

ISSUE BRIEF

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Reforming Regulation: Some Sensible Steps

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Like the weather, regulation is something that everyone likes to complain about, but nobody does anything about it. However, the House of Representatives this week plans to take up over half a dozen measures to reduce red tape. This comes in addition to last year's passage of measures to require congressional approval of new major regulations (the REINS Act¹) and to update rulemaking processes (the Regulatory Accountability Act²).

The measures being considered this week are hardly the stuff of revolution, and few will make their way onto bumper stickers. But they do represent common-sense changes that promise to help limit unnecessary burdens.

A Broad Swathe. There is little doubt that the burden of federal red tape has been growing in recent

years—and growing fast. According to the most recent Heritage Foundation analysis, 106 major new regulations—each imposing \$100 million or more in new costs on Americans—were adopted in the first three years of President Obama's tenure.³ That compares to 28 during the first three years under President Bush.

In dollar terms, the acceleration is even starker, with \$46 billion in new burdens being assessed since January 20, 2009, compared to \$8 billion in the three years following President Bush's inauguration.⁴

The new rules cover a broad swathe of economic activity and daily life. New environmental restrictions will increase the cost of electricity in American homes⁵ while adding thousands to the cost of new cars.⁶ Obamacare health care rules limit patient choice and increase the cost of medical care.⁷ New financial regulations have increased the cost of banking, while thousands of additional financial rules still linger in the pipeline.⁸ The Internet has been targeted by new “net neutrality” rules from the Federal Communications Commission,⁹ while employers—and workers—must contend with new edicts aimed at helping union bosses.¹⁰

A Rescue from Red Tape. The legislation now being considered in the House (H.R. 4078) would take a number of approaches to stemming this rising tide of red tape. The headline reform is a regulatory freeze—banning adoption of new major regulations until the national unemployment rate, now just over 8 percent, dips below 6 percent. This provision—which allows for waivers to protect health and safety—makes sense: Why impose more burdens on the economy and on employers when so many people are out of work?

A freeze is no cure-all, however. Past freezes, such as the one imposed by the first President Bush in 1991, have had limited success. High-profile rules tend to get waivers, and even those stopped by the freeze tend to be adopted when it is lifted, leaving little long-term effect. But it is an important symbolic move, sending the message to regulators that now is not the time for new restrictions on the economy.

The other elements of the House regulatory plan are narrower in scope but could have a meaningful impact. Among them:

- **Banning “midnight” regulations.** As a presidential Administration comes to a close,

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the number of new rules adopted by regulators invariably skyrocket. It does not matter whether the President is a Republican or a Democrat, liberal or conservative; policymakers—freed from normal political constraints—rush to clear their desks and put their pet ideas into effect while they can. The result is a glut of new restrictions that are hastily considered with limited accountability. The House bill would limit this periodic circus, banning promulgation of new rules after Election Day whenever the presidency changes hands. Even better accountability could be maintained by requiring Congress’s approval of new regulations, as provided under the REINS Act.

■ **Making regulatory settlements transparent.** A significant number of new regulations are imposed under court order, with regulators seemingly having little choice but to promulgate the new

rule. In many cases, however, such court orders are the result of not an adversarial process lost by the agency but rather an elaborately staged kabuki dance among outside pressure groups, the courts, and the agency itself. This “sue and settle” process is simple: An interest group sues a regulatory agency, then the agency takes a dive and settles the case, resulting in a court order requiring the agency to do what it wanted to do in the first place. The public is neatly left out of the equation. The House bill would not end this practice, but it would require more transparency in the process, including an opportunity for public comment to the agency before agreement on a settlement.

■ **Cost-benefit analysis by the Securities and Exchange Commission and Commodities Futures Trading Commission.** For over 30 years, executive branch agencies have been

required to assess the benefits and costs of major new rules. This requirement does not apply, however, to so-called independent agencies, which are outside direct presidential control. The House legislation would require, by statute, two of the most significant independent agencies to conduct such analyses before adopting new rules.

Sensible, Common-Sense Improvements. The package of reforms now before the House would implement a series of sensible, common-sense improvements to the regulatory process. Combined with other, broader reforms already approved by the House, they represent a major step toward limiting the regulatory burden on the U.S. economy and American consumers.

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2. See James L. Gattuso, “The Regulatory Accountability Act: A Step Toward Reform,” Heritage Foundation *WebMemo* No. 3424, December 1, 2011, <http://www.heritage.org/research/reports/2011/12/the-regulatory-accountability-act-a-step-toward-reform>.
3. See James L. Gattuso and Diane Katz, “Red Tape Rising: Obama-Era Regulation at the Three-Year Mark,” Heritage Foundation *Background* No. 2663, March 13, 2012, <http://www.heritage.org/research/reports/2012/03/red-tape-rising-obama-era-regulation-at-the-three-year-mark>.
4. *Ibid.*
5. Nicolas D. Loris, “The Assault on Coal and American Consumers,” Heritage Foundation *Background* No. 2709, July 23, 2012, <http://www.heritage.org/research/reports/2012/07/the-assault-on-coal-and-american-consumers>.
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