

## GOVERNMENT REGULATION ON AUTOPILOT

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US Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Spending Oversight and Emergency Management

July 17, 2019

Chairman Paul, Ranking Member Hassan, and members of the committee:

Thank you for allowing me to offer testimony this afternoon on the cost of federal regulations as it pertains to the federal government and to taxpayers. My name is James Broughel, and I am a senior research fellow at the Mercatus Center at George Mason University, as well as an adjunct professor of law and economics at George Mason University. My research focuses on state and federal regulatory institutions, economic growth, and the economic analysis of regulations.

My message today is simple:

1. Much of what constitutes federal policy is on autopilot. By this I mean, many government programs, including the amount of money spent on them, operate largely outside the annual appropriations process and by extension the active management of legislators in Congress.
2. The true cost of leaving so many important policy decisions on autopilot remains unknown, but estimates of automatic mandatory spending and the total cost of regulations are in the trillions annually.
3. A simple reform could begin to shed light on those costs: require the Congressional Budget Office (CBO) to analyze the fiscal effects of regulations. CBO could start with so-called budget regulations, which primarily impact the federal government's budget and are systematically underanalyzed by executive branch regulatory agencies.

### INTRODUCTION

As children, most of us receive a civics lesson that explains how the government is supposed to operate: citizens vote for their elected representatives; those representatives make tough tax and spending decisions that are supposed to reflect the interests of their constituents; and if citizens are unhappy with the mix of taxes and spending they receive, they can vote out their elected officials until they find representatives who give them the policy mix they prefer.

At least, that is the theory. In practice, things work very differently.

Over the past century, increasing amounts of authority have been transferred away from Americans' elected representatives in Congress and toward faceless bureaucracies that enact policy through regulation. At the same time, increasing amounts of the federal budget are taken up by nondiscretionary

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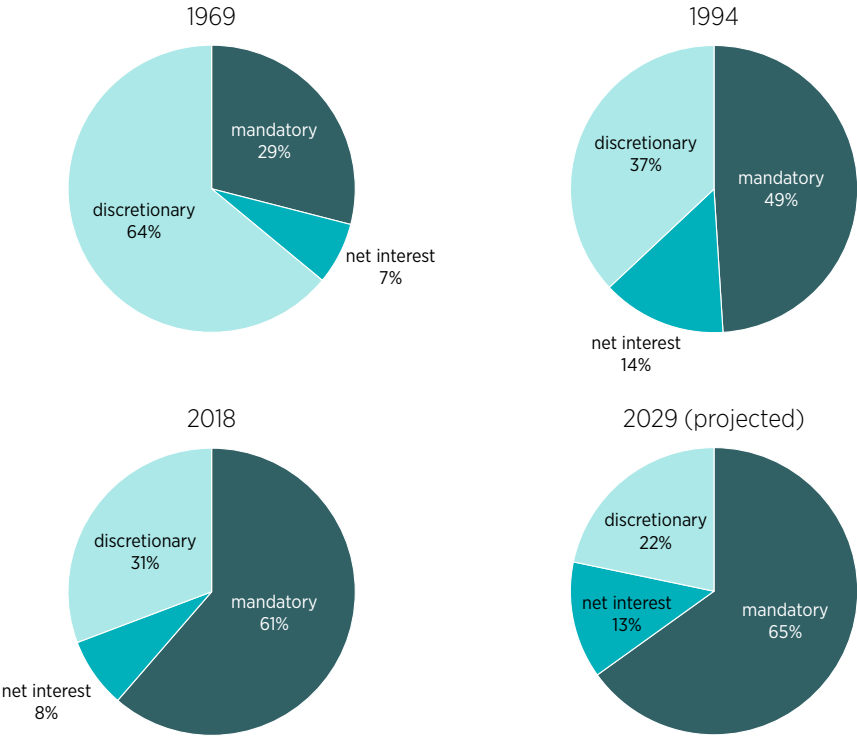
“mandatory” spending, which doesn’t require the same active management from legislators because it doesn’t typically require an annual appropriation from Congress. The end result is that an ever-increasing number of critical decisions about policy are made either by democratically unaccountable regulators or, worse, by no one at all.

**SPENDING ON AUTOPILOT**

Mandatory spending includes spending on massive government programs like Social Security, Medicare, and Medicaid. In 1969, 29 percent of federal outlays consisted of this mandatory spending, 64 percent consisted of discretionary spending, and 7 percent consisted of net interest payments on the debt (which also might be considered mandatory).<sup>1</sup> By 2018, 61 percent was mandatory, 31 percent was discretionary and 8 percent was interest on the debt.<sup>2</sup>

This trend is expected to continue: the CBO projects that, in 2029, 65 percent of federal outlays will be mandatory spending, 22 percent will be discretionary spending, and 13 percent will be net interest payments.<sup>3</sup> This projection is notable as 2029 is already within Congress’s 10-year budget window. Under current law, the federal government will spend more on net interest on the debt in 2046 than all discretionary spending for that year.<sup>4</sup> In other words, a huge fraction of federal spending is on autopilot, and this trend is getting substantially worse over time.

FIGURE 1. TYPES OF SPENDING AS A SHARE OF FEDERAL GOVERNMENT OUTLAYS



Source: Congressional Budget Office, *The Budget and Economic Outlook: 2019 to 2029*, January 2019, 7, 11.

<sup>1</sup> Congressional Budget Office, *The Budget and Economic Outlook: 2019 to 2029*, January 2019, 11.  
<sup>2</sup> Congressional Budget Office, *The Budget and Economic Outlook*, 7.  
<sup>3</sup> Congressional Budget Office, *The Budget and Economic Outlook*, 11.  
<sup>4</sup> Congressional Budget Office, *The 2019 Long-Term Budget Outlook*, June 2019, 27.

## REGULATION ON AUTOPILOT

The situation with federal spending, concerning enough in its own right, is just part of the story, because spending is only part of what government does. Much of the cost of government is not captured in the official budget because it comes from regulation. By virtually every measure, the amount of federal regulation has been growing over time. According to the Office of the Federal Register, there were fewer than 10,000 pages in the *US Code of Federal Regulations* in 1950, compared with more than 185,000 in 2018.<sup>5</sup> Regulatory agencies had 57,109 employees in 1960, compared with 277,163 in 2017.<sup>6</sup> Regulator budgets have increased in real terms from \$3 billion in annual spending in 1960 to \$58 billion in 2017 (in 2009 dollars).<sup>7</sup> In 1970, there were roughly 406,000 regulatory restrictions in the *US Code of Federal Regulations*.<sup>8</sup> By 2018 that number had risen to nearly 1.09 million.<sup>9</sup>

Contrast this regulatory activity with activity from Congress. Wayne Crews of the Competitive Enterprise Institute has noted that during calendar year 2018, federal agencies issued 3,368 final rules, while Congress enacted 313 laws.<sup>10</sup> Thus, agencies issued roughly 11 rules for every law passed by Congress and signed by the president.

One might consider the entire federal regulatory apparatus as being, to some extent, on autopilot, as this entire branch of government enjoys a high degree of insulation and independence from Congress. Furthermore, the burden of federal regulation occurs primarily off budget. In fact, estimates of the total cost of federal regulation in the United States can be enormous, at times dwarfing the entire federal government budget. To give just a few examples, a 2013 study in the *Journal of Economic Growth* estimates that federal regulation has slowed the growth rate of the US economy by 2 percentage points per year on average since 1949.<sup>11</sup> Two percentage points in lost growth may not sound like much, but this estimate suggests that had regulation remained at its 1949 level,<sup>12</sup> 2011 GDP would have been about \$39 trillion (or more than 3.5 times) higher than it actually was. An estimate produced by the Mercatus Center is that the cumulative cost of federal regulation was \$4 trillion in 2012 alone, resulting from reduced growth of 0.8 percentage points per year on average since 1980. By comparison, total federal outlays in 2018 were around \$4.1 trillion.<sup>13</sup>

While there is significant uncertainty surrounding any estimate of the total cost of federal regulations,<sup>14</sup> the numbers cited suggest that US federal regulation is indeed slowing the growth rate of the US economy and that the preponderance of costs from regulation are not captured in the federal budget. Even if the slowdown from regulation only amounts to a few tenths of a percentage point shaved off

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<sup>5</sup> Office of the Federal Register, *Code of Federal Regulations Total Pages 1938 - 1949, and Total Volumes and Pages 1950 - 2018*, April 2019, <https://www.federalregister.gov/uploads/2019/04/cfrTotalPages2018.pdf>.

<sup>6</sup> Susan Dudley and Melinda Warren, "Regulators' Budget: More for Homeland Security, Less for Environmental Regulation: An Analysis of the U.S. Budget for Fiscal Years 1960 through 2019" (Regulators' Budget Report 40, George Washington University Regulatory Studies Center, Washington, DC, May 2018).

<sup>7</sup> Dudley and Warren, "Regulators' Budget."

<sup>8</sup> Regulatory restrictions are instances of the terms *shall*, *must*, *may not*, *prohibited*, and *required*.

<sup>9</sup> Patrick A. McLaughlin and Oliver Sherouse, RegData 3.1 Annual (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, accessed July 8, 2019, <https://quantgov.org/regdata-us/>.

<sup>10</sup> Clyde Wayne Crews Jr., *Ten Thousand Commandments 2019: An Annual Snapshot of the Federal Regulatory State*, 2019 ed. (Washington, DC: Competitive Enterprise Institute, 2019), 5.

<sup>11</sup> John W. Dawson and John J. Seater, "Federal Regulation and Aggregate Economic Growth," *Journal of Economic Growth* 18, no. 2 (2013): 137-77.

<sup>12</sup> Keeping regulation at its 1949 level does not mean no new regulations would be issued post 1949. Rather, it would mean that old regulations would have had to be removed to offset any new regulations added. Texas imposed a similar cap in 2017, and the federal government in Canada did as well in 2015. See H.B. 1290, 2017 Leg., 85th Sess. (Tx. 2017); Red Tape Reduction Act, S.C. 2015, c. 12 (Can).

<sup>13</sup> Office of Management and Budget, "Historical Tables," accessed July 8, 2019, <https://www.whitehouse.gov/omb/historical-tables/>.

<sup>14</sup> For a review of some of the methodical issues that arise when estimating the total cost of federal regulations, see Maeve P. Carey, *Methods of Estimating the Total Cost of Federal Regulations* (Washington, DC: Congressional Research Service, 2016).

growth annually, this will add up to trillions in lost output over the course of time, an invisible cost that won't show up in any formal accounting statement.

## BUDGET REGULATIONS

Although much of federal spending is not discretionary from the perspective of Congress, some of this mandatory spending is discretionary from the perspective of executive branch regulatory agencies. That's because some appropriations decisions are made by unelected regulators in the executive branch, rather than by the American people's elected representatives in Congress.

An annual report from the Office of Management and Budget (OMB) sheds light on some of these regulatory spending decisions.<sup>15</sup> According to OMB, in fiscal year (FY) 2016, regulatory agencies promulgated 85 "major" rules, which are essentially rules expected to have an annual impact of \$100 million or more on the economy.<sup>16</sup> Of these 85 rules, 27 were "budget" rules,<sup>17</sup> which are rules whose primary impact is on the federal government's budget. Budget rules fall under a more general class of rules known as "transfer" rules because they are "rules that primarily cause income transfers usually from taxpayers to program beneficiaries."<sup>18</sup>

Budget regulations come in a variety of forms, including rules that set or establish Medicaid program premiums, physician fee schedules under the Medicare program, or revisions to prescription drug benefits under Medicare Advantage. These rules can set fees for consular services, expand grants for various education and federally funded childcare initiatives, or outline eligibility for business loan guarantees or the September 11th Victim Compensation Fund, to name just a few examples. They might expand or contract the list of ailments that qualify for federal health coverage for veterans or broaden or narrow eligibility for federal agricultural disaster aid. In short, budget regulations address a myriad of issues, but all have in common that they primarily impact federal spending.

In its annual report to Congress on regulations, OMB compiles information from the regulatory impact analyses that agencies produce alongside their most economically significant rules. Drawing from these analyses, OMB reports that, for those rules for which agencies estimated dollar values for both benefits and costs in their regulatory impact analyses, total regulatory costs were between \$78 billion and \$115 billion (in 2015 dollars) over the previous decade. Similar rules finalized in FY 2016 produced \$4.3 to 6.4 billion in annual costs (in 2015 dollars), according to OMB.<sup>19</sup> For comparison, budget regulations for FY 2016 had a net budgetary cost of approximately \$5 billion (in 2015 dollars).<sup>20</sup> Although budgetary transfer rules constituted 32 percent of major rules in FY 2016, there isn't much information beyond this in the OMB report. From what limited information exists, budget rules appear to be significant compared to other major rules.

The cost estimates in OMB's report may not sound like much money compared to the massive federal budget, but it's important to note that these cost estimates can vary fairly significantly depending on the year, and they also capture only a tiny sliver of the overall regulatory system. For example, OMB's aggregate social cost estimate for FY 2016 comes from just 16 rules—those that met the threshold of

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<sup>15</sup> Office of Management and Budget, *2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*, 2017.

<sup>16</sup> Technically, the OMB report defines major rules as rules designated as "major" under 5 U.S.C. § 804(2), rules designated as meeting the analysis threshold under the Unfunded Mandates Reform Act of 1995 (UMRA), or rules designated as "economically significant" under § 3(f)(1) of Executive Order 12866. See Exec. Order No. 12,866, 58 Fed. Reg. 51735 (October 4, 1993).

<sup>17</sup> Office of Management and Budget, *2017 Draft Report to Congress*, 28–30.

<sup>18</sup> Office of Management and Budget, 8.

<sup>19</sup> Office of Management and Budget, 20.

<sup>20</sup> Office of Management and Budget, 28–30. Note that gross costs were higher, but some budget regulations reduce spending. Note also that these budget costs are excluded from the OMB's aggregate cost estimate cited earlier, as they are considered a "transfer" by OMB rather than a net cost to society.

having a cost-benefit analysis comprehensive enough to include dollar estimates of both benefits and costs.<sup>21</sup> Based on a search of the *Federal Register*, 3,752 final rules were published between October 1, 2015, and September 30, 2016,<sup>22</sup> meaning that the OMB FY 2016 cumulative cost estimate reflects the cost of less than one-half of one percent of all rules finalized in FY 2016. Similarly, of the 36,255 final rules published between 2007 and 2016, only 137 rules had estimates of monetized benefits and costs in OMB's draft report.<sup>23</sup> This represents about four-tenths of one percent of all final regulations during that period, suggesting that the true costs to society of federal regulation far exceed the very limited set of costs detailed in OMB's report.

## BUDGET REGULATIONS HAVE LOW-QUALITY ANALYSIS

The Mercatus Center conducted an analysis of the quality of regulatory impact analyses in 2008 using a regulatory scorecard system.<sup>24</sup> One-third of the economically significant regulations scrutinized as part of the study were transfer regulations, which the authors define as rules that “outline how the federal government will spend money, set fees, or administer spending programs.”<sup>25</sup> A key finding from this analysis was that transfer regulations have significantly lower-quality analysis than other economically significant regulations.

It is concerning that the analysis accompanying these rules is so scant, as economically significant regulations have to meet the federal requirement of being subjected to cost-benefit analysis, regardless of whether or not they are budget or transfer regulations. For example, under Executive Order 12866, all regulations that are “significant” must include “an assessment of the potential costs and benefits of the regulatory action.”<sup>26</sup> A significant regulation includes regulations that “materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.”<sup>27</sup>

For those rules that are “economically significant”, meaning that they “have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities,”<sup>28</sup> a more thorough regulatory impact analysis must be completed, which must include an assessment “of costs anticipated from the regulatory action (such as, but not limited to, the direct cost . . . to the government in administering the regulation.” (emphasis added).<sup>29</sup>

Budget rules have effects on the economy other than just on the budget. Yet, the OMB report states in a footnote that “agencies typically do not estimate possible resulting distortionary effects on the economy” that result from budgetary transfer regulations,<sup>30</sup> a finding confirmed in empirical studies of budget rules.<sup>31</sup> These distortions include “deadweight losses,” which are economic losses that “may impose real costs on society to the extent that they cause people to change behavior, either by directly prohibiting or mandating certain activities, or, more often, by altering prices.”<sup>32</sup> At the same time, regulations other than budget regulations also impact the federal government's fiscal position, as any

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<sup>21</sup> For the 30 or so rules that have monetization of all or some costs but no dollar estimate of benefits, there is an additional \$7 billion or so in annual cost. See Office of Management and Budget, *2017 Draft Report to Congress*, 25–27.

<sup>22</sup> Office of the Federal Register, document search page, accessed July 12, 2019, <https://www.federalregister.gov/documents/search#advanced>.

<sup>23</sup> James Broughel and Richard Williams, “More Information Needed on the Benefits and Costs of Regulations,” *The Bridge*, August 22, 2018.

<sup>24</sup> Jerry Ellig and Patrick A. McLaughlin, “The Quality and Use of Regulatory Analysis in 2008,” *Risk Analysis* 32, no. 5 (2012): 855–80.

<sup>25</sup> Ellig and McLaughlin, “The Quality and Use of Regulatory Analysis in 2008,” 863.

<sup>26</sup> Exec. Order 12,866, 58 Fed. Reg. 51741 (October 4, 1993) (§ 6(a)(3)(B)(ii)).

<sup>27</sup> Exec. Order 12,866, 58 Fed. Reg. 51738 (October 4, 1993) (§ 3(f)(3)).

<sup>28</sup> Exec. Order 12,866, 58 Fed. Reg. 51738 (October 4, 1993) (§ 3(f)(1)).

<sup>29</sup> Exec. Order 12,866, 58 Fed. Reg. 51741 (October 4, 1993) (§ 6(a)(3)(C)(ii)).

<sup>30</sup> Office of Management and Budget, *2017 Draft Report to Congress*, 8.

<sup>31</sup> Ellig and McLaughlin, “The Quality and Use of Regulatory Analysis in 2008.”

<sup>32</sup> Office of Management and Budget, *2017 Draft Report to Congress*, 22.

regulation that allows or restricts economic activity will have an impact on tax collections. But these indirect budget effects also tend to go overlooked by federal agencies.

To summarize, regulatory analysis occurs only for a small sliver of regulations. It tends to be seriously incomplete when it is conducted but is especially deficient for budget regulations. Furthermore, budget regulations have impacts beyond the federal budget, just as nonbudget regulations also impact the federal government's finances. Yet little is understood about these effects because analysis tends to be of such low quality, if it is conducted at all.

## CONGRESS CAN REASSERT ITSELF

A first step towards addressing regulatory costs on autopilot is to better understand the extent of the problem. This means beginning to shine a light on these costs and reporting on them in a transparent manner. The track record of federal agencies is that the quality of the regulatory analysis that accompanies their rules tends to be quite poor.<sup>33</sup> Agencies routinely skip fundamental steps in analysis such as identifying the problem they are trying to solve or considering multiple alternative ways of solving the relevant problem.<sup>34</sup> They also tend to overlook basic economic concepts in their analysis, such as the opportunity cost of funds exhausted to comply with or implement a government regulation or program.<sup>35</sup>

The Office of Information and Regulatory Affairs (OIRA) plays an oversight role that, in part, is about ensuring the quality of regulatory analysis in the executive branch. But given the track record of federal agencies,<sup>36</sup> it is not clear that OIRA is up to the task. It seems likely that OIRA is either too weak or it is not sufficiently insulated from the political influence of the president to reject deficient analysis.<sup>37</sup> As just one example, a key report for tracking the annual costs of federal regulations, including budget regulations, is the OMB annual report to Congress on the costs and benefits of regulations, which OIRA issues. Although the OMB report is nominally an annual report and is required by law,<sup>38</sup> it has not been issued since 2017, meaning transparency is lacking.

The executive branch cannot be expected to police itself. However, Congress is well positioned to reassert some of its constitutional authority over rulemaking. A reasonable first step is to task an agency like CBO with reviewing the fiscal impacts of federal regulations. While CBO may have less experience estimating the off-budget social costs and benefits of regulations (as compared to executive branch regulatory agencies), it is perfectly positioned to assess the budgetary impacts of regulations.

CBO has three specific advantages that make it well poised to take on this task:

1. *Independence.* Agencies in the executive branch often craft their cost and benefit estimates to reach predetermined conclusions,<sup>39</sup> which is why their analyses are sometimes referred to as “advocacy

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<sup>33</sup> Jerry Ellig, “Evaluating the Quality and Use of Regulatory Impact Analysis: The Mercatus Center’s Regulatory Report Card, 2008–2013” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

<sup>34</sup> Jerry Ellig and James Broughel, “Regulation: What’s the Problem?” (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, November 2011); Jerry Ellig and James Broughel, “Regulatory Alternatives: Best and Worst Practices” (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, February, 2012); Jerry Ellig, James Broughel, and Spencer Bell, “Regulating Real Problems: The Principle of Regulatory Impact Analysis” (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, March 2016).

<sup>35</sup> James Broughel, “Equity or Efficiency: The Battle for the Soul of Benefit-Cost Analysis” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 2019).

<sup>36</sup> For example, many of the shortcomings in agency analysis have persisted for decades. See Thomas Hopkins and Laura Stanley, “The Council on Wage and Price Stability: A Retrospective,” *Journal of Benefit-Cost Analysis* 6, no. 2 (2015): 400–431.

<sup>37</sup> James Broughel, “New Rule Exposes the Regulatory Watchdog That Wasn’t,” *The Hill*, May 20, 2019.

<sup>38</sup> Regulatory Right to Know Act, 31 U.S.C. § 1105 (2018).

<sup>39</sup> Stuart Shapiro, *Analysis and Public Policy: Successes, Failures and Directions for Reform* (Cheltenham, UK: Edward Elgar Publishing, 2016); Richard Williams, “The Influence of Regulatory Economists in Federal Health and Safety Agencies” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2008).

documents.”<sup>40</sup> Unlike regulatory agencies, which are run by political personal with specific policy agendas they enter office looking to implement, CBO has no obvious stake in the outcome of rules.

2. *Experience.* Since the mid 1970s, CBO has analyzed the fiscal impacts of legislation.<sup>41</sup> The fiscal impacts of regulation are likely to be similar to legislation, especially for budget regulations. Analyzing regulations may be even easier, as regulations tend to be more narrowly tailored than legislation.
3. *Democratic Accountability.* CBO is part of the legislative branch, which has direct accountability to voters. By contrast, federal regulations are issued by career civil servants or political officials only indirectly accountable to voters. Many regulations, including some budget regulations, are apparently signed off on by agency officers who have not been confirmed by the Senate.<sup>42</sup>

## CONCLUSION

More is unknown about the budgetary impacts of federal regulations than is known because very few regulations receive the scrutiny of an economic analysis. Where there is analysis, it tends to be of poor quality. Budget regulations have analysis more deficient than most, even compared to the very low standards set by executive branch agencies.

What scholars do know is troubling, however. Mandatory spending currently constitutes a large and growing portion of federal spending. Regulatory costs, which are estimated to be in the trillions annually, occur primarily off the federal budget altogether. In short, much of the federal government is on autopilot.

A simple and straightforward reform would be to task CBO with analyzing the budgetary impacts of federal regulations. CBO has the relevant expertise, is part of the legislative branch that is most accountable to voters, and has the independence to ensure analysis gets done professionally. Such a reform could prevent a regulation from going into effect unless CBO review and analysis is completed and the agency is afforded an opportunity to amend regulations in response to the analysis. At a minimum, significant and economically significant budget regulations could be so scrutinized. However, any regulation affecting economic activity can be expected to impact the federal government’s finances.

With more transparency about the budgetary impacts of regulations, the true costs of having a government on autopilot should begin to reveal themselves, at which point perhaps Congress will begin to reestablish its constitutional role in the American republic.

Thank you for granting me the opportunity to speak today. I’m happy to answer any questions you may have.

## ATTACHMENT

“Are the Costs of Government on ‘Autopilot?’” (Mercatus Chart)

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<sup>40</sup> E. Donald Elliott, “Rationing Analysis of Job Losses and Gains: An Exercise in Domestic Comparative Law,” in *Does Regulation Kill Jobs?*, ed. Cary Coglianese, Adam M. Finkel, and Christopher Carrigan (Philadelphia: University of Pennsylvania Press, 2014); Christopher Carrigan and Stuart Shapiro, “What’s Wrong with the Back of the Envelope? A Call for Simple (and Timely) Benefit-Cost Analysis,” *Regulation and Governance* 11, no. 2 (2017): 203–12.

<sup>41</sup> Congressional Budget Office, “History,” accessed July 9, 2019, <https://www.cbo.gov/about/history>.

<sup>42</sup> This was the finding of a recent report issued by the Pacific Legal Foundation (PLF), which questioned the legality of hundreds of federal regulations issued by the Department of Health and Human Services over the past two decades. A significant portion of the regulations reviewed in the PLF report are budget regulations, especially those coming from the Centers for Medicare & Medicaid Services (CMS). Most of the identified budget regulations lacking a signature from a Senate-confirmed officer appear to be amendments or corrections to other regulations. Nonetheless, this issue deserves further study. See Angela C. Erickson and Thomas Berry, *Who Rules the Rulemakers? A Study of Illegally Issued Regulations at HHS* (Sacramento, CA: Pacific Legal Foundation, 2019).



Chart / Data Visualization

## Are the Costs of Government on “Autopilot”?

September 2, 2015

**Authors:** Richard Williams, Tyler Richards

Taxes and the costs of complying with regulation are two of the larger and more noticeable ways that private individuals pay for government services. Yet it may surprise most people to learn that a significant portion of the federal government’s expenditures and indirect costs to the US economy occur each year on “autopilot” without any action by the current Congress. These autopilot costs are the result of past legislation, interest payments, and rules created by government agencies, all of which bypass the annual appropriations process that exists to ensure the accountability of our elected officials.

Some federal government costs *are* included in the yearly budget [1]. For example, discretionary expenditures—those appropriated by annual congressional vote—are budgeted at \$1.15 trillion for fiscal year (FY) 2015. According to a yearly report [2] by Susan Dudley of George Washington University and Melinda Warren of Washington University in St. Louis, MO, \$62 billion of that \$1.15 trillion will flow to regulatory agencies. While \$62 billion is a substantial figure, it is relatively small in terms of overall government spending. The sum of regulatory costs to the economy, however, extends far beyond the salaries and spending at the agencies themselves.

The remaining costs of regulations are much more difficult to calculate than those plainly stated in the federal budget. These are the costs of complying with regulations that are borne by consumers and producers, and those costs are, in turn, paid for through higher prices, lower wages, and reduced innovation. An oft-cited report [3] by Clyde Wayne Crews Jr. of the Competitive Enterprise Institute estimates that these costs will be approximately \$1.88 trillion in 2015.

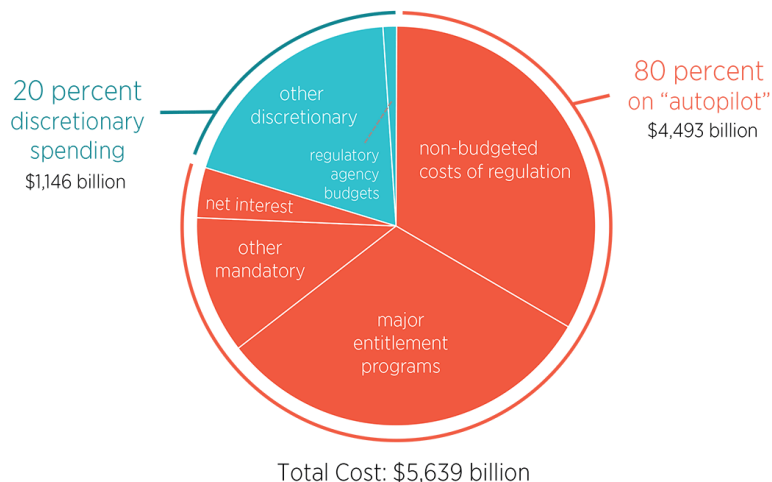
Other organizations such as the National Association of Manufacturers (NAM) and the Office of Management and Budget (OMB) offer estimates that help highlight the wide range and uncertainty in this calculation. NAM estimates these costs were \$2.03 trillion in 2012 [4], while OMB calculates that the range of annual costs from 2001 to 2013 was from \$74.3 to \$110.5 billion [5] (all amounts adjusted to 2015 dollars by the authors). However, the OMB estimation only includes the costs of 116 of the 569 economically significant regulations (those with an impact of \$100 million in at least one year) and none of the 36,453 regulations that do not qualify as economically significant during this period. The authors acknowledge that, because of this exclusion, “the total benefits and costs of all Federal rules now in effect are likely to be significantly larger than the sum of the benefits and costs reported.” Yet even the lower-range value from the OMB, when compared to Dudley and Warren’s figure, shows that the annual appropriations by Congress only reflect 45 percent, or \$62 billion, of the total costs of regulations, \$136.3 billion. The higher-range estimates from Crews and NAM indicate that this figure may be as low as 3 percent.

To get a full picture of the costs of government, we must also take into account the expenditures that *are* a part of the budget but *are not* appropriated each year by congressional votes. The three major entitlement programs—Social Security, Medicare, and Medicaid—are estimated at \$1.75 trillion for the year. These programs, along with another \$628 billion in other mandatory spending and \$229 billion in net interest, account for the remainder of the autopilot costs. Combining the estimates of regulatory costs and the numbers from the federal budget, we can produce estimations of the total cost of the federal government in 2015.

Then we can separate the costs that are appropriated by Congress as part of the annual budget process from those that are not to see how much is on autopilot. The appropriated costs are the discretionary expenditures, including budgets for regulatory agencies. Those remaining—non-budgeted costs of regulation, Social Security, Medicare, and Medicaid, other mandatory programs, and net interest—give us the total “autopilot” costs. Using the Crews estimate, the data reveal that the current Congress is voting on just 20 percent of the amount that we pay for their services, leaving 80 percent—an astounding \$4.5 trillion—as autopilot costs in 2015. But even using the lower-bound estimate of \$74.3 billion for the non-budgeted costs of regulation would only decrease the autopilot costs to 70 percent of the total.



## Are the Costs of Government on “Autopilot”?



Citation: Richard A. Williams and Tyler Richards. "Is Congress Driving Spending, or Is the Budget on 'Autopilot'?" (chart, Mercatus Center at George Mason University, July 17, 2015).

[6]

This recurring process is not inescapable. Our Mercatus Center colleagues Jason Fichtner and Patrick McLaughlin have proposed a method of more accurately estimating costs and including them in the annual budget process called legislative impact accounting [7]. This method would:

incorporate economic analyses of legislation and regulation into the budget process in two ways: First, when new legislation is proposed, an independent office—perhaps the Congressional Budget Office—would produce an estimate of the economic costs the legislation would create. Importantly, a legislative impact assessment would attempt to consider economic costs of proposed legislation, not just budgetary outlays. . . . Second, legislative impact accounting would require retrospective analyses of the economic effects of legislation, starting five years after the legislation passed. The idea is to learn what the real effects have been, and to then update the original estimates produced in the first stage. This would effectively create a much-needed feedback loop that communicates information about the economic effects of legislation back to Congress.

Such a process would help inform Congress and the public about the hidden costs that accompany legislation and regulation, and it would help incorporate this information into the annual appropriations process.

Indeed, any effort to account for these autopilot costs would help promote transparency and accountability within the federal government.

**Source URL:** <https://www.mercatus.org/publication/are-government-costs-autopilot>

#### Links

[1] <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/budget.pdf>

[2]

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[3] [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2502883](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2502883)

[4] <http://www.nam.org/Data-and-Reports/Reports/Cost-of-Federal-Regulations/The-Cost-of-Federal-Regulation/>

[5] [https://www.whitehouse.gov/sites/default/files/omb/inforeg/2014\\_cb/2014-cost-benefit-report.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/2014_cb/2014-cost-benefit-report.pdf)

[6] [https://www.mercatus.org/sites/default/files/federal-govt-costs-chart-1\\_0.png](https://www.mercatus.org/sites/default/files/federal-govt-costs-chart-1_0.png)

[7] <http://www.economics21.org/commentary/mercatus-legislative-impact-analysis-budget-06-09-2015>

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