



Insight

When A Major Regulation Isn't Major, Or Is it?

SAM BATKINS | APRIL 2, 2014

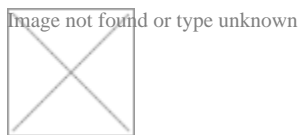
Every year the federal government publishes roughly 80,000 pages of new regulations. This doesn't even include regulatory guidance. If you're looking for reliable and comprehensive information about one of these regulations, good luck. New regulations, regulatory guidance documents, and regulatory impact analyses either can or can't be found on any number of sites including the Federal Register, GAO, OIRA, agency websites, or regulations.gov. None are always consistent. Only some are reliable. The regulatory process has often been described as "Rube Goldberg-like," and trying to make sense of the entire regulatory apparatus can sometimes be maddening since the process to obtain reliable and comprehensive information on regulations is far from transparent.

For more than three years, the American Action Forum (AAF) has been tracking every federal rulemaking, no matter how trivial. In that time, AAF has developed a [searchable database](#) with more than 4,000 notable federal regulations, with information on costs, benefits, and paperwork hours.

Just as finding regulations and supporting documents can sometimes be difficult, determining whether a rulemaking is "economically significant" or "[major](#)" is not always straightforward. We at the American Action Forum have experienced this first hand.

We published a study yesterday examining discrepancies with the Congressional Review Act process, where some rules that should have been declared major were actually deemed not major, according to the Government Accountability Office's (GAO) website. One such example was a Dodd-Frank rulemaking for "Risk-Based Capital Guidelines."

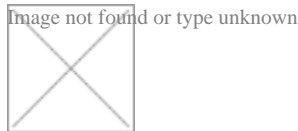
The Unified Agenda, which is more or less a schedule of future rules developed by agencies and compiled by the White House, will often forecast if a rule is major. With "Risk-Based Capital Guidelines," the Unified Agenda labeled the rule "non-major." You can see that on the accompanying chart below.



If the White House says a rule is non-major, we can rely on that information, right? Not exactly.

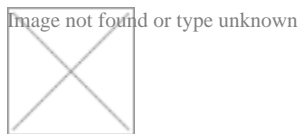
However, after the rule was actually published, it was clear it imposed more than [\\$100 million](#) in economic impacts, which should automatically trigger major rule status. That should be reflected in the regulatory text – except it wasn't. But regardless of regulatory text, the last resort for determining major rule status is to check with GAO. Upon searching GAO's website for the Federal Deposit Insurance Corporation's entry – who jointly authored the rule for Risk-Based Capital Guidelines – the rule is clearly listed as [non-major](#). See GAO's site

below.



So, the White House and GAO both declared the rule to be non-major. The rule quite clearly costs more than \$100 million. This is obviously a discrepancy in the Congressional Review Act process with a \$100 million rule not being deemed major. Settled. Except it wasn't.

In a strange twist, a slightly different search did in fact list the Risk-Based Capital Guidelines as a major rule, when searching under the Department of Treasury's entry, the other co-author of the rule.



This was a joint rulemaking published on the same day in the Federal Register, with the same "Identifier," but it is designated as non-major under FDIC, and major under the Department of Treasury.

This same discrepancy occurred with Mental Health Parity regulations jointly authored by Health & Human Services and IRS.

Finding the correct answer isn't just applicable to determining major rule status. In 2011, the White House launched an aggressive push to reform regulation, listing the initial agency review plans and their updates on a special [website](#).

Then, the updates stopped in 2013. To find revised plans, one now needed to search the back-end of agency [websites](#). However, sometimes those plans [aren't on agency pages](#), and one would need to look on [regulations.gov](#) for updated information. Despite attempts at streamlining the regulatory process and making information easily accessible, this compartmentalization houses different regulatory data in countless places online with sometimes-conflicting information.

Our regulatory data is housed in so many different places that it is sometimes impossible for the public to obtain accurate and comprehensive information on regulations. From agency websites, to [regulations.gov](#), to the Federal Register, to GAO, to OIRA, to [whitehouse.gov](#), it is a maddening task to track every detail. Unlike tax data on revenue and outlays, which is located in the Budget's "Historical Tables," the regulatory world is practically a black box. Even for important matters, such as major rule status, discerning the right and wrong answer can involve three different websites and countless searches. To call this process somewhat convoluted is a gross understatement. We would all be better served with a simplified and transparent way to obtain information on federal regulations.