

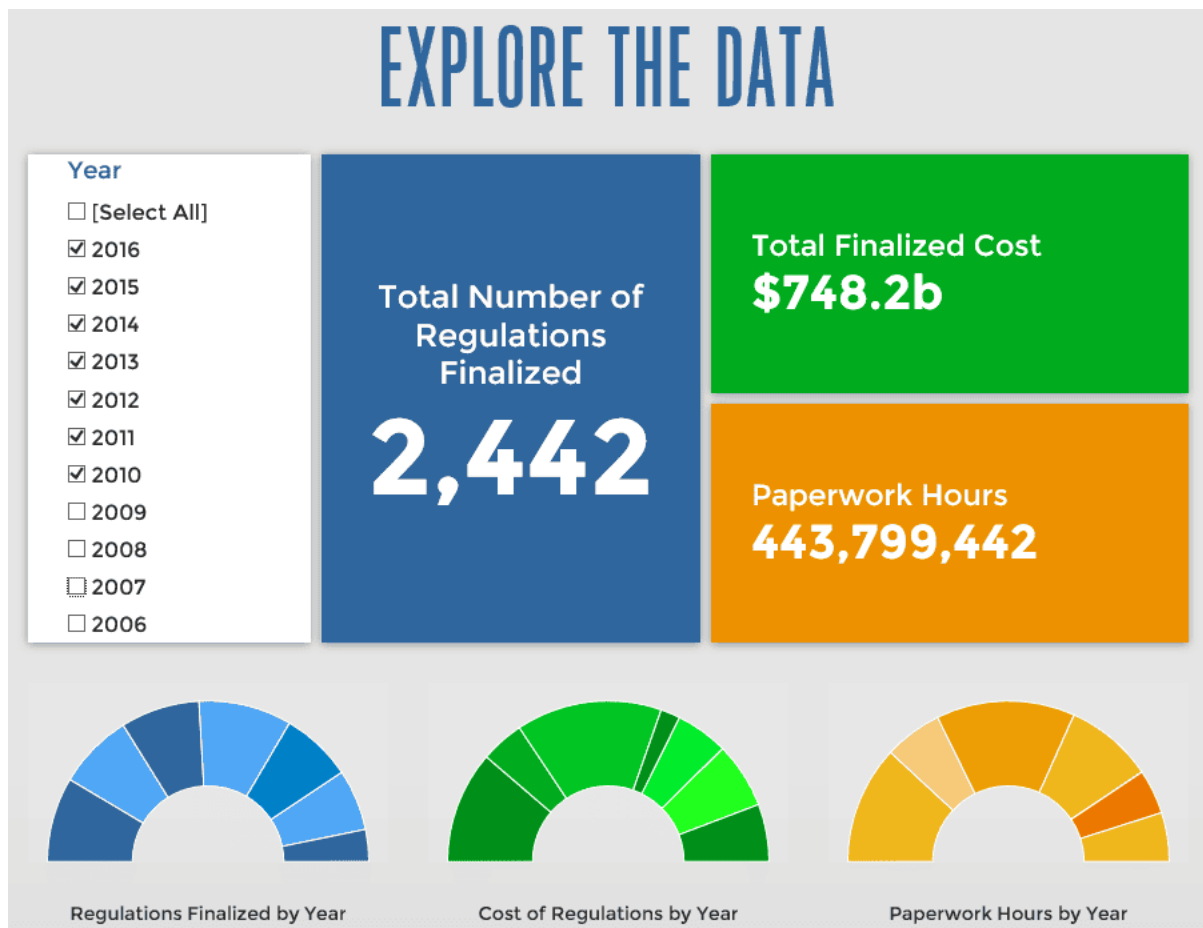


Insight

House Regulatory Task Force Aims to Modernize Regulation

SAM BATKINS | JUNE 14, 2016

As part of Speaker Paul Ryan's "[Better Way](#)" approach to constructive government reform, the task force on regulatory reform released its benchmark report [today](#). In addition to reports on poverty, jobs, taxes, health care, security, and constitutional authority, the report on regulatory reform contains a litany of proposals to modernize the rulemaking process and reassert Congress's legislative authority. The numbers on regulation speak for themselves: President Obama has already issued [591](#) major rules, 41 percent more than his predecessor during the same period. Since 2010 alone, regulators have imposed nearly \$750 billion in net present value costs.



The American Action Forum (AAF) has covered some of the reform ideas in the past. For example, one plank of the Better Way approach addresses existing regulations. The House has already passed the Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act, which would empower an independent commission to review the existing slate of rules and modify or repeal outdated and ineffective measures. SCRUB calls for a 15 percent reduction in cumulative regulatory burdens. AAF calculated this could save Americans more than 1.5 billion hours of paperwork and [\\$48 billion](#) in reduced costs.

Another plank of Better Way involves reforming the abusive “sue and settle” process. “Sue and settle” is a process by which special interest lawyers use the power of the courts and complicit regulators to initiate and expedite pricey rulemakings. A lawsuit is filed against the regulatory agency and is then “settled” out of court through a mutual consent decree, forcing an expedited regulatory process that is legally binding for the agency. The Sunshine for Regulatory Decrees and Settlements Act aims to reform this process. AAF estimated reform would address more than [\\$20 billion](#) in resulting costs from these special interest lawsuits, along with 5.7 million paperwork burden hours.

Perhaps the boldest measure in the task force report calls for a regulatory budget. Contrary

to the Chicken Little opponents of regulatory modernization, the U.S. already has a regulatory budget, but it's an [unwritten budget](#) devised in the White House and Office of Information and Regulatory Affairs (OIRA). The budget is in the hands of the executive and Congress has little in the way of oversight. Now, Congress seeks to reassert its constitutional authority to work with the executive and manage the amount and quality of regulation. Depending on its form, a regulatory budget could save nearly [\\$100 billion](#).

Broadly, a regulatory budget has three iterations: 1) a cumulative approach with Congress adjusting the aggregate budget annually, 2) [British-style](#) one-in-one-out (or two-out) that replaces an old rule whenever a new measure is adopted, and 3) a forward-looking system that appropriates a specific amount of new regulation each year to federal agencies.

Here's an example of how the third version could work in practice. Congress could pick the least costly year from this administration (2009 at \$7.9 billion in net burdens) and use that as a regulatory baseline. In other words, in future fiscal years, regulatory agencies could only impose \$7.9 billion in new economic burdens, with individual agency budgets as a subset of this figure. Obviously, the executive would play a part in determining this number.

If Congress had set this figure for 2009 and adjusted it for inflation, here's what a modified regulatory budget would have saved in future years:

- 2010 Savings: \$9.98 billion (\$8.03 billion budget compared to \$18.01 billion in actual burdens).
- 2011 Savings: \$920 million (\$8.28 billion budget compared to \$9.2 billion in actual burdens).
- 2012 Savings: \$24.2 billion (\$8.45 billion budget compared to \$32.7 billion in actual burdens)
- 2013 Savings: \$630 million (\$8.57 billion budget compared to \$9.2 billion in actual burdens).
- 2014 Savings: \$8.1 billion (\$8.71 billion budget compared to \$16.9 billion in actual burdens).
- 2015 Savings: \$10.6 billion (\$8.8 billion budget compared to \$19.4 billion in actual burdens).

Total Savings: \$54.4 billion

Congress and the administration are not bound by this inflation figure. Indeed, a regulatory budget is merely a reflection that Congress has a role in federal lawmaking (beyond initial

authorization of statutes). For generations the bulk of new laws, in the form of federal rules, are created by the executive branch with little input from Congress. A budget for federal rules would allow Congress a seat at the table to craft a regulatory portfolio for the nation, not dictate the specific form of rules to agencies, but allow regulators to work within a grant of power from Congress.

A regulatory budget isn't as much about more versus less government; it's about the appropriate relationship between the legislative and executive branch. Presumably, progressives controlling Congress would want a regulatory budget when a conservative is in the White House. Currently, virtually all regulatory decisions are made by a handful of political appointees, the White House, and a few career staffers at the OIRA. Allowing Congress a seat at the table, instead of in the corner, embraces our constitutional structure at a time when each new executive seeks more and more power.

The Better Way path for regulation contains several other important measures, including improving benefit-cost analysis, reforming judicial review of federal rules, and increased transparency in rulemaking. Taken together, these measures are a reflection of the House's desire to ensure regulation does not act as an impediment to economic growth. At minimum, these reforms could save tens of billions of dollars in costs and countless hours of federal paperwork.