11-1-2020

Deregulatory Deceptions: Reviewing the Trump Administration’s Claims About Regulatory Reform

Cary Coglianese
University of Pennsylvania Carey Law School

Natasha Sarin
University of Pennsylvania Carey Law School

Stuart Shapiro
Rutgers University

PENN PROGRAM ON REGULATION



Deregulatory Deceptions:

Reviewing the Trump Administration's Claims About Regulatory Reform

Cary Coglianese
University of Pennsylvania Law School

Natasha Sarin
University of Pennsylvania Law School

Stuart Shapiro
Rutgers University Bloustein School of Planning and Public Policy

Penn Program on Regulation Research Report

November 1, 2020

Deregulatory Deceptions:
Reviewing the Trump Administration's Claims About Regulatory Reform

Cary Coglianese, Natasha Sarin, and Stuart Shapiro

November 1, 2020

Summary

President Donald Trump and his supporters like to point to the positive economic trends the United States experienced prior to the COVID pandemic. They argue that these positive conditions stemmed from the President's policies, especially his emphasis on deregulation. But what has the Trump Administration really accomplished when it comes to regulation? The answer is much less than the Administration has claimed—and much less than probably most members of the public would surmise. We compare the claims the Administration has made about its deregulatory accomplishments with what the evidence can sustain. Drawing on an original compilation of data on federal regulation from over the last four years, we find three new completed actions appear in agencies' regulatory agendas for every one that is labeled deregulatory. When we look at just economically significant actions, even on assumptions favorable to the Administration, we find only one deregulatory action for every one action labeled as regulatory. Overall, we find that every claim we examine about the Trump Administration's deregulatory efforts is either wrong or exaggerated. The reality is that the Trump Administration has done less deregulating than regulating, and its deregulatory actions have not achieved any demonstrable boost to the economy. The positive economic trends that the Administration likes to give deregulation credit for—such as increases in the gross domestic product and decreases in unemployment—had their roots in policies predating the Administration. If anything, the pace of overall growth in GDP has actually slowed somewhat during the pre-COVID years of the Trump Administration relative to the last three years of the Obama Administration. The Trump Administration has not only exaggerated the positive effects of deregulation, it too often has ignored or downplayed its negative consequences. These adverse effects could be substantial. Although it is too early to assess the overall impact of the Trump Administration's deregulatory efforts, our research suggests that the Administration may be more effective at deceiving the public about its achievements than in actually using deregulation to boost the economy.

This report may be cited as Cary Coglianese, Natasha Sarin, and Stuart Shapiro, "Deregulatory Deceptions: Reviewing the Trump Administration's Claims About Regulatory Reform," Penn Program on Regulation Report (2020). Comments are welcome and may be directed to the authors via email at regulation@law.upenn.edu. The report reflects the research, findings, and views of the authors and not necessarily of the Penn Program on Regulation or the University of Pennsylvania.

Deregulatory Deceptions:
Reviewing the Trump Administration's Claims About Regulatory Reform

Cary Coglianese[*], Natasha Sarin,[**] and Stuart Shapiro[***]

Under a large-typeface banner declaring "Trump Administration Accomplishments," a White House website lists "record number of regulations eliminated" as among its claimed accomplishments.[1] Many observers would probably agree. A recent *Vox* podcast, for example, reviews what the Trump Administration accomplished over the last four years—and it begins with an episode entitled "the deregulator in chief," with a description declaring that regulatory reform has been President Trump's "biggest accomplishment."[2] Similarly, when a member of the *New York Times*' editorial board conducted a fact-check in August, she considered the claim that the Administration achieved a "[r]ecord number of regulations eliminated that hurt small businesses" to be one that "appears to be true."[3]

But what *appears* to be true is not necessarily always true. In this case, the President has fostered an appearance of historic accomplishments by making deregulation a central focus of his domestic policy agenda, holding annual press events touting his purported achievements and regularly boasting to have provided a major boost to the economy from record levels of deregulation. The impression the Administration has made might even help explain why, notwithstanding the current economic recession and record job losses associated with the COVID crisis, some view President Trump as a more effective steward of the economy than Vice President Biden.[4] Yet the reality is much different. Both the extent and impact of the Administration's efforts to eliminate regulation are considerably less substantial than President Trump and his supporters have claimed.

Given deregulation's central place in a widely shared perception about domestic policy change over the last four years, it is important to know what has actually happened on the regulatory front. In this report, we inquire into the Trump Administration's regulatory agenda, fact-checking the many claims that the Trump Administration has made about its deregulatory agenda. We recognize that the Trump Administration has repealed or modified a series of agency regulations adopted under the

---

[*] Edward B. Shils Professor of Law, University of Pennsylvania; Director, Penn Program on Regulation.
[**] Assistant Professor of Law at the University of Pennsylvania Law School.
[***] Associate Dean of Faculty, Bloustein School of Planning and Public Policy, Rutgers University.

We thank Breland Finch, Patrick Gaughan, and Roshie Xing for helpful research assistance with this report.

[1] *Trump Administration Accomplishments,* The White House (September 2018), https://www.whitehouse.gov/trump-administration-accomplishments/.
[2] *The Trump Years: Deregulator in Chief* [Audio podcast] (October 9, 2020), https://www.vox.com/2020/10/9/21498457/trump-presidency-policies-accomplishments-coronavirus-impeachment.
[3] Farah Stockman, "A Fact-Checked List of Trump Accomplishments," *New York Times* (September 11, 2020), https://www.nytimes.com/2020/09/11/opinion/fact-check-trump.html.
[4] Laura Santhanam, "Biden Leads Trump by Double Digits, but More Americans Trust Trump on Economy Despite Historic Recession," *PBS Newshour* (September 18, 2020), https://www.pbs.org/newshour/politics/biden-leads-trump-by-double-digits-but-more-americans-trust-trump-on-economy-despite-historic-recession.

Obama Administration, and even that the Administration has adopted a smaller number of *new* regulations deemed significant than other recent administrations. Yet overall the reality of regulatory elimination is rather unremarkable, especially in light of the prevailing perception of many rollbacks in existing rules that have purportedly boosted the economy. The Administration has accomplished markedly little compared to what it has claimed. And the deregulation that has been pushed forward—like the rollback of environmental protections—has harmed, not helped, American families in ways ignored by the Administration as they put forth estimates of household "savings" they have brought about. Overall, we find no credible indication that deregulation under President Trump has generated the impacts on today's economy that the Administration has boasted.

In fact, without exception, each major claim we have uncovered by the President or other White House official about regulation turns out to be exaggerated, misleading, or downright untrue. We begin by considering what level of deregulation the Trump Administration has actually achieved. Then we turn to the question of what impact these deregulatory efforts may have had on the economy.

I. What Level of Deregulation Has the Trump Administration Achieved?

To assess how much deregulation has actually occurred, it is necessary to get into the weeds, at least to some degree. Regulation is a broad and varied function of government undertaken by dozens of federal agencies. Not only do different agencies use varied forms of regulation to address a wide array of market failures and other social problems, but the data we have on regulation can also vary across different sources. Even the meaning of the term "regulation" itself requires careful definition.

Colloquially, the term "regulation" refers to any legal requirement imposed by the government on individuals and businesses. But federal regulatory officials, as well as scholars who study regulation, typically give regulation a more specific definition: a "rule" adopted by a regulatory agency, such as a cabinet department, such as the Department of Transportation, or a stand-alone administrative agency, such as the Environmental Protection Agency or the Securities and Exchange Commission. These regulations, whether issued by executive or independent agencies, implement laws such as the Affordable Care Act or the Clean Air Act. They can impose (or at times relax) binding legal requirements on businesses and others in society.

The federal Administrative Procedure Act (APA) sets out the steps that an agency must follow to create, amend, or repeal a rule. With limited exceptions, the agency much publish a proposed rule in the *Federal Register* and give the public an opportunity to comment on the proposal.[5] The agency must then consider the information contained in all of the submitted public comments before issuing a final rule. Other statutes and executive orders place further obligations on agencies for certain types of rules, including requirements to analyze the economic impact of new rules,[6] assess their impact on small businesses,[7] and undertake other mandated steps or analyses. Once an agency issues a final rule, it is published in the *Federal Register*, along with a statement explaining the rule's requirements and its purpose. That final rule document in the *Federal Register* also includes the agency's responses to the

[5] 5 U.S.C. § 553.
[6] Executive Order 12,866.
[7] Regulatory Flexibility Act, 5 U.S.C. §§ 601–12.

issues raised in the public comments as well as a summary of any required analyses. Later, the rule's operative legal text—without any of the accompanying explanatory material—is published in the Code of Federal Regulations (CFR), an official government publication that organizes all the binding regulatory text by subject matter.

The federal government has established a well-developed system for tracking the development and adoption of agency-established rules. We rely on that system to determine what can be said about the Trump Administration's accomplishments, so it is helpful to say a word about this tracking system, known formally as the Unified Agenda of Federal Regulatory and Deregulatory Actions—or the regulatory agenda, for short. Each agency is required by law twice each year to publish its regulatory agenda in the *Federal Register* listing what are supposed to be all but the agency's most trivial rules and showing at what stage they are in development, from a proposed rule to a completed or final rule. The data that appear in this biannual regulatory agenda are provided by the agencies, but the agenda's publication is overseen by the White House's Office of Information and Regulatory Affairs (OIRA). Each entry in the agenda contains a standard set of information about each listed regulatory action, including a designation for the economic and policy importance of the action. Some rules are designated as "routine," while others are designated as "significant" or "economically significant." Executive Order 12,866 has defined economically significant rules to be those expected to impose annual costs of more than $100 million. By comparison, many routine rules issued by federal agencies have at most minor economic impacts. The Federal Aviation Administration, for example, issues a regulation whenever it approves use of a new aircraft part, and the Department of the Interior sets out new regulations annually to designate hunting season for migratory birds.

Given these differences, in measuring levels of regulatory activity, researchers rely on a variety of sources of data, including overall pages in the *Federal Register* and the CFR, the incidence of new rules published in the *Federal Register*, and the number of actions listed in the semi-annual regulatory agenda. These sources of data provide the only available basis for any credible claims about the level of regulatory activity within any administration. Some of these data apply to regulatory activity by all administrative agencies, while other data are available only for executive agencies that fall under OIRA's oversight. Regulatory actions undertaken by independent agencies—such as the Federal Communications Commission, the Federal Reserve, and the Securities and Exchange Commission—are typically not considered part of a President's accomplishments as they are headed by individuals insulated from ordinary presidential oversight, including OIRA's regulatory review.

Using these various data sources, we consider in this first part of this report the Trump Administration's claims about what it has achieved in terms of reducing the level of federal regulation in the United States. Specifically, we consider the Administration's claims to have reduced the number of pages of federal regulations, repealed a number of existing rules (variously from 7 to 22) for each new rule it has adopted, and to have made historic efforts to deregulate the economy. As we shall see, none of these claims have any support in the relevant data.

A. Removals of pages in the CFR

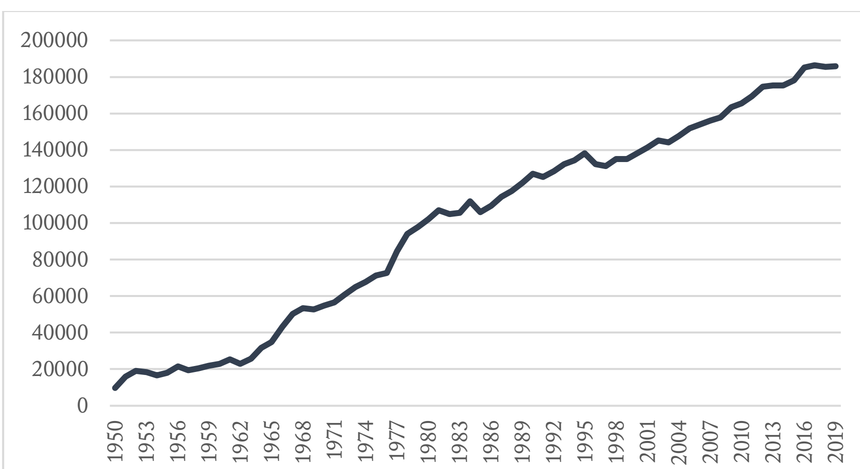
> **"Under my administration, we have removed nearly 25,000 pages of job-destroying regulations — more than any other President by far in the history of our country, whether it was four years, eight years, or, in one case, more than eight years."**
>
> **– President Trump, Press Conference (July 16, 2020)**

Removal of 25,000 pages of existing regulations sounds impressive. But it is also simply false. The Code of Federal Regulations (CFR) is the authoritative source of all existing regulatory requirements on the books. As Figure 1 shows, the accumulation of pages in the CFR has grown steadily over the decades, tripling from about 50,000 pages in 1967 to over 157,000 pages in 2008. The CFR has tended to increase in page count at a relatively constant rate.

Growth continued in the Obama Administration to 185,053 pages in 2016. If President Trump's claim to have eliminated 25,000 pages were correct, we would expect to see no more than 160,000 pages in the CFR by now. But, quite to the contrary, the count as of the end of 2019 was 185,984 pages—actually a somewhat greater number of pages, not fewer, than when President Trump took office.

It is true that the number of CFR pages dipped slightly between 2017 and 2018—by one half of one percent, or a grand total of 940 pages. But this tiny decrease was offset by comparably sized increases from 2016 to 2017 and then again from 2018 to 2019. Judged against historical standards,

Figure 1: Cumulative Pages in the Code of Federal Regulations[8]



[8] The page-count data in this Figure and referred to in the text are maintained by the Office of the Federal Register and can be found at: https://uploads.federalregister.gov/uploads/2020/04/01123111/cfrTotalPages2019.pdf.

even the slight 0.5 percent decrease in pages from 2017 to 2018 was far from record-setting. In 1954, 1957, and 1964, page counts in the CFR declined about 10 percent each year, relative to the preceding year. In more recent decades, the Reagan Administration saw a 5.3 percent decline in 1985 and the Clinton Administration's National Performance Review process brought about a 4.4 drop in pages in 1996. President Trump's record does not even come close to previous years showing the largest drops.

B. Eliminating regulations

"The Administration actually eliminated 22 regulations for every new regulatory action."
– Trump Campaign Website (accessed Nov. 1, 2020)

"For every one new regulation added, nearly eight federal regulations have been terminated."
– President Trump Press Conference (July 16, 2020)

"Under President Trump, seven deregulatory actions have been taken for every one new regulation."
– Press Secretary Kayleigh McEnany, Press Briefing (July 16, 2020)

A count of pages in the CFR is only an indirect proxy for regulatory obligations. Not all pages are created equal, as some include requirements imposing substantial burdens on businesses and other entities, while other pages do not. Some pages of the CFR only apply to particular sectors or industries while others apply more generally to many industries. Another way to look at what the Trump Administration has done by way of deregulation would be to look not at pages but at the number of actual rules.

Whenever an agency seeks to repeal or modify an existing regulation, it must still go through the notice-and-comment rulemaking process outlined in the Administrative Procedure Act, including publishing as a "final rule" in the *Federal Register* the agency's decision to repeal or amend an existing regulation. The Trump Administration has designated different regulatory actions in its biannual regulatory agenda as "deregulatory," making it possible to discern the number of completed rules that purportedly have involved the repealing or rolling back of regulatory obligations. The number of completed actions designated as deregulatory can then be compared to the number of new regulatory actions that have been completed. Although the President and his supporters have claimed various levels of deregulatory activity—from 7 to 22 rules removed for every new rule added—these claims are false or misleading.

The use of a metric that tracks the number of rules removed for each new rule added follows a framework established by Executive Order 13,771. This order, issued by President Trump in 2017, calls upon agencies to identify for elimination at least two rules for every new one that they issue. Against this directive, it is certainly understandable that the Administration would take an interest in how many rules have been eliminated for every new rule adopted.

In principle, though, ratios of deregulatory actions to regulatory ones are not all that meaningful. For one thing, a deregulatory action is not the same as eliminating a rule altogether.[9] As one of us noted in an earlier review of the Trump Administration's regulatory track record, "even actions classified as 'deregulatory' can still be accompanied by new requirements."[10]

For another, even when rules are eliminated, the impacts of those removals are not necessarily just the inverse of any new rules added, such that any "rules-out-to-rules-in" comparison would make conceptual sense. If numerous minor deregulatory changes are made for every one major regulatory change, the regulatory burden on business could still increase. In short, the Trump Administration's rules-out-to-rules-in comparison is an apples-to-oranges comparison. As one of us has noted in an earlier review, it may not be "too much of an exaggeration to say that Administration officials are removing 22 *Peter Rabbit* books from the regulators' shelves for every one *War and Peace* they add."[11]

Nevertheless, even on their own terms, the Trump Administration's claims to have removed anywhere from 7 to 22 rules for every new one added cannot be sustained. These claims are purportedly based on annual reports the White House has issued to update its progress under Executive Order 13771.[12] But, as two of us have noted in the past, these reports are themselves highly problematic sources of data on rules repealed versus rules adopted.[13] The lists overcount deregulatory actions by including withdrawals of proposals that were never finalized, delays in effective dates which do not eliminate regulations, non-regulatory actions such as the repeal of guidance documents, and even proposed deregulatory actions rather than completed ones. In addition, when comparing deregulatory actions to regulatory ones, the White House only counts new regulations designated as "significant,"[14] while they count deregulatory actions of any magnitude or level of significance—the *War and Peace* versus *Peter Rabbit* problem. Any serious effort to document the relationship between the Administration's imposition of and relief from regulatory burdens must treat these annual reports as at best unreliable and at worst pure propaganda.

To undertake a more meaningful and consistent method of evaluating the Trump Administration's deregulatory accomplishments, we collected data from the semiannual regulatory

---

[9] For one example, see the discussion of the USDA regulation on the importing of pitahaya fruits discussed in Cary Coglianese, "Let's Be Real About Trump's First Year in Regulation," *The Regulatory Review* (January 29, 2018), https://www.theregreview.org/2018/01/29/lets-be-real-trumps-first-year-regulation/.

[10] *Id*.

[11] *Id.*

[12] Office of Information and Regulatory Affairs. (2017). *Regulatory Reform: Completed Actions Fiscal Year 2017*. US Office of Management and Budget. https://www.reginfo.gov/public/pdf/eo13771/FINAL_BU_20171207.pdf;Office of Information and Regulatory Affairs. (2018). *Regulatory Reform Report: Completed Actions for Fiscal Year 2018*. US Office of Management and Budget. https://www.reginfo.gov/public/pdf/eo13771/EO_13771_Completed_Actions_for_Fiscal_Year_2018.pdf; Office of Information and Regulatory Affairs. (2019). *Regulatory Reform Report: Completed Actions for Fiscal Year 2010*. US Office of Management and Budget, https://www.reginfo.gov/public/pdf/eo13771/EO_13771_Completed_Actions_for_Fiscal_Year_2019.pdf.

[13] Coglianese, *supra* note 9; Stuart Shapiro, "Deregulatory Realities and Illusions," *The Regulatory Review (*November 12, 2018), https://www.theregreview.org/2018/11/12/shapiro-deregulatory-realities-illusions/; Stuart Shapiro, "Making Sense of the Trump Administration's Regulatory Numbers," *The Regulatory Review* (January 14, 2020) https://www.theregreview.org/2020/01/14/shapiro-making-sense-trump-administration-regulatory-numbers/.

[14] What counts as a "significant" rule is governed by a multi-factor definition contained in Executive Order 12,866. *See infra* notes 31 and accompanying text.

agenda.[15] We culled all of the completed actions from each edition of the agenda published during the Trump Administration, from the Fall 2017 to the Spring 2020 edition (the latest released).[16] We removed all actions that were completed due to simply being withdrawn, as a withdrawal of a planned or even proposed rule reflects no change in the compliance costs incurred by businesses. That leaves all actions completed by promulgation.

For each regulatory action, the agenda includes a classification for the level of significance: "routine and frequent," "info/admin/other," "substantive nonsignificant," "economically significant," and "other significant." Those regulations deemed "economically significant" and "other significant" are ones that are selected for review by OIRA. They are also more likely to be the regulatory actions that tend to generate headlines, that impose (or relax) significant burdens, and that produce the lion's share of regulatory benefits (such as clean air, worker safety, or reduced risk of a terrorist attack).

In addition to the significance classification, which has appeared in the agenda for decades, the Trump Administration for the first time added a classification of completed actions in the agenda as to whether they are counted as "deregulatory" or not for purposes of Executive Order 13,771. This same field in the dataset also designates some actions in the regulatory agenda as having been completed by independent agencies,[17] which are outside the direct supervision of the White House and not subject to OIRA review. Although a nontrivial portion of entries in the agenda data are issued by independent agencies, these are not typically ascribed to Presidents or their Administrations as the White House exerts less direct influence over these agencies. We thus excluded actions completed by independent agencies from our analysis.[18] We did, however, include all completed actions in the regulatory agenda by executive branch agencies that were classified as being either "fully or partially exempt" or "not subject to/nonsignificant" from the rubric of Executive Order 13,771—a not insubstantial category, as noted below.[19] This same data field also designates some completed actions as simply "other."

---

[15] The Trump Administration has also claimed deregulatory success by citing removal of *plans* to regulate from the regulatory agenda. For example, President Trump has said that, "[w]ithin our first 11 months, we cancelled or delayed over 1,500 planned regulatory actions—more than any previous President by far." Remarks by President Trump on Deregulation (Dec. 14, 2017), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-deregulation/. But these withdrawals of planned regulations from the regulatory agenda did not in fact constitute any deregulation since they were removals of *plans*—some of which can sit in the agendas for years—rather than of completed rules. The Trump Administration is also far from unique among Presidents in making withdrawals of planned rules in the works, even before they are proposed. *See* O'Connell, Anne Joseph. "Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State," *Virginia Law Review* 94:889 (2008).

[16] We did not include the Spring 2017 edition because almost all of its completed actions were ones finished during the Obama Administration.

[17] Agencies are defined as independent under the Paperwork Reduction Act, 44 U.S. Code § 3502(5). The following agencies are also designated as independent in the agenda for purposes of the applicability of Executive Order 13,771: Surface Transportation Board; Farm Credit Administration; Farm Credit Insurance Corporation; Federal Mine Safety and Health Review Commission; National Credit Union Administration; Appraisal Committee of the FFEIC; National Indian Gaming Commission; National Transportation Safety Board; Office of Government Ethics; Railroad Retirement Board; and US Chemical Safety and Hazard Investigation Board. Independent agencies are also excluded from OIRA's annual reports of regulatory and deregulatory actions. *See supra* note 11.

[18] In addition, without going through every rule, it is impossible to tell whether regulations issued by independent agencies are regulatory or deregulatory, since they are not classified as such in the agenda dataset.

[19] We include all rules classified with either set of quoted terms in the "exempt" category in Table 1.

Table 1: Completed Actions in Semiannual Regulatory Agenda, 2017-2020

	Significance of Action					
13,771 Designation	Routine & Frequent	Info/Admin / Other	Substantive Nonsignif.	Econ. Signif.	Other Signif.	Total
Regulatory	0	2	9	38	38	87
Deregulatory	10	12	308	42	120	492
Exempt	56	61	834	24	141	1116
Other	0	11	171	25	67	274
TOTAL	66	86	1322	129	366	1,969

Table 1 shows the significance level and the 13,771 classifications for all executive agencies' completed actions appearing in the regulatory agenda. One can immediately see that those actions designated as "deregulatory" make up only a quarter of the overall number of completed actions within the regulatory agenda (25 percent). This means that, rather than there being more deregulatory actions than other actions, as the Trump Administration's claims have implied, there was, in fact, just the opposite. Overall about three completed actions in the regulatory agenda appear for every action designated as deregulatory.

The 13,771 designation for "regulatory" actions is a bit of a curiosity, even a misnomer, as every entry in the regulatory agenda is, by definition, *regulatory*. It is puzzling why the vast bulk of entries other than "deregulatory" ones are then not classified as regulatory. The agenda data do not come accompanied with any explanation for classification choices. It is obvious, though, that an administration seeking to make a claim of having more deregulatory actions than regulatory ones can try to justify such a claim by simply not designating most of the completed actions in its regulatory agendas as "regulatory." Whatever the purported rationale might be for the classification used in the regulatory agenda data, it is irrefutably convenient for the Administration to take 71 percent of all of its completed regulatory actions out of its calculations altogether when reporting a ratio of deregulatory to regulatory actions.[20] This is a bit like golfers only counting the strokes that suit them.

But even if we put aside these seemingly ad hoc and strategic classification choices reflected in the regulatory agenda data, the Trump Administration's claims are still not supported. Even when just comparing the "deregulatory" actions with those relatively few ones that the administration has coded as "regulatory," the ratio of deregulatory actions to regulatory actions would be only slightly greater than 5-to-1, still less than any of the claims made by the Trump Administration.

[20] It is true, of course, that some regulations—so-called transfer rules—only shift resources between taxpayers, such as rules about Medicare spending. These rules are treated by OIRA as outside the scope of Executive Order 13,771. Mancini, Dominic J. (2017, April 5). *Memorandum: Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs (M-17-21)."* Office of Information and Regulatory Affairs, Office of Management and Budget, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf. We find it difficult to believe that 71 percent of all the federal government's regulatory actions are transfer rules. Moreover, transfer rules are still regulations, and nowhere have we discovered anyone in the Trump Administration claiming only to be boasting about the Administration's ratio of non-transfer regulations. Instead, they make claims about regulations writ large.

And yet, that is still not all. Even this 5-to-1 ratio still overstates the Trump Administration's deregulatory accomplishments for three additional reasons.

First, a substantial percentage of completed actions classified as deregulatory were also classified as routine or not significant. If one makes a more apples-to-apples comparison, and only compares the *significant regulatory* actions to the *significant deregulatory* actions (again, accepting the Administration's seemingly ad hoc, cramped 13,771 classifications), the ratio of deregulatory actions to regulatory actions drops to about 2-to-1. Furthermore, if one only counts those regulatory and deregulatory actions that fall in the "economically significant" category, the ratio drops further to roughly 1-to-1. In other words, when it comes to actions with a notable economic or policy impact, the Trump Administration has, by its own agenda data, issued nearly as many actions increasing the burden on the public as ones that decrease the burden.

Second, as we have noted, these ratios only include those completed actions expressly coded as "regulatory" and "deregulatory" in the field for Executive Order 13,771. If one compares within the significant categories but across all such actions in the agenda, then only 33% of all significant actions were deregulatory.[21] That works out to about a 2-to-1 ratio of significant regulatory actions-to-deregulatory actions. When it comes to significant rules, it appears the Trump Administration engaged much more in the imposition of regulatory obligations than in the repealing or lifting of such obligations. This finding is all the more striking given that the Trump Administration presumably had the incentive to use the "deregulatory" label for as many actions as possible.

Finally, the count of actions in Table 1 labeled as deregulatory almost certainly overstates the number of such actions that the Administration has truly completed. Although the regulatory agenda treats an action as completed when the final rule has been issued, many of the Trump Administration's most salient deregulatory initiatives have been challenged in court, such as EPA's attempts to repeal regulations on power plant emissions, auto emissions, and water pollution. Many of these cases are still being litigated. In other words, while they are listed as "completed" in the regulatory agenda, they are not in fact completed or in effect while pending litigation. Given the Trump Administration's seemingly poor record in court defending its deregulatory initiatives,[22] it might be reasonable to assume that some of initiatives currently being counted as deregulatory will eventually be overturned in court.

All of these reasons lead us to conclude that the claims about deregulation in comparison to regulation are not only unsupported by the data but are quite overstated even if we give the Administration the benefit of the doubt in what regulatory actions it chose to treat as regulatory. In terms of the significant actions that have substantial impacts on the lives of Americans, the number of deregulatory actions is at best very close to the number of regulatory actions and possibly significantly below that number.

[21] We removed the regulations coded under Executive Order 13,771 as "independent" because conceivably these regulations could be either regulatory or deregulatory.
[22] "Roundup: Trump-Era Agency Policy in the Courts." New York University School of Law Institute for Policy Integrity. https://policyintegrity.org/trump-court-roundup.

C. Historical Claims

Nearly four years ago, we ended this regulatory assault on the American worker, and we launched the most dramatic regulatory relief campaign in American history by far. No other administration has done anywhere near."
– President Trump, Press Conference (July 16, 2020)

"And this President has already signed more bills rolling back federal red tape than any President in American history."
– Vice President Pence, Press Conference (July 16, 2020)

"We've eliminated more regulations in our first year than any administration has ever eliminated. And that means four years, eight years, or, in one instance, 16 years."
– President Trump, Republican Conference (February 1, 2018)

For reasons we have already discussed, little support exists of the Trump Administration's claims to have delivered historic levels of regulatory relief. The Trump Administration has not reduced the overall number of pages from the regulatory code book, and it has completed far more regulatory actions than deregulatory ones once the full data are examined. But there are several additional points that could be made in comparing this administration to previous ones.

First, in terms of "dramatic regulatory relief," nothing the Trump Administration has done compares to the deregulation of the airlines,[23] rail,[24] and truck transportation[25] that was executed by the Carter Administration in the late 1970s.[26] Prior to that time, these major sectors of the economy—along with others, such as natural gas and telecommunications— were subject to regulations of prices and outputs—an inefficient form of regulation that advantaged incumbent firms but at the expense of consumers. President Carter championed major deregulatory initiatives that loosened the government restrictions on the air, rail, and transport sectors. Retrospective analysis indicates that the deregulation of these industries resulted in $70 billion in annual consumer benefits.[27]

Second, it is true that a 1994 law known as the Congressional Review Act (CRA)[28] was invoked by Congress to repeal 14 Obama Administration regulations in the first six months of the Trump

---

[23] Airline Deregulation Act, Pub. L. No. 95-504, 92 Stat. 1705 (1978) (codified at 49 U.S.C. §1301). *See also* John Howard Brown, "Jimmy Carter, Alfred Kahn, and Airline Deregulation: Anatomy of a Policy Success." *The Independent Review* 19:85 (2014).

[24] Staggers Rail Act, Pub. L. No. 96-448, 94 Stat. 1895 (1980) (codified at 49 U.S.C. §10101). *See also* William E. Thoms, "Clear Track for Deregulation American Railroads, 1970-1980," *Transportation Law Journal* 12:183 (1981).

[25] Motor Carrier Act, Pub. L. No. 96-296, 94 Stat. 793 (1980) (codified at 49 U.S.C. §10101). *See also* Thomas L. Traynor and Patrick S. McCarthy, "Trucking Deregulation and Highway Safety: The Effect of the 1980 Motor Carrier Act," *Journal of Regulatory Economics* 3:339 (1991).

[26] Susan E. Dudley, "Alfred Kahn 1917-2010," *Regulation* 34:8 (2011).

[27] Robert Crandall and Jerry Ellig, "Economic Deregulation and Customer Choice: Lessons for the Electric Industry," Mercatus Center (1997), https://www.mercatus.org/publications/regulation/economic-deregulation-and-customer-choice-lessons-electric-industry.

[28] Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified at 5 U.S.C. §§ 601, 631, 648(c)(3), 657).

Administration.[29] These efforts were initiated by Republican members of Congress who passed the resolutions of disapproval; however, the resolutions did need to be signed by the President. As only one previous President had the opportunity to sign such a resolution in the past, President Trump has clearly signed more such resolutions than any other President. But the CRA is in reality only a viable tool for repealing rules during a short window following the transition of the White House from one party to another, something that has occurred only twice before since the CRA's passage. Furthermore, the impact of President Trump's signing of disapproval resolutions is quite limited. These rules had either not yet taken effect or only recently had become binding. Moreover, only two of the fourteen rules were economically significant.[30] Disapproving only fourteen rules out of thousands issued during the Obama Administration is a far cry from a "dramatic" regulatory roll-back.

Finally, what the Administration does not emphasize is the one way that its regulatory agenda could actually be said to be distinctive, if not across the entire sweep of U.S. history at least in comparison with other recent administrations. That distinction lies in a decrease in the number of new rules issued, rather than in any record levels of eliminating existing rules. As a measure of overall output, consider that during the three years of the Trump Administration for which data are available (2017-2019), the federal government overall published an annual average of 3,204 final rules in the *Federal Register*.[31] That marks a 12 percent decrease over the first three years of the Obama Administration, which averaged 3,628 rules per year (and which was itself a 12 percent decrease over the first three years of the George W. Bush Administration). In addition, the Trump Administration has also issued fewer new economically significant rules during its first three years than during this same period of time for other presidents. President Trump issued 107 economically significant rules during his first three years (2017-2019), while the average for the first three years of the prior five presidencies was 118 such rules.[32]

Despite the reduction in new rules, the evidence does not support the Trump Administration's claims to have engaged in a dramatic scaling back of government regulation. More pages were removed from the CFR in the Clinton Administration than the Trump Administration. A more substantial unleashing of market forces occurred from the deregulatory changes made in the Carter Administration. And the Trump Administration has done at least as much regulating as it has deregulating. We turn next to what can be said of the economic effect of the Trump Administration's regulatory policy decisions.

---

[29] "Resolutions of Disapproval Under the Congressional Review Act," https://www.federalregister.gov/reader-aids/congressional-review/resolutions-of-disapproval-under-the-congressional-review-act.

[30] Of the fourteen repeals, only two were "economically significant," 8 were "other significant," 2 were from independent agencies not subject to Executive Order 12866 and hence could not be categorized, and 2 were not significant.

[31] This number is larger than the total number of entries in Table 1 in part because we excluded rules by independent agencies from Table 1, while they are included in the Office of Federal Register's data on number of final rules. In addition, the regulatory agenda never captures all rules, especially minor rules issued without notice and comment, such as due to an emergency circumstance.

[32] The data for our historical comparison of economically significant rules originate from OIRA. We obtained these data from a compilation for the years 1981 to 2019 maintained by the George Washington University Regulatory Studies Center at https://regulatorystudies.columbian.gwu.edu/reg-stats. Prior to the adoption of Executive Order 12,866, rules which met the same criteria as economically significant rules—that is, those having annual economic impacts of greater than $100 million—were technically labeled "major" rules.

II. Has Trump's Deregulatory Agenda Provided a Major Boost to the Economy?

Prior to March 2020, the U.S. economy had reached historic heights in employment and national income, along with historic gains in stock prices. The Trump Administration has taken credit for these trends, attributing positive economic indicators to, among other things, what it had accomplished by way of deregulation.

As we have explained, though, those deregulatory accomplishments have been less substantial than the Administration has asserted. Furthermore, giving regulatory changes credit for the positive economic indicators leading up to the COVID outbreak simply overlooks the economic trends that prevailed when President Trump took office. He inherited a growing economy, as President Obama had overseen a dramatic recovery following the most severe downturn since the Great Depression. While it is true that the economy grew and jobs were created during the early years of the Trump Administration, the successes of the pre-COVID economy were largely building on trends that date back to the Obama era.[33] Indeed, the pace of overall growth in GDP actually slowed somewhat during the Trump Administration relative to the last three years of the Obama Administration: As former Obama Administration official Steven Rattner has pointed out, "almost exactly 1.5 million fewer jobs were created on Mr. Trump's watch than during Mr. Obama's final three years."[34]

Needless to say, since March, the economic gains made since 2008 have been wiped away as tens of millions of Americans have found themselves jobless, concerned for their health in the face of a deadly pandemic as well as their ability to provide for themselves and their families. A recent Pew study finds that 25% of Americans report having had trouble paying their bills since COVID started.[35] The unemployment rate still remains double what it was prior to March.[36]

---

[33] For an accessible treatment, see Catherine Rampell, "Trump Boasts About A Great Economic Record. Too Bad It's Obama's," *Washington Post* (August 31, 2020), https://www.washingtonpost.com/opinions/trump-boasts-about-a-great-economic-record-too-bad-its-obamas/2020/08/31/1eebc59a-ebb8-11ea-b4bc-3a2098fc73d4_story.html. Even when economists have used synthetic control techniques to estimate the counterfactual of what the economy would have been like in the absence of Trump Administration policies, they fail to find that these policies have made any difference in major indicators such as GDP or employment growth. Benjamin Born, Gernot J. Muller, Moritz Schularick, and Petr Sedlácek, "Stable Genius? The Macroeconomic Impact of Trump," Centre for Economic Policy Research (2020), https://cepr.org/active/publications/discussion_papers/dp.php?dpno=13798. For additional background, see Andrew Hunter, "US Economics Focus: Deregulation Doing Little to Boost Economy," *Capital Economics* (January 2020), https://www.capitaleconomics.com/publications/us-economics/us-economics-focus/deregulation-doing-little-to-boost-economy/.

[34] Steven Rattner, "The Truth Behind Trump's 'Rocking' Economy," *New York Times* (August 23, 2020) https://www.nytimes.com/2020/08/23/opinion/trump-convention-economy.html. Rattner reports changes in seasonally adjusted nonfarm employment.

[35] Kim Parker, Rachel Minkin, and Jesse Bennett, "Economic Fallout From COVID-19 Continues to Hit Lower-Income Americans the Hardest," *Pew Research Center* (Sep. 24, 2020), https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/.

[36] "Labor Force Statistics from the Current Population Survey," (extracted November 1, 2020). U.S. Bureau of Labor Statistics, https://data.bls.gov/timeseries/LNS14000000?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true

In response to COVID, the Trump Administration has turned to deregulation as an asserted driver of economic recovery—apparently suggesting that what is needed is a suspension of small business regulations and the expansion of Executive Order 13,771's call for revoking existing regulations when agencies issue new one.[37] Such a focus on deregulation to spur economic recovery is hardly surprising given the Administration's misplaced celebration of deregulation as integral to pre-COVID economic growth.

The Administration has lauded deregulation for saving households money and spurring innovation and employment growth by removing barriers to small business development. Of course, that deregulation has presumably also led to a loss in consumer, environmental, and safety benefits. Without taking into account any such loss in benefits, the President has announced that the Administration's deregulatory efforts have delivered to "the average American household $3,000 more to spend every single year."[38] But just as we showed in Part I of this report with respect to the Administration's claims about the extent of its deregulatory change, the Trump Administration's claims about the economic effects of these changes cannot be given any credit. No household today is receiving thousands of dollars as a result of the Trump Administration's deregulatory efforts—nor will they likely see any extra money any time soon.

An inherent reason that the Administration's claims of economic gains from deregulation are exaggerated and misleading stems from fundamental difficulties in assessing the macroeconomic consequences of any regulatory intervention—deregulatory or regulatory. Tracing out the effects of a specific regulatory policy decision on macroeconomic indicators is a deeply complex exercise, highly fraught with uncertainty—a reality that has even been publicly acknowledged within the Trump White House.[39] As OIRA noted in 2017, "the direct impacts of particular regulations, or categories of regulations, on the overall economy may be difficult to establish because causal chains are difficult to ascertain and because it is hard to control for confounding variables."[40] For this reason, neither regulatory agencies nor OIRA typically seek to estimate the broader macroeconomic ramifications of regulation.

In general, any claims about the larger economic effects of deregulation should be treated with a degree of suspicion. That suspicion should only be magnified when the underlying economic trends remain virtually unchanged from before and after regulatory change, which is at least suggestive evidence that wholescale changes have not been accomplished. But even if one takes at face value the Administration's boasts to have improved the economy through deregulation, one only need scratch

---

[37] Jeff Stein and Robert Costa, "White House Readies Push to Slash Regulations as Major Part of Its Coronavirus Recovery Plan," *Washington Post* (April 21, 2020), https://www.washingtonpost.com/business/2020/04/21/white-house-coronavirus-regulations/.

[38] "Speech: Donald Trump Holds a Political Rally in Cincinnati, Ohio [Transcript]." (2019, August 1). Factbase. https://factba.se/transcript/donald-trump-speech-maga-rally-cincinnati-oh-august-1-2019.

[39] Office of Information and Regulatory Affairs, Office of Management and Budget, "2017 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with Unfunded Mandates Reform Act": 44 (2017). https://www.whitehouse.gov/wp-content/uploads/2019/12/2019-CATS-5885-REV_DOC-2017Cost_BenefitReport11_18_2019.docx.pdf ("Measuring the effects of regulation on economic growth is a complex task.").

[40] *Id*. *See also* Brian F. Mannix, "Employment and Human Welfare: Why Does Benefit-Cost Analysis Seem Blind to Job Impacts?," in Cary Coglianese et al., eds., *Does Regulation Kill Jobs*? 196 (2013) (discussing how the "myriad welfare effects that inevitably fall downstream" turn out to be "too complex to measure").

slightly beneath the surface to reveal how suspect these claims actually are. The purported boost to the economy through deregulation holds up neither to economic logic nor evidence.

A. Economic growth

> **"They tell us that we've saved $220 billion in our economy …."**
> **- Vice President Pence, Press Conference (July 16, 2020)**
>
> **"Our historic regulatory relief is providing the average American household an extra $3,100 every single year. And we're going up from that number."**
> **– President Trump, Press Conference (July 16, 2020)**

The basis for a purported $220 billion boost to the economy from the Trump Administration's regulatory agenda is simply not credible. But suppose, for a moment, that it was. What might a $220 billion boost to the economy mean? When put into the context of an economy that is still a hundred times larger, it is clear that deregulation, even of this magnitude, could only be but a modest overall driver of economic growth. For example, deregulation is hardly any solution to the current pandemic-driven economic woes. Economists estimate that the cost to American households of COVID-19 will be $16 trillion.[41] Against a problem of such magnitude, even savings of $220 billion, if they were in fact ever realized, would only plug just 1.4% of this hole.

But a more fundamental problem with the $220 billion number is that it never was meant to be an estimate of a boost that the economy is currently receiving. Rather, it purports to estimate what the economy might gain in the future. The $220 billion in claimed economic benefits appear to be derived from a 2019 report by the Council of Economic Advisors (CEA).[42] In that report, CEA purports to quantify the increase on real income to the economy from 20 non-randomly selected deregulatory actions that have occurred during the Trump Administration.[43] CEA then spreads its estimated real income gains across all households equally. It separately derives an estimate of what it claims are the cost-savings from the Trump Administration not adding new regulations at the same pace of the Obama Administration. The report concludes that, within a decade, real incomes would be 2.1% above the prior growth path, saving American households on average $3,100 annually—$1,900 from the 20 deregulatory actions, and $1,200 from the restraint on new regulations.[44] But just taken on its own terms, this extra $3,100 is not landing in any households' pockets today. The CEA purports to quantify gains that will accrue well into the future—even up to ten years from now—once the

---

[41] David M. Cutler & Lawrence H. Summers, "The COVID-19 Pandemic and the $16 Trillion Virus," Journal of American Medical Association (Oct. 12, 2020), https://jamanetwork.com/journals/jama/fullarticle/2771764.
[42] The Council of Economic Advisers (CEA), *The Economic Effects of Federal Deregulation Since January 2017: An Interim Report* (June 2019), https://www.whitehouse.gov/wp-content/uploads/2019/06/The-Economic-Effects-of-Federal-Deregulation-Interim-Report.pdf. The report claims the boost to the economy would be closer to $235 billion.
[43] We follow the CEA's account in saying that CEA staff members considered 20 deregulatory actions, even though in the end they really only examined 18 such actions, as two involved deregulatory changes to pairs of related rules. *Id*. at 21-22.
[44] *Id*. at 16-17.

benefits of deregulation translate into gains in real income.[45] That is fundamentally distinct from the average American household benefitting anything today.[46]

Another reason that these cost-savings could not be real gains enjoyed immediately is that some of the regulatory repeals occurred before businesses had yet to incur any mandatory compliance costs associated with their underlying rules. For example, the CEA attributes an annual gain of $22 billion in real income from the repeal of the Federal Communications Commission's (FCC) broadband privacy rule on April 3, 2017, when President Trump signed a joint resolution of disapproval adopted by Congress under the terms of the Congressional Review Act (CRA).[47] The FCC had published this final rule in the *Federal Register* on December 2, 2016.[48] It required internet service providers (ISPs) to shift from an opt-out to an opt-in system for protecting sensitive customer information. Whereas ISPs could previously make their default to share sensitive customer information, unless the customer opted out and requested privacy, the new rule would have required ISPs to protect privacy as the default and obtain a specific opt-in approval before sharing any such sensitive information. The CEA report makes a point of noting that the FCC opt-in rule "was to go into effect on January 3, 2017," which naturally would seem to imply that ISPs were already incurring compliance costs by the time President Trump signed off on a repeal of the rule. Yet in fact, what the CEA report fails to mention is that, under the very terms of the FCC rule, ISPs had no obligation to comply with the opt-in requirements until 12 months after the publication of the rule in the *Federal Register*. Although the repeal of the rule did spare ISPs compliance costs down the road, it did not lift any currently mandated regulatory burdens from the ISPs. When rules have extended implementation periods like the opt-in broadband privacy rule—which many do—repeals of these rules by definition do not take any immediate regulatory burden off the economy.[49]

The best that can be said from the CEA report, taken on its own terms, is that deregulation will alleviate costs to industry in the future. It is not delivering immediate returns nor has it been the major contributor to economic growth over the last several years as the Administration has asserted.

---

[45] *Id*. at 1 ("The Council of Economic Advisers (CEA) estimates that after 5 to 10 years, this new approach to Federal regulation will have raised real incomes by $3,100 per household per year.").

[46] A similar temporal problem arises if one simply assumed that repealing a rule would amount a cost-savings of the same estimated amount of costs contained in agencies' regulatory impact analyses. Those estimates are discounted based on streams of regulatory impacts into the future. It would simply be erroneous to conclude that the discounted value of future regulatory savings—even if they were accurately assessed—is gain that lands in the pockets of American families today. Indeed, over the longer term, it is possible that any such cost-savings might never filter down to households. Cost-savings to, say, power plants from undoing environmental protections could result in increasing economic rents without delivering consumer gains.

[47] David Shepardson, "Trump Signs Repeal of U.S. Broadband Privacy Rules," *Reuters* (April 3, 2017), https://www.reuters.com/article/us-usa-internet-trump-idUSKBN1752PR

[48] 81 Fed. Reg. 87,274. Under the Administrative Procedure Act, rules ordinarily cannot take effect for 30 days after publication in the *Federal Register*. 5 U.S.C. § 553.

[49] Conceptual challenges pervade the CEA's claims of revenue gains from "deregulation" in cases when the underlying regulation was never actually implemented. The report claims, for example, revenue gains from "an attempt by the Consumer Financial Protection Bureau (CFPB) to largely eliminate the payday lending industry." CEA, *supra* note 41, at 15. The assumptions underlying this estimate appear at best specious, relying on what a totally unclear "revealed preferences framework" and assuming "that the industry demand for payday loans is linear in feeds charged." *Id*. at 10, 15.

In determining the economic effects of deregulation, the relevant task is to assess impacts against a counterfactual: that is, to look for the difference in how resources that would have been devoted to compliance with a regulation would be deployed once the rule is rolled back. A counterfactual can be difficult to estimate but it is essential to sustain a causal claim that a deregulatory action led to a positive (or negative) economic effect. It is in theory conceivable to use existing statistical techniques to try and infer the benefits (and costs) of deregulation.[50] Unfortunately, the CEA report does not use any of these techniques. Indeed, it is far from clear how it could even reasonably do so, given that so many of the regulations in its sample had only relatively recently been adopted. As Howard Shelanski, former administrator of the White House Office of Regulatory Affairs under President Obama, has suggested, "one of the oddest claims in the report is that we have enough time since the repeal of the rules to empirically measure what the effect would be."[51]

An example makes this point: even if Trump pulls back from energy efficiency standards (as he has done), it is impossible to predict ex-ante how this deregulatory change will impact the market—and translate into consumer savings—over the course of the next decade. It is just as possible that consumers will be harmed by this intervention (because they value efficient products and the incentive to produce them is diminished) as it is possible that there will be no effect at all (because market demand or economies of scale for manufacturers seeking to meet international standards will carry over to the US) as they will accrue savings from this intervention. It is almost certainly too early to ascertain what the consequences of a deregulatory action will be for consumers. To do so would require comparing welfare post-deregulation to a counterfactual world where regulations were not lifted. That is not the task that the CEA report undertakes.

Rather than attempting any causal inquiry, the CEA staff rely on a series of assumptions. These assumptions are not all clearly articulated nor sufficiently justified in the CEA report. The report's Appendix detailing the CEA's methodology provides no meaningful clarity on how estimates are reached.[52]

The CEA report explains that its main estimation procedure comprises a bottoms-up aggregation of the estimated impact of the 20 deregulatory actions chosen from the thousands of rules issued by federal agencies since 2017. For each of these actions, the CEA performed an industry-level

[50] Cary Coglianese, "Measuring Regulatory Performance: Evaluating the Impact of Regulation and Regulatory Policy," OECD Expert Paper No. 1 (August 2012), https://www.oecd.org/gov/regulatory-policy/1_coglianese%20web.pdf.

[51] Glenn Kessler, "Trump's Claim His Deregulatory Actions Are Saving American Households $3,000 a Year," *Washington Post* (Aug. 15, 2019), https://www.washingtonpost.com/politics/2019/08/15/trumps-claim-his-deregulatory-moves-are-saving-american-households-year/.

[52] The CEA's estimation of the impact of freezing new regulations suffers all of the same kinds of deficiencies that plague its estimation of the real income effects of repealing rules. This is because it assumes that, but for the Trump Administration, the federal government would have kept 20 deregulatory actions in the first sample. It then uses the same approach to estimate the reduction in household income attributable to the pre-Trump annual growth rate of regulation. The CEA estimates that regulation growth lowered 0.16 percent of real income annually over the period. CEA, *supra* note 41, at 16. As a result, the CEA concludes that the benefit of freezing new regulations from 2016 to 2021 is around 0.8% of real income over the five years. Id. at 17. The impact of freezing new regulation constitutes 39% of the total estimated gains in real income. *See supra* note 43 and accompanying text. There is, of course, the inconvenient fact that, as noted in Part I of this report, regulations have not in fact been "frozen" during the Trump Administration. The CEA does not investigate those other rules but assumes that they are not creating the same level of regulatory burdens as has existed in the past.

analysis, relying on "simple sufficient statistics" and observed changes in market data. The procedure used is ad hoc depending on the regulation considered, and often it appears to rely on a single estimated parameter of costs, without a discussion of the range of estimates in the literature and without explicit justification of why the selected estimate was preferred.[53] CEA then added in estimates of indirect costs. To estimate indirect costs, the CEA first obtained estimates for the impact the deregulatory action has on labor and capital utilization and then divided by a tax wedge of 0.48, finally adding this to its "primary market" impact. The result is a total output estimate for each deregulatory action.

What is missing from the CEA estimates is serious consideration of the "other side of the ledger"—the forgone benefits to households from deregulation. Consider for example a rule that was eliminated, the "Fair Pay and Safe Workplaces Rule," which was estimated by the CEA to have zero effect on real income. The objective of the rule was to protect contractors from unsafe working conditions by requiring disclosure of violations of labor laws. The CEA report concludes that the repeal does not result in significant household savings—but it ignores the potential losses to employees who will be more likely to be exposed to wage theft and poor working conditions in the absence of regulation. CEA claims to account for such "non-pecuniary and environmental costs" of deregulation, although the procedure used is neither documented nor explained. The CEA does claim, though, that factoring in the loss of benefits from regulation reduces the real income boost from $3,100 to $2,500. [54] At a minimum, then, taking the Administration's own computations at face value, President Trump's public statements have been exaggerating the economic consequence of deregulation by about 25 percent.

The CEA's sampling strategy is also problematic. The authors of the report selected the deregulatory actions to examine from five categories: CRA disapprovals (6 actions); agency-selected rule changes (8 actions); independent agency actions (1 action); reform of guidance documents (1 action); and statutory repeals (2 actions).[55] Within the two categories for CRA disapprovals and agency-selected rule changes, the CEA sampled based on the number of comments submitted on the underlying rules, with the explicit intent of choosing rules with the most comments because they would be likely candidates for high-cost rules that would deliver high impacts on real income when repealed. The CEA appears to claim that, by choosing a sampling strategy designed intentionally to target changes to regulations with the largest economic impacts, it will conservatively estimate the total impacts of deregulation—but, in fact, the sampling strategy appears self-consciously designed to try to find the rules that delivered the most gains from being rolled back.[56]

Overall, the CEA's sampling strategy relies on the assumption that the economic consequences of the non-sampled rules would be negligible. But the CEA provides no meaningful basis for accepting

---

[53] A sensitivity analysis reported in an appendix to the CEA report only partly addresses this concern. CEA, *supra* note 41, at 24-26.
[54] *Id*. at 4, 18.
[55] Although this amounts to only 18 actions, the CEA states that one CRA disapproval involved a pair of rules, while one agency-selected rule change also apparently involved a pair of rules. *Id*. at 21-22.
[56] To be sure, the CEA does not claim that all the deregulatory actions in its sample deliver dramatic real income gains. In fact, the CEA estimates that 3 actions had no effects, and for another 4 the CEA concedes they will have small aggregate effects, meaning that 13 rules comprise the bulk of the purported savings in the report. *Id*. at 22.

the reasonableness of that assumption. Research shows that about half of all federal regulations are adopted without going through the notice-and-comment process,[57] a relevant factor that CEA does not acknowledge in justifying its use of the number of comments as the key variable on which to sample within two of its categories. It has missed selecting from a large number of rules.

Moreover, by expressly sampling based on what the CEA thinks will be the rules that show the Administration in the best light, it looks to be cherry-picking by excluding rules with negative economic effects which would offset any gains from the actions included in the CEA sample. Given the likely negative economic effects from the Administration's trade and immigration policies,[58] it would have been appropriate for the CEA to show that it was not ignoring other inefficient rules that the Administration may have imposed. As noted in Part I of this report, during the past four years executive agencies issued as many economically significant regulatory actions as deregulatory ones. It is also hardly inconceivable that an administration would impose many relatively low-cost but still inefficient rules, none of which might elicit many comments, but which in the aggregate—if never repealed—could easily offset purported positive effects from other deregulatory actions.[59]

We emphasize "purported" positive effects because the real income estimates reported by the CEA are simply implausible. Again, the CEA did not conduct any systematic empirical analysis of how deregulation had played out over time—nor could it, given how recently the underlying rules had been adopted. The CEA's assumption-driven estimates depart widely from the estimates made at the time that some of the underlying rules were adopted. For example, with Department of Interior's stream protection rule, the CEA turns a rule that imposed an estimated $81 million costs to industry when adopted into a rule that, when repealed, allegedly delivered an estimated $2 billion in real income gains.[60] The CEA fails to provide a sufficient basis for assuming that real income gains would be more than two orders of magnitude larger than the estimated compliance costs of a rule.[61]

The CEA's estimates also suffer from unsupported causal inferences. A clear example is the CEA's assertion that the FCC's net neutrality rule will accrue $22 billion annually in real income savings. As with the stream protection rule, this is a striking estimate given that the benefit-cost

---

[57] Connor Raso, "Agency Avoidance of Rulemaking Procedures," *Administrative Law Review* 67:1 (2015).

[58] *See, e.g.,* Aaron Flaaen and Justin Pierce, "Disentangling the Effects of the 2018-2019 Tariffs on a Globally Connected U.S. Manufacturing Sector," Finance and Economics Discussion Series 2019-086. Washington: Board of Governors of the Federal Reserve System (2019).

[59] According to one study, the median number of comments on agency proposed rules is about 13. Steven J. Balla and Benjamin M. Daniels, "Information Technology and Public Commenting on Agency Regulations," *Regulation & Governance* 1:46-67 (2007).

[60] Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Stream Protection Rule, 81 Fed. Reg., 93066, 93069, 93113 (Dec. 20, 2016).

[61] The stream protection rule also illustrates the deficiency of the CEA report when it comes to considering foregone benefits from deregulation. In promulgating the stream protection rule, the Department of Interior did an extensive job of quantifying many benefits that the rule would deliver in terms of preserving streams for fishing and improving forest lands, even though it did not monetize these various environmental benefits or any health benefits from improved water quality. It only attempted to monetize reductions in greenhouse gas emissions associated with some reductions in coal use forecasted from the rule. Based on a global social cost of carbon, the agency's RIA pegged a monetized benefit at $110 million per year in its regulatory impact analysis, which it reduced to $57 million per year in the preamble to the final rule. Industrial Economics, Inc., Final Regulatory Impact Analysis of the Stream Protection Rule 7-39 (Nov. 2016); Department of Interior, *supra* note 60, at 93,069.

assessment conducted at the time of the rule's adoption arrived at a vastly different conclusion: determining that it was a "non-major" rule, with costs of less than $100 million annually. But the CEA reaches its estimate of a purported $22 billion gain—the largest in the CEA's report—based on a decline in prices for wireless services in March 2017 when Congress considered a nullification of the net neutrality rule. Yet, heightened market competition between Verizon and T-Mobile around the same time presumably impacted pricing practices too. It is hard to disentangle these two effects, but it is economically disingenuous simply to ascribe all of the price reductions to savings from the net neutrality rule, especially when the estimates of the impact of cost-savings from rolling back the rule differ so drastically from the cost estimates attached to the rule at its adoption.

Competing estimates from outside observers also draw into question the veracity of the CEA's conclusions. One serious regulatory economist, for example, has been quoted as characterizing the CEA's report as "stupid" and "just crazy."[62] Others have, albeit less bluntly, criticized the quality of the report.[63] An independent report produced at the consulting firm Capital Economics studied trends in capital expenditure, consumer lending, and other economic indicators and found little evidence for a deviation from baseline trends resulting from Trump's deregulatory efforts.[64] "There is little to suggest that President Donald Trump's deregulatory agenda has provided a significant boost to economic growth," the Capital Economics report concluded, suggesting that even "hopes of a more significant boost in the longer run are also likely to be disappointed."[65]

B. Specific Claims of Positive Economic Effects

"[O]ur regulation cuts have helped create thousands and thousands of jobs."
– President Trump, <u>Press Conference</u> (July 16, 2020)

"Prior to the global pandemic, regulatory reforms contributed to a historically strong labor market and economy, lifting more than 2 million Americans out of poverty and liberating 7 million Americans from food stamps. This is the direct result of President Trump's actions, and his plan for further deregulatory overhaul will ensure that America's workers and families prosper."
- White House **<u>Council of Economic Advisors</u>** (July 16, 2020)

"Thanks to our bold regulatory reduction campaign, the United States has become the number one producer of oil and natural gas anywhere in the world, by far."
– President Trump, <u>State of the Union</u> (February 4, 2020)

[62] Kessler, *supra* note 50.
[63] *Id*.
[64] Hunter, *supra* note 61.
[65] *Id*. *See also* Catherine Rampell, "The White House Touts Trump's Deregulation. It's Actually Been a Bust," *Washington Post* (Oct. 28, 2019), https://www.washingtonpost.com/opinions/the-white-house-touts-trumps-deregulation-its-actually-been-a-bust/2019/10/28/c9fcbdc8-f9c3-11e9-ac8c-8eced29ca6ef_story.html

"My administration has just issued another reform that my Council of Economic Advisers estimates will lower the price of new vehicles by more than $2,200 per vehicle. And I think we're going to get that up to $3,500 per vehicle."

– President Trump Press Conference (July 16, 2020)

In addition to boasting about massive gains to economic growth from deregulation, President Trump and Administration officials have asserted a variety of other specific effects from its deregulatory agenda: increased jobs, decreased poverty, expanded energy production, and even decreases in the prices of automobiles. Yet, these claims, too, are misleading and suffer from the same kinds of problems that afflict the rest of the Administration's assertions about what its deregulatory bent has accomplished.

It is hard to see how deregulation can conceivably be driving improvements in these various indicators when positive trends were already well underway before the Trump Administration's interventions. With its specific claims, the Trump Administration is again crediting its deregulatory push with economic gains that were well underway before they took office:

- Unemployment had been dropping steadily throughout the Obama Administration from its peak of 10 percent in October 2009 to 4.7 percent by the time President Trump took office. It declined by about another percentage point during the first two years of the Trump Administration.[66]
- It is also true that millions fewer Americans were drawing Supplemental Nutrition Assistance Program benefits (SNAP benefits, or "food stamps") pre-COVID than previously. But far from being driven by Trump deregulatory efforts, this decline too reflects part of a general decrease in poverty that dates back to the Obama era. The share of Americans in poverty has trended downward each year since 2014.[67]
- The President similarly credits himself for dominance in the energy sector; however, the timeline does not substantiate his assertion. Rather, the U.S. surpassed Russia in 2011 to be the largest producer of natural gas in the world, and petroleum production has trended upward since President Obama took office.[68] It is hard to see how this inherited upward trajectory could reasonably be ascribed to deregulation in just the last four years.
- With respect to automobiles, average prices for new cars started to drop three years prior to the Trump Administration's completion of a final rule to scale back the fuel economy and carbon dioxide emissions standards. All these decreases have since disappeared following the Trump Administration's deregulation, although almost surely because of COVID-related factors.[69]

---

[66] Federal Reserve Bank of St. Louis, Economic Research, "Unemployment Rate," https://fred.stlouisfed.org/series/UNRATE.
[67] U.S. Census Bureau, Current Population Survey, https://www.census.gov/content/dam/Census/library/visualizations/2020/demo/p60-270/Figure7.pdf.
[68] U.S. Energy Information Administration, United States Remains the World's Top Producer of Petroleum and Natural Gas Hydrocarbons (May 21, 2018), https://www.eia.gov/todayinenergy/detail.php?id=36292.
[69] Federal Reserve Bank of St. Louis, Economic Research, "Consumer Price Index for All Urban Consumers: New Vehicles in U.S. City Average," https://fred.stlouisfed.org/series/CUSR0000SETA01.

The Trump Administration's assertions about the impact of its deregulation on the prices of new automobiles also exemplify other flaws in the Administration's boasts more generally. First, the decrease in the cost of new cars that the Administration trumpets is, by the Administration's own analysis, savings that would accrue to model year 2029 automobiles—not any savings that anyone experiences today. Second, the Administration is again cherry-picking what it reports. By the Administration's own analysis, consumers will actually spend more overall from deregulation: while prices of new cars are expected to go down, motorists will end up spending more over the life of the vehicle in offsetting increases in fuel costs.[70] (Perhaps ironically, Administration officials even "estimate that less stringent standards could slightly reduce domestic employment."[71]) Finally, an exclusive focus on consumer costs ignores the forgone environmental benefits from improved fuel economy and a reduction of greenhouse gas emissions—a loss estimated at more than $1.7 trillion, equivalent to lowering the price of gasoline by $1 by 2025.

C. Who benefits and who loses from deregulation?

> **"The cost of these burdensome regulations fall disproportionately and benefit disproportionately lower-income Americans. So this President took action to roll back the burdensome regulations that harm low-income communities and make sure that these lower-income Americans are taken care of.**
> **- Press Secretary Kayleigh McEnany, Press Briefing (July 16, 2020)**

> **"[T]he net effect of these deregulatory actions, once fully realized, will represent nearly 15 percent savings for the bottom quintile of households."**
> **- White House Council of Economic Advisors (July 16, 2020)**

Although the Trump Administration sometimes seeks to justify deregulatory measures by claiming that they help lower-income Americans, the research literature does not support such claims. Indeed, we know strikingly little by the general incidence of the costs and benefits of regulation. Perhaps for this reason, the Trump CEA ignores the issue and simply estimates an average cost savings per family by taking the increase in national income estimated and distributing it equally among households. Such an approach misses how deregulation might in fact in many cases end up regressive.

What would be valuable is a full understanding of winners and losers from deregulatory efforts. For example, the statutory elimination of the individual mandate in the Affordable Care Act is responsible for what the CEA asserts are substantial real income gains ($28 billion). But the loss of the mandate has almost surely increased the uninsured population, so the most vulnerable American

---

70 *See* U.S. Environmental Protection Agency and Department of Transportation, The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule, 85 Fed. Reg. 24,174, 25,109-25,111 (April 30, 2020). Some experts have reportedly indicated that the rule could impose a total cost on the economy of up to $22 billion. Coral Davenport, Trump Calls New Fuel Economy Rule a Boon. Some Experts See Steep Costs," *New York Times* (March 31, 2020), https://www.nytimes.com/2020/03/31/climate/trump-pollution-rollback.html.

71 85 Fed. Reg. at 24,741.

households are actually harmed by this deregulatory change.[72] Especially given the fact that the consequences of the current pandemic are being borne disproportionately by the bottom of the distribution—individuals who are more likely to find themselves unemployed but less likely to be able to meet household spending needs in this moment—the case for more progressive health care regulatory interventions would appear strong.

It is important to consider who wins and who loses from regulation—and, by extension, from deregulation. Even if some gains in real income were to accrue to the U.S. economy from the deregulatory measures taken in the last four years, it will surely not accrue evenly across the wealth distribution, and it is thus disingenuous for the Trump Administration to suggest—as it does when touting numbers such as its unfounded $3,100 per household claim—that everyone will be universally and equally improved by deregulation. In fact, tracing out the incidence of regulatory impacts is a general issue with benefit-cost analysis, as noted by economists Lisa Robinson, Jim Hammitt, and Richard Zeckhauser, who find that typically "agencies' analysis provide little information on distributional impacts."[73]

In related work, the former Chief Economist of the Trump Administration's Council of Economic Advisors, Casey Mulligan, concludes in a recent op-ed that deregulation has actually benefitted the bottom of the household income distribution more than the top, with the net effect of deregulatory actions representing nearly 15 percent of their household income.[74] He draws on this analysis to conclude that these households would be harmed by a hypothetical revival of the regulatory state under a Biden Administration. It is hard to engage with this conclusion directly since, to our knowledge, the estimates that underlie it are not publicly available. What we are able to glean is that they are misleading—ascribing losses to households from, for example, a ban on fracking even though the Biden has been explicit that such a ban is not his proposal. And again, as with the Trump Administration's claims more generally, Mulligan considers only one side of the ledger: gains to workers from, for example, labor market deregulation, presumably because decreased cost of regulatory compliance could result in higher wages. But the costs of deregulation to worker health and safety, for example, are ignored, and these costs may well disproportionately accrue to the bottom of the wealth distribution.

Conclusion

Deregulation has been celebrated as one of the Trump Administration's most important economic accomplishments. The Administration has suggested both that the magnitude of its deregulatory efforts far outpace those of prior years, and that the economic gains from these efforts are drivers of historic economic and jobs growth, delivering an increase in real income of over $3,000 to each American household.

---

[72] Matthew Fiedler, "How Did the ACA's Individual Mandate Affect Insurance Coverage? Evidence from Coverage Decisions by Higher-Income People," USC-Brookings Schaeffer Initiative for Health Policy (May 2018), https://www.brookings.edu/wp-content/uploads/2018/05/coverageeffectsofmandate2018.pdf.
[73] Lisa Robinson, James K. Hammitt, and Richard Zeckhauser, "Attention to Distribution in U.S. Regulatory Analyses," *Review of Environmental Economics and Policy* 10:308-328 (2016).
[74] Casey B. Mulligan, "The Real Costs of Biden's Plans," *Wall Street Journal* (Sept. 16, 2020).

This report investigates these claims in turn. We find that they are a mix of exaggerated, cherry-picked, and indefensible. Stated simply, the Administration has not rolled back regulations at anything close to the rates it has claimed and households have not gained thousands of dollars annually from these efforts. The false or misleading statements offered by the President and other officials illustrate a problem that economist Michael Greenstone has described as a general tendency in this Administration toward "monkeying around with the numbers and the benefits, undermining a four-decade commitment to on-the-level cost-benefit analysis that has been in place since the Reagan administration."[75] There may well be long-term consequences to trust in benefit-cost analysis as a guiding principle of policymaking that derive from this Administration's misstatements.[76]

In reviewing the Administration's claims, it is not our intent to overlook or understate the adverse consequences of the Trump Administration's deregulatory agenda. In the climate context, for example, the Trump Administration has weakened various limits on greenhouse gas emissions that would have kept the United States moving forward in addressing one of the most significant and challenging problems confronting the nation and the world. The resulting lost time and momentum, not to mention additional greenhouse gas emissions, can hardly be dismissed.[77] And yet this particular harm—as with the costs of deregulation more generally—is missing entirely from the overstated and misleading claims made by the Trump Administration about its deregulatory decisions.

---

[75] Davenport, *supra* note 71.

[76] *See* Stuart Shapiro, "OIRA's Dual Role and the Future of Cost-Benefit Analysis," *Environmental Law Reporter* 50:10385 (2020).

[77] Furthermore, a full accounting of deregulation would also take into account measures other than the elimination of rules. Reduced enforcement of regulations can also have negative consequences on social welfare, especially for those on the bottom of the income distribution. *See., e.g.,* Eric Lipton & Danielle Ivory, "Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers," *New York Times* (December 10, 2017), https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html. In addition, the granting of waivers or exceptions can also undermine the efficacy of regulation. *See, e.g.,* Cary Coglianese, Gabriel Scheffler, and Daniel E. Walters, "Unrules," *Stanford Law Review* (forthcoming).