

# The Cost of Regulation and Intervention

Policy makers have a responsibility to disclose regulatory costs, whatever uncertainties exist in measuring them. Indeed, in many respects, costs are unmeasurable to third parties.<sup>18</sup> Given the inherent difficulty of accurately measuring costs and the fact that regulators are unelected, reforms must move toward requiring elected representatives to vote to approve regulations before they become effective, because there is no other way to force authorities to internalize and answer for costs. Alas, Washington has a long way to go in this regard.

The Office of Management and Budget's (OMB) *2015 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates*, which surveys regulatory costs and benefits, pegs the cumulative costs of 120 selected major regulations during the decade from 2004 to 2014 at between \$68.4 billion and \$102.9 billion (in 2010 dollars).<sup>19</sup> The previous year's report estimated the cost of 116 rules at between \$68.5 billion and \$101.8 billion.<sup>20</sup> Meanwhile, the estimated range for benefits in the new report spanned \$260.9 billion to \$981 billion (in 2010 dollars).<sup>21</sup>

OMB's cost-benefit breakdown incorporates only rules for which both benefits and costs have been expressed in quantitative and monetary terms by agencies. It omits numerous categories and cost levels of rules. Rules from independent agencies are entirely absent.

For the fiscal year (FY) ending September 2014, OMB's new publication reports only 13 rules that had both benefit and cost analyses. These depict additional costs ranging from \$3.0 billion to \$4.4 billion (in 2010 dollars).<sup>22</sup> In the previous year's report, by contrast, OMB had presented seven rules

with costs ranging from \$2.4 billion to \$3 billion annually (in 2010 dollars).<sup>23</sup> Several billion dollars more in annual rule costs generally appear in these reports for rules with only cost estimates, but these are not tallied and highlighted by OMB.

In a 2014 report, the National Association of Manufacturers (NAM) modeled 2012 total annual regulatory costs in the economy of \$2.028 trillion (in 2014 dollars).<sup>24</sup> Earlier governmental assessments before and after the turn of the century from OMB, Government Accountability Office (GAO), and Small Business Administration (SBA) have also noted aggregate annual costs in the hundreds of billions of dollars, some well in excess of \$1 trillion in today's dollars (see Table 2). Still another report, by economists John W. Dawson of Appalachian State University and John J. Seater of North Carolina State University, pushes regulatory cost impacts into the stratosphere via dozens of trillions of dollars in lost GDP annually, taking into account the long-term growth reduction caused by decades of costly economic regulation.<sup>25</sup> Finally, the Mercatus Center in a "a formal model of economic growth from microeconomic foundations," particularly the influence of regulation on firms' investment choices, presents a counterfactual that if regulatory burdens had remained constant since 1980, the 2012 U.S. economy would have been 25 percent larger; or, put another way, the economy is now at least \$4 trillion smaller annually than it would be otherwise.<sup>26</sup>

Among governmental reports, the latest comprehensive federal government assessment of the entire federal regulatory enterprise that one might regard as official was

Table 2. Assessments of Federal Regulation: Late 20th Century, Early 21st Century, Billions of Dollars

	Hopkins 1992 (1991 dollars)	Government Accountability Office 1995 (1995 dollars)	Hopkins 1995 (1995 dollars)	Small Business Admin. 2001 (2001 dollars)	Office of Management & Budget 2002 (2001 dollars)	Small Business Admin. 2005 (2004 dollars)	Small Business Admin. 2010	National Association of Manufacturers 2014 (2012 dollars)
Environmental	115		168	197	203	221	281	330
Other Social	36		55		30			
Transportation					22			
Labor					22			
Economic Regulation	73		80		150	591	1,236	1,448
Efficiency	130		147		337			
Transfers - Domestic				101				
Transfers - Domestic				202				
Efficiency - Int'l Trade				44				
Transfers - Int'l Trade				88				
Workplace and Homeland Security				82		106	75	92
Paperwork/Process/Info Collection (tax compliance)	189		218	129	190	195	160	159
Totals:	543	647	668	843	954	1,113	1,752	2,029
Totals, converted to 2013 \$		992.498	1,024.712	1,109.39	1,255.46			

Sources: Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps, Report prepared for the Regulatory Information Service Center," Washington, D.C., August 1992, <http://www.thecre.com/pdf/COST%20OF%20REGULATION%20FILLING%20THE%20GAPS.pdf>. General Accounting Office, Briefing Report to the Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, Regulatory Reform: Information on Costs, Cost Effectiveness, and Mandated Deadlines for Regulations, (GAO/PEMD 95 18BR), March 1995, <http://archive.gao.gov/t2pbat/1153774.pdf>. Thomas D. Hopkins, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress," Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, Washington, D.C., October 1995, [http://www.sba.gov/advo/laws/archive/law\\_brd.html](http://www.sba.gov/advo/laws/archive/law_brd.html). Office of Management and Budget, "Draft Report to Congress on the Costs and Benefits of Federal Regulations," *Federal Register*, March 28, 2002, pp. 15037-15038, <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/infomag/cbreport.pdf>. W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, October 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>. W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract no. SBHQ-03-M-0522, September 2005, <https://www.sba.gov/sites/default/files/files/rs264tot.pdf>. National Association of Manufacturers, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business," W. Mark Crain and Nicole V. Crain, September 10, 2014, <http://www.nam.org/~media/A7A8456F33484E498F40CB46D6167F31.ashx>. Some figures here are adjusted to 2013 by the change in the consumer price index between 2001 and 2013 (1.316), and between 1995 and 2013, derived from "CPI Detailed Report Data for April 2014," Bureau of Labor Statistics, Washington, D.C. (Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, all items), <http://www.bls.gov/cpi/cpid1404.pdf>.

prepared in September 2010 for the SBA.<sup>27</sup> This report, which the SBA presented in several iterations over the previous decade and a half, has been discontinued. The report estimated regulatory compliance costs of \$1.752 trillion for 2008 and received significant criticism, to which the authors responded directly and more than adequately.<sup>28</sup>

The primary purpose of the SBA report series was to examine the extent to which regulatory costs impose higher burdens on small firms, which have higher per-employee regulatory costs than do larger ones. The exercise is vitally important, but the federal government now chooses to ignore it. The SBA and earlier OMB surveys traditionally have conveyed regulatory costs using the following categories:

- Economic regulatory costs (for example, market entry restrictions and transfer payments such as price supports that shift money from one pocket to another)
- Workplace regulatory costs
- Environmental regulatory costs
- Paperwork costs

The NAM model addresses the now-dropped size-of-firms question and finds overall annual per employee regulatory costs to firms of \$9,991 on average. But the effects by firm size are disparate. Table 3 shows that per employee regulatory costs for firms of fewer than 50 workers can be 29 percent

greater than those for larger firms—\$11,724 for smaller firms versus \$9,083 for larger ones.<sup>29</sup> Meanwhile, other developments—including the aftermath of recent major financial, health, and environmental policies—point to substantial regulatory costs not captured by most assessments to date.<sup>30</sup>

NAM estimates that regulatory costs now exceed \$2 trillion, whereas other reports imply considerably more.<sup>31</sup> To allow for incremental updates to an aggregate baseline, one may compile estimates of compliance and economic costs for the federal regulatory enterprise mainly by using OMB annual *Report to Congress* on costs and benefits over the years, data such as paperwork burdens described in OMB’s annual *Information Collection Budget*, the few independent agency cost estimates available, and other publicly available material and third-party assessments. The goal is for data to converge over time on some annual estimate encompassing new information about economic and regulatory cost burdens. Using this approach, we employ an across-the-board cost estimate for federal regulation and economic intervention of \$1.886 trillion annually (see Figure 1)<sup>32</sup> that integrates material like that seen in Table 2.

There is much work to be done. Recent regulatory interventions—including regulatory costs associated with the recent health care and financial reform legislation—have dramatic

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*Per employee regulatory costs for firms of fewer than 50 workers can be 29 percent greater than those for larger firms.*

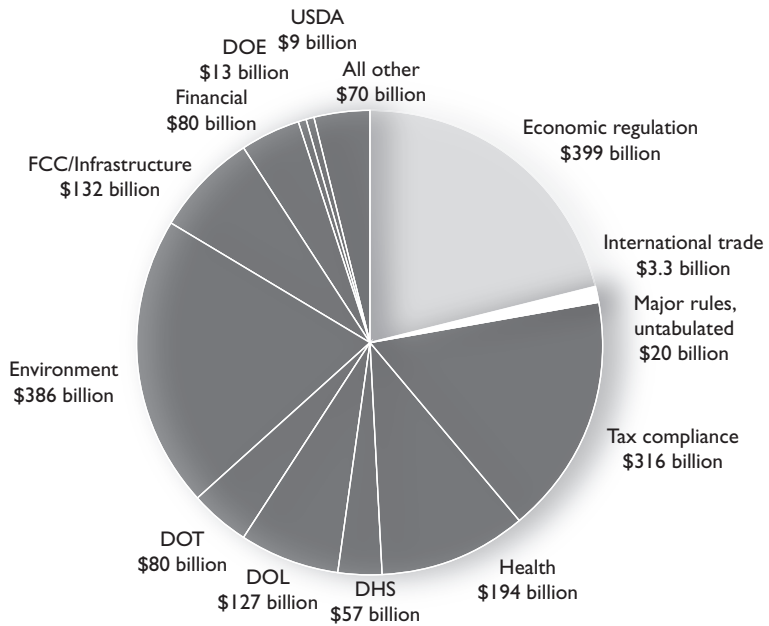
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**Table 3. Regulatory Costs in Small, Medium, and Large Firms, 2012**

	<b>Cost per Employee for All Business Types</b>			
	<b>All Firms</b>	<b>&lt; 50 Employees</b>	<b>50–99 Employees</b>	<b>&gt; 100 Employees</b>
All Federal Regulations	\$9,991	\$11,724	\$10,664	\$9,083
Economic	\$6,381	\$5,662	\$7,464	\$6,728
Environmental	\$1,889	\$3,574	\$1,338	\$1,014
Tax Compliance	\$960	\$1,518	\$1,053	\$694
Occupational/Homeland Security	\$761	\$970	\$809	\$647

Source: W. Mark Crain and Nicole V. Crain, “The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business,” National Association of Manufacturers, September 10, 2014, <http://www.nam.org/~media/A7A8456F33484E498F40CB46D6167F31.ashx>.

Figure 1. Annual Cost of Federal Regulation and Intervention, 2016 Estimate, \$1.885 Trillion



Source: Wayne Crews, *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, 2016 ed., <http://ssrn.com/abstract=2502883>.

Note: DHS = Department of Homeland Security; DOE = Department of Education; DOL = Department of Labor; DOT = Department of Transportation; FCC = Federal Communications Commission; USDA = U.S. Department of Agriculture.

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*The last time the federal government balanced the budget was between 1998 and 2001.*

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economic impacts. Other long-recognized costs, such as indirect costs and the effects of lost innovation or productivity, remain stubbornly difficult to assess and can produce underestimates of the total regulatory burden.<sup>33</sup>

### Regulatory Compliance Costs: Catching Up to Government Spending?

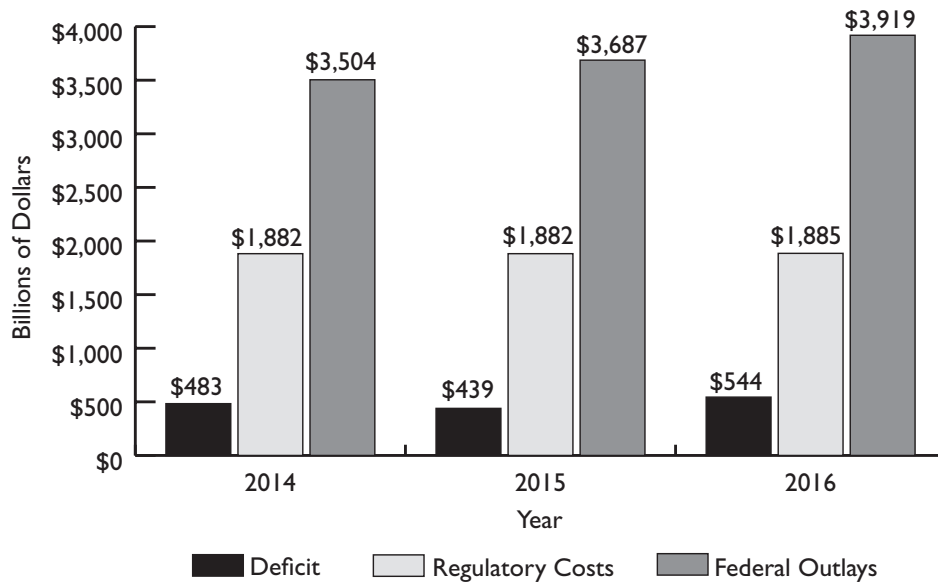
FY 2015 saw a deficit of \$439.0 billion on \$3.687 trillion in outlays. Figure 2 compares deficits and outlays for 2014–2015 and projected amounts for 2016 with our regulatory cost estimate of \$1.88 trillion. In the 2016 bar, note that estimated regulatory compliance costs are equivalent to nearly half the projected

level of fiscal budget outlays and well over three times the anticipated deficit of \$544 billion.

Recognizing that off-budget, largely hidden regulatory compliance costs are equivalent to half of all federal outlays is sobering enough, but the situation is more dramatic in Washington’s high-spending culture of perpetual deficits, because regulations constitute a type of off-budget spending in the form of federal mandates—for which the population is compelled to bear the cost. That is why looking at outlays, regulation, and the deficit at one glance is useful (see Figure 2).

The last time the federal government balanced the budget was between 1998 and 2001.<sup>34</sup> But those were days when a \$2 trillion federal budget was regarded as high.

Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2013, 2014, and projected 2015)



Sources: 2014 deficit and outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2015 to 2025*, January 2016, Table 1-2, “CBO’s Baseline Budget Projections,” p. 13, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49892-Outlook2015.pdf>. 2014-16 regulatory cost estimate from Crews, *Tip of the Costberg*, Working Paper 2014, 2015 and 2016 eds. 2015 actual and 2016 projected deficit and outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2016 to 2026*, January 2016, Summary Table 1, “CBO’s Baseline Budget Projections,” p. 2. <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51129-2016Outlook.pdf>.

Note: Federal deficit and outlay numbers are by fiscal year; regulatory costs by calendar year.

Today, regulatory costs approach \$2 trillion, while annual federal spending hovers around \$3.9 trillion and will soon top \$4 trillion. FY 2015 saw a deficit of \$439 billion on \$3.687 trillion in outlays, with no balance—let alone surplus—anywhere in sight over the coming decade, according to the CBO. The deficit is projected to jump by more than \$100 billion during 2016, to reach \$3.919 trillion. And the trend likely will continue northward, as the deficit’s rate of increase is projected to top \$1 trillion by 2022.<sup>35</sup>

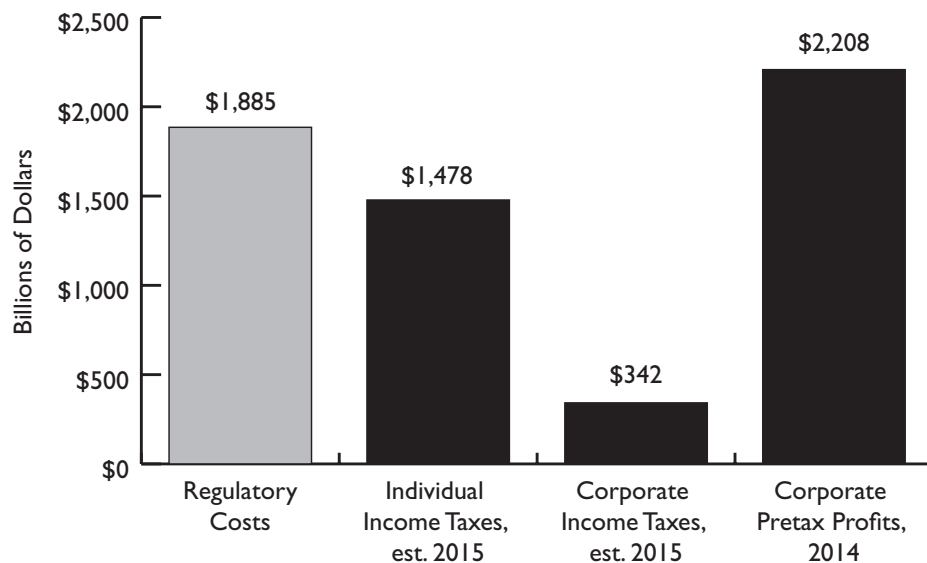
All this spending can translate into even higher future regulatory costs. Spending related to bailouts, stimulus, infrastructure, health care, telecommunications, and more will include significant regulatory components as well. Burdening the American

economy with even more regulatory mandates and restrictions will lead to more years of slow growth and stagnant job creation. To avoid that fate and truly address Washington’s spending and deficit culture and off-budget regulation, policy makers should move toward economic liberalization and a reduced regulatory state.

### Regulatory Costs versus Income Taxes and Corporate Profits

Regulatory costs easily exceed the cost of individual income taxes and vastly exceed revenue from corporate taxes *combined*. As Figure 3 shows, regulatory costs now tower over the estimated 2015 individual income tax revenues of \$1.478 trillion (individual

Figure 3. Regulatory Compliance Compared with Individual Income Taxes, Corporate Income Taxes, and Corporate Pretax Profits



Sources: Crews, *Tip of the Costberg*, 2016 ed. Estimated 2014 tax figures from OMB, Historical Tables, Table 2.1, "Receipts by Source: 1934–2019," <http://www.whitehouse.gov/omb/budget/Historicals>. 2014 corporate pretax profits (domestic and international) from Bureau of Economic Analysis, National Income and Product Accounts Tables, Table 6.17D, "Corporate Profits before Tax by Industry," <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=243>.

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**Regulatory compliance costs are approaching the level of pretax corporate profits, which were \$2.208 trillion in 2014.**

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income tax receipts had fallen substantially during the economic downturn but are rising again).<sup>36</sup> Corporate income taxes collected by the U.S. government, estimated at \$341.7 billion in 2015, are dwarfed by regulatory costs (corporate tax receipts had declined by half during the recent downturn).<sup>37</sup> The combination of the two, \$1.82 trillion, is just exceeded by our regulatory cost estimate. As the last bar of Figure 3 shows, regulatory compliance costs are approaching the level of pretax corporate profits, which were \$2.208 trillion in 2014.<sup>38</sup> This is the third time pretax profits have topped \$2 trillion.

### Regulatory Costs versus GDP

#### Regulation “Eats” 11 Percent of U.S. GDP

For the United States, the Commerce Department’s Bureau of Economic Analysis in January 2016 estimated GDP for 2015 at \$17.938 trillion.<sup>39</sup> The total regulatory cost estimate of

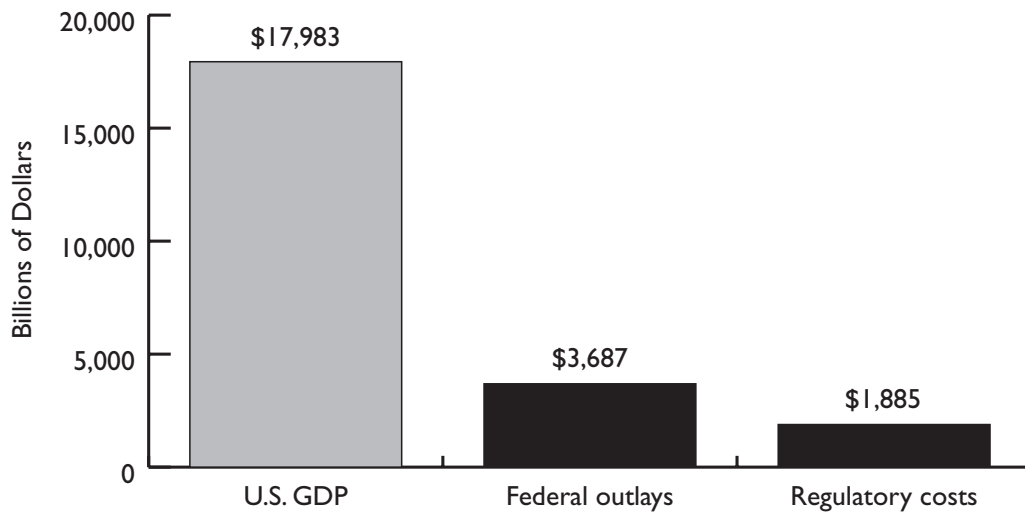
\$1.885 trillion is equivalent to approximately 10.5 percent of that amount. Combining regulatory costs with federal FY 2015 outlays of \$3.687 trillion (see Figure 2) indicates that the federal government’s share of the economy reaches \$5.572 trillion, or 31.1 percent. (See Figure 4.) This does not include state and local spending and regulation.

#### U.S. Regulation Can Be Compared to Some of the World’s Largest Economies

Not counting the United States, only eight countries have GDPs that exceed the estimated cost of regulation in the United States. U.S. regulatory costs surpass the 2014 GDP of both Canada, at \$1.785 trillion, and Mexico, at \$1.295 trillion. If U.S. regulatory costs of \$1.885 trillion were a country, it would be the world’s ninth-largest economy, ranking behind India and ahead of Russia.<sup>40</sup> Figure 5 depicts this number embedded within a ranking of the 14 largest global

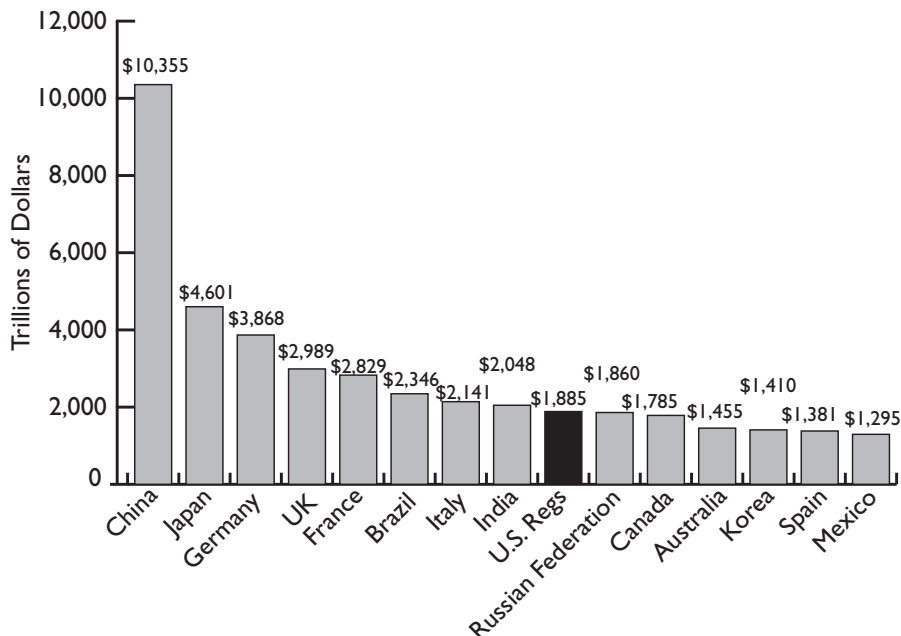


Figure 4. GDP Compared to Federal Outlays and Regulation



Sources: Crews, *Tip of the Costberg*, 2016 ed. GDP from U.S. Department of Commerce, Bureau of Economic Analysis, *National Income and Product Accounts, Gross Domestic Product: Fourth Quarter and Annual 2015* (Advance Estimate), January 29, 2016, <https://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>. Outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2016 to 2026* January 2016, Summary Table 1, "CBO's Baseline Budget Projections," p. 2, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51129-2016Outlook.pdf>.

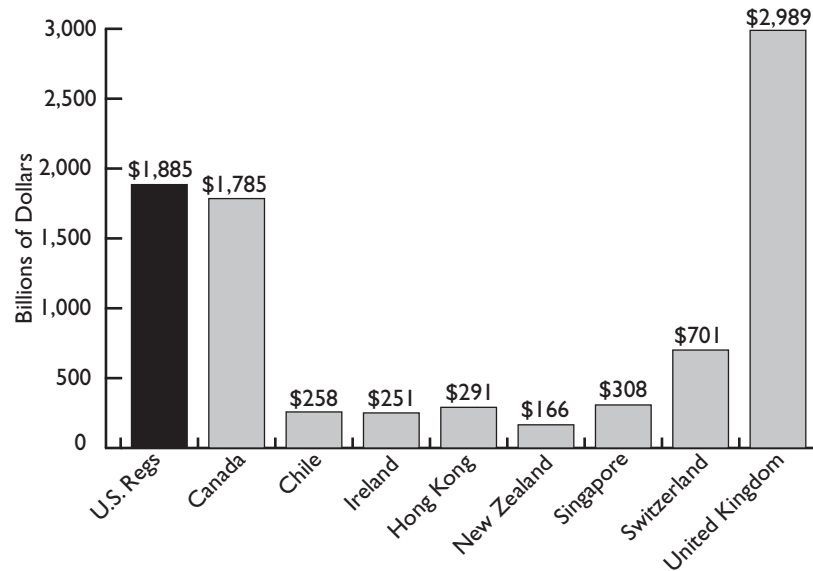
Figure 5. U.S. Regulatory Costs Compared to 2014 Gross Domestic Product of the World's Largest Economies



Source: Crews, *Tip of the Costberg*, 2016 ed. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries>.

Note: U.S. 2014 GDP of \$17.419 trillion is not shown. If it were a country, U.S. regulations would be the ninth largest.

Figure 6. U.S. Regulatory Load Compared to 2014 Gross Domestic Product in World Economies Regarded as Most Free



Sources: Crews, *Tip of the Costberg*. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries>. New Zealand is from 2011 data.

Note: "Free" economies consist of those in the top ten of both the Heritage Foundation/*Wall Street Journal Index of Economic Freedom* and the Fraser Institute/Cato Institute *Economic Freedom of the World* report.

economies (U.S. GDP is omitted in the chart).

### U.S. Regulatory Costs Exceed GDPs of All the World's Most-Free Economies

U.S. regulatory costs of \$1.885 trillion exceed the output of many of the world's major economies, including those regarded as the most economically free. Two annual surveys of global economic freedom are widely cited. Each year, the Heritage Foundation and the *Wall Street Journal* jointly publish the *Index of Economic Freedom*.<sup>41</sup> Meanwhile, Canada's Fraser Institute, in conjunction with the Cato Institute and a group of international think tanks, publishes the annual *Economic Freedom of the World* report.<sup>42</sup> Of the top

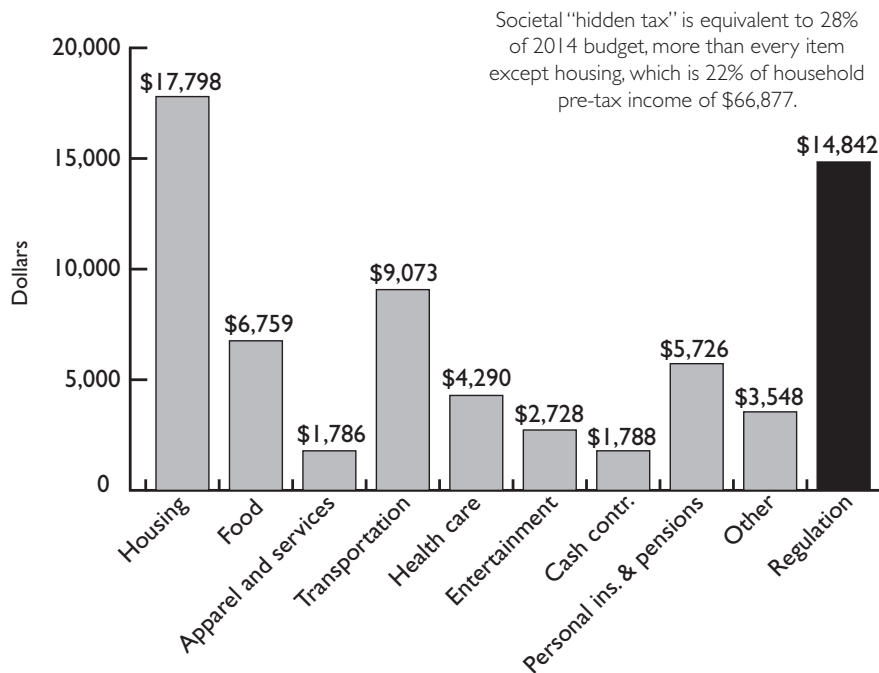
10 countries in these publications, eight are common to both. Figure 6 lists the eight compared to U.S. regulatory costs. Note that the United States no longer ranks in the top 10 of either report. Overregulation is likely a factor affecting that ranking.

### Regulation: A Hidden Tax on the Family Budget

Like the taxes they are required to pay, businesses will pass some regulatory costs on to consumers. Costs are borne by businesses, households, and lower-level governments both through direct pass downs and in broader indirect economic effects.<sup>43</sup> Thus, regulatory costs propagate through an economy, for which the basic unit remains the individual and the household. The implication



**Figure 7. The U.S. Household Expense Budget of \$53,495 Compared to Regulatory Costs**



Sources: Bureau of Labor Statistics, author arithmetic.

Note: Proxy for households here is BLS depiction of 127,006,000 “Consumer units,” which comprise “families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses.”

is that regulation has large effects on societal wealth. For perspective, if we assume the full pass-through of all such costs to consumers, we can look at the share of each household’s regulatory costs and compare it with total annual expenditures as compiled by the Labor Department’s Bureau of Labor Statistics (BLS).<sup>44</sup>

For America’s 127 million households, or “consumer units” in BLS parlance, the average 2014 pretax income was \$66,877.<sup>45</sup> Figure 7 breaks down household expenditures of \$53,495 by category. The highest category is housing at \$17,798 annually. The second-highest category is transportation at \$9,073.

As Figure 7 shows, U.S. households “pay” \$14,842 annually in a hidden regulatory tax (\$1.885 trillion in regulation divided by 127 million “consumer units”), or 22 percent of

average income before taxes. That figure is higher than every annual household budgetary expenditure item except housing. More is “spent” on embedded or hidden regulation in society than on health care, food, transportation, entertainment, apparel and services, and savings. Societal regulatory costs amount to up to 28 percent of the typical household’s expenditure budget.<sup>46</sup>

### The Federal Government’s Costs of Policing the Regulatory State

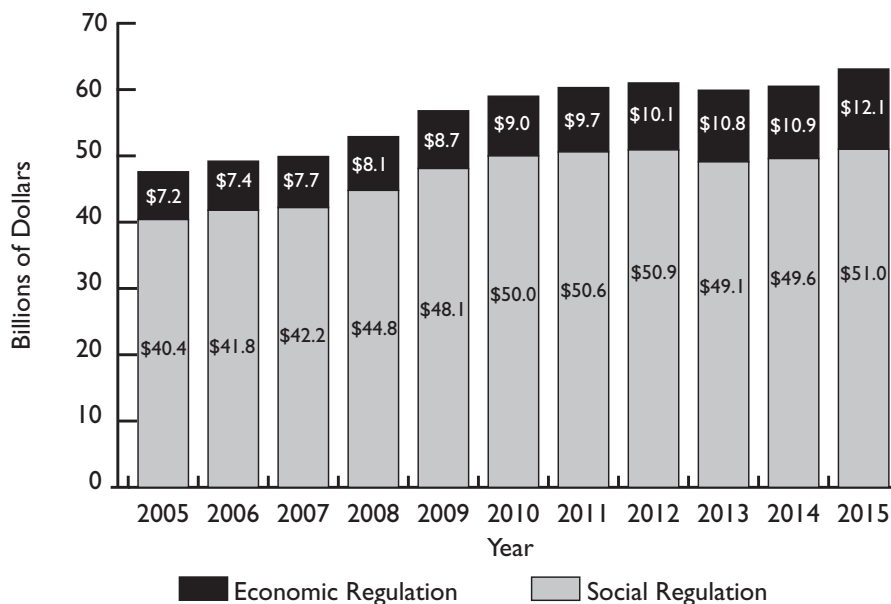
Regulatory cost estimates encompass compliance costs paid by the public, but those estimates do not include administrative costs—the on-budget amounts spent by federal agencies to produce their rules and to police regulatory compliance. The Weiden-

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*More is “spent” on embedded or hidden regulation in society than on health care, food, transportation, entertainment, apparel and services, and savings.*

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Figure 8. Federal Agency Enforcement Budgets, \$63 Billion Total in FY 2015



Source: Susan Dudley and Melinda Warren, “Regulators’ Budget Increases Consistent with Growth in Fiscal Budget: An Analysis of the U.S. Budget for Fiscal Years 2015 and 2016,” *Regulators’ Budget* No. 37, published jointly by the Regulatory Studies Center at the George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy, May 2015, p. 25.

Note: Original 2009 constant dollars are adjusted here by the change in the consumer price index between 2009 and 2015, derived from Consumer Price Index tables, U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. (Table 24. All Urban Consumers (CPI-U), U.S. city average, all items), <http://www.bls.gov/cpi/tables.htm>

baum Center at Washington University in St. Louis, Missouri, and the Regulatory Studies Center at George Washington University in Washington, D.C., regularly examine the annual presidential federal budget proposal to compile the administrative costs of developing and enforcing rules. Such amounts, as funds that taxpayers contribute to support agencies’ administrative operations, are disclosed in the federal budget.

The estimated FY 2015 enforcement costs incurred by federal departments and agencies stood at \$63 billion (in constant 2014 dollars, adjusted from original 2009 dollars), a 4.3 percent increase over \$60.4 billion the previous year (Figure 8).<sup>47</sup>

Of that amount, \$12.1 billion was spent administering economic regulations. The larger amount spent for writing and enforcing social and environmental regulations was \$51 billion. In current dollars, the Environmental Protection Agency (EPA) alone spent an estimated \$5.211 billion in this latter category in 2015, accounting for 8.3 percent of the total expected to be spent by all regulatory agencies.<sup>48</sup> The EPA formerly accounted for the lion’s share of governmental administration and enforcement costs, but the Department of Homeland Security, at an estimated \$26.5 billion, now accounts for 42.1 percent.<sup>49</sup>

The \$63 billion in regulatory agency enforcement costs—\$12.1 billion plus \$51 billion—helps complete a picture of the federal

regulatory apparatus. Adding administrative costs tabulated by the Weidenbaum Center and the Regulatory Studies Center to our \$1.885 trillion estimate brings the total 2015 regulatory cost estimate to about \$1.948 trillion.

The number of estimated full-time-equivalent administrative and enforcement staff stood at 277,266 in FY 2015, up from

276,576 in 2014, according to the joint report by the Weidenbaum Center and Regulatory Studies Center. There has been an increase of well over 100,000 federal employees since the 2001 staffing level of 173,027.<sup>50</sup> Much of the post-2001 surge may be attributable to the creation of the Transportation Security Administration that year, which included the hiring of thousands of airport screening personnel.