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CONGRESSIONAL TESTIMONY

**Regulatory Impediments to Job
Creation**

**Testimony before the
Committee on Oversight and Government
Reform
United States House of Representatives**

Thursday, February 10, 2011

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Chairman Issa and members of the Committee, thank you for the opportunity to testify today on this important topic.

My name is James Gattuso. I am a Senior Research Fellow in Regulatory Policy at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

This strong and concise description of sound regulatory policy is from Executive Order 12866, issued by President Bill Clinton in 1993. And his conclusion that the regulatory system falls short of what's best for the nation is even truer today than it was 18 years ago.

From the lighting in their homes, to the volume of their television sets, to the cars they buy, Americans are facing an unprecedented tide of red tape that is increasing prices, reducing innovation, and destroying jobs.

The impact of this regulation is difficult to measure precisely. Unlike direct spending, regulatory burdens imposed on businesses and consumers appear in no budget and are recorded in no ledger. However, by any reckoning, the burden is substantial and growing. This growth is not confined to one administration or political party. In fact, according to the Office of Management and Budget, regulatory costs have grown every year since 1981. The last several years of the George W. Bush administration were particularly busy ones in terms of regulatory activity.

Last year, however, the number and cost of new regulations imposed by federal agencies reached unprecedented levels. Based upon reports from the Government Accountability Office, in fiscal year 2010 alone some 43 major new rules increasing regulatory burdens were issued by federal agencies. The total annual cost for these rules, based on estimates by the regulators themselves, tops \$26.5 billion, the highest level since at least 1981, the earliest date for which figures are available.¹

Fifteen of the 43 major rules issued during the fiscal year involve financial regulation. Another five stem from the Patient Protection and Affordable Care Act adopted by Congress in early 2010. Ten others come from the Environmental Protection Agency, including the first mandatory reporting of "greenhouse gas" emissions and \$10.8 billion

¹ See James L. Gattuso, Diane Katz, and Stephen A. Keen, "Red Tape Rising: Obama's Torrent of New Regulation," Heritage Foundation *Backgrounders* No. 2482, October 26, 2010.

in new automotive fuel economy standards (adopted jointly with the National Highway Traffic Safety Administration).

It should be noted that the actual cost of regulations adopted in FY 2010 is almost certainly much higher than \$26.5 billion annually. As a first matter, the cost of non-economically significant rules—rules deemed not likely to have an annual impact of \$100 million or more—is not calculated by agencies. Moreover, regulatory agencies did not quantify costs for 12 of the 43 economically significant rules adopted in FY 2010.

Many more are on the way. According to one estimate, the financial regulation legislation recently adopted by Congress will alone require 243 new formal rulemakings by 11 different federal agencies.²

A similarly large number of rulemakings will likely be required to implement the new health care law. Significant new regulation is also in the pipeline at EPA, as well as at independent agencies such as the Federal Communications Commission and the Consumer Product Safety Commission.

Overall, the latest Unified Agenda released by OMB shows that regulatory agencies have 183 more regulations in the pipeline now than they did last year, 40 of which are “economically significant”—an increase of 20 percent.³

The types of costs imposed by these rules vary as much as the regulations themselves. One of the most significant is the effect on jobs. A pending EPA rule on boilers, for example, threatens some 71,000 jobs related to the paper and pulp industry alone.⁴ “Net neutrality” rules by the FCC is forecast to reduce employment by hundreds of thousands of jobs.⁵ A recent report by the Manufacturer’s Alliance projected the loss of 7.3 million jobs by 2020 from the EPA’s proposed ozone rule.⁶

These figures show only part of the jobs picture, however. Economic studies can only capture effects on existing industries and technologies. The dogs that don’t bark are not counted: new technologies that are stunted, new products that are never brought to market, and ideas that are never acted upon.

² Davis Polk, “Summary of the Dodd–Frank Wall Street Reform and Consumer Protection Act, Enacted into Law on July 21, 2010,” Davis Polk & Wardwell, LLP, July 21, 2010.

³ Susan Dudley, “An Ambitious Regulatory Agenda,” George Washington University Regulatory Studies Center, *Regulatory Policy Commentary*, December 24, 2010, at http://www.regulatorystudies.gwu.edu/images/commentary/20101224_dudley_regulatory_agenda.pdf.

⁴ Fisher International, “Economic Impact of Pending Air Regulations on the U.S. Pulp and Paper Industry,” August 2010, at <http://www.afandpa.org/pressreleases.aspx?id=1545>.

⁵ Charles M. Davidson and Bret T. Swanson, “Net Neutrality, Investment & Jobs: Assessing the Potential Impacts of the FCC’s Proposed Net Neutrality Rules on the Broadband Ecosystem,” Advanced Communications Policy and Law Institute, New York University, June 2010.

⁶ Donald A. Norman, “Economic Implications of EPA’s Proposed Ozone Standard,” Manufacturer’s Alliance Economic Report, September 2010.

Regulations can create jobs as well as eliminate them. But this is not always a good thing. For instance, a new regulation can—and in fact usually does—create more demand for lawyers, lobbyists, and even regulators themselves. Few, however, would consider this a good thing. For the same reason, policymakers should be wary of claims about new rules creating “green jobs.” If those jobs are based on artificial mandates or restrictions that are not otherwise justified, they add nothing to overall prosperity.

In the long run, total employment levels will likely be relatively constant. As the economy adjusts—according to most economists—total employment will trend toward a stable level. But to an individual American out of a job, news that in a few years the economy will achieve equilibrium may not provide much consolation. And even after that long-term leveling of employment is reached, total income and prosperity in the economy remains lower than it would otherwise be.

It is critical that policymakers increase scrutiny of new and existing rules to ensure that each is necessary and that costs are minimized. President Obama has already taken an important first step toward reform, issuing an Executive Order reiterating the obligation of regulatory agencies to carefully review new regulations and to review rules already on the books. This is a welcome step. At the same time, however, I am concerned that the initiative falls short of what is needed. For instance, although President Obama has stated that he has called for a “government-wide review” of existing rules, agencies only are required to submit preliminary plans for ongoing reviews in the future. This adds little to the review requirements that already exist in statute and prior executive orders. Moreover, President Obama’s order excludes independent agencies, thus exempting some of the biggest sources of regulation.

Mr. Chairman, I would like to commend you for initiating your review of regulation by requesting input directly from over 150 research organizations and individuals,⁷ as well as American businesses—who have had first-hand experience with the real burdens of regulation. Supplemented by information provided via your new website—americanjobcreators.com— your efforts promise to provide vital information as to what is and is not working in our regulatory system, as well as focus attention on this vital issue.

There are a number of legislative steps Congress can take in order to ensure proper scrutiny of new and existing rules. Among these:

- 1) Require congressional approval of major regulations that place new burdens on the private sector.

⁷ In response to your request, my colleague Diana Katz and I identified 20 specific regulations which we believe should be eliminated, ranging from the individual mandate for health insurance to new FCC regulation of Internet service providers. These recommendations have also been detailed in a Heritage research report issued last month. See Diane Katz, “Rolling Back Red Tape: 20 Regulations to Eliminate,” Heritage Foundation *Backgrounder* No. 2510, January 26, 2011, at <http://www.heritage.org/Research/Reports/2011/01/Rolling-Back-Red-Tape-20-Regulations-to-Eliminate>.

Under the 1996 Congressional Review Act, Congress has the means to veto new regulations from agencies. To date, however, that authority has been used successfully only once. Under legislation introduced in the House by Congressman Geoff Davis (H.R. 10) and in the Senate by Senator Rand Paul (S. 299), the review process would be strengthened by requiring congressional approval before any major regulation takes effect. Such a system would ensure a congressional check on regulators, as well as ensure the accountability of Congress itself.

2) Require a cost analysis of all legislation imposing new regulatory burdens.

Although all proposed legislation must be scored by the Congressional Budget Office to determine likely fiscal costs, there is no similar requirement for scoring regulatory costs. Members should not be asked to vote on proposals without the best possible estimate of likely costs. All bills proposing new or expanded regulation should undergo a regulatory impact analysis analyzing and quantifying (where possible) the likely costs and benefits. This “regulatory scoring” would ideally be performed by a new “Congressional Regulation Office,” similar to the Congressional Budget Office. Such a step could be taken by Congress on its own initiative and without presidential approval.

3) Establish a sunset sate for new federal regulations.

Once adopted, rules tend to be left in place, even if they have outlived their usefulness. Currently, under section 610 of the Regulatory Flexibility Act, rules that have a substantial effect on a significant number of small entities must be reviewed by the promulgating agency every 10 years. In practice, however, such review, if it occurs at all, is usually performed in a cursory manner. To ensure that substantive review occurs, regulations should automatically expire if not explicitly reaffirmed. This requirement should be applied to all rules, not just those affecting small businesses. Such “sunset” dates should also be included in legislation imposing new regulation.

Conclusion. While reforming the regulatory process is important, it is also important to note that such reforms will not by themselves solve the problem of overregulation. No set of procedural reforms will be enough to stem the regulatory tide. Ultimately, regulatory burdens will rise until policymakers fully appreciate the burdens that regulations impose on Americans, and exercise the political will necessary to limit and reduce those burdens. I hope today’s hearing serves as one step towards that end.

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