

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2016 Edition

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Executive Summary

In January 2016, the Congressional Budget Office (CBO) reported outlays for fiscal year (FY) 2015 of \$3.687 trillion and projected spending for FY 2016 at \$3.919 trillion.¹ Discretionary, entitlement, and interest spending is projected to surpass \$4 trillion in 2017 and to top \$5 trillion by FY 2022.² High debt and deficits notwithstanding, \$5 trillion in annual spending will soon be the new normal.

Revenue is not expected to cover spending at any point in the coming decade. Once unthinkable, trillion-dollar deficits became an annual occurrence during the economic downturn between 2009 and 2012,³ and the CBO projects that deficits will exceed \$1 trillion again by FY 2022.⁴ In the near term, President Obama's more optimistic 2017 budget projects smaller deficits than recent highs, yet the \$503 billion deficit projected for 2017 is expected to hit \$660 billion in 2022 with no hint of balance anywhere in sight.⁵

Such sums once typified the level of budgets themselves rather than shortfalls. Granted,

numerous other countries' national government outlays consume a greater share of their national output, compared with about 20 percent for the U.S. federal government, but in absolute terms, the U.S. government is the largest government on the planet.⁶ Only six other nations top \$1 trillion in annual government revenues, and none but the United States and recently China collect more than \$2 trillion.⁷

Alongside spending, regulations are another way the federal government heavily influences society. Like federal spending, regulations and their costs should be closely tracked and disclosed annually. Then, periodic housecleaning should be performed. The limited cost-benefit analysis at the agency level covers only a fraction of rules.⁸

Among the problems with cost-benefit analysis is that it relies primarily on agency self-reporting. Having agencies audit their own rules is like asking students to grade their own exams. Regulators are disinclined to underscore when a rule's benefits do not justify

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its costs. In fact, one could expect agencies to devise new and suspect categories of benefits to justify agency rulemaking activity and new endeavors.⁹

A major driver of overregulation is the entrenched overdelegation of rulemaking power to agencies. Requiring expedited votes on economically significant or controversial agency rules before they become binding would help reestablish congressional accountability and affirm the principle of “no regulation without representation.”

Openness about regulatory facts and figures can be bolstered through federal regulatory transparency report cards, similar to the presentation in the annual *Ten Thousand Commandments* report.¹⁰ These report cards could be officially issued each year to distill information for the public and policy makers about the scope of the regulatory state.

Regulation: The Hidden Tax

The national debt now stands at \$18.9 trillion.¹¹ That is alarming. Yet the federal government’s reach extends well beyond Washington’s taxes, deficits, and borrowing. Federal environmental, safety and health, and economic regulations affect the economy by hundreds of billions—even trillions—of dollars annually in addition to the official dollar outlays that dominate the federal policy debate.

Firms generally pass the costs of some taxes along to consumers.¹² Likewise, some regulatory compliance costs borne by businesses will find their way into the prices consumers pay, affect the wages workers earn, and lead to lower levels of growth and prosperity. Precise regulatory costs can never be fully known because, unlike taxes, they are unbudgeted and often indirect.¹³ But scattered government and private data exist about the number of regulations issued, their costs and effects, and the agencies that issue them. Compiling some of that information can make the federal regulatory enterprise

somewhat more comprehensible. That compilation is one purpose of *Ten Thousand Commandments*, highlights of which follow:

- Based on federal government data, past reports, and contemporary studies, this report highlights regulatory compliance and economic impacts of federal intervention of \$1.885 trillion annually.¹⁴
- The Weidenbaum Center at Washington University in St. Louis and the Regulatory Studies Center at George Washington University in Washington, D.C., jointly estimate that agencies spent \$63 billion in 2015 to administer and police the regulatory enterprise. Adding the \$1.885 trillion in off-budget compliance costs brings the total reckoned regulatory enterprise to about \$1.948 trillion.
- If it were a country, U.S. regulation would be the ninth-largest economy, ranking behind India and ahead of Russia.
- U.S. regulatory costs fall between the gross domestic products (GDPs) of Canada and the United Kingdom, the highest-income nations among the countries ranked most free in the annual *Index of Economic Freedom* and *Economic Freedom of the World* reports.
- In 2015, 114 laws were enacted by Congress during the calendar year, while 3,410 rules were issued by agencies.¹⁵ Thus, 30 rules were issued for every law enacted last year. This “Unconstitutionality Index,” the ratio of regulations issued by agencies to laws passed by Congress and signed by the president, had been 16 in 2014 and 51 in 2013. The average for the decade has been 26. This disparity highlights the delegation of lawmaking power to unelected agency officials.
- If one assumed that all costs of federal regulation and intervention flowed all the way down to households, U.S. households would “pay” \$14,842 annually on average in a regulatory hidden tax. That payment amounts to 22 percent of the average income of \$66,877 and 28 percent of the expenditure budget of \$53,495. The “tax” exceeds every item in the budget except housing. More is

“spent” on embedded regulation than on health care, food, transportation, entertainment, apparel, services, and savings.

- The estimated cost of regulation is equivalent to half the level of federal spending itself, which was \$3.687 trillion in 2015.
- Regulatory costs of \$1.88 trillion amount to 11 percent of U.S. GDP, which was estimated at \$17.9 trillion in 2015 by the Commerce Department’s Bureau of Economic Analysis.
- When regulatory costs are combined with federal FY 2015 outlays of \$3.687 trillion, the federal government’s share of the entire economy reaches 31.1 percent. This does not include state and local spending and regulation.
- The costs of the regulatory hidden tax surpass federal individual and corporate income tax receipts, which total \$1.82 trillion combined.
 - Regulatory compliance costs exceed 2015 estimated individual income tax revenues of \$1.478 trillion.
 - Regulatory compliance costs vastly exceed the 2015 estimated U.S. corporate income tax revenues of \$341.7 billion.
- Regulatory costs rival corporate pretax profits of \$2.208 trillion.
- The *Federal Register* finished 2015 at 80,260 pages, the third-highest level in its history.
- Of the seven all-time-high *Federal Register* page counts, six have occurred under President Obama.
- *Federal Register* pages devoted specifically to final rules stand at 24,694 in 2015. The record high was 26,417 in 2013.
- The 2015 *Federal Register* contained 3,410 final rules and 2,342 proposed rules.
- The annual outflow of more than 3,400 final rules—sometimes far above that level—means that 94,246 rules have been issued since 1993 when the first edition of *Ten Thousand Commandments* was published.
- President George W. Bush’s administration averaged 63 “major” rules (a broader category than “economically significant”) annually during his eight years in office. President Obama’s seven years so far have averaged 81, or a 29 percent higher average annual output than that of Bush. Obama has already issued 570 major rules during his seven years, compared with Bush’s 505 over eight years.
- Since the nation’s founding, more than 15,236 executive orders have been issued. President Obama had issued 244 as of the end of 2015.
- President Bush published 129 memoranda over his entire presidency, whereas Obama issued 219 that were published in the *Federal Register* during his first seven years.
- Whereas the federal government issues more than 3,400 rules annually, public notices in the *Federal Register* normally exceed 24,000 annually, with uncounted “guidance documents” and other proclamations with potential regulatory effect among them. There were 24,393 notices in 2015, and there have been 526,292 since 1995.
- As for the current regulatory pipeline, 60 federal departments, agencies, and commissions have 3,297 regulatory actions at various stages of implementation, according to the fall 2015 “Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.”
- Of the 3,297 regulations in the pipeline, 218 are “economically significant” rules, which the federal government defines as having annual effects on the economy of \$100 million or more. Assuming that those rule-making effects are primarily regulatory rather than deregulatory implies roughly \$22 billion yearly in future off-budget regulatory costs in the works.
- For completed economically significant rules (a narrower category than “major”), the average for Obama’s seven years so far is 67; George W. Bush’s average over his eight years was 49.
- Of the 3,297 regulations now in the works, 674 affect small businesses. Of those, 386 required a regulatory flexibility analysis, up from 374 last year. An additional 288 were otherwise noted by agencies to affect small businesses

in some fashion. While the combined reported number of rules affecting small business is down recently, the average of Obama's seven years so far, 406, exceeds Bush's eight-year average of 377.

- The five most active rule-producing entities—the Departments of the Treasury, the Interior, Commerce, Health and Human Services, and Transportation—account for 1,348 rules, or 41 percent of all rules in the Unified Agenda pipeline.
- The Environmental Protection Agency (EPA), which until two years ago ranked consistently in the top five, is now sixth. But adding the EPA's 188 rules brings the total from the top six rulemaking agencies to 1,639 rules, or 46 percent of all federal rules.

Reducing overspending and relieving regulatory burdens are vital to the nation's economic health. The short-lived series of budget surpluses from 1998 to 2001 now seem like ancient history. Mounting pressures to restrain spending budgets can incentivize lawmakers to impose off-budget regulations on the private sector rather than add to unpopular deficit spending. Unlike on-budget spending, the regulatory costs remain largely hidden from public view, a feature that can make regulation overly attractive to lawmakers. For example, a new government program like job training could involve either increasing government spending or imposing new regulations that require businesses to provide such training.