What Comes after "Trillion"? The Unknowable Costs of Regulation and Intervention

If real debt levels on the fiscal budget and entitlements can be vastly higher than the public is generally told, what might that say about the true costs of the even less disciplined regulatory enterprise?[451] The nonchalance with which those costs are treated extended even to former President Trump, who had asked staff to postpone looking until his second term, which did not materialize.[452] "Who the hell cares about the budget," Trump reportedly proclaimed at a January 2020 fundraiser.[453] Soaring peacetime deficits and debt proliferated at a time of low interest rates, now compounded by unprecedented COVID-related spending. We can expect more rescue-by-deficit spending during some future recession or crisis.[454] When reckonings come and spending options disappear, regulation can become more of a fallback.

The federal government undertakes little review of federal regulation to assure that individual regulations do more good than harm and no assessment of regulatory burdens as a whole.[455] The sole official reckoning citizens get regarding the scale and scope of regulatory costs is an annual—in law[456] but not in practice[457]—OMB survey of a subset of regulatory costs and benefits called the *Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*.[458] These reckonings contain a limited overview of significant rules and a partial quantification of costs and benefits of a handful of executive agencies' rules during the current fiscal year and the most recent 10 years. It has not been seen for several years now. The aggregate annual estimate of the cost of the regulatory enterprise required by law[459] has not been performed since 2002.[460]

OMB's 2017 *Report to Congress on Benefits and Costs*, covering fiscal year 2016 Obama-era rules and regulations, arrived nearly four years overdue, in December 2019.[461] This report has a long history of tardiness and incompleteness, but that years-long delay was unprecedented.[462]A frenzy to catch up brought forth a truncated *Draft Report* combining the overdue fiscal years 2018, 2019, and 2020 in one abbreviated volume the day before Christmas Eve in 2019,[463] along with helpful supplemental tables in electronic format, but without the 10-year lookbacks that had become standard, let alone the aggregate estimate required by law.[464] Undated final reports for these years, covering the period through FY 2019, have now appeared on OMB's website with a URL indicating they were uploaded in January 2021.[465] While the reports were late, the public did get the year-end status reports on Trump's one-in, two out Executive Order 13771 directive on agency regulations.[466]

OMB's last 10-year survey from FY 2016 reported that federal agencies published 36,255 final rules in the *Federal Register*, and that it reviewed 2,670 of those final rules under Executive Order 12866. Of those OMB-reviewed rules, 609 were considered major. Yet OMB claimed high net regulatory benefits, pegging the cumulative benefits of a selection of 137 of 609 major regulations issued between 2006 and 2016 at between $287 billion and $911 billion (in 2015 dollars). The estimated range for the decade's costs was $78 billion to $115 billion. The 16 rules subjected to both benefit and cost analyses during FY 2016 added annual costs in the range of $4.3 billion to $6.4 billion.

The aggregate annual estimate of the cost of the regulatory enterprise required by law has not been performed since 2002.

Bringing it all up to date, the new White House composite report on fiscal years 2017–2019 covers a handful of rules and acknowledges total costs and benefits of only a few billion each:[467]

- FY 2017: $6.9 billion to $11 billion in annual benefits; $2.5 billion to $3.7 billion in annual costs (2016$)
- FY 2018: $0.2 billion to $0.6 billion in annual benefits; $0.1 billion to $0.3 billion in annual costs (2017$)
- FY 2019: $0.2 billion to $3.7 billion in annual benefits; up to $0.6 billion in annual costs (2018$)

Regulators decide what counts as major. As OMB acknowledges in the 2018, 2019, and 2020 *Report to Congress*: "As has been the practice for many years, all estimates presented ... are agency estimates of benefits and costs, or minor modifications of agency information performed by OMB."[468] OMB admits that its report "does not purport to demonstrate all costs or benefits from federal regulation; instead, the report summarizes the anticipated costs and benefits that the Regulatory Impact Analyses (RIAs) of individual final rules reported for those rules."[469] The administration acknowledges what it calls an "often-overlooked detail"—that "the totals listed … include only the benefits and costs for the minority of rules for which both those categories of impacts were estimated."[470]

Regulators decide what counts as major.

As this report will cover, nearly 13,000 rules and regulations, large and small, have been issued since Trump's inauguration, but the amalgamated three-year report features only 30 rules with both benefits and costs "quantified and monetized," and another 28 with costs alone quantified, in some cases partially.[471] Meanwhile, very few of the regulations covered earlier find their way into OMB-style analyses. For the categories it does cover, OMB asserts the major rules—including budget rules—it reviewed "represent approximately one-fourth" of the significant regulatory actions reviewed by OMB.[472] Overall, the 2018–2020 consolidated *Report to Congress* encompasses only 145 "major" rules, a small number compared with the 9,604 rules issued during the corresponding calendar years.[473]

Of the hundreds of executive agency major rules issued since 2001 (among tens of thousands of nonmajor rules issued), just a relative handful received OMB-reviewed quantified cost analysis, let alone cost *and* benefit analysis; overall about 38 percent had quantitative cost estimates.[474] When one looks beyond the officially self-designated "major" rules, the proportion of all rules with any reviewed cost analysis averages less than 1 percent.[475]

OMB references a 2004 claim that the "major" rules reviewed account for the bulk of regulatory costs.[476] Earlier OMB reports had been more forthcoming about indirect and unaccounted costs. Even today, OMB does not review *independent agency* rules like those of the FCC or financial regulatory bodies. Entire categories of economic and social regulatory intervention like those referenced in Box 3 are not captured in the current OMB review process. Even the Unfunded Mandates Reform Act, surveyed in the *Report to Congress*, exempts a great deal of regulatory intervention from critical analysis.[477]

Transfer and budget programs, unless directly related to national defense or criminal justice, are inherently interventionist and regulatory in nature. Yet the costs and market distortions caused by such federal spending are not counted,[478] nor are the deadweight effects of such budget rules, even when the federal government has taken over a substantial portion of retirement and senior health care.[479] Pell Grants alter private college financing. Federal medical programs have altered the medical market to such an extent that single-payer insurance is now contemplated. Washington's expansion of middle-class dependency on the federal government is about as fundamental as social regulation gets, yet it is not counted as costs—especially now that the Biden administration's benefit assertions in the "Modernizing Regulatory Review" order replace any cost balance.[480] Agencies conducting reviews will be inherently reluctant to conduct cost–benefit analysis or to acknowledge that regulations impose a net cost.

The fundamental problem with the regulatory *Report to Congress* is that net-benefit analysis helps fuel indefinite expansion of government. Creative regulators can alternate between maximizing net benefits (as in OMB's 19-year-old "Circular A-4" guidance on regulatory analysis) and claiming that benefits "justify" costs as specified in Executive Order 12866. Cost–benefit analysis is conveniently silent on benefits that may have accrued if an agency's "regulatory budget" allocation belonged to another agency instead. So there exists no genuine net-benefit pursuit adopting a wider perspective than that of agencies in isolation. Still further, costs of "regulatory dark matter"—such as agency memoranda, guidance documents, bulletins, circulars, and manuals—do not appear in OMB's annual assessments. Executive orders' effects are unaccounted for.[481] Far too much is left out, despite OMB's decades of experience.

In contrast to OMB's traditionally narrow focus, a 2019 report from the Council of Economic Advisers, *The Economic Effects of Federal Deregulation,* pointed to hundreds of billions in direct and indirect annual savings from changes not just in a set of rules removed but in approaches to regulation as such:

> The Council of Economic Advisers (CEA) estimates that after 5 to 10 years, this new approach to Federal regulation will have raised real incomes by $3,100 per household per year. Twenty notable Federal deregulatory actions alone will be saving American consumers and businesses about $220 billion per year after they go into full effect. They will increase real (after-inflation) incomes by about 1.3 percent. …
>
> This new approach to regulation not only reduces or eliminates costly regulations established by prior administrations but also sharply reduces the rate at which costly new Federal regulations are introduced. The ongoing introduction of costly regulations had previously been subtracting an additional 0.2 percent per year from real incomes, thereby giving the false impression that the American economy was fundamentally incapable of anything better than slow growth.[482]

In touting deregulatory actions and their purported benefits in July 2020, the administration claimed that "President Trump has signed 16 pieces of deregulatory legislation that are expected to result in a $40 billion increase in annual real incomes."[483] Further, the administration's deregulatory actions would save additional billions not entirely captured in the year-end updates on one-in, two-out. For example, the White House claimed that the "implementation of the SAFE [Safer Affordable Fuel-Efficient] Vehicles Rule is estimated to increase the real incomes of Americans by $53 billion per year over the 2021–2029 period."[484]

During the coronavirus outbreak, the CEA estimated the savings from regulatory streamling related to pandemic recovery:[485]

> The total value of more widespread adoption of telemedicine would be approximately $325 billion per year. Reducing FDA approval times by relaxing overly burdensome impediments to drug development would have a net present value of $1.9 trillion if approval times are sped up by one year, $3.9 trillion if sped up by two years, and $5.9 trillion if sped up by three years. Expanding occupational licensing deregulation for nurse practitioners nationwide could result in $62 billion in cost savings for patients annually.

Many changes made over the past few years are on the chopping block in the Biden administration, but the inference of the CEA approach is that far greater costs exist that can be attributed to regulation than the annual *Report to Congress* has addressed. For example, regulation affects not only current jobs, but also entrepreneurs' inclination to create new ones in the future. This intertemporal nature of regulation complicates cost assessment, since jobs that have not been created cannot be "lost."

The CEA's assertions in its 2019 *Economic Effects of Federal Deregulation* report were blasted as "bad fiction"[486] by progressives and received some left-leaning "fact checks."[487] But if there is validity to the propositions that such regulatory changes (and those during COVID-19) reduced costs substantially, it is also reasonable to presume prior increases in regulation will have added billions of dollars beyond what is seen in the normal compliance measures. Government steering without issuing a rule is also "regulation," as implied in the CEA report. Therefore, it is appropriate to address the costs of progressive policies and the benefits of lifting them.

Regulatory costs are unknowable in an elemental sense. They are not observable or calculable.

Regulatory costs are unknowable in an elemental sense. They are not observable or calculable—and many of the economic calculations necessary to enable central economic planning are impossible.[488] That is why the real goal for restraining the growth of government is not regulatory reform alone, but rather restoration of Congress' lawmaking duties under Article I of the Constitution. Even so, the need for disclosure is an imperative as long as the administrative state persists. The solution in the meantime is for Congress to internalize costs by voting on costly and controversial rules (eventually and ideally all of them) and to avoid passing overly broad and vague legislation that delegates tremendous authority to administrative agencies.

Making matters worse, the federal bureaucracy, even with all the vast resources at its disposal, has done nothing to fulfill its duty to assess the aggregate effects of regulation and intervention in which it engages.

The Small Business Administration (SBA) last published an assessment of the federal regulatory apparatus in 2010, pegging regulatory compliance costs at $1.75 trillion for 2008, but that report was discontinued and has not been replaced. The primary purpose of the SBA report series was not an aggregate cost estimate but rather an examination of regulatory burdens on small firms, which have higher per-employee regulatory costs than larger ones. Earlier government assessments from around the turn of the 21st century from OMB, the GAO, and the SBA also found aggregate annual costs in the hundreds of billions of dollars, some in excess of $1 trillion in the 2013 dollars depicted in Table 3.

Performing an aggregate estimate was never the SBA's job, but remains OMB's neglected duty. The data underlying these studies were problematic.[489] In the final analysis, the annual OMB cost–benefit breakdown omits the independent agencies that account for so many regulations. It also incorporates only those rules for which agencies have calculated both benefits and costs. That amounts to a couple dozen at best, even as, each year, agencies issue several thousand rules and guidance documents.

Box 3 illustrates a wide range of regulatory and administrative state interventions that go unacknowledged.[490]

Private entities have attempted to quantify regulatory costs. 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).[491] The NAM report drew its share of detractors.[492] Another report—by economists John W. Dawson of Appalachian State University and John J. Seater of North Carolina State University—counts the long-term reduction in economic growth caused by decades of cumulative opportunity costs imposed by economic regulation. Their report posits dozens of trillions of dollars in lost gross domestic product (GDP) annually. They contend that rules affecting growth rates compound, and that Americans are less than half as rich as they would be in the absence of much of the regulatory state.[493]

Box 3. Unmeasured Costs of the Administrative State and Intervention

I. Unmeasured Costs of Shortcomings in Administrative Procedure Act Oversight

A. Rule Cost Categories Prone to Escaping Measurement and Disclosure[494]

- Costs of rules not deemed economically significant by agencies that in fact are economically significant
- Costs of independent agency regulations
- Costs of unfunded mandates on states and localities
- Costs of interpretive rules and guidance documents
- Indirect costs
- Job costs of regulation

B. Process/Oversight Shortcomings Generating Unknown Financial and Societal Costs[495]

- Costs of abandonment of formal rulemaking
- Costs of agencies' failure to issue a notice of proposed rulemaking for a significant portion of rules
- Costs of agency-gamed notice-and-comment processes
- Costs of agencies' undermining of the Congressional Review Act by failing to submit final rules to Congress and the Government Accountability Office for consideration
- Costs of baked-in pro-regulatory bias of the administrative state
- Costs of policy uncertainty
- Costs of regulation by sue-and-settle agreements
- Costs of regulatory accumulation
- Costs of differential effects of rules on businesses

II. Unmeasured Costs of the Loss of Liberty[496]

- Costs of regulatory takings and property value destruction[497]
- Costs of abandoning negative rights for a positive rights framework and unequal treatment of citizens[498]
- Costs of delegation of lawmaking power to the executive branch and to unelected administrators[499]
- Costs of agency liberation from Congress through self-funding[500]
- Costs of paternalism and the normalization of dependency
- Costs of imposing regulation based on secret or creatively leveraged data[501]
- Costs of abandoned federalism[502]
- Costs of authoritarianism and overcriminalization[503]
- Costs of loss of anonymity due to state surveillance[504]

- **III. Costs of Spending and Legislative Programs with Sweeping Regulatory Effect**
- Costs of top-down national plans, agendas, and treaties[505]
- Costs of distortions created by "ordinary" federal spending, subsidies, and stimulus[506]
- Costs of deadweight effects of federal spending[507]
- Costs of government spending to steer investment in science and technology

IV. Costs of the Derailment of Market Institutions

- Costs of the presumption of agency expertise (and denial of non-expertise and disruption)[508]
- Costs of the market failure fallacy and disregard of government failure
- Costs of interference with price, distribution, and access mechanisms
- Costs of antitrust regulation and the institutionalization of raising competitors' costs[509]
- Costs of blurring corporate and government roles with government-sponsored enterprises and public–private partnerships[510]
- Costs of government steering by direct ownership or control of resources[511]
- Costs of abandoning property rights
- Costs of hyperregulatory public utility, infrastructure models
- Costs of anti-property approaches to environmental amenities and concerns[512]
- Costs of overlicensing
- Costs of cronyism through rent-seeking[513]
- Costs of permanent bureaucracy[514]

V. Costs of Lethality

- Costs of the precautionary principle and the derailment of normal evolutionary risk-management innovation
- Costs of selective expression of benefits
- Costs of ignoring reductions in general wealth and health induced by regulation
- Health costs of rent-seeking
- Costs of undermining markets in information

Table 3. 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 and 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						591	1,236	1,448
Efficiency	73		80		150			
Transfers	130		147		337			
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 dollars		1,019.03	1,052.10	1,142.27	1,292.67			

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/t2pbat1/153774.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/files/rs264tot.pdf. Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, http://www.sba.gov/advo/research/rs371tot.pdf. Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, http://www.sba.gov/advocacy/7540/49291. 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 2016 by the change in the consumer price index between 2001 and 2016, derived from "CPI Detailed Report Data for January 2017," 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..

Table 4. 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.

Some have set out to examine how seemingly inconsequential regulations accumulate and generate unintended effects and costs.[515] A 2016 report—"The Cumulative Cost of Regulations" by the Mercatus Center at George Mason University—employs a microeconomic model to determine "how much regulation distorts the investment decisions of firms and thus hampers long-run economic growth." Using a 22-industry data set covering 1977 through 2012, the report concluded that, had regulatory burdens remained constant since 1980, the 2012 U.S. economy would have been 25 percent larger. Put another way, the 2012 U.S. economy was $4 trillion smaller than it would have been in the absence of cumulative regulatory growth since 1980.[516] That represents a loss in real income of approximately $13,000 per American per year.[517]

Based on existing and available sources, this report uses a baseline for across-the-board costs of federal regulation and intervention of $1.9 trillion annually in compliance costs, economic and GDP losses, and social costs (see Figure 1).[518] This placeholder estimate is based on a nonscientific, disclaimer-laden, amalgam of GDP losses and compliance costs derived from available official data and the other available sources.[519] Even so, this assessment is more representative and inclusive than official estimates and more "conservative" in that burdens are conceivably considerably more, as the Mercatus and Dawson and Seater approaches imply. While it speaks to the kinds of unfathomed costs detailed in Box 3, it does not quantify them.

While Trump claimed to have saved hundreds of billions in regulatory costs in areas like fuel economy, health care, and telecom regulation, he also added significant categories of regulation, including those in response to the COVID-19 crisis. His vast increase in spending compounded the resulting regulatory distortions. As Box 3 illustrates, enormous costs simply never find their way into regulatory analyses or public disclosure.

Regarding regulations' unequal effects on different kinds of firms, the NAM model noted above found overall annual per-employee regulatory costs to firms of $9,991 on average, but those vary by firm size.[520] Table 4 shows that per-employee regulatory costs for firms with 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.[521]

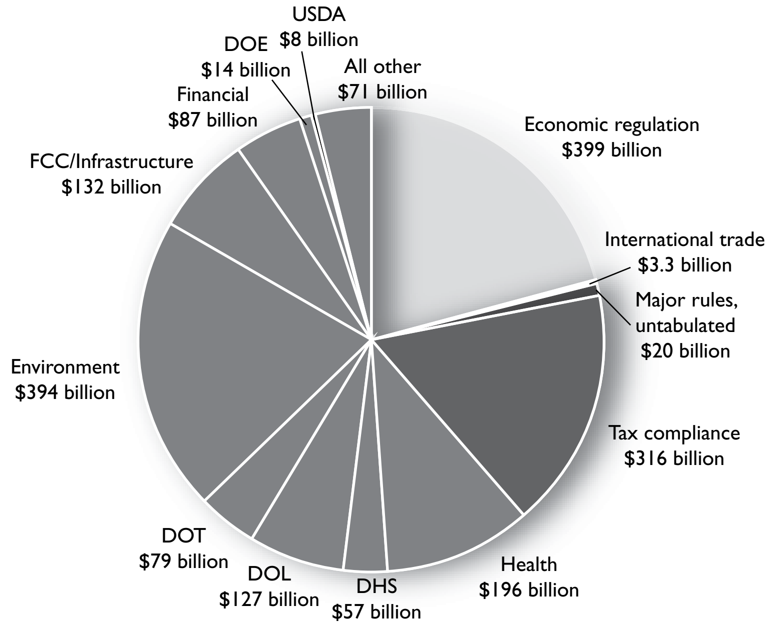
The SBA and earlier OMB surveys had traditionally conveyed regulatory costs in the following categories:

- Economic regulatory costs (for example, market entry restrictions and transfer payments such as price supports)
- Workplace regulatory costs
- Environmental regulatory costs
- Paperwork costs

However, they do not capture numerous other categories of costs, such as the costs of antitrust prosecutions and the distortions they have inflicted over the past century.[522] Others include costs imposed by common-carriage telecom

Enormous costs simply never find their way into regulatory analyses or public disclosure.

Figure 1. Annual Cost of Federal Regulation and Intervention, 2021 Placeholder Estimate, $1.9 Trillion



Source: Clyde Wayne Crews, Jr., *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.

network regulations that undermine property rights, federal health care spending, the predominance of public–private partnerships rather than private enterprise in large-scale infrastructure projects, resource-use restrictions on western lands, the reluctance to move the electromagnetic spectrum into private hands, a "too big to fail" stance toward large financial institutions, the permanent war economy, surveillance of private citizens, overcriminalization, monopolization of airport security, influence in the housing market and financing, and much more. The overarching cost is the overthrow of the constitutional order in favor of rule by unelected bureaucrats.

We need greater acknowledgment of the costs we do not know.

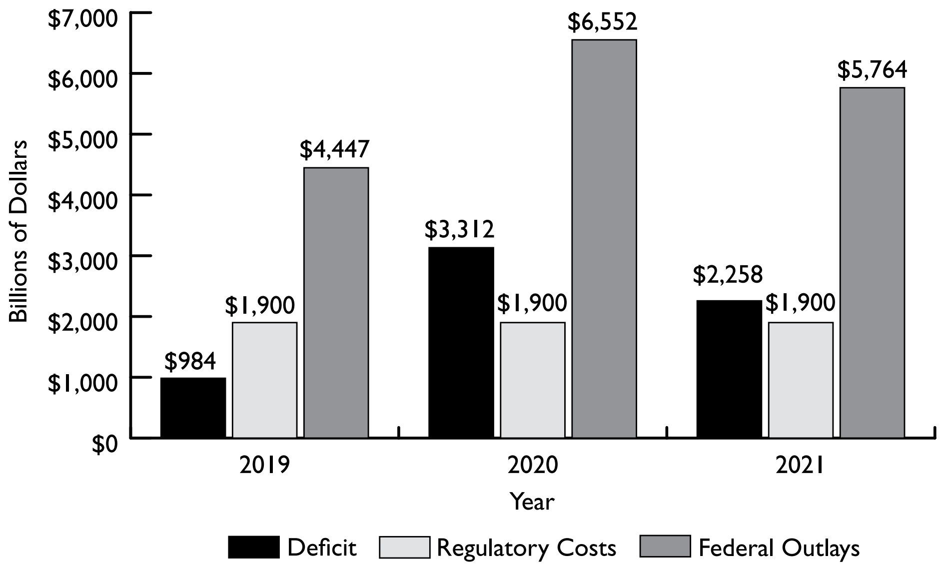
We need greater acknowledgment of the costs we do not know. With regard to the mechanics of disclosure, the debate has never been over whether the government should perform its cost assessment, but whether it should be bottom-up or top-down.[523] The answer is that both approaches are needed.

Regulatory Cost Burdens Compared with Federal Spending and the Deficit

Comparisons of regulation with the costs of federal taxation and spending help place the relative magnitudes in perspective, but the calculus changes with the surge in COVID-related spending and regulation. The first-ever trillion-dollar budget occurred in the latter half of the 1980s; now, deficits dwarfing that are projected with no end in sight, and the situation cannot be blamed on the COVID response.[524]

The U.S. federal government posted $6.552 trillion in outlays and a deficit of $3.132 trillion in FY 2020, up from $4.447 trillion in outlays and a deficit of $984 billion in pre-COVID FY 2019.[525] In the Congressional Budget Office's new *Budget and Economic Outlook*, trillion-dollar deficits continue

Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2019, 2020, and Projected 2021)



Sources: Deficit and outlays and projected outlays from Congressional Budget Office, *The Budget and Economic Outlook*, Table 1-1, "CBO's Baseline Budget Projections, by Category," various years, https://www.cbo.gov. Deficit and outlays also from White House Office of Management and Budget, Historical Tables, Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–present, https://www.whitehouse.gov/omb/historical-tables/. Regulatory cost estimate from Crews, *Tip of the Costberg*.

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

every year through 2031, at which point the projection reaches $1.883 trillion.[526]

Figure 2 compares deficits and outlays for fiscal years 2019 and 2020 and projected amounts for 2021. Where costs of regulation have tended to hover around 40 percent of outlays, the rocketing spending in 2020 resulted in regulatory compliance costs of about 29 percent of budget outlays of $6.552 trillion. We now find the deficit some 65 percent larger than the placeholder estimate for total federal regulatory costs.

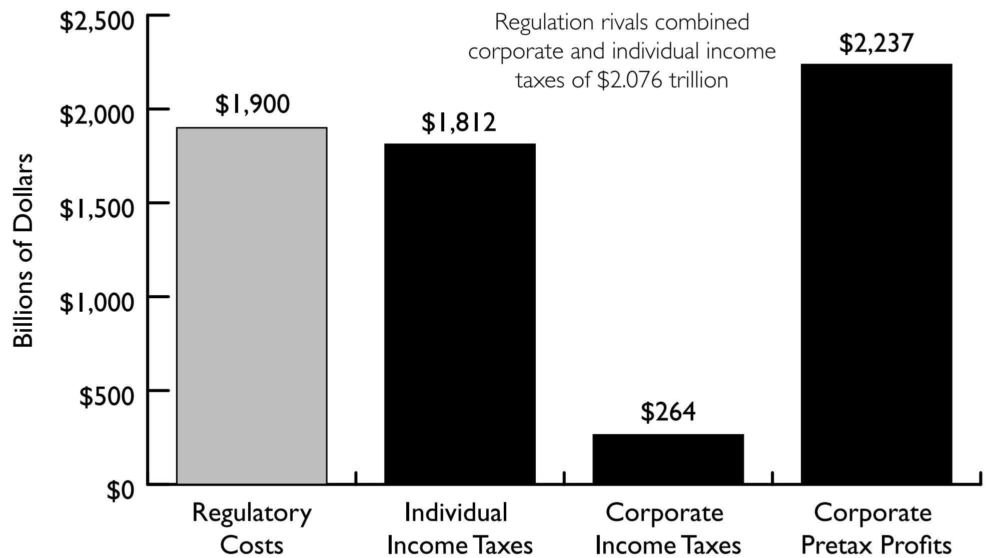
Regulatory Costs Compared with Income Taxes and Corporate Profits

Regulatory costs easily rival revenues from individual income taxes and corporate taxes combined. As Figure 3 shows, regulatory costs surpass 2020 estimated individual income tax revenues of $1.812 trillion.[527] Corporate income taxes collected by the U.S. government—an estimated $264 billion for 2020—are dwarfed by regulatory costs.[528] The sum of the two—$2.076 trillion—is rivaled by our regulatory cost marker of $1.9 trillion. Regulatory costs as depicted here also approach the level of pretax corporate profits, which were $2.237 trillion in 2019.[529]

Regulatory Costs Compared with GDP

In December 2020, the Commerce Department's Bureau of Economic Analysis estimated U.S. current-dollar GDP for 2020 at $21.17 trillion.[530] The total regulatory cost figure of $1.9 trillion annually is equivalent to approximately 9 percent of that amount (as noted, other considerations could take that sum far higher). Combining regulatory costs with federal FY 2020 outlays of $6.552 trillion (see Figure 2), the federal government's share of the economy reached $8.45 trillion in

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



Sources: Regulatory cost estimate from Crews, *Tip of the Costberg*. 2020 tax figures from OMB, Historical Tables, Table 2.1, "Receipts by Source," http://www.whitehouse.gov/omb/historical-tables. 2019 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."

2020, or roughly 40 percent of GDP, compared with the stubborn longstanding annual combined figure of approximately 30 percent (see Figure 4). That does not include state and local spending and regulation.

If U.S. regulatory costs of $1.9 trillion were a country, it would be the world's eighth-largest economy.

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

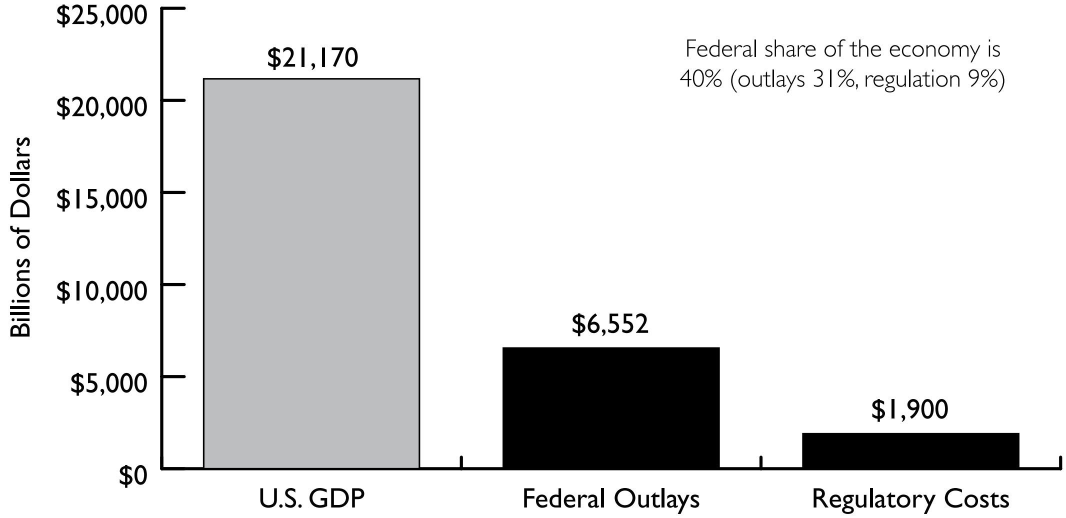
Not counting the United States, only seven countries have GDPs that exceed the cost burden of U.S. regulation. U.S. regulatory costs surpass the 2019 GDP of neighbors Canada, at $1.7 trillion, and Mexico, at $1.3 trillion. If U.S. regulatory costs of $1.9 trillion were a country, it would be the world's eighth-largest economy, ranking behind Italy and ahead of Brazil (see Figure 5).[531]

The U.S. regulatory figure of $1.9 trillion exceeds the output of many of the world's major economies, including those ranked as the freest economically by two prominent annual surveys of global economic freedom. Figure 6 depicts the 2019 GDPs of the countries common to the top 10 in both the Heritage Foundation *Index of Economic Freedom* and the Fraser Institute/Cato Institute *Economic Freedom of the World* report.[532] The United States ranks 17th and sixth in those reports, respectively.

Regulation: A Hidden Tax on the Family Budget

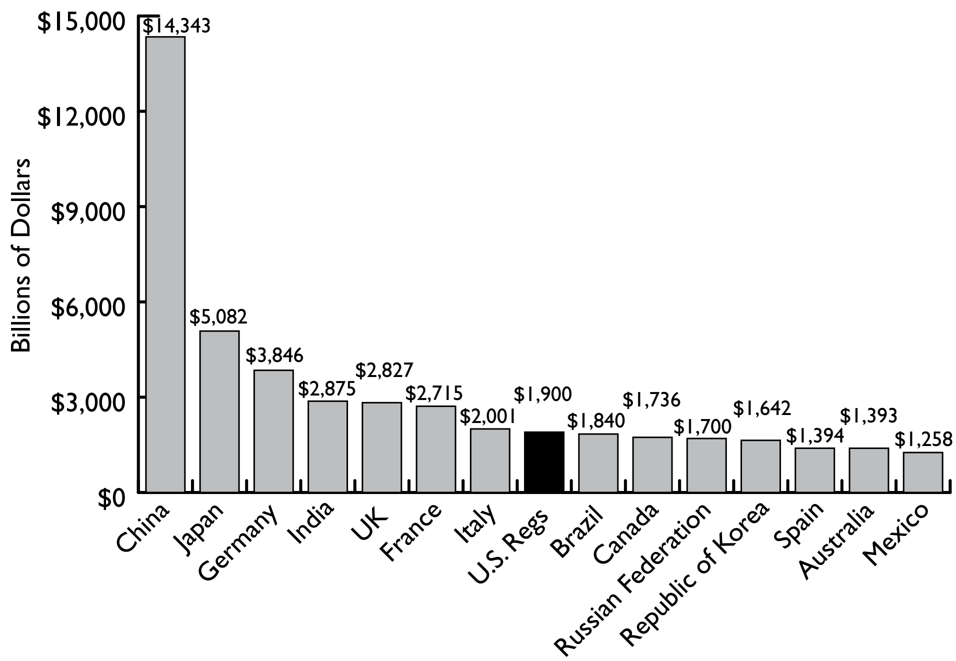
The pain of taxes can seem more immediate and present than that of regulation, but, like the taxes they are required to pay, businesses will pass some regulatory costs on to consumers. Other costs will find their way to workers and investors in regulated companies. By assuming a full pass-through of all such costs to consumers—many 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 Depart-

Figure 4. GDP Compared to Federal Outlays and Regulation



Sources: Crews, *Tip of the Costberg*. GDP from U.S. Department of Commerce, Bureau of Economic Analysis. Outlays from CBO and/or White House OMB.

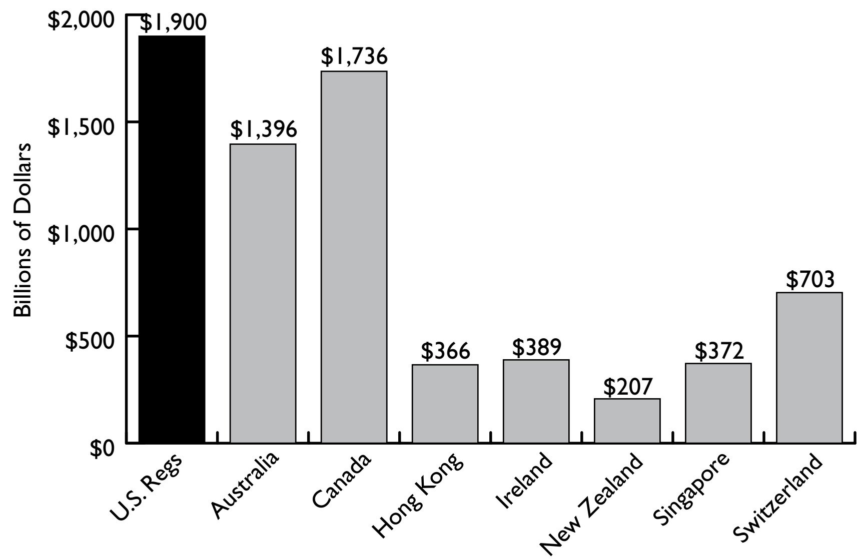
Figure 5. U.S. Regulatory Costs Compared to 2019 Gross Domestic Product of the World's Largest Economies



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 and https://databank.worldbank.org/data/download/GDP.pdf.

U.S. 2019 GDP of $21,428 billion per World Bank not shown.

Figure 6. U.S. Regulatory Load Compared to 2019 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.

"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* reports.

ment of Labor's Bureau of Labor Statistics (BLS).[533]

The average U.S. household "spends" more on hidden regulation than on health care, food, transportation, entertainment, apparel, services, or savings.

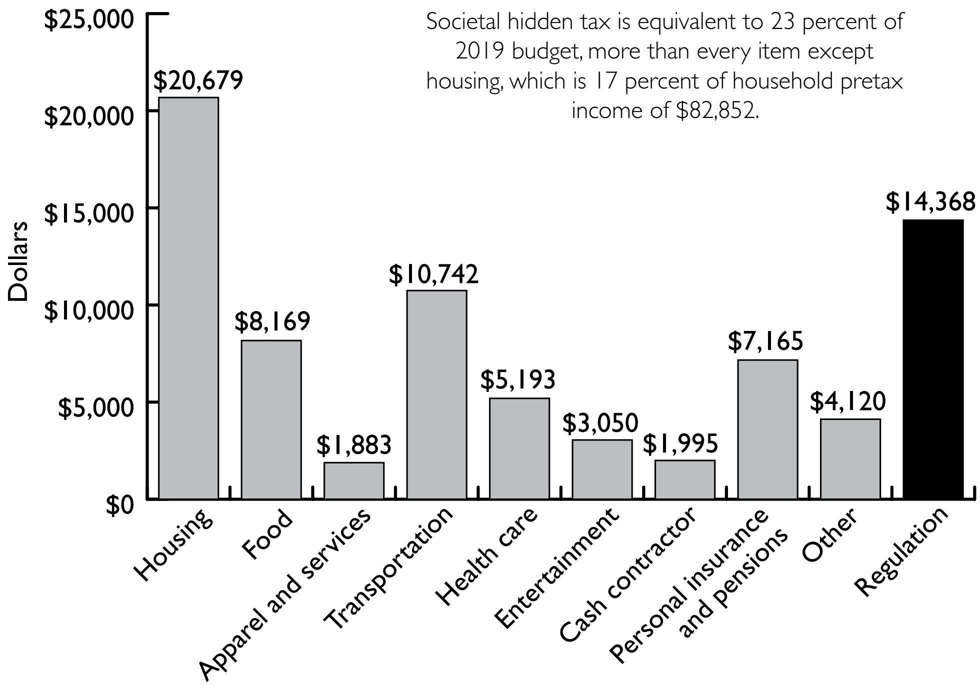
For America's 132.2 million households, or "consumer units" in BLS parlance, the average 2019 pretax income was $82,852.[534] If one were to allocate annual regulatory costs assuming, for simplicity's sake, a full pass-through of costs to consumers, U.S. households "pay" $14,368 annually in embedded regulatory costs ($1.9 trillion in regulation divided by 132,242,000 "consumer units"), or 17 percent of average income before taxes, and more as a share of after-tax income. This regulatory "hidden tax" exceeds every annual household budgetary expenditure item except housing (see Figure 7). Regulatory costs amount to up to 24 percent of the typical household's expenditure budget of $63,036. The average U.S. household "spends" more on hidden regulation than on health care, food, transportation, entertainment, apparel, services, or savings. Of course, some costs of regulation are not hidden. Consumers pay for regulatory agencies and administration more directly through taxes, as described in the next section.

Administrative and Enforcement Costs of Regulation

Regulatory cost estimates attempt to capture compliance, deadweight, and other costs experienced by the public, but those evaluations do not generally include administrative costs—the on-budget amounts spent by federal agencies to issue and enforce rules. The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center regularly examine presidents' annual budget proposals to compile the administrative costs of developing and enforcing rules. Those amounts—funds that taxpayers contribute to support agencies' administrative operations—are disclosed in the federal budget in a way that regulatory compliance and economic costs are not.

According to the latest compilation, FY 2020 enforcement costs incurred by federal departments and agencies stood at almost $78 billion (in constant 2020 dollars, adjusted from original 2012 dollars) (Figure 8).[535] Of that

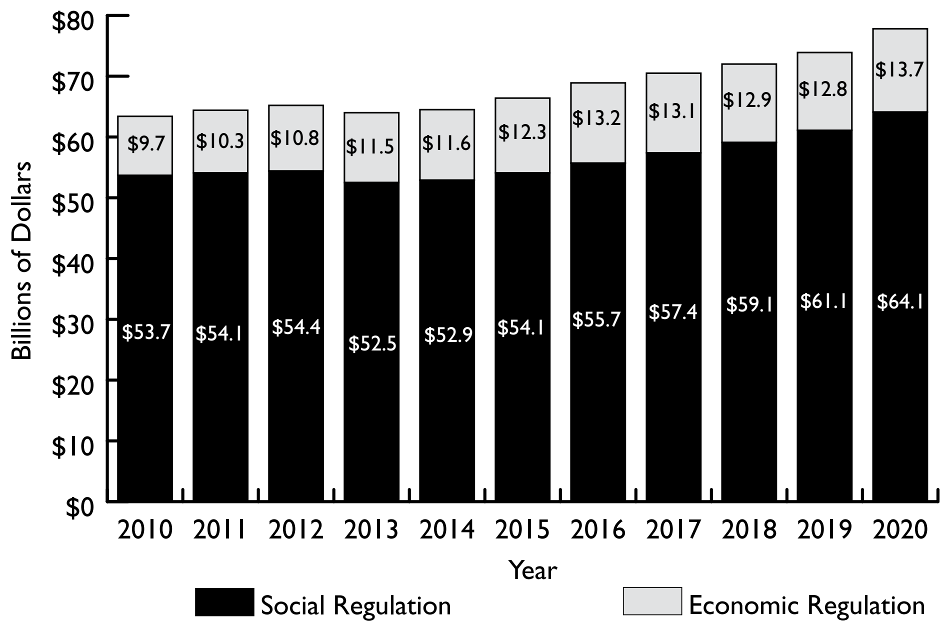
Figure 7. The U.S. Household Expense Budget of $63,036 Compared to Regulatory Costs



Sources: Bureau of Labor Statistics, author calculations.

Proxy for households here is BLS depiction of 132,242,000 "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." Other consists of "personal care products and services," "education," and "all other expenditures."

Figure 8. Federal Agency Administrative and Enforcement Budgets, $78 Billion Total in FY 2020



Source: 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 2012 constant dollars are adjusted here by the change in the consumer price index between 2012 and 2020, derived from Consumer Price Index tables, U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. All Urban Consumers (CPI-U), U.S. city average, all items.

amount, $13.7 billion was incurred on administering economic regulations. The larger amount, spent on writing and enforcing social and environmental regulations, was $64.1 billion. The $78 billion in regulatory agency enforcement costs helps complete a picture of the federal regulatory apparatus, as these costs come on top of other estimates of regulatory compliance and economic burdens. In current dollars, the EPA alone spent an estimated $5.561 billion in this category in 2020, accounting for 7 percent of total expected expenditures by all regulatory agencies.[536] The EPA formerly accounted for the lion's share of government administration and enforcement costs, but the Department of Homeland Security's costs, at an estimated $38 billion, now accounts for 48 percent.[537] The Weidenbaum Center and the Regulatory Studies Center also estimate the number of full-time-equivalent administrative and enforcement staff at 288,409 in FY 2021. The number of federal employees has increased by more than 100,000 since the 2001 staffing level of 173,057.[538] 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.

Costs are one way to attempt to capture the size and scope of the federal regulatory enterprise. Another is to assess the paper production—the regulatory material that agencies publish each year in sources like the *Federal Register*.