

The Cost of Regulation and Intervention

Policy makers should disclose regulatory costs so that the choice to regulate can get full consideration. The costs that Congress imposes indirectly through regulation appear substantial, as several studies over the years have shown. The coverage and methodology of such studies vary, but they all suggest that regulation is a substantial government activity that deserves greater consideration.

The Office of Management and Budget (OMB) annually surveys regulatory costs and benefits. Its *2016 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* pegs the annual costs of 129 selected “major” regulations from 2005 to 2015 at between \$74 billion and \$110 billion (in 2014 dollars).²² The estimated range for benefits in the new report spanned \$269 billion to \$872 billion (in 2014 dollars).²³ According to OMB, 21 rules subjected to both benefit and cost analyses during the fiscal year ending September 2015 show added annual costs of \$5.5 to \$6.9 billion (2014 dollars).²⁴

The OMB cost–benefit breakdown incorporates only those rules for which agencies have expressed both benefits and costs in quantitative and monetary terms. The previous year’s OMB report included only 13 rules that had both benefit and cost analyses. It reported additional costs ranging from \$3 billion to \$4.4 billion (in 2010 dollars).²⁵ Just seven rules were subjected to cost and benefit analyses the year before that.²⁶ Several billion dollars more in annual rule costs generally appear in these reports for rules with only cost estimates, but they are not tallied and highlighted

by OMB. The agency omits many smaller rules from its analysis.

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).²⁷ Earlier governmental assessments before and after the turn of the century from OMB, the Government Accountability Office (GAO), and the Small Business Administration (SBA) have also found 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 costs into the stratosphere by counting the long-term growth reduction caused by decades of increased opportunity costs imposed by economic regulation. Their report counts tens of trillions of dollars in lost GDP annually.²⁸

The Mercatus Center at George Mason University in Arlington, Virginia, has a report that uses a microeconomic model to try to determine “how much regulation distorts the investment decisions of firms and thus hampers long-run economic growth.” If regulatory burdens had remained constant since 1980, according to the Mercatus report, the 2012 U.S. economy would have been 25 percent larger. Put another way, during that time, the economy grew by at least \$4 trillion less each year than it could have.²⁹

The SBA used to publish a comprehensive assessment of the federal regulatory apparatus that was unfortunately discontinued in

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								
Efficiency	73		80		150			
Transfers	130		147		337	591	1,236	1,448
Efficiency - 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 Accountability 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/1/153774.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. 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>. 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/inforeg/cbreport.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/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/17A8456F33484E498F40CB46D6167F31>. 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 (1.316), 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>.

2010. This report estimated regulatory compliance costs of \$1.75 trillion for 2008.³⁰

The primary purpose of the SBA report series was to examine the extent to which regulatory costs impose burdens on small firms, which have higher per-employee regulatory costs than larger ones. The SBA and earlier OMB surveys have traditionally 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; and
- Paperwork costs.

The National Association of Manufacturers' model finds overall annual per-employee regulatory costs to firms of \$9,991 on average.³¹ 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, compared with \$9,083 for larger ones.³²

The NAM model estimates that regulatory costs now exceed \$2 trillion annually, whereas other estimates suggest more.³³ 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 the 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 baseline reckoning that encompasses new information about economic and regulatory cost burdens. Using this approach, we estimate across-the-board federal regulatory costs of \$1.902 trillion annually (see Table 1 and Figure 1).

There is much more work to be done. Because of recent developments—including major financial, health, and environmental regulations—some substantial regulatory costs are not captured by most assessments.³⁴ Other long-recognized costs—such as indirect costs and negative effects on innovation or productivity—remain stubbornly difficult to assess. That may produce underestimates of the total regulatory burden.³⁵ Nonetheless, it is clear that regulation imposes costs to rival government taxation and spending. Some comparisons help place the cost of regulation in perspective.

The U.S. government saw \$3.854 trillion in federal outlays in FY 2016 and a deficit of \$587 billion. Figure 2 compares deficits

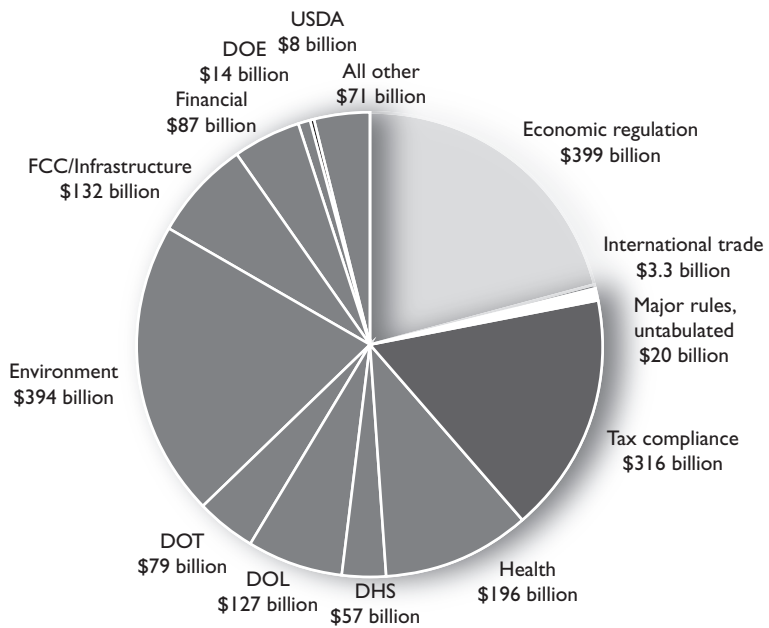
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Table 3. Regulatory Costs in Small, Medium, and Large Firms, 2012

	Cost per Employee for All Business Types			
	All Firms	< 50 Employees	50–99 Employees	> 100 Employees
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 I. Annual Cost of Federal Regulation and Intervention, 2017 Estimate, \$1.902 Trillion



Source: Wayne Crews, *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, 2017 ed., <http://ssrn.com/abstract=2502883>.

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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and outlays for 2015–2016 and projected amounts for 2017 with our regulatory cost estimate of \$1.9 trillion. For 2017, estimated regulatory compliance costs are equivalent to nearly half the projected level of fiscal budget outlays of \$3,963 and well over three times the anticipated deficit of \$559 billion.

Regulatory Costs versus Income Taxes and Corporate Profits

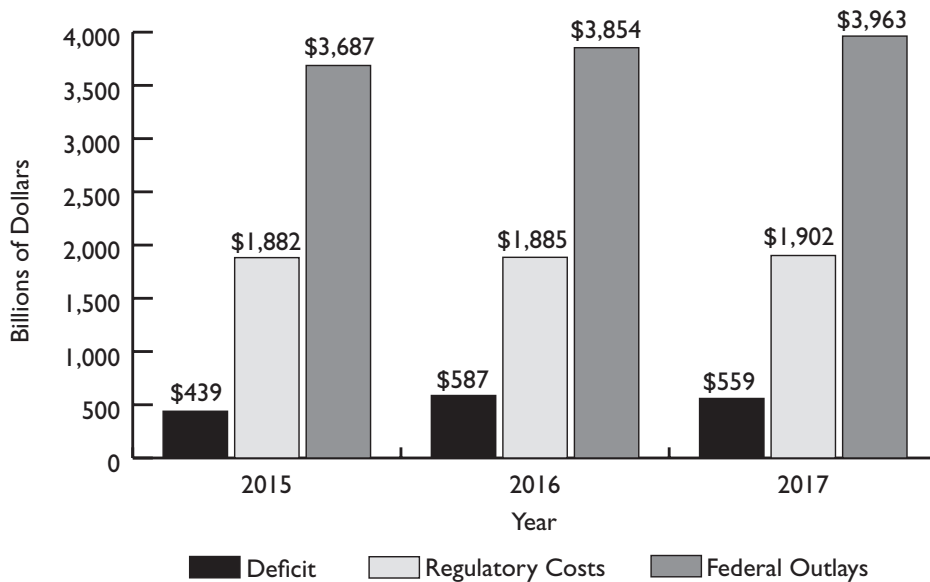
Regulatory costs easily rival revenues from individual income taxes and corporate taxes *combined*. As Figure 3 shows, regulatory costs stand well above estimated 2016 individual income tax revenues of \$1.628 trillion (individual income tax receipts fell substantially during the economic downturn but are rising again and

have reached record levels).³⁶ Corporate income taxes collected by the U.S. government—estimated at \$292.6 billion for 2016—are dwarfed by regulatory costs (corporate tax receipts declined by half during the recent downturn).³⁷ The combination of the two, \$1.92 trillion, just exceeds our regulatory cost estimate of \$1.9 trillion. Regulatory compliance costs are approaching the level of corporate pretax profits, which were \$2.138 trillion in 2015.³⁸

Regulatory Costs versus GDP

In January 2017, the Commerce Department’s Bureau of Economic Analysis estimated U.S. GDP for 2016 at \$18.861 trillion.³⁹ The total regulatory cost figure of \$1.9 trillion annually is equivalent to ap-

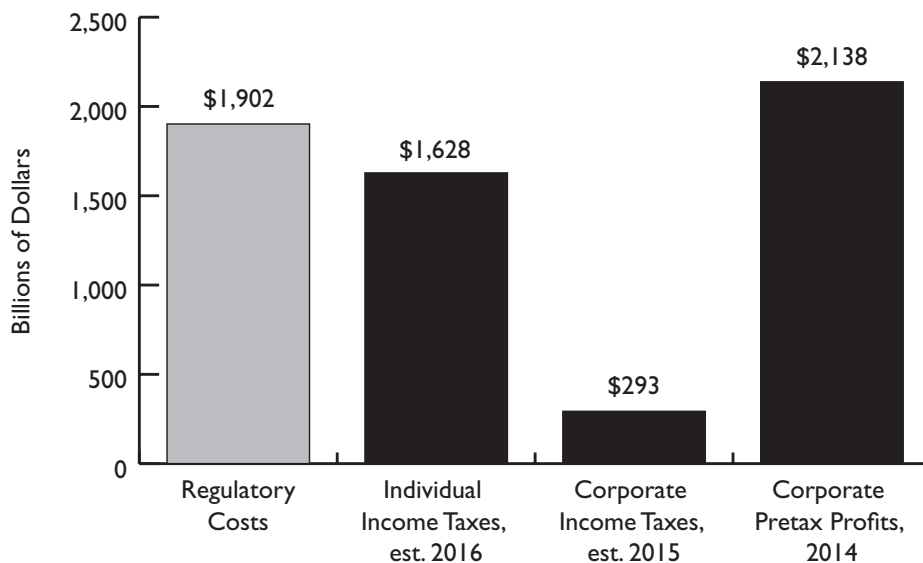
Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2015, 2016, and projected 2017)



Sources: 2015 deficit and outlays from Congressional Budget Office (CBO), *The Budget and Economic Outlook: Fiscal Years 2016 to 2026*, January 2016, Table I-2, “CBO’s Baseline Budget Projections,” p. 15, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51129-2016outlook.pdf>. 2016 actual and 2017 projected deficit and outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2017 to 2027*, January 2017, Table I-1, “CBO’s Baseline Budget Projections, by Category” p. 10. <https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/reports/52370-outlook.pdf>.

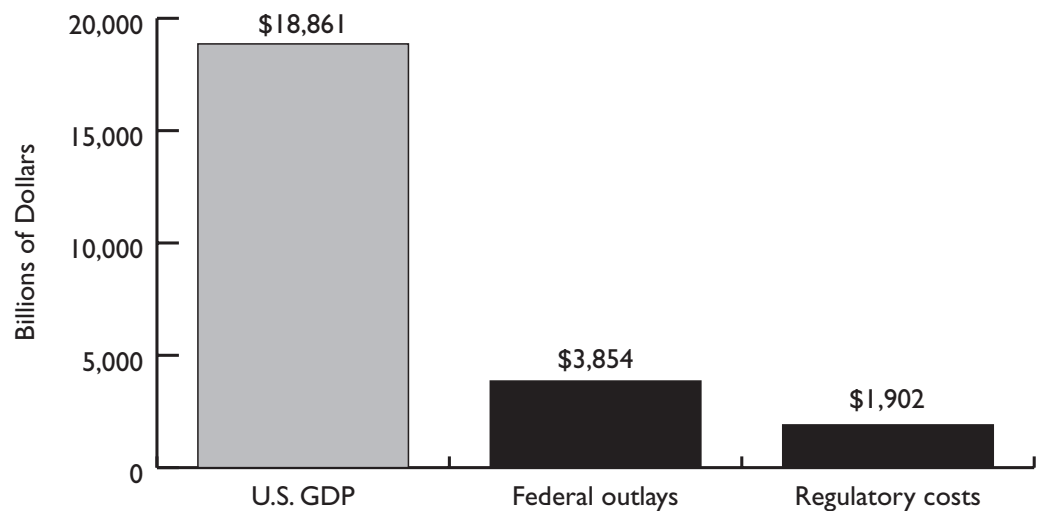
Federal deficit and outlay numbers are by fiscal year; regulatory costs by calendar year.

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



Sources: Crews, *Tip of the Costberg*, 2017 ed. Estimated 2014 tax figures from OMB, Historical Tables, Table 2.1, “Receipts by Source: 1934–2019,” <http://www.whitehouse.gov/omb/budget/Historicals>. 2013 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>.

Figure 4. GDP Compared to Federal Outlays and Regulation



Sources: Crews, *Tip of the Costberg*, 2017 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>.

proximately 10 percent of that amount. Combining regulatory costs with federal FY 2016 outlays of \$3.854 trillion (see Figure 2), the federal government’s share of the economy reaches \$5.754 trillion, or 30 percent. That does not include state and local spending and regulation (see Figure 4).

est economically by the two annual surveys of global economic freedom (see Figure 6).⁴¹

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.⁴² The rest are passed on to workers and investors in regulated companies. By assuming a full pass-through of all such costs to consumers—most consumers are also workers and owners through stock and mutual fund holdings—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).⁴³

For America’s 128.4 million households, or “consumer units” in BLS parlance, the average 2015 pretax income was \$69,629.⁴⁴ U.S. households “pay” \$14,809 annually in embedded regulatory or intervention costs (\$1.902 trillion in regulation divided by 128.4 million

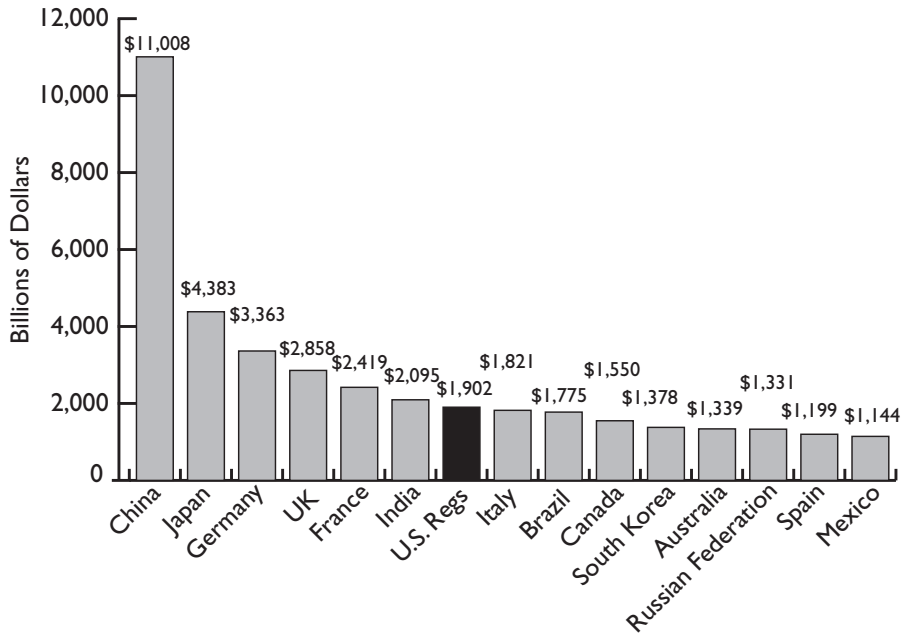
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U.S. Regulation Compared with Some of the World’s Largest and Freest Economies

Not counting the United States, only six countries have GDPs that exceed the estimated cost of U.S. regulation. U.S. regulatory costs surpass the 2015 GDP of both Canada, at \$1.55 trillion, and Mexico, at \$1.144 trillion. If U.S. regulatory costs of \$1.9 trillion were a country, it would be the world’s seventh-largest economy, ranking behind India and ahead of Italy (see Figure 5).⁴⁰

U.S. regulatory costs of \$1.9 trillion exceed the output of many of the world’s major economies, including those ranked as the fre-

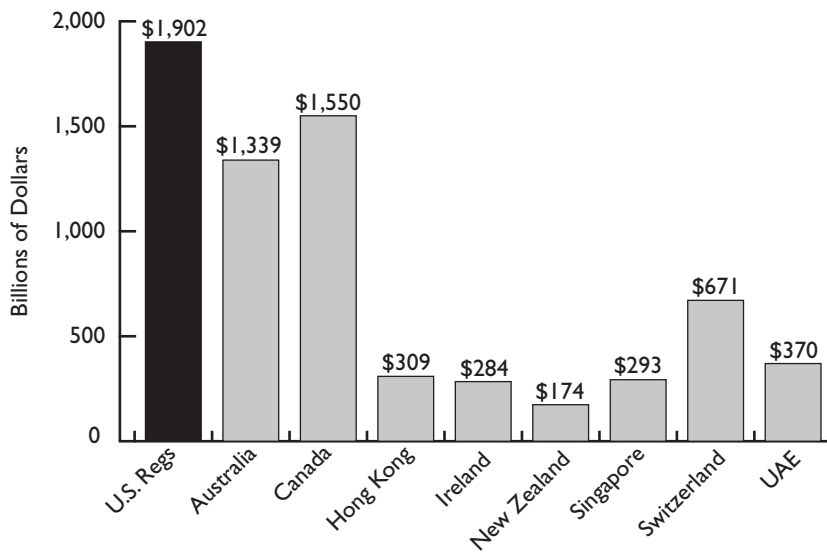
Figure 5. U.S. Regulatory Costs Compared to 2015 Gross Domestic Product of the World's Largest Economies



Source: Crews, *Tip of the Costberg*, 2017 ed. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries>, and <http://databank.worldbank.org/data/download/GDP.pdf>.

If it were an “economy,” U.S. regulations would be the seventh largest.

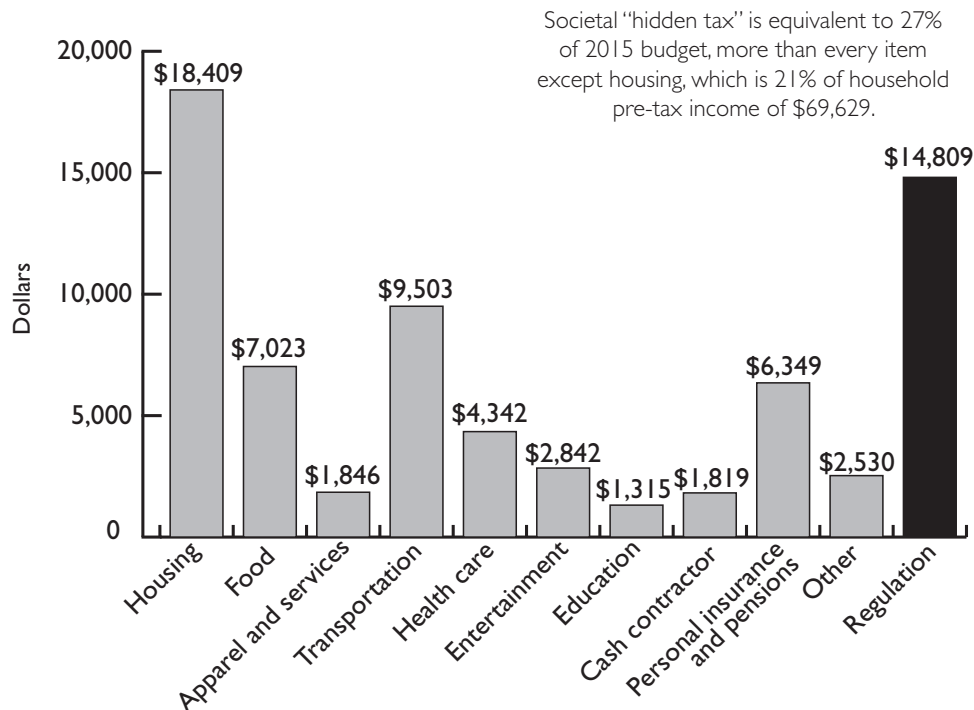
Figure 6. U.S. Regulatory Load Compared to 2015 Gross Domestic Product in World Economies Regarded as Most Free



Sources: Crews, *Tip of the Costberg*, 2017 ed. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries>. New Zealand is from 2011 data.

“Free” economies consist of those in the top 10 of both the Heritage Foundation/*Wall Street Journal Index of Economic Freedom* and the Fraser Institute/*Cato Institute Economic Freedom of the World* report.

Figure 7. The U.S. Household Expense Budget of \$55,978 Compared to Regulatory Costs



Sources: Bureau of Labor Statistics, author arithmetic.

Proxy for households here is BLS depiction of 128,437,000 “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.”

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

“consumer units”), or 21 percent of average income before taxes. (The percentage is higher as a share of after-tax income.) That “hidden tax” figure is higher than every annual household budgetary expenditure item except housing. Regulatory costs amount to up to 27 percent of the typical household’s expenditure budget. More is “spent” on embedded or hidden regulation in society than on items like health care, food, transportation, entertainment, apparel, services, and savings (see Figure 7). Of course, some costs of regulation are not hidden. Consumers pay for regulatory agencies directly through taxes.

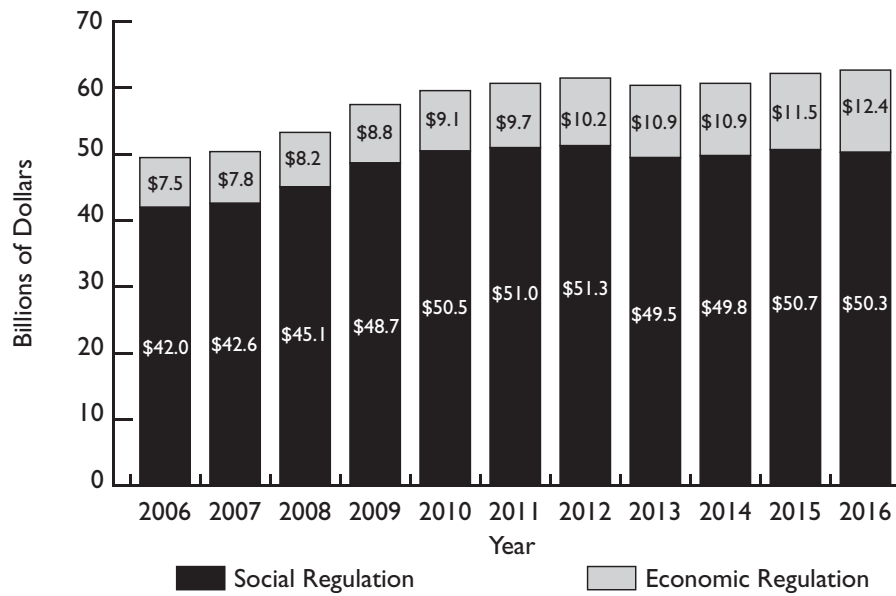
The Direct Costs of Regulatory Policing

Regulatory cost estimates generally capture costs paid by the public, but those estimates

do not include administrative costs—the on-budget amounts spent by federal agencies to produce and enforce rules. The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center regularly examine the president’s annual budget proposal to compile the administrative costs of developing and enforcing rules. These amounts—as funds that taxpayers contribute to support agencies’ administrative operations—are disclosed in the federal budget.

According to these estimates, FY 2016 enforcement costs incurred by federal departments and agencies stood at \$63 billion (in constant 2016 dollars, adjusted from original 2009 dollars) (Figure 8).⁴⁵ Of that amount, \$12.4 billion was spent on administering economic regulations. The larger amount, spent on writing and enforcing social and environmental regulations, was \$50.3 billion.

Figure 8. Federal Agency Enforcement Budgets,
\$63 Billion Total in FY 2016



Source: Susan Dudley and Melinda Warren, Annual “Regulators’ Budget” Series, published jointly by the Regulatory Studies Center at the George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy.

Original 2009 constant dollars are adjusted here by the change in the consumer price index between 2009 and 2016, 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>.

In current dollars, the Environmental Protection Agency (EPA) alone spent an estimated \$5.335 billion in this latter category in 2016, accounting for 8.4 percent of the total expected to be spent by all regulatory agencies.⁴⁶ The EPA formerly accounted for the lion’s share of governmental administration and enforcement costs, but the Department of Homeland Security (DHS), at an estimated \$26.9 billion, now comprises 42.6 percent.⁴⁷

The Weidenbaum Center and the Regulatory Studies Center estimate the number of full-time-equivalent administrative and enforcement staff at 278,799 in FY 2016, up from 270,910 in 2015. The number of federal employees has increased well over 100,000 since the 2001 staffing level of 173,057.⁴⁸ Much of the post-2001 surge may be attributable to the then newly created Transportation Security

Administration’s hiring of thousands of airport screening personnel.

The \$63 billion in regulatory agency enforcement costs—\$12.4 billion plus \$50.3 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 \$1.9 trillion estimate brings the total 2016 regulatory cost estimate to about \$1.963 trillion.

Estimating dollar costs is one way to capture the size and scope of the federal regulatory enterprise, which is indeed massive. Another is to assess the paperwork—the dauntingly huge amount of regulatory material that agencies publish each year in the *Federal Register*.