Moving from PRESUMPTION TO PROOF

The Future of Regulations

NOVEMBER 13, 2012 THE LIAISON CAPITOL HILL HOTEL, 415 NEW JERSEY AVE, NW

MERCATUS CENTER
George Mason University

AGENDA

8:30 to 9:00 am	REGISTRATION AND RECEPTION
9:00 to 9:20 am Metropolitian East/ West	KICK-OFF KEYNOTE Scott O'Malia, *Commissioner of the Commodity Futures Trading Commission (CFTC)*
9:30 to 10:30 am Metropolitian East/ West	REGULATIONS AS 'PANACEA': EXPLORING THE CONSE-QUENCES **Charting the Great Unknown.** Capturing and comparing changes in regulatory burden based on industry or regulatory code title. Patrick McLaughlin, *Senior Research Fellow, Mercatus Center* **Good Intentions, Bad Consequences.** The unintended effects of regulations on the unemployed and low-income individuals. Keith Hall, *Senior Research Fellow, Mercatus Center; Former Commissioner of the Bureau of Labor and Statistics* **Opportunity: Denied.** The effects on entrepreneurship and competition when regulations pick winners and losers. Matthew Mitchell, *Senior Research Fellow, Mercatus Center*
10:45 to 11:30 am Metropolitian East/ West	KEY CHALLENGES, KEY SOLUTIONS **Ending the Ready, Fire, Aim! Approach to Regulations**. Discussion of why the majority of regulations earn the equivalent of an 'F' using real-world examples from the Mercatus Center's Regulatory Report Card. **Shifting from Rule Making to Problem Solving.** A back-to-basics approach to achieving successful, sustainable regulatory reform. Jerry Ellig, *Senior Research Fellow, Mercatus Center* Hester Peirce, *Senior Research Fellow, Mercatus Center*

turn over

11:45 to 12:15 pm	BENEFITS: PROMISES AND PROOF (BREAKOUT SESSIONS)
The Hill Room	**Are Regulation's Benefits Real?** A case-study review of regulation's claimed benefits are identified, measured, and justified. Ted Gayer, *Brookings Institution*
The Grid Room	**Bad Science, Bad Regulations.** A look at how poorly crafted and applied risk assessment often yields unnecessary and ineffective regulations. Richard Williams, *Director of Policy Research*, *Mercatus Center*
The Hub Room	**Looking Back to See Forward - OSHA.** A review of the Occupational Safety and Health Administration's role in workplace safety improvements and the lessons it provides on the importance of retrospective review and analysis. John Leeth, *Professor and Chair of Economics*, *Bentley University*
12:30 to 1:30 pm Metropolitan East/ West	KEYNOTE ADDRESS (*lunch will be served*) **What's the Competition Doing?** Frank discussion of how the U.S. is behind the curve in recognizing the relationship between regulatory reform and economic growth. Scott Jacobs, *Managing Director*, *Jacobs & Associates (international advisors)*
1:30 to 1:45 pm Metropolitan East/ West	CLOSING Richard Williams, *Director of Policy Research*, *Mercatus Center*

SPEAKER BIOS

JERRY ELLIG
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Jerry Ellig is a senior research fellow at the Mercatus Center at George Mason University, where he has worked since 1996. His primary research interests include the federal regulatory process, economic regulation, and telecommunications regulation.

Between August 2001 and August 2003, he served as deputy director and acting director of the Office of Policy Planning at the Federal Trade Commission. Ellig has also served as a senior economist for the Joint Economic Committee of the U.S. Congress and as an assistant professor of economics at George Mason University.

Ellig received his PhD and MA in economics from George Mason University and his BA in economics from Xavier University in Cincinnati, Ohio.

TED GAYER
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Ted Gayer is the co-director of the economic studies program and the Joseph A. Pechman Senior Fellow at the Brookings Institution. He conducts research on a variety of economic issues, focusing particularly on public finance, environmental and energy economics, housing, and regulatory policy.

Before joining Brookings in September 2009, he was an associate professor of public policy at Georgetown University. From 2007 to 2008, he was deputy assistant secretary for economic policy at the U.S. Department of the Treasury. While at Treasury, he primarily worked on housing and credit market policies as well as energy and environmental issues, health care, Social Security, and Medicare.

Earlier in his career, he held positions as a senior economist at the President's Council of Economic Advisers, where he worked on environmental and energy policies; a visiting fellow at the Public Policy Institute of California; and a visiting scholar at the American Enterprise Institute.

KEITH HALL

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Keith Hall is a senior research fellow at the Mercatus Center at George Mason University. From 2008 to 2012, he served as the 13th commissioner of the Bureau of Labor Statistics. In this role, he headed the principal fact-finding agency in the federal government in the broad field of labor economics and statistics. Hall's research interests include labor markets, labor-market policy, and economic data.

From 2005 to 2008, Hall served as chief economist for the White House Council of Economic Advisers, where he analyzed a broad range of fiscal, regulatory, and macroeconomic policies and directed a team that monitored the state of the economy and developed economic forecasts. Before that, he was chief economist for the U.S. Department of Commerce. Hall also spent 10 years at the U.S. International Trade Commission; has been a full-time member of faculty in the economics departments of the Universities of Arkansas and Missouri; and has published a number of papers on international trade and international trade policy.

Hall received his BA degree from the University of Virginia and his MS and PhD degrees in economics from Purdue University.

SCOTT H. JACOBS

scottjacobs@regulatoryreform.com

Scott H. Jacobs is a leading global expert and author, with 25 years of experience in regulatory reform and good business environments. He organized and directed the influential OECD Program on Regulatory Reform from 1995 to 2001, where he wrote many of the recommended regulatory practices that are now used as benchmarks worldwide.

Jacobs has worked with more than 75 developing and industrialized countries in Europe, Asia, Africa, and the Americas to design and implement programs for regulatory reform. His work aims at producing low-cost and low-risk regulatory regimes that support private-sector development and good governance. His expertise includes comparative research, diagnostics of regulatory barriers to growth and poverty reduction, building national capacities to carry out broad-based reforms, helping governments implement regulatory impact analysis (RIA), simplifying administrative and licensing procedures and other barriers to entry, and reforming business registration.

A pioneer in the RIA field, Jacobs has worked on RIA in more than 45 developed and developing countries. He has authored 22 books and numerous articles on regulatory reform.

JOHN LEETH
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John D. Leeth is professor and chair of economics at Bentley University in Waltham, Massachusetts. From 2004 to 2007, he served as the Gibbons Research Professor at Bentley University and, in 2004, was the recipient of the Bentley Scholar of the Year Award.

Leeth has published extensively in the areas of workplace safety, executive compensation, economic inequality, and mergers and acquisitions. He received his PhD in economics from the University of North Carolina, Chapel Hill.

PATRICK A. MCLAUGHLIN
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Patrick A. McLaughlin is a senior research fellow at the Mercatus Center at George Mason University. His research focuses on regulations and the regulatory process, with additional interests in environmental economics, international trade, industrial organization, and transportation economics. Before joining Mercatus, he served as a senior economist at the Federal Railroad Administration in the U.S. Department of Transportation.

McLaughlin has published articles in the fields of law and economics, public choice, environmental economics, and international trade. He holds a PhD in economics from Clemson University.

MATTHEW MITCHELL
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Matthew Mitchell is a senior research fellow at the Mercatus Center at George Mason University and the lead scholar on the Project for the Study of American Capitalism. His primary research interests include economic freedom and economic growth, public choice economics, and the economics of government-granted privileges to businesses. He currently serves on the Joint Advisory Board of Economists for the Commonwealth of Virginia, where his advice helps the government formulate its revenue expectations.

Mitchell has testified before the U.S. Congress, and his work has been featured in numerous national media outlets, including the *New York Times*, *Wall Street Journal*, *Washington Post,* National Public Radio, and C-SPAN. Mitchell blogs about economics and economic policy at Neighborhood Effects.

Mitchell received his PhD and his MA in economics from George Mason University. He received his BA in political science and BS in economics from Arizona State University.

SCOTT O'MALIA
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Scott O'Malia was confirmed by the U.S. Senate on October 8, 2009, as commissioner of the Commodity Futures Trading Commission (CFTC) and was sworn in on October 16, 2009. He is currently serving a five-year term that expires in April 2015.

Born in South Bend Indiana and raised in Williamston, Michigan, O'Malia learned about commodity prices firsthand growing up on a small family farm. He brings both his agricultural background and experience in energy markets to his role as commissioner.

At the CFTC, O'Malia has advanced the use of technology to more effectively meet the agency's oversight responsibilities and is seeking the reestablishment of the long-dormant CFTC Technology Advisory Committee (C-TAC). As chairman of the newly reinstated committee, he intends to harness the expertise of the C-TAC membership to establish best practices for oversight and surveillance considering such issues as algorithmic and high-frequency trading, data collection standards, and technological surveillance and compliance.

Before starting his term at the CFTC, O'Malia served as the staff director to the U.S. Senate Appropriations Subcommittee on Energy and Water Development, where he focused on expanding U.S. investment in clean-energy technologies, specifically promoting low-cost financing and technical innovation in the domestic energy sector.

From 2003 to 2004, he served on the U.S. Senate Energy and National Resources Committee under Chairman Pete Domenici (R-N.M.) as senior policy advisor on oil, coal, and gas issues. From 1992 to 2001, he served as a senior legislative assistant to U.S. Sen. Mitch McConnell (R.-Ky.), now the Senate Minority Leader.

O'Malia earned his BA from the University of Michigan.

HESTER PEIRCE
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Hester Peirce is a senior research fellow at the Mercatus Center at George Mason University. Peirce's primary research interests relate to the regulation of the financial markets.

Before joining Mercatus, Peirce served as senior counsel to Senator Shelby's staff on the Senate Committee on Banking, Housing, and Urban Affairs. Her oversight work on the Banking Committee focused primarily on the activities of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Financial Stability Oversight Council, the Financial Industry Regulatory Authority, and the Public Company Accounting Oversight Board.

From 2004 to 2008, Peirce served as counsel to Commissioner Paul S. Atkins at the Securities and Exchange Commission. She has also served as a staff attorney in the Division of Investment Management at the Securities and Exchange Commission; a clerk for Judge Roger B. Andewelt on the Court of Federal Claims; and an associate at a Washington, D.C., law firm.

Peirce earned her BA in economics from Case Western Reserve University and her JD from Yale Law School. She also studied in Vienna, Austria, on a Fulbright grant.

RICHARD WILLIAMS
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Richard Williams is the director of policy research at the Mercatus Center at George Mason University. Before joining Mercatus, he served for 27 years as the director for social sciences at the Center for Food Safety and Applied Nutrition in the Food and Drug Administration. He also served as an adviser to the Harvard Center for Risk Analysis and taught economics at Washington and Lee University in Lexington, Virginia.

Williams is an expert in benefit-cost analysis and risk analysis, particularly associated with food safety and nutrition. He has published articles in *Risk Analysis* and the *Journal of Policy Analysis and Management* and has addressed numerous international governments, including the United Kingdom, South Korea, Yugoslavia, and Australia.

Williams received his PhD and MA in economics from Virginia Tech and his BS in business administration from Old Dominion University. He is a U.S. Army veteran who served in the Vietnam war.

REGULATIONS AS ‘PANACEA’: EXPLORING THE CONSEQUENCES

Patrick A. McLaughlin, *Senior Research Fellow, Mercatus Center*

CHARTING THE GREAT UNKNOWN
RegData: Quantifying by Industry

RegData is a new, publicly available database that quantifies federal regulation by industry. Using text analysis, RegData assesses the applicability of regulations to each sector of the economy, similar to how search engines determine the relevance of webpages to search terms based on webpage text. RegData combines this measure with data on regulatory restrictions to create an industry regulation index. Some highlights include:

- **Researchers can combine the index with other data measuring industry performance**. RegData measures regulation of sectors of the economy using the North American Industry Classification System (NAICS). NAICS is used by many other datasets, such as the BEA’s Industry Accounts and BLS’s Business Employment Dynamics, permitting researchers to examine questions such as, “Do regulations affect employment?” by combining datasets.

- **RegData permits users to see how regulation has changed for broadly and narrowly defined sectors of the economy.** NAICS categories include 2-digit industries, which comprise broad groups, such as “Manufacturing” or “Construction,” and 3-digit industries, which are more narrowly defined, such as “Paper Manufacturing” or “Construction of Buildings.”

- **Regulation of 2-digit industries grew by 21 percent from 1997 to 2010.** In contrast, those targeting manufacturing grew by 45 percent.

- **The average 3-digit industry saw regulation increase by about 20 percent.** Figure 2 compares the average to three industries: Paper Manufacturing, Chemical Manufacturing, and Air Transportation.

To learn more:

Visit www.regdata.mercatus.org to see explanatory videos, access the data, and create graphs and tables.

For a short summary of the research behind RegData, see: Patrick A. McLaughlin. “A New Way to Quantify Regulation.” http://mercatus.org/sites/default/files/IRCD_summary.pdf

For a detailed description of the methodology, see: Omar Al-Ubaydli and Patrick A. McLaughlin. “The Industry-specific Regulatory Constraint Database.” Mercatus Working Paper No. 12-20. http://mercatus.org/sites/default/files/IRCD_McLaughlinUbaydli_v1-0_0.pdf

FIGURE 1: RESTRICTIONS TARGETING MANUFACTURING, 1997–2010

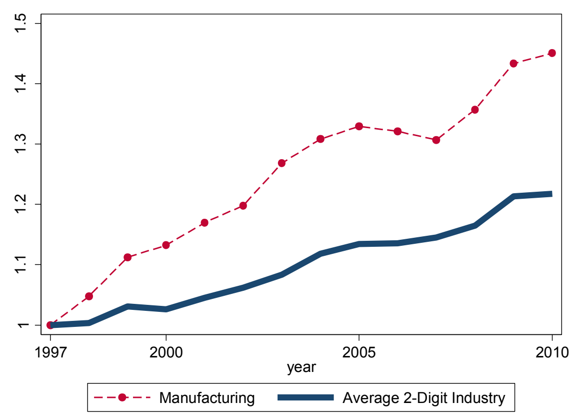
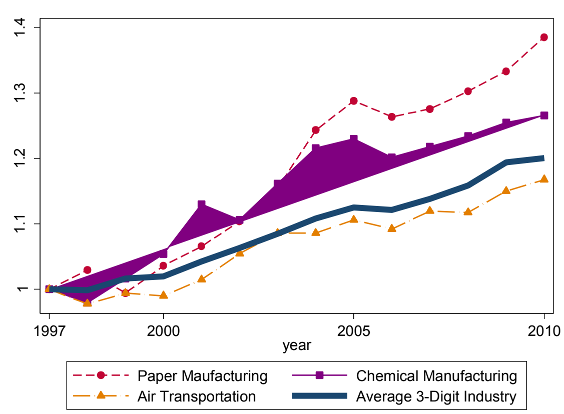


FIGURE 2: SAMPLE 3-DIGIT INDUSTRIES



REGULATIONS AS 'PANACEA': EXPLORING THE CONSEQUENCES

Patrick A. McLaughlin, *Senior Research Fellow, Mercatus Center*

REGDATA: Quantifying Regulation by CFR Title

RegData (http://regdata.mercatus.org) is a new, publicly available database that quantifies federal regulation. When working with a complex system, such as the economy, it is important to measure its inputs and components if you want to advance the performance of that system. RegData does just that by offering a novel and objective measure of the accumulation of regulations in the economy overall and for all the different industries in the U.S. This new tool uses text analysis to count the number of restrictions in federal regulatory text, as indicated by words indicating legal obligation such as "shall" or "must." By relying on the content of the *Code of Federal Regulations* (CFR) as a data source, RegData can separately parse each CFR title, which correspond to broad subject areas such as "Energy," "Agriculture," and "Transportation." Such an analysis permits us to see, for the first time, how the growth of restrictions differs across titles, and, to some degree, across government agencies. Some highlights include:

- Regulatory restrictions are proliferating. The total number of restrictions in the *Code of Federal Regulations* (CFR) grew from about 835,000 in 1997 to just over 1 million in 2010 – an increase of roughly 20 percent.
- **Regulations grew similarly under Presidents George W. Bush and Barack Obama.** From 2001 – 2008, restrictions grew by an annual average of 1.5 percent. In 2009 and 2010, they grew by an average of 1.8 percent.
- **In 2010, three CFR titles accounted for over 27 percent of all restrictions.** These titles are: Protection of the Environment, Labor, and Internal Revenue.
- **Environmental regulations contain about 30 percent of the new restrictions created between 1997 and 2010.** Of the approximately 275,000 additional restrictions added to CFR over this period, about 80,000 were printed in Title 40 – Protection of the Environment.

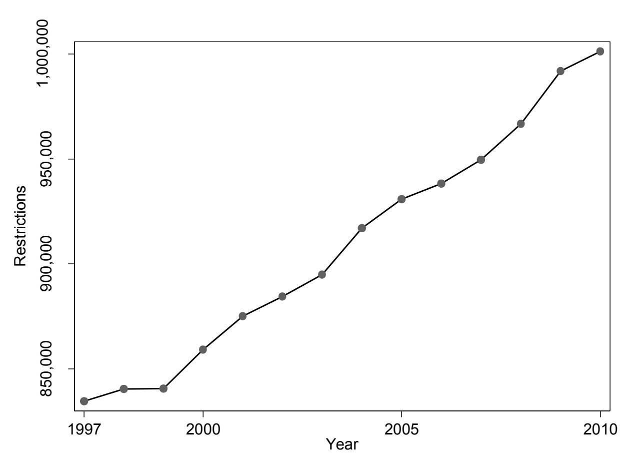
To learn more:

Visit www.regdata.mercatus.org to see explanatory videos, access the data, and create graphs and tables.

For a short summary of the research behind RegData, see: Patrick A. McLaughlin. "A New Way to Quantify Regulation." http://mercatus.org/sites/default/files/IRCD_summary.pdf

For a detailed description of the methodology, see: Omar Al-Ubaydli and Patrick A. McLaughlin. "The Industry-specific Regulatory Constraint Database." Mercatus Working Paper No. 12-20. http://mercatus.org/sites/default/files/IRCD_McLaughlinUbaydli_v1-0_0.pdf

FIGURE 1: TOTAL RESTRICTIONS, 1997–2010



REGULATIONS AS 'PANACEA': EXPLORING THE CONSEQUENCES

Keith Hall, *Senior Research Fellow, Mercatus Center*

GOOD INTENTIONS, BAD CONSEQUENCES.
The unintended effects of regulations on the unemployed and low-income individuals

Summary Points:

- The employment cost of new regulations is routinely underestimated. In fact, it is nearly standard practice in the economic analysis of regulation to simply ignore it. One of the ways that this is done is by assuming a "full employment" economy where displaced workers instantly and costlessly find equivalent jobs in new industries.

- Another common approach also trivializes job loss by assumption. This is through a "netting out" approach where the number of new compliance jobs created by the regulation is assumed to roughly match the production job loss. There are a number of problems with this:

  - ✧ It isn't necessarily true.
  - ✧ It ignores the fact that the newly unemployed production workers are not likely to get any of the newly created compliance jobs.
  - ✧ It still ignores the indirect job loss in other industries due to higher prices on regulated goods and services.

- Both of these approaches result in an underestimate of the employment cost of regulation because they ignore the economic cost of job displacement. There is now a sizeable literature establishing that there are significant and sustained earnings losses created by job displacements of long tenured workers. This is true even in good labor markets but particularly true when labor markets are bad.

- It appears that the benefits of many regulations go disproportionally to wealthier households while the costs fall more on lower income households. Regulations raise the prices of goods and services. Since lower income households often spend a greater share of their income on these products, there is an impact much like the regressive impact of a sales tax.

- Higher demand for regulation by wealthier households may force lower-income households to assume greater risks. This happens because private expenditure on risk reduction increases in household income. Therefore, when risks normally privately mitigated by wealthier households but not lower income households is mitigated through regulation, lower income households must pay higher prices. Budget constraints then may force them to reduce their private mitigation of more important risks.

To learn more:

Steven J. Davis and Till M. von Wachter, "Recessions and the Cost of Job Loss", NBER Working Paper No. 17638 (December 2011)

Robert Michaels and Robert Murphy, "Green Jobs: Fact or Fiction?" (Institute for Energy Research, Jan. 2009).

(Forthcoming) Diane Thomas, "Regressive Effects of Regulation", working paper, Department of Economics and Finance, Utah State University.

REGULATIONS AS 'PANACEA': EXPLORING THE CONSEQUENCES

Matthew Mitchell, *Senior Research Fellow, Mercatus Center*

OPPORTUNITY: DENIED. The effects of entrepreneurship and competition when regulations pick winners and losers

Regulations are typically characterized as a burden of business. In reality, though, a regulation can be a boon to a *particular* business if it somehow limits competition.

- **Regulatory capture.** Economic Nobel Laureate George Stigler developed an influential theory of regulation which holds that often agencies created "in the public interest" are "captured" and used by the firms they were intended to regulate.
- **All regulations impose costs. But the costs are rarely, if ever, evenly distributed.** This means that regulations present an opportunity for some firms to profit at the expense of consumers and rivals.
- **Barriers to entry.** In Stigler's original theory, firms use regulatory bodies to erect barriers to entry. Licenses, for example, make it more expensive for new firms to enter an industry, driving up prices and limiting competition. All of those firms that are already in the industry benefit from higher profits while consumers and would-be competitors lose.
- **Raising rivals' costs.** Following Stigler, economists came to appreciate other ways that regulations can benefit firms. For example, a regulation might raise the costs of some firms more than others, driving customers into the arms of those firms that find it easier to comply with the regulation. In this case, consumers again lose, but only some firms in the industry gain.
- **Labor regulations benefit capital-intensive industries.** Consider, for example, a regulation that requires firms to provide a certain benefit to all employees—say health insurance. This regulation raises the cost of labor. But it will raise the costs of firms whose operations are labor-intensive more than it will raise the costs of firms whose operations are capital-intensive. Prices will go up and if they rise more than the costs of capital-intensive firms, these firms will gain.
- **The ICC & regulatory capture.** The first major regulatory body, the Interstate Commerce Commission (ICC), provides a classic example of regulatory capture. The ICC was empowered to set railroad rates, with the hope that it would result in lower rates. The railway men quickly learned, however, that the ICC could be used to *raise* rates above what the market would bear. U.S. Attorney General and former railway executive Richard Olney explained the concept to a former colleague in a letter: "The Commission… is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of the railroads, at the same time that supervision is almost entirely nominal. Further, the older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things.… The part of wisdom is not to destroy the Commission, but to utilize it."

To learn more:

Adam Thierer, "Regulatory Capture: What the Experts Have Found," *The Technology Liberation Front* (December 9, 2010): http://techliberation.com/2010/12/19/regulatory-capture-what-the-experts-have-found/.

Matthew Mitchell, "The Pathology of Privilege: The Economic Consequences of Government Favoritism" (Arlington, VA: Mercatus Center at George Mason University, July, 2012): http://mercatus.org/publication/pathology-privilege-economic-consequences-government-favoritism.

Fred McChesney, *Money for Nothing: Politicians, Rent Extraction, and Political Extortion* (Cambridge, MA: Harvard University Press, 1997).

KEY CHALLENGES, KEY SOLUTIONS

Jerry Ellig, *Senior Research Fellow, Mercatus Center*

ENDING THE READY, FIRE, AIM! APPROACH TO REGULATIONS

Summary:

- Regulatory Impact Analyses (RIAs) are supposed to inform decisions. An RIA is supposed to assess the systemic problem the regulation seeks to solve, identify alternative solutions, and estimate the benefits and costs of each alternative.

- Agency RIAs are often seriously incomplete. The best regulation ever evaluated under the Mercatus Center's Regulatory Report Card received the equivalent of a B-.

- Rulemaking is often "Ready-Fire-Aim." Often decisions are made and then analysis is expected to support decisions. This is precisely backward.

- The problem is likely even worse in the independent agencies. Independent agencies' analysis of regulations often lacks any information about benefits or costs.

Solutions:

- Make agencies analyze the problem and alternative solutions before writing the regulation.

- Separate economists who conduct RIAs from program offices that write regulations.

- Require agencies to explain how their analysis of the systemic problem, alternatives, benefits, and costs affected their decisions about the regulation.

- Require agencies to explain any other values that affected their decisions and present evidence

- that the regulation will substantially advance these other values.

- Apply RIA requirements to independent agencies.

To learn more:

All evaluations of Regulatory Impact Analyses conducted as part of the Mercatus Center's Regulatory Report Card are available at www.mercatus.org/reportcard.

Jerry Ellig, Patrick A. McLaughlin, and John A. Morrall III, "Continuity, Change, and Priorities: The Quality and Use of Regulatory Analysis Across US Administrations," forthcoming in *Regulation & Governance*. Electronic Early View version is currently available to journal subscribers at http://onlinelibrary.wiley.com/journal/10.1111/(ISSN)1748-5991/earlyview.

Arthur Fraas and Randall Lutter, "On the Economic Analysis of Regulations at Independent Regulatory Commissions," Administrative Law Review 63 (2011). Online accessible prepublication version is Resources for the Future Discussion Paper 11-16 (April 2011), http://www.rff.org/publications/pages/publicationdetails.aspx?publicationid=21538.

Winston Harrington, Lisa Heinzerling and Richard Morgenstern. *Reforming Regulatory Impact Analysis*. Washington, DC: Resources for the Future Press, 2009, http://www.rff.org/publications/pages/publicationdetails.aspx?publicationid=20830.

KEY CHALLENGES, KEY SOLUTIONS

Hester Peirce, *Senior Research Fellow, Mercatus Center*

REGULATORY ANALYSIS AT THE INDEPENDENT AGENCIES

What's the Problem? Independent regulatory agencies, unlike executive agencies, do not fall under the executive orders governing economic analysis. Some independent agencies have organic statutory requirements to conduct analysis. Others have expressed an affinity for the principles of regulatory analysis that executive agencies use.

In practice, however, regulatory analysis appears to be an afterthought—used to justify regulatory choices after they are made rather than to help the agency make those choices. A recent review of economic analysis practices at the Federal financial regulators, most of which are independent regulatory agencies, shows a general reluctance or even resistance to rigorous regulatory analysis.

Are any Independent Agencies Getting It Right? Recent court challenges have caused the Securities and Exchange Commission to rethink its approach to economic analysis. Although the changes are in their infancy and are imperfect, if the changes are effective, the agency could be a good example for others to follow.

Why Does it Matter? Regulators are depriving themselves of a useful tool. Good regulatory analysis would help regulators to set their regulatory priorities and effectively solve the problems on their regulatory agendas.

As one example, the implementation of Dodd-Frank, a seminal financial industry reform bill, is being carried out without comprehensive analysis. Unintended consequences and ineffective regulations are the unfortunate result.

What's the Solution? There are different ways to address the dearth of economic analysis at independent agencies.

- A President could extend executive order requirements for economic analysis and review by the Office of Information and Regulatory Affairs to independent regulatory agencies.
- Congress could impose comprehensive, uniform statutory analysis requirements on agencies, backed by judicial review.
- Regulators could be reminded of the valuable role that analysis can play in making and justifying their decisions.

Will Regulators Find a Way Around New Requirements? Observers should be mindful of ways that regulators might try to evade the requirements:

- Backdoor approaches to rulemaking, such as staff guidance, rulemaking by enforcement, and rulemaking by speech.
- Attempts to outsource rulemaking to so-called self regulatory organizations that are not bound by the requirements.

To learn more:

Hester Peirce, "Economic Analysis by Federal Financial Regulators," Mercatus Working Paper No. 12-31 (Oct. 2012), http://mercatus.org/sites/default/files/FinancialRegulators_Peirce_v1-0_1.pdf

Richard Williams and Sherzod Abdukadirov, "Blueprint for Regulatory Reform," Mercatus Working Paper No. 12-07 (Feb. 2012), http://mercatus.org/sites/default/files/publication/Blueprint_For_regulatory_Reform.pdf.

BENEFITS: PROMISES AND PROOF

Ted Gayer, *Senior Research Fellow, Mercatus Center*

ARE REGULATION'S BENEFITS REAL? A case-study review of regulation's claimed benefits are identified, measured, and justified

Summary Points:

- The environmental benefits of recent energy efficiency regulations are negligible, and are often dwarfed by the societal costs these regulations impose. In order to justify these expensive regulations, the agencies assert that consumers and firms are incapable of making responsible purchase choices on their own. Thus, in a departure from standard cost-benefit practice, the agencies claim (without supporting evidence) that consumers and firms benefit from regulations that restrict product choices.

- By claiming regulatory benefits from the correction of so-called "consumer irrationality, agencies are shifting regulatory priorities from the important goal of mitigating the harm individuals impose on others (through pollution) towards the nebulous and unsupported goal of mitigating harm individuals cause to themselves by purchasing purportedly uneconomic products. The result is a host of costly regulations that have minimal effect on improving the environment. It also establishes a dangerous precedent: If regulatory agencies can justify regulations on the unsubstantiated premise that consumers and firms (but not regulators) are irrational, then they can justify the expansive use of regulatory powers to control and constrain virtually all choices consumers and firms make.

To learn more:

Gayer, Ted and W. Kip Viscusi. July 2012. "Overriding Consumer Preferences with Energy Regulations." Mercatus Working Paper No. 12-21.

BENEFITS: PROMISES AND PROOF

Richard Williams, *Director of Policy Research*, *Mercatus Center*

BAD SCIENCE, BAD REGULATIONS.
A look at how poorly crafted and applied risk assessment often yields unnecessary and ineffective regulations.

Summary:

- Since the 1970s, agencies have used so-called "conservative" risk assessments that intentionally overestimate potential risks, and tend to employ a selective use of science to support these biased estimates.

- Fifty years ago—when there were a handful of small agencies managing enormous risks—this conservative model had little downside. The risks were so large and obvious that it was almost a given that a regulation's benefits would outweigh its costs.

- But today, this scenario has reversed. We have much larger agencies dealing with much smaller and more nuanced problems. Yet we are still using the blunt instrument of conservative risk assessment.

- Overestimating risk in one area makes it impossible to weigh them against other risks that may arise from an agency's chosen course of action. As a result, an agency cannot know if its rule will improve—or worsen—safety.

- Conservative risk assessments also make it impossible to achieve objective cost-benefit analysis. If a risk assessment has overestimated the potential risk, the assumed benefits of reducing those risks will also be inflated.

Solutions:

- We cannot effectively improve the regulatory process or outcomes unless this foundational problem is corrected. Conservative risk assessment methods must be replaced with objective risk assessment methods that encompass the full range of risk, low to high.

- The standards for achieving objective risk assessment methods have already been clearly identified in the following: the Office of Management and Budget's Circular A-4 and the Information (Data) Quality Act.

- The missing piece of effective risk assessment reform is an effective enforcement mechanism. First steps toward achieving this aim include:

  - ✧ Establish judicial review of challenges under the Information (Data) Quality Act.

  - ✧ Require institutions to weigh all scientific views—both from agencies and stakeholders—equally.

  - ✧ Where possible, integrate cost-benefit and risk assessments into one analysis.

BENEFITS: PROMISES AND PROOF

Richard Williams, *Director of Policy Research*, *Mercatus Center*

To learn more:

Belzer, Richard, "Risk Assessment, Safety Assessment, and the Estimation of Regulatory Benefits," Mercatus Working Paper, Oct. 10, 2012 http://mercatus.org/publication/risk-assessment-safety-assessment-and-estimation-regulatory-benefits

Williams, Richard A. and Kimberly M. Thompson, "Integrated Analysis: Combining Risk and Economic Assessments While Preserving the Separation of Powers," Risk Analysis 24(6) 2004.

National Research Council, Review of the Environmental Protection Agency's Draft IRIS Assessment of Formaldehyde (2011) http://dels.nas.edu/Report/Review-Environmental-Protection-Agency/13142

OMB, *Current Regulatory Issues in Risk Assessment and Risk Management*, (Regulatory Program of the United States, Washington, DC, April 1, 1990–March 31, 1991), p, 13–26.

"Comment on OMB's Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations" Richard Williams, June 11, 2012 http://mercatus.org/publication/comment-ombs-draft-2012-report-congress-benefits-and-costs-federal-regulations

Albert L. Nichols and Richard J. Zeckhauser, "The Perils of Prudence: How Conservative Risk Assessments Distort Regulation," *Regulatory Toxicology and Pharmacology* 8 (1988).

BENEFITS: PROMISES AND PROOF

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LOOKING BACK TO SEE FORWARD – OSHA

Summary Points:

- To evaluate the Occupational Safety and Health Administration's (OSHA) effectiveness in improving workplace safety, one must account for possible improvements in safety that would have occurred in OSHA's absence.

  Workplace fatalities have fallen dramatically since OSHA's creation in 1970, but the decline began well before 1970 and shows no acceleration post 1970. Worker safety has improved over time because of the changing industrial mix of workers, improvements in safety technology, and expanding employer incentives arising from the labor market and states' workers' compensation insurance programs.

- Econometric studies find OSHA having only a modest impact on worker safety, a 2-4 percent reduction in non-fatal injuries and illnesses.

  More research on OSHA's impacts, particularly in the area of health-related illnesses, is needed. Although OSHA overall appears to be cost ineffective, some specific safety and health standards do generate more benefits than costs. Given what we do know, a better targeting of OSHA efforts could generate greater safety improvements with no increase in enforcement costs.

To learn more:

Leeth, John, "OSHA's Role in Improving Occupational Safety and Health", Mercatus Center, George Mason University, Working Paper.

WORKPLACE FATALITIES, 1933-2010