

Toward a Federal “Regulatory Budget”

When Congress spends, no one questions that disclosure is necessary for voters to hold representatives accountable. Federal expenditure programs are funded either by raising taxes or by borrowing against a promise to repay with interest from future tax collections. Taxpayers can observe those decisions during the authorization and appropriations processes (not that it is a simple thing to do). They can inspect the costs of programs and agencies in Congressional Budget Office publications and in the federal budget’s historical tables.⁴⁴⁹ The point is, disclosure for spending exists, however difficult it may be to access specific information.

However, Congress often “funds” objectives and programs through regulatory mandates. Regulation and spending are both mechanisms by which governments act or compel individuals. Rather than taxing and paying directly, federal regulation can compel the private sector, as well as state and local governments, to bear the costs of federal initiatives. Regulation in such instances functions as an off-budget form of taxation and spending. Although disclosure of spending obviously does not stop deficits and debt, it is still vital for making progress toward those ends. Likewise, policy makers should disclose regulatory costs to the extent possible so that the decision of whether to regulate can at least have an opportunity to get the full consideration it deserves.

Because the costs and economic effects of regulatory compliance are not budgeted and disclosed the way that federal spending is, regulatory initiatives can commandeer private-sector resources with comparatively little public controversy. Policy makers may find it easier to impose regulatory costs than to embark on government spending because of the former’s lack of disclosure and accountability. And when regulatory compliance costs prove burdensome, Congress can escape accountability by blaming an agency for issuing an unpopular rule.

In fact, “regulation” may be too narrow a term to capture the effects of today’s wholesale government intervention into a vast array of areas, from health care and education to retirement. Much of this pursuit is aimed at progressives’ North Star of a universal basic income, an idea seductive to some conservatives and libertarians as well.⁴⁵⁰ That cost calculations are largely impossible is not the fault of critics of the regulatory state. Nonetheless, they need to be assessed and described to the public, at least in the aggregate.

Table 2 provides an overview of the 2021 federal regulatory enterprise to be discussed in the following pages.

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Table 2. The Regulatory State: A 2020 Overview

	Year-End 2020	1-Year Change (2019–2020)	5-Year Change (2016–2020)	10-Year Change (2011–2020)
Total regulatory costs	\$1.9 trillion	n/a	n/a	n/a
Agency enforcement budgets	\$78.0 billion	5.5%	13.1%	20.7%
<i>Federal Register</i> pages	86,356	19.2%	–9.9%	6.6%
Devoted to final rules	32,223	55.0%	–16.6%	22.6%
<i>Federal Register</i> final rules	3,353	–13.1%	–13.0%	–11.9%
<i>Federal Register</i> proposed rules	2,149	1.0%	–11.0%	–26.0%
Code of Federal Regulations pages*	185,984	0.3%	4.3%	12.4%
Total rules in Agenda pipeline	3,852	2.7%	16.1%	–6.7%
Completed	630	15.4%	–5.3%	–37.6%
Active	2,636	1.3%	25.8%	–1.5%
Long term	586	–10.5%	17.4%	–27.4%
“Economically significant” rules in the year-end pipeline	261	35.9%	35.2%	23.1%
Completed	58	31.8%	23.4%	28.9%
Active	173	45.4%	53.1%	25.4%
Long term	30	3.4%	–9.1%	3.4%
Rules affecting small business	635	–1.4%	–5.4%	–22.7%
Regulatory flexibility analysis required	350	0.9%	–15.4%	–16.3%
Regulatory flexibility analysis not required	285	–4.0%	10.0%	–29.5%
Rules affecting state governments	409	6.0%	15.2%	–20.0%
Rules affecting local governments	258	11.2%	22.3%	–18.4%
GAO Congressional Review Act reports on major rules	90	12.5%	–22.4%	12.5%

n/a = not applicable.

* year-end 2019