



Comments on Draft 2015 Report to Congress on the Benefits and Costs of Federal Regulations

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Thank you for the opportunity to comment on this year's Draft 2015 Report to Congress (2015 Report). We would like to highlight the following points, including our findings from an independent analysis of the data for final rules published in FY 2014:

- Based on the American Action Forum's (AAF) analysis of 325 final rules in FY 2014, annualized costs total \$14.4 billion, compared to approximately \$19.4 billion in benefits.
- Why was the ban on proprietary trading (Volcker Rule) listed as a rule without monetized costs in Table 1-10 when the Regulatory Impact Analysis contained an extensive discussion of monetized costs? In addition, the coal dust measure (1219-AB64) has costs and benefits less than \$100 million, but was nevertheless included in Table 1-6. Finally, why did this report include a deregulatory measure in Table 1-6 when such rules have no listed benefits and similar rules have been excluded in the past?
- According to the Government Accountability Office (GAO), there were three major rules issued in FY 2014, but omitted from the 2015 Report, including two with costs or benefits exceeding \$100 million.
- Part II of the 2015 Report covers compliance with the Unfunded Mandates Reform Act (UMRA). The American Action Forum has found three instances where measures that easily triggered UMRA were not reported by OIRA.
- On retrospective review, recent work by Resources for the Future (RFF) analyzed the effectiveness of 22 past regulatory requirements, finding that 10 involved overestimated benefits, six were underestimated, and six were relatively accurate. Does OIRA plan to incorporate the RFF work into future reports?

FY 2014 REVIEW

The 2015 Report continues to use language ("vast majority") that asserts the major rules with estimates of costs and benefits exceeding \$100 million annually account for a majority of regulatory costs and benefits. For some years, this has proven true, but in years where there are significant independent agency actions or rules with costs or benefits slightly less than \$100 million, the OIRA totals do not capture a majority of regulatory activity for the year.

The Regulatory Right to Know Act merely states, to the extent feasible, OIRA should provide, "an estimate of the total annual costs and benefits ... of Federal rules and paperwork." Using that approach, AAF reviewed all final rules in FY 2014 that contained figures on costs, benefits, or paperwork burdens. For benefit figures, the 2015 Report accurately depicts monetized benefits, but the reported cost figure is only a fraction of what was published in the Federal Register.

Costs and Benefits of 325 Federal Rules

AAF Analyzed Rules from FY 2014	Billions of 2001 dollars	OIRA Mean Benefit-Cost Range as Percentage of AAF Total
Total Costs	\$14.5	25.5%
Total Benefits	\$19.4	84%

As the table above displays, Table 1-5 hardly captures a “vast majority” of costs, or even a majority. Largely due to rules from independent agencies and measures that did not monetize both costs and benefits, the 2015 Report displays only about one-quarter of the total published costs last year. However, benefits do appear to be accurately represented. AAF tallied 24 regulations that monetized benefits, totaling roughly \$19.4 billion. This compared to a range of \$9.8 billion to \$22.8 billion provided in Table 1-5.

As previous reports have stated, there are certain limitations in each report to Congress, namely that rules displayed contain costs, benefits, or transfers that exceed \$100 million annually. In addition, rules must have quantified and monetized a substantial portion of both benefits and costs. However, the passage of the Affordable Care Act, which has generated rules rarely quantifying both costs and benefits, and Dodd Frank, which rarely monetizes either, has increased the number of rules that evade OIRA’s basic methodology for inclusion in Tables 1-5 and 1-6. It’s unlikely OIRA’s methodology will be substantially revised, but a discussion of these major rules, some with costs and benefits exceeding rules reviewed by OIRA, would aid in a more complete picture of regulation for the year.

For example, the Volcker Rule could impose costs of \$4 billion annually and generate benefits. It would rank as twice as costly as Tier 3 (2060-AQ86), the costliest measure listed in the 2015 Report, but the Volcker Rule is practically a footnote. Other notable rules that could have profound economic consequences, but were excluded from Table 1-6, likely merit at least some discussion in future reports.

Finally, it is worth noting FY 2014’s overall reliance on the Tier 3 rule. If a court were to vacate the rule and it were excluded from the summation in Table 1-5, the benefit-cost ratio would change from \$19.4 billion:\$3.9 billion to \$7 billion:\$2.4 billion. This would reduce net benefits from \$15.5 billion to \$4.6 billion, among rules that monetized both costs and benefits. However, looking broadly at all rules, vacating Tier 3 could have profound consequences. For example, the benefits for the year would fall to \$7.3 billion, but the costs would only decline to \$12.9 billion. Thus, without Tier 3, the costs for FY 2014 could exceed the benefits. In the two previous years studied, no one rule provided such a critical foundation to a year’s benefit-cost balance.

NOTABLE RULEMAKINGS IN REPORT

Table 1-10, which highlights major rules from independent agencies, listed the Volcker Rule (Prohibitions and Restrictions on Proprietary Trading), but notes it contains no information on costs and benefits and omits data on monetized costs. However, the Office of the Comptroller of the Currency issued a Regulatory Impact Analysis (RIA) in 2014 with an extensive discussion of the costs and benefits: <http://www OCC.gov/topics/laws-regulations/legislation-of-interest/volcker-analysis.pdf>. The RIA stated, “Our estimates of total annual costs range from \$412 million to \$4.3 billion.” If the \$4.3 billion figure is used, the Volcker Rule is easily the most expensive rule in FY 2014, almost equaling costs from all major OIRA-reviewed rules that monetized cost and benefits. Yet, the 2015 Report currently states that there are no costs or benefit figures for arguably the most

consequential rulemaking of the year. Does OIRA plan to alter its discussion of the Volcker Rule?

Second, Table 1-6 includes a coal mine dust rule (1219-AB64) that contains both costs and benefits below the \$100 million threshold. There is some precedent for including rules that fall below \$100 million, but are nevertheless considered major. However, OIRA's 2015 Report noted two conditions for inclusion: "(1) each rule was estimated to generate benefits, costs, or transfers of approximately \$100 million, or more, in at least one year; and (2) for each rule, a substantial portion of both its benefits and costs were quantified and monetized by the agency or, in some cases, monetized by OMB." According to the rule and to the totals in Table 1-6, both the costs and benefits fall below \$100 million annually. Why, then, is it included in Table 1-6?

Finally, the 2015 Report included a deregulatory measure, part of Executive Order 13,563, that significantly reduced costs (0938-AR49). However, the report omitted a joint rulemaking from the Departments of Health and Human Services, Labor, and Treasury, also from FY 2014: "Ninety-Day Waiting Period Limitation and Technical Amendments" (0938-AR77). The measure cut costs by more than \$100 million and eliminated 3.2 million hours of paperwork. It was reviewed by OIRA on February 19, 2014. In addition, previous major deregulatory rules (0938-AQ96) have been included in reports, but in the table on "partial estimate of annual benefits or costs." Is there a reason why some deregulatory measures are omitted, some are included in Table 1-6, and others are included in the "partial estimate" table?

OMITTED RULES

Based on a comparison of GAO's major rule database and the 2015 Report, there are three major rules that are omitted from the 2015 Report. Two of these three contain annual costs or benefits exceeding \$100 million. These measures are listed below with hyperlinks to their major rule status:

<u>Rule</u>	<u>RIN</u>	<u>Annual Cost (in millions \$)</u>
Integrated Mortgage Disclosures	3170-AA19	\$275
Mental Health Parity	0938-AP65	\$200
Derivatives	3133-AD90	\$4.6

The first rule on the list, 3170-AA19, was published in the Federal Register on December 31, 2014, but a major rule report was not sent to Congress until June 30, 2015. According to the rule's analysis, costs could exceed \$200 million annually. Is there a reason this major rule is omitted from the 2015 Report?

The second rule, 0938-AP65, was published in the Federal Register on November 13, 2013 and even though all agencies involved are subject to OIRA review, there is no record of review in 2013. Is there a reason this major rule was omitted from the 2015 Report and there is no record of formal review at OIRA in 2013?

The final rule was published in the Federal Register on January 31, 2014, but Congress did not receive a major rule report until September 3, 2015. Although the costs and benefits of the measure are minor, the rule is nevertheless major. Why was this rule omitted from the 2015 Report?

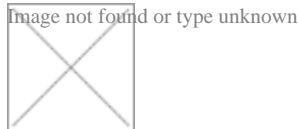
All of the rules above were published during FY 2014 and have major rule reports on record at GAO. However, the 2015 Report omits these major rules. Unlike previous reports, none of these measures are considered notices that merely amend previous major rules. Is there a specific reason the 2015 Report excluded these major rules

from inclusion?

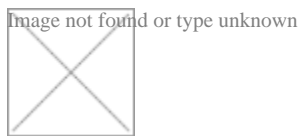
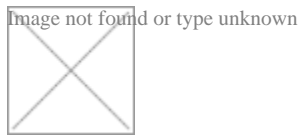
COMPLIANCE WITH UNFUNDED MANDATES REFORM ACT (UMRA)

The 2015 Report covers the eleven final rules that triggered UMRA last year, but there are discrepancies between the online reporting of UMRA rules and what is contained in the report. For example, AAF found three instances where the OIRA records differ from what triggers UMRA in the 2015 Report.

In one instance, OIRA publicly stated the “Rearview Mirrors” rule (2127-AK43) did not meet the threshold under UMRA, even though it’s inclusion in the 2015 Report clearly indicates it does trigger UMRA. See below.



This wasn’t the only instance of a disparity between online records of UMRA status and what is contained in the 2015 Report. The energy efficiency rule for battery chargers and external power supplies (1904-AB57) also indicated that it did not trigger UMRA and the cooling water measure listed no information on UMRA status. See below.



Is the 2015 Report conclusive, in that these three measures do exceed the threshold for UMRA status? Should commenters assume the online OIRA records are incorrect and the 2015 Report supersedes any previous determination?

RETROSPECTIVE REVIEW

In addition to the President’s executive orders on retrospective review, the 2015 Report spends considerable time discussing the merits of ex post review. “Prospective analyses may overestimate or underestimate both benefits and costs; retrospective analysis can be important as a corrective mechanism.” Recent work by Resources for the Future (RFF) and Richard Morgenstern has contributed new insight into the accuracy of prospective regulatory analysis.

From 2013 to 2015, RFF conducted [nine studies](#) that covered 34 “ex ante-ex post cost or benefit/effectiveness comparisons.” For costs, they found nine involved overestimates, two were underestimated, and one was accurate. For benefits, ten overestimated initial figures, six underestimated benefits, and six were “relatively accurate.” Does OIRA plan to discuss and incorporate these new studies into the final 2015 Report?

The 2015 Report and OIRA have also stressed the need for current rules to be written in a way that allows for retrospective review in the future. For instance, “[R]ules should be written and designed, in advance, so as to facilitate retrospective analysis of their effects.” However, this is often difficult because many rules still are not written, or sufficient information is not provided, to allow for an easy comparison of ex ante and ex post costs. As RFF noted, “Up-to-date baseline information is essential for sound regulation. Several case studies presented here reveal the absence of current baseline information.” Previous studies (“Assessing the Accuracy of OSHA’s Projections of the Benefits of New Safety Standards”) have also found that establishing a proper baseline to measure benefits and costs was nearly impossible.

Furthermore, in a recent analysis of 22 regulations issued in 2014, the George Washington University Regulatory Studies Center [found](#) that not one rule included a plan for future retrospective review and just 44 percent provided metrics that later analysis could employ to measure the regulation’s effectiveness. The study noted, “Agencies were best at identifying problems, and worst at establishing timeframes and identifying linkages between proposed standards and their outcomes.”

Given OIRA’s commitment to retrospective review and the shortcomings that RFF and the Regulatory Studies Center have found with current rules failing to include metrics that would facilitate retrospective review, how does OIRA plan to address these issues? Will OIRA work closely with agencies to ensure rules are written to be easily measured in the future? Will agencies begin to look back at past major rules to ensure their effectiveness?

In conclusion, we appreciate the opportunity to comment on this draft report. Should OIRA require additional information, please contact us at 202-559-6420.