The entry of President Donald Trump’s administration has brought renewed energy to the challenge of reducing the cost of regulation. The early days of the administration were characterized by a burst of activity meant to roll back regulation, including Executive orders (EOs) to regulate the U.S. financial system, enforce a regulatory reform agenda, and reduce regulation while controlling regulatory costs.¹ Of the EOs issued to date, the one likely to have the largest effect is EO 13771, which seeks to reduce regulation and control regulatory costs. Specifically, the order states that, during fiscal year (FY) 2017, an agency must offset the cost associated with any new regulation by “identifying two existing regulations for elimination.” In subsequent years, EO 13771 imposes a “regulatory budget” approach on agencies, whereby the Office of Management and Budget (OMB) assigns a maximum allowable cost growth for planned regulations within each agency that is capped at zero. In other words, the cost of any new regulation must be offset by the elimination of costs associated with at least two prior regulations. EO 13771 can potentially affect every part of the economy touched by federal regulation through the OMB’s annual review of regulation.²

The concept of a regulatory budget is not new. Supporters of regulatory reform have long argued that the growing costs associated with regulations have increased production costs for businesses, thus increasing consumer prices and inhibiting economic growth.³ Reform proponents have also expressed concern that current approaches for evaluating the effects of proposed regulations using cost-benefit analysis are biased and that a regulatory budget would force agencies to make hard choices about priorities that they would otherwise avoid. The questions for this Perspective are, how well does EO 13771 address reform proponents’ concerns, and, perhaps more importantly, what challenges does it present from an implementation perspective?

To understand these issues, we begin by discussing the concept of the regulatory budget and the ways in which proponents of regu-
The concept of a regulatory budget such as that described in EO 13771 is not new: This type of regulatory reform has been proposed in the United States for at least 40 years and has been implemented in a variety of forms by governments around the world. The idea behind the regulatory budget is simple: A regulation imposes a cost. In principle, it is possible to add up the costs of all regulations that a federal agency has in place in any particular year. The budget then places a ceiling on the total burden that an agency’s regulations, taken together, can impose. A common analogy is that, in the same way that a fiscal budget limits the total amount of money an executive agency can spend, a regulatory budget limits the total costs the agency can impose.

Variations on the regulatory budget idea have been proposed many times over the years on both sides of aisle. Regulatory budgeting first gained traction in Congress in 1978 with the introduction of the Federal Regulatory Budget Act by Senator Lloyd Bentsen of Texas. President Carter’s administration explored the concept of regulatory budgeting, and OMB proposed the Regulatory Cost Accounting Act that built on the idea. Regulatory budgeting was proposed in President George H. W. Bush’s 1993 budget submission to Congress and was included in proposed legislation in 1993, 1998, and as recently as 2014. In 2007, President George W. Bush issued an EO that required all agencies to estimate “the combined aggregate costs and benefits of all its regulations planned for that calendar year to assist with the identification of priorities,” although the estimate was not explicitly tied to any restriction and hence was not a regulatory budget. President Obama revoked the order in 2009. In recent years, the most ambitious attempt to establish a regulatory budget in Congress was the proposed National Regulatory Budget Act of 2014 by Senator Marco Rubio of Florida, which sought to implement regulatory cost caps for each agency, enforced by a new independent agency. However, despite many proposals, regulatory budgeting has never before been successfully implemented in the United States.

The Existing Regulatory Environment
Although the impetus for many regulations is demand for the benefits they provide, there has also long been demand to restrain costs associated with efforts to provide those benefits. To understand the context surrounding regulatory budget proposals, we need to review some key features of the federal government’s existing system of regulatory oversight, which seeks to restrain the costs
of regulations. The existing system of regulatory oversight combines legislative directives, congressional oversight of specific programs, and presidential direction executed through OMB.

Systematic tracking of federal regulations was initiated by the Federal Register Act (FRA) of 1935, which established the Federal Register, a daily publication containing discussions of proposed and final regulations of executive agencies. The Federal Reports Act of 1942 represented an early effort to limit the costs imposed by U.S. regulations, requiring that the Bureau of the Budget approve agencies’ efforts to collect information from the public. Efforts to provide some oversight and limitations to federal regulations were expanded under the Paperwork Reduction Act of 1980, which established the Office of Information and Regulatory Affairs (OIRA) within the OMB. The 1980 act, along with a 1995 amendment, gave OMB broader control over how agencies collect and disseminate information.

The key idea underlying the prevailing regulatory environment in place when President Trump issued EO 13771 was that the benefits provided by a regulation must exceed the regulation’s costs. At a minimum, this regulatory framework sought to prevent the implementation of regulations whose benefits were not large enough to justify their costs. EO 12866, signed by President Clinton in 1993, stipulated that agencies must develop a regulatory plan each year tracking the benefits and costs of significant regulatory actions under their purview and must manage these regulations as a portfolio in a way that maximizes the difference between the benefits and costs of the regulations in the portfolio. OMB Circular A-4, which has codified OMB guidance on preparing a regulatory analysis since 2003, defines a good regulatory analysis as containing three components: “(1) a statement of the need for the proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and costs—quantitative and qualitative—of the proposed action and the main alternatives identified by the analysis.” While OMB’s guidance on regulatory analysis is not overly prescriptive, it also provides several broad requirements, including those to “[e]xplain how the actions required by the rule are linked to the expected benefits” and to define a baseline, which typically refers to what the world would be like without the regulation, but may refer to what the world would be like under an alternate regulation. Benefits are defined as the effects of the proposed regulation that increase well-being compared to the baseline, while costs are defined as effects of the proposed regulation that decrease well-being compared to the baseline. The regulatory analysis must also include a variety of considerations such as “expected undesirable side-effects and ancillary benefits of the proposed regulatory action and the alternatives.”

OMB Circular A-4 specifies that the regulatory analysis must include three different categories of benefits and costs: (1) those that have been quantified and monetized, (2) those that have been quantified but not monetized, and (3) those that have been neither monetized nor quantified. OMB Circular A-94 provides discount rates to be used in monetizing costs and benefits and directs analyses to separate qualitative effects that are significant in terms of features, such as magnitude and reversibility from minor concerns. Distributional effects, such as transfers of well-being from one group to another, should be reported separately to avoid misclassifying them as net changes in benefits or costs. Finally, OMB Circular A-4 suggests using more-rigorous approaches to evaluate regulations with annual benefits or costs in the range of $100 million to $1 billion and requires a formal quantitative...
analysis of uncertainty for regulations when those values exceed $1 billion.

Although there are sometimes different views about how best to calculate or monitor costs and benefits, the goal of ensuring that the costs of regulatory actions do not exceed their benefits has remained remarkably consistent over time and across administrations of different parties.

The Debate Surrounding Regulatory Reform

Those seeking to reform the existing regulatory oversight environment tend to focus on two main arguments. The first is that, especially when taken together, regulations impose large and rapidly growing costs on the U.S. economy. For example, the House Committee on the Budget asserted that the implementation of regulations associated with the Affordable Care Act “has resulted in 177.9 million annual hours of regulatory compliance paperwork, $37.1 billion of regulatory compliance costs affecting the private sector, and $13 billion in regulatory compliance costs on the States.”16 Similarly, some Environmental Protection Agency (EPA) regulations effectively purchase future health by imposing regulatory costs today. Those emphasizing the growth of regulations argue that the administrative or regulatory bureaucracy behind this growth is extending the reach of regulations beyond the intent of the legislators who initially authorized them. Their concern is that bureaucracies are creating additional and unnecessary regulations to increase their budget and importance—not necessarily to provide a public benefit.17

A second concern raised by those seeking reform is that the manner in which agencies currently implement cost-benefit analysis is biased in favor of finding large benefits and small costs.18 Dudley (2013) presents several examples in which she argues that the monetary benefits associated with regulations that reduce air pollution have been overstated, while costs have been understated, arguing

The problem . . . is that agencies do not appear to be approaching the problem objectively. On the benefit side of the equation, they quantify or list every conceivable good thing that they can attribute to a decision to issue new regulations, while on the cost side they only consider the most obvious direct and intended costs of complying with the regulation.19

Others have sounded a similar alarm. OMB’s annual benefit-cost analyses is described by Johnson et al. as “wildly inaccurate and prone to data manipulation.”20 Another related argument is that benefits of regulations tend to be diffuse and difficult to quantify, making them easily prone to miscalculation or bias. Peacock points out that, “By their very nature, federal regulations typically produce benefits that are not traded in a marketplace and, therefore, cannot be easily evaluated.”21

The potential for inaccuracy is magnified, critics contend, because OMB’s cost-benefit analyses are all forward-looking, estimating what will happen rather than retrospectively assessing
what *did* happen as a result of new regulations. McLaughlin argues that the lack of retrospective assessments means that today’s biased assessments become justification for future regulations rather than being corrected or removed.\textsuperscript{22} He states that

the absence from the regulatory process of . . . provisions for retrospective analysis and review of regulations means that the errors that do occur become ensconced in the regulatory code and often, in turn, serve as the foundation for subsequent regulations.\textsuperscript{23}

To put these statements in perspective, it is worth noting that the benefits of regulation that OMB currently reports annually to Congress far exceed the costs. Figure 1 summarizes those estimates for rules introduced over 2006–2015. Estimated benefits range from two to 17 times higher than estimated costs during this period.\textsuperscript{24}

Still, some supporters of regulatory budgets argue that, because of concerns that agencies overestimate benefits and underestimate

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**Figure 1. Total Annual Costs and Benefits of Major Rules Reported by OMB, by Fiscal Year**

![Graph showing total annual costs and benefits](image)


NOTE: \textsuperscript{a} As presented in the source document, the y-axis for this figure is in billions of 2001 dollars for all years except 2015; 2015 values are in billions of 2014 dollars.
costs, agencies are inherently incapable of neutrally determining when additional regulations pass a cost-benefit analysis. From this perspective, externally imposed regulatory budgets force agencies that would otherwise overregulate to impose only the regulations that are most important. Arguing in favor of regulatory budgets, Clyde Warne Crews, Jr., stated during congressional testimony that agencies tend to regard all their regulations as bestowing net benefits. To remedy this, agencies subject to a budget should not be allowed to offset regulatory costs with benefits. . . . Instead, Congress would specify the total budget and divide it appropriately among agencies based on prospective effectiveness, such as potential lives saved.25

Indeed, regulatory budgets are seen by proponents as a tool through which the federal government could define priorities, improve regulatory focus on core principles, and allow for cross-agency comparisons. Crews added:

Agencies operate under conditions such that only the matters under their particular jurisdiction are relevant to their decision making process. . . . The Food and Drug Administration for example, could analyze the relative merits of regulations under its jurisdiction under a budget, but it could not evaluate its own rules in relation to, for example, EPA’s.

However, others worry that there would be little incentive to consider trade-offs between agencies in practice because “legislators likely would quickly provide ‘emergency’ resources to implement the rule, ignoring budget limits.”26

Why might individuals or organizations support regulatory budgets when the policy could prevent regulations for which benefits are estimated to exceed costs? Why might individuals or organizations support regulatory budgets when the policy could prevent regulations for which benefits are estimated to exceed costs? One reason is a regulation that provides benefits valued at $100 does not necessarily reduce future expenditures by $100. Because of this, proponents of regulatory budgets could be concerned that wanting benefits does not mean we can afford them. Another possibility is that the regulatory

How Would an Agency Implement a Regulatory Budget?

It is FY 2018, and an agency has only two regulations. Regulation A imposes $200 in costs and yields $240 in benefits. It generates $40 in net benefits. Regulation B imposes $200 in costs and yields $300 in benefits. It generates $100 in net benefits.

Under EO 13771, OMB directs the agency to cut its regulatory costs by $200. The agency must remove one regulation or the other. In isolation, EO 13771 is agnostic about which to remove—either will meet the requirement. But both EO 13771 and the interim OMB guidance state explicitly that EO 13771 operates in the context of the framework described in EO 12866 and its predecessors. That framework states that agencies should manage their regulations in a way that maximizes net benefits. To comply with both EO 13771 and existing rules, the agency must eliminate Regulation A. The existing framework requires the agency to maintain the highest possible net benefits while complying with EO 13771.
How Might OMB Distribute Regulatory Cuts Across Agencies?

It is the start of FY 2018, and OMB is deciding each agency’s regulatory budget for the year. Under EO 13771, OMB has the sole authority to decide the magnitude of these regulatory budgets, although it is plausible that new regulations or political pressure could influence or require cuts of certain magnitudes. Suppose that OMB has either decided or been instructed to reduce the total cost of regulations by $1,000, compared to FY 2017.

OMB must now decide how to distribute these cuts across agencies. OMB could distribute these cuts uniformly across agencies or impose them entirely on a small number of agencies. How should OMB decide how to distribute these reductions in regulatory budget?

Again, cost-benefit analysis provides some guidance. The same principles that guide agencies to maintain regulations with the greatest net benefit per dollar of cost could also be applied by OMB for cross-agency decisionmaking. Each agency, after being given its regulatory budget, will be required to cut regulations with the lowest net benefit per dollar of cost. To make society as well-off as possible under this constraint, OMB should give the largest regulatory budget to agencies that have regulations with the highest net benefit per dollar of cost on the margin to be cut. Taking the costs and benefits reported by agencies as given, the last regulation to be cut at each agency should have approximately identical net benefits per dollar of cost. If this were not the case, then OMB could increase total societal benefits without increasing total societal cost by shifting regulatory resources from agencies reporting lower net benefits per dollar of cost to agencies reporting higher net benefits per dollar of cost.

How Does EO 13771 Change the Existing Regulatory Regime?

With the above background in mind, we now look more closely at the relationship between President Trump’s EO 13771 and the regulatory regime before EO 13771.

EO 13771 restricts regulatory costs by putting a limit on how much an agency can change the total costs of its regulations in any year. For FY 2017, the order states that no federal agency may change its regulations in any way that allows that total cost to grow. Specifically, the order states that an agency must offset the cost associated with any new regulation by identifying two existing regulations for elimination. The details of how such a “two-for-one” offset would occur are not clear and should be subject to further

Those who incur the costs have strong incentives to emphasize the negative impacts of regulations, and these individuals may be frustrated by what is, from their perspective, excessive regulation.
analysis. It is likely that existing laws make compliance with the EO challenging in many cases. For example, the Administrative Procedure Act subjects any change in regulation to a rigorous review that ensures broad public participation and transparency.\textsuperscript{28} This review process can be time-consuming. Legal challenges to the EO itself have already arisen.\textsuperscript{29} Also, while the intent of EO 13771 appears to be that benefits cannot be used to offset costs, further clarity on this point is needed.

For FY 2018 and beyond, the “two-for-one” regulatory offset will continue, and OMB will, as part of its budgetary guidance, issue caps on the total change in costs for every major federal agency. OMB will have the authority to set caps for each federal agency that either allow total regulatory costs to grow by a limited amount or that require total regulatory costs to be decreased. However, it is not clear to what extent OMB’s authority to set caps that allow the growth of regulatory costs is or is not limited by the requirement to offset the cost of new regulations by eliminating two existing regulations; these portions of the EO appear to directly conflict and hence require clarification. In addition, the order gives OMB the authority to waive a cap in a particular situation and, at its discretion, to offset growth beyond the cap in one agency with a reduction in total regulatory cost in another agency. The EO also directs OMB to “provide the heads of agencies with guidance on the implementation of the requirements” stated in the order.

The new EO thus diverges from the previous regulatory framework in two important ways. First, it highlights the importance of tracking costs separately from benefits. The framework in place before focused primarily on net benefits—the difference between benefits and costs. In contrast, EO 13771 states that it is “essential to manage the costs [emphasis added] associated with the governmental imposition of private expenditures required to comply with Federal regulations.”

Second, the decision to use a budget to limit the level of the total costs associated with regulation requires that all costs be counted in dollar terms. Recall that the current version of Circular A-4 makes clear that agencies need not quantify all costs, much less state them all in dollar terms. In comparison, EO 13771 can control the total level of costs in an objective, auditable manner only if it can define relevant costs in a way that allows them to be monetized. The current interim guidance states that OMB will address this concern on a case-by-case manner. However, OMB’s ability to audit current agency efforts to define and measure costs and benefits of regulation is limited.\textsuperscript{30} Increasing demands on limited OMB staff will likely provoke the development of new, more formal guidance in Circular A-4.

While some aspects of the regulatory budget approach described in EO 13771 impose significant changes in the way new regulations are to be proposed and managed, in other respects, the

\textbf{The new EO thus diverges from the previous regulatory framework in two important ways. First, it highlights the importance of tracking costs separately from benefits. . . . Second, the decision to use a budget to limit the level of the total costs associated with regulation requires that all costs be counted in dollar terms.}
new EO is expected to be implemented within the context of the preexisting regulatory framework. For example, EO 13771 specifies that, starting in FY 2018, the new regulatory budget is to be embedded in the process used to manage the annual regulatory plan “required under Executive Order 12866 of September 30, 1993, as amended, or any successor order.” In effect, the federal government will continue to create the regulatory plan defined in EO 12866 each year and graft the regulatory budget described by the new EO onto that plan.31

Once OMB assigns new caps on regulatory costs on each agency, EO 12866 and the predecessors it builds on dictate that each agency should comply with its new cap in a way that maximizes the net benefits it can achieve within the cost cap that it has been assigned. Put another way, although EO 13771 does not explicitly mention regulatory benefits, it embeds its new regulatory budget in a preexisting approach to managing regulations in which benefits continue to play a central role.32

It is also likely that the new EO will continue to use the existing approach for issuing additional implementation guidance. EO 13771 calls for OMB to develop and issue additional guidance required to implement the new EO; whereas a new memorandum offers interim OMB guidance.33 The memo builds directly on OMB Circular A-4, which has codified OMB guidance on preparing a regulatory plan since 2003.34 History suggests that OMB will continue to use the approach described in Circular A-4 and will adjust it as needed to cover new issues that arise as a result of the new EO.

Implementation of EO 13771 will significantly increase the amount of effort OMB and regulating agencies must put toward monitoring regulation costs, as enforcing a regulatory budget would require monitoring the costs of most regulations produced by the Executive Branch, not just significant regulatory actions. Independent regulatory agencies, such as the Securities and Exchange Commission and the Federal Communications Commission, remain explicitly excluded from OMB oversight because those agencies were created by Congress to be independent of the Executive Branch. EO 13777, which provides additional details on the implementation of EO 13771, requires each agency to designate a Regulatory Reform Officer and create a Regulatory Reform Task Force. Each group is tasked with evaluating both its agency’s new and existing regulations, along with other roles involved in implementing the updated regulatory regime. Implementing the new EOs requires agencies under OMB oversight to identify the costs associated with any new regulations, not just significant regulatory actions, and identifying the most efficient regulations to eliminate will require a large amount of retrospective evaluations. In comparison, the previous regulatory environment, as defined in EO 12866 and OMB Circular A-4, only requires tracking the costs and benefits of significant regulatory actions in executive agencies under OMB oversight. As a result, according to one estimate, OMB has previously reviewed only about 8 percent of all federal regulations.35

Overall, the relationship between EO 13771 and the existing regulatory regime means that even though EO 13771 focuses entirely on costs, cost-benefit analysis will continue to play a role in determining which regulations agencies opt to enact.

**Implementing a Regulatory Budget: Challenges and Opportunities**

EO 13771 addresses supporters’ first concern by slowing or even reversing the growth of regulations. The prohibition on growth of
costs in FY 2017, implemented via the requirement to eliminate two regulations for any one new regulation, and OMB setting caps that limit new costs or required cost decreases for each agency in FY 2018 and beyond, can significantly slow or reverse the growth of regulations in the United States. That said, there is still uncertainty regarding how this EO will be implemented in practice. The details of how this EO will be implemented offer both challenges and opportunities for improving the U.S. regulatory environment.

Perhaps the biggest challenge and opportunity for regulatory reform relates to the need for cultural change within government. Jitinder Kohli, who directed the UK version of a regulatory budget, “One-in, Two-out,” during 2005–2009, offers some important advice to those who wish to implement similar programs. Among the key lessons he learned are the following:

**Don’t underestimate the culture change needed to carry this out.** Those who work in regulatory policy often focus on designing new regulatory ideas. Typically, they don’t systematically look for ways to reduce the costs of regulations that are already on the books.

**Reducing regulatory costs doesn’t require gutting critical protections.** In the UK, by focusing on how we regulated, rather than just what we regulated, we were able to drive enormous cost reductions without sacrificing protections. By simplifying forms and processes, compliance became much less costly without any underlying regulatory changes or compromising mission. For example, allowing publicly traded companies to use electronic versions of their annual reports saved British business more than £180 million. We also rationalized inspections, reducing the burden on good corporate citizens without diminishing outcomes.36

EO 13771 embeds the regulatory budget deeply within the existing framework for overseeing federal regulation, strongly reinforcing the prevailing regulatory culture. Neither the order nor its supporting guidance says anything about changing how regulation occurs. Rather, the very notion of trading two existing regulations out to justify a new regulation focuses the attention of regulators with a preexisting regulatory mindset on changing what is regulated. Unless the introduction of a regulatory budget is accompanied by efforts to shift the focus from what to regulate to how to regulate, the decision about which regulations to eliminate will likely be decided using the same processes that proponents of regulatory budgets believe is biased.

Although EO 13777 calls for new Regulatory Reform Officers, it does not address the key cultural issues of how the people who design proposals for regulation and implement their enforcement are trained, evaluated, and rewarded. Similarly, EO 13777 calls for retrospective analysis, which is a concept that holds much potential for reducing costs and improving cost-benefit analysis. For retrospective analysis to be as effective as possible, cultural change is required. Changes in the reward structure for career regulators and their managers, along with consistent, data-driven pressure for reassessment are critical. If no value is placed on retrospective

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*Unless the introduction of a regulatory budget is accompanied by efforts to shift the focus from what to regulate to how to regulate, the decision about which regulations to eliminate will likely be decided using the same processes that proponents of regulatory budgets believe is biased.*
analysis and reviewing the effectiveness of past regulations, then the mindset of the agencies will stay focused on what new regulations are needed instead of focusing on how to implement regulations more effectively. The point of cultural change is not to dictate how retrospective analysis should be done, but rather to ensure regulators work in an environment where creative approaches to cost reduction are rewarded.

Another illustration of the tension between what to regulate and how to regulate is the comparison between regulations that mandate a specific approach to achieving a goal (such as the use of catalytic converters as a technology to reduce automotive emissions) and those that call for a goal but allow for creativity and latitude as to how it is achieved (such as the use of fleet averages for achieving automotive fuel economy standards). It is important to construct regulations correctly at the outset because the process of changing regulations is quite cumbersome and potentially subject to lengthy, emotional, nontechnical barriers. Because of these factors and the prevailing reward structure within agencies, there are often no significant drivers for regulatory agency updates in established markets. Combining a regulatory budget with cultural change could result in significant cost savings that do not require gutting critical protections.

It is important to also consider the impact of these reforms if the culture remains focused on trading one regulation for another without addressing how to regulate more efficiently. In such a scenario, halting the growth of regulations will only make the country as a whole better off if (1) there are enough regulations with negative net benefits to offset the costs associated with new regulations that have positive net benefits and (2) the costs and benefits associated with regulations can be accurately identified and assessed to ensure that any such trades actually make society better off. If those conditions are not met, the elimination of regulations will likely reduce costs but will also reduce the benefits of regulations by a larger amount.

Fully accounting for the costs and benefits involved in all affected regulations is critical regardless of whether cultural changes are achieved, and it involves addressing many complex issues, such as how nonmonetary costs are to be considered. Concerns about how such calculations might be made are not partisan issues; indeed, some advocates of regulatory reform have expressed the fear that, if all costs were monetarized, regulations “with real but intangible costs—such as violations of religious liberty—would actually be free to regulators.”³⁷ For the moment, this issue has not

### A Specific Example of the Benefits of Retrospective Analysis: Tampons

With the rapid advancements in analytical science and the understanding of disease mechanisms, it is increasingly important to address the need for updating and/or eliminating outdated regulations that no longer serve a significant purpose. In the consumer products area, advances in the scientific understanding of menstrual toxic shock have meant that some of the previous regulatory limitations on wear time and overnight use of tampons are now largely irrelevant to the risk of acquiring the syndrome. Rather than continuing to provide benefits, the regulations now do little more than complicate labeling and provide inaccurate or misleading understanding of the risks.
been addressed. EO 13771 operates within a framework defined by EO 12866 that, at its core, accepts the legitimacy of benefit-cost analysis as federal agencies currently conduct it.38

A final opportunity and challenge to keep in mind while pursuing regulatory reform is to ensure that policymakers remember that regulations are not necessarily harmful to industry. On the contrary, regulations are often advantageous to companies. Regulations can solve coordination problems by defining standards and providing common rules that would be difficult for industries to develop voluntarily. The global authority currently held by U.S. regulations also provides significant advantages to U.S.-based industries. The ability to cite compliance with U.S. regulatory agencies provides competitive advantages and regulatory simplicity in many developing markets, and often developed markets as well.

For example, many manufacturing plants make products for global distribution, regardless of their location. The manufacturing process at such plants will be built around the regulatory requirements of the markets in which that product is sold. When the U.S. regulations are widely accepted around the globe, the manufacturing process can be simpler and more easily designed—for example, the manufacturer only needs to manufacture its products in a way that meets U.S. regulations and not create separate manufacturing or test systems for each country in which the product is sold. Thus, U.S. global leadership on regulations allows U.S. manufacturers to easily sell to global markets. In the absence of this leadership, U.S. manufacturing plants may design their production around regulations from whatever country fills the void left by the United States (for example, European regulations). A U.S. manufacturer might have to design multiple production lines and processes to deal with widely varying global regulations, manage more complex inventory and shipping processes, and generally face increased costs as a result of the elimination of U.S. regulations. Indeed, cutting U.S. regulations could actually push companies to move their manufacturing facilities to non-U.S. locations, where the plant personnel will be more familiar with the prevailing regulatory climate, as familiarity with U.S. regulations becomes less relevant to the larger

A Specific Example of the Benefits of Regulation: Tampons

When an increased risk for menstrual toxic shock was identified as being linked with higher absorbency in tampons, the FDA created a common test method for determining the absorbency of a tampon and defining the ranges and limits of absorbency allowed. This created a level playing field for all manufacturers and decreased the risk of menstrual toxic shock—allowing the safe marketing of a highly desired product.

The global recognition of FDA expertise meant compliance with FDA regulations was sufficient for most other countries and limited the potential for dozens of differing regulations and test methodologies. The reputation of FDA regulations provided an exporting benefit for U.S.-based manufacturers of tampons, as products meeting U.S. regulations were generally accepted in all other countries. The expertise of U.S. regulators and the clarity of the regulations in this area have led, and continue to lead, to many regulatory changes around the globe that simplify the regulatory complexity of manufacturing women’s personal care products, further enhancing the growth of U.S.-based manufacturers.
Cutting U.S. regulations could actually push companies to move their manufacturing facilities to non-U.S. locations, where the plant personnel will be more familiar with the prevailing regulatory climate, as familiarity with U.S. regulations becomes less relevant to the larger global market. Such concerns highlight the potential unanticipated impacts of blanket deregulation.

Conclusion
President Trump has added a regulatory budget to the framework that the government has used to oversee major federal regulations for several decades now. When fully implemented, this budget will seek to stop and potentially roll back the collective burden imposed by federal regulations. However, before this can be fully implemented, OMB will need to further refine the guidance in its Circular A-4 to clarify current inconsistencies in guidance. Additional resources will be required to determine the costs associated with the many regulations that require additional analysis, and decisions will need to be made about how to handle costs which cannot be easily monetized.

Many in the United States have advocated the introduction of a regulatory budget for many years, but the version offered on EO 13771 is unlikely to fully address proponents’ concerns. While it does seek to reduce costs, it does little to address proponents’ concerns that bureaucracies have tended to overestimate benefits and underestimate costs. The EO does provide a mechanism for requiring regulators to prioritize between alternative regulations, but the process regulators will likely use to make those decisions is the same process that proponents of regulatory budgets argue is biased.

Further, much work remains to successfully address the issue of organizational culture and the ways in which that culture is likely to influence the implementation of a regulatory budget. While aspects of reform, such as the call for retrospective analysis in EO 13777, can be a key part of instituting the cultural changes necessary to make a regulatory budget effective, the “two-for-one” approach of EO 13771 reinforces a regulatory mindset that focuses on which regulations to cut rather than how to most efficiently reduce regulatory burden. Without further changes in guidance, regulators are unlikely to focus on the kinds of changes in how to regulate that have accounted for most of the cost savings generated by the UK’s regulatory budget.

Without further changes to the EOs and the prevailing regulatory culture, unless the net benefits of regulation shown in Figure 1 are grossly overstated, the new EO could easily remove more benefits of regulation than costs, without addressing the core issues that concern advocates of a regulatory budget. There are many beneficial opportunities to reduce costs through regulatory reform, but reducing costs by simply eliminating regulations can lead to serious negative consequences for both U.S. consumers and U.S. manufacturers.
Notes


3 For example, see Dustin Chambers and Courtney A. Collins, “How Do Federal Regulations Affect Consumer Prices? An Analysis of the Regressive Effects of Regulation,” Mercatus Working Paper, February 2016, as of April 17, 2017: https://www.mercatus.org/system/files/Chambers-How-Regs-Affect-Prices-v2.pdf. Note that, even if rising regulatory costs do increase prices, this does not necessarily imply that reducing regulatory costs would reduce prices. Cost savings could instead be used to avoid future price increases, creating consumer savings in the long run and increased firm profits in the short run.


5 Patrick McLaughlin, Regulatory Budgeting as a Solution to the Accumulation of Regulatory Errors, testimony before the House Committee on the Budget, U.S. House of Representatives, July 7, 2016a; and Patrick McLaughlin, Regulatory Budgeting as a Solution to the Accumulation of Regulatory Errors, Follow-Up, U.S. House of Representatives, August 8, 2016b, as of April 21, 2017: https://www.mercatus.org/system/files/McLaughlin-reg-budgeting-QFR-v2.pdf.


8 For example, Upton Sinclair’s unappetizing depiction of the U.S. meatpacking industry in his 1906 novel, The Jungle, caused a public outcry that quickly led to Congress establishing the Food and Drug Administration (FDA).

9 Amy Bunk, “Federal Register 101,” Proceedings, Spring 2010, p. 1, as of April 17, 2017: https://www.federalregister.gov/uploads/2011/01/fr_101.pdf, explains that the FRA was passed in response to a U.S. Supreme Court case, Panama Refining Co. v. Ryan (293 U.S. 388, 55 S.Ct. 241, 1935), “involving an agency that tried to enforce a regulation that had actually been revoked by an Executive order. No one—not the government, not the defendants, not the lower courts—was aware that the regulation had been eliminated.” In 1937, the FRA was amended to also create the Code of Federal Regulations, which is an annual codification of all current federal regulations.

10 “Significant regulatory actions” are regulations that “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.” Office of the President, “Executive Order 12866 of September 30, 1993: Regulatory Planning and Review,” Federal Register, Vol. 58, No. 190, October 4, 1993, p. 4, as of April 21, 2017: https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf


19 Dudley, 2013.

20 Johnson et al., 2016.


22 McLaughlin, 2016a.

23 McLaughlin, 2016a, p. 2.

24 Regulations during this period with the largest estimated costs and benefits are largely from the EPA. As reported in “2016 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act” (OMB, Washington, D.C., 2016, as of April 17, 2017: https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/draft_2016_cost_benefit_report_12_14_2016_2.pdf), examples of regulations during this period with large costs and/or benefits include: “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Proposed Reconsideration” (EPA, 2013; benefits estimated at $0.02 billion–$56.6 billion, costs estimated at $1.2 billion–$1.4 billion); “Joint Rulemaking to Establish 2017 and Later Model Year Light Duty Vehicle GHG Emissions and CAFE Standards” (U.S. Department of Transportation and EPA, 2012; benefits estimated at $21.2 billion–$28.8 billion, costs estimated at $5.3 billion–$8.8 billion); “National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units” (EPA, 2012; benefits estimated at $28.1 billion–$76.8 billion, costs estimated at $8.2 billion); “Cross State Air Pollution Rule” (CAIR Replacement Rule) (EPA, 2011; benefits estimated at $20.5 billion–$59.7 billion, costs estimated at $0.7 billion); “Review of the National Ambient Air Quality Standards for Ozone” (EPA, 2008; benefits estimated at $1.5 billion–$14.9 billion, costs estimated at $6.7 billion–$7.7 billion); and “Clean Air Fine Particle Implementation Rule” (EPA, 2007; benefits estimated at $18.8 billion–$167.4 billion, costs estimated at $7.3 billion–$4.2 billion).


29 The Natural Resources Defense Council, Public Citizen, and the Communications Workers of America have sued to block EO 13771, arguing that “agencies cannot comply with the order without violating the laws under which they operate.” See Natural Resources Defense Council, “NRDC and Partners Sue Trump
Administration over 2-for-1 Regulations Order,” February 8, 2017, as of April 18, 2017: https://www.nrdc.org/media/2017/170208


31 For a history of regulatory oversight mechanisms introduced by presidents since President Nixon, see Hahn, 1998.

32 The President could easily decide to rewrite the new EO on regulatory cost to rescind past orders. For now, he has decided to make changes around the edges of a bipartisan consensus that has held for decades.


35 McLaughlin, 2016a and 2016b.


37 Gattuso, 2016.

38 The Society for Benefit-Cost Analysis attempts to engage people from public and private sectors in developing and applying best practices, and the U.S. government has contributed to the international use of benefit-cost analysis through the Organisation for Economic Co-operation and Development and technical assistance aimed at developing nations, both contexts for promoting good governance.
About This Perspective

The early days of President Donald Trump’s administration were characterized by a burst of activity meant to roll back regulation, including Executive orders (EOs) to regulate the U.S. financial system, enforce a regulatory reform agenda, and reduce regulation while controlling regulatory costs. These reforms, particularly EO 13771, can potentially affect every part of the economy touched by federal regulation through the OMB’s annual review of regulation. This Perspective considers how well EO 13771 addresses the concerns of those who have long supported regulatory reform and how agencies and OMB might best face the challenges and opportunities associated with implementing regulatory reform.

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