

## **Burden is Back: Comparing Regulatory Costs between Biden, Trump, and Obama**

By Casey B. Mulligan

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Government regulation may be the single greatest barrier to prosperity. The federal executive branch alone issues thousands of new regulations each year that add to the 200,000 pages of federal rules already in place.

With so many components, regulation can be difficult to distill into important trends or even to comprehend its cumulative costs. The purpose of this report is to compare and contrast the regulatory records of Presidents Biden, Trump, and Obama.

The main findings are:

- As of the end of 2022, the Biden administration imposed new regulatory costs on American households and businesses at a pace surpassing that of the Obama administration during a comparable period.
- The added costs from these Biden-era final rules, which include both their current and expected future costs, amount to almost \$10,000 per household. If regulatory costs continue to rise at the same rate as they did during the Obama administration, the total costs of Biden's rulemaking over an eight-year period would almost reach \$60,000 per household.
- While the automobile fuel economy and emissions standards contribute the greatest single cost, they still account for only a third of the total regulatory costs. Collectively, health, labor, telecommunications, and consumer finance regulations impose costs that exceed those of automobile regulations.
- President Trump reduced regulatory costs almost as fast as President Obama and Biden were adding them. Without even counting Operation Warp Speed, the Trump administration's agencies through four years reduced regulatory costs by almost \$11,000 per household in present value.
- Unlike President Obama, who had virtually no deregulation in his first two years, President Biden has already implemented several meaningful deregulations that are treated as negative costs in my estimates.
- This report is the first to comprehensively quantify the costs missing from agency cost assessments. Four agencies impose especially large opportunity and resource costs without acknowledging them.

This report does not assess regulatory benefits, although its bibliography includes references on that subject.

This report makes special use of databases related to agency rulemaking, which are introduced in the first section. The next two sections compare findings across administrations. The fourth section analyzes and audits agency assessments of regulatory costs. Agency cost assessments typically do not adhere to federal standards for cost-benefit analysis, resulting in a systematic and proven propensity to understate costs. A fifth section discusses other sources of regulatory costs while the final section concludes.

## Databases used in this study

One of five sources is a database of 4,884 final rules promulgated in the Federal Register between 2009 and 2022 as compiled weekly by the American Action Forum (AAF).<sup>1</sup> It indicates rule title, issuing agency, and the cost of the regulation as reported in the Federal Register by the issuing agency. Because two administrations issued final rules in each of 2009, 2017, and 2021, I merged the AAF data with the results of Federal Register searches to assign each rule to a presidential administration.<sup>2</sup> I added three important rules that were missing from the database for 2016: a privacy rule from the Federal Communication Commission (81 FR 87274); the rule jointly promulgated by the Department of Treasury, Department of Labor, and Department of Health and Human Services that prohibited the sale of health insurance plans with duration between three months and 364 days (81 FR 75316); and a Department of Labor rule creating an exception in federal law so that states could mandate employers provide retirement-savings plans.<sup>3</sup> Although technically a Department of Labor “administrator interpretation” (U.S. Department of Labor, Wages and Hour Division 2016) rather than a rule, I add a fourth record regarding the definition of “joint employer” because of its importance for understanding the scope of regulatory costs that are quantified by federal agencies.

The Department of Education’s 2022 student loan action (87 FR 61512) was, according to the Government Accountability Office, misclassified as “Waivers and modifications of statutory and regulatory provisions” rather than a rule as defined by the Administrative Procedure Act (U.S. Government Accountability Office 2023). I therefore added it as a fifth record. The Department of Education did not indicate any cost for the action in its Federal Register publication. If had undertaken quantitative analysis would likely have treated it as a transfer with essentially no aggregate cost.

A third database consists of the list of 362 Public Laws passed in the 117<sup>th</sup> Congress. Their titles and word counts were used to select those potentially containing economically significant regulations and deregulations during the first two years of the Biden Administration. A fourth database consists of nine federal laws enacted pursuant to the Congressional Review Act (CRA) that disapprove of (in effect, rescind) specific rules promulgated by federal agencies. Each of the nine is added to the AAF data as a “final rule” from the same agency with the same title, but (i) with cost equal to the negative of the cost that the agency assessed for the rule disapproved by Congress and (ii) date equal to the date enacted. That brings the amended database to 4,898 rules.

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<sup>1</sup> The data is publicly available at <http://regrodeo.com/>. It includes rules that quantify either regulatory costs or paperwork hours. While the Paperwork Reduction Act encourages agencies to at least consider paperwork hours, 90 percent of rules fail to quantify either (American Action Forum 2023). See also Crews (2015) and Ellig (2016).

<sup>2</sup> Four rules finalized by the Consumer Financial Protection Bureau (CFPB) in 2017 are coded as the Obama administration because as of that time President Trump had been unable to have his appointee head the CFPB. While the Obama appointee was still heading the agency, one of the 2017 rules was nullified as President Trump and the Republican Congress utilized their authority under the Congressional Review Act. President Biden was able to appoint his own acting CFPB director already on January 20, 2021.

<sup>3</sup> The Department of Labor promulgated two similar but separate rules on the same day (81 FR 59464 and 81 FR 59581). I treat the two rules as one for the purposes of this report, as I do for the two public laws passed in 2017 rescinding these rules.

The final source is the Council of Economic Adviser's (CEA) database of economically important federal rules, statutes, and guidance documents during the Obama and Trump administrations. This database includes reassessments of regulatory costs made by a team at CEA.<sup>4</sup> Although not a database, another tool used in this study is CEA's model of the cost of automobile ("light-duty vehicle") regulations concerning fuel economy and greenhouse gas emissions (Council of Economic Advisers 2020b).

## Categories of federal rules

The federal agencies vary widely in the type and scope of rules they promulgate and the quality with which they assess the costs of their rules. I partition them in categories so that the rules are more similar within category. One important category are the rules from the Environmental Protection Agency (EPA) and the Department of Transportation (DOT) regarding the emissions and fuel economy of cars ("light-duty vehicles"). I refer to these as the **CAFE/GHG rules**, in reference to DOT's Corporate Average Fuel Economy and EPA's attention to GreenHouse Gases. I count only six rules in this category between 2009 and 2022 – about 0.1 percent of all rules during that period, but they are of outsized importance in terms of any estimate of their costs. In addition to the EPA and DOT cost estimates, I use CEA's cost model that is based on the inter-manufacturer market for compliance credits (Council of Economic Advisers 2020b). As the amount of real money that market participants pay to relax their compliance, and what other participants receive to voluntarily exceed the standards, the price of these credits is a market indicator of compliance costs that is useful to contrast with the engineering analysis used by the agencies.

Another important category are the rules from the Department of Health and Human Services (HHS), the Federal Communications Commission (FCC), the Department of Labor (DOL), and the Consumer Financial Protection Bureau, which I call the **Big 4**. Many of their regulations have an unusually broad reach. Additionally, they have a particularly weak track record when it comes to quantifying their costs, as explained further below.

With much public attention to environmental rules and energy rules, I track EPA (apart from its CAFE/GHG rules) and the Department of Energy (DOE) separately. EPA is also worth tracking separately because of their cost assessments are much more comprehensive than the Big 4.

A fifth category consists of the "Airworthiness Directives" promulgated by DOT. These are typically more than 100 rules per year with a combined cost of less than \$1 billion. They are the Federal Aviation Administration's notifications that inform owners of various aircraft of a safety deficiency. The final category is the residual of the first five.

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<sup>4</sup> For some of the larger rules, the CEA consulted with OIRA and the agency issuing the rule.

## Comparing Three Administrations

### *Biden adds regulatory costs faster than Obama did*

Table 1a shows regulatory costs by rule category and administration. I present the results of the Obama administration through the end of 2010 for comparison with those of the Biden administration through the end of 2022.<sup>5</sup> Table 1b follows a similar structure for showing the numbers of rules.

Each category and administration has two cost estimates in Table 1a. One was prepared by the agency issuing the rule. The other is an estimate I prepared either from CEA's cost analysis or imputed on the basis of the empirical relationship between the agency cost and CEA's cost.

All table entries are expressed as a rate per year of rulemaking. An administration promulgating, say, 300 rules per year would have 1200 rules after four years and 2400 after eight. The costs of each rule are net present values because rules typically impose costs in the year the rule takes effect and in each subsequent year.

The Biden administration's regulatory costs through the end of 2022 exceed the Obama administration's over the same time frame. The Biden administration stands out in the "all other" category, which includes its action on forgiving student loans at taxpayer expense. The Congressional Budget Office (2023) estimates the budgetary cost to be \$316 billion, with almost all of this cost incurred in the first year of the action. According to OMB (1992, 2019), I estimate the regulatory cost to be the product of the \$316 billion and the marginal excess tax burden.<sup>6</sup>

In terms of both costs and number of finalized rules, the Obama administration was more active on EPA and Energy. The EPA rule with the greatest agency cost during that era was a set of "Effluent Limitations Guidelines and Standards" formulated for the first time in 2009 specifically for the construction industry. Also costly were a series of 2010 rules regarding "National Emission Standards for Hazardous Air Pollutants" that were more specific than predecessors. By comparison with the Biden administration, the Obama administration's DOE was quicker to finalize its rules regarding energy conservation standards for residential water heaters, fluorescent lamps, small electric motors, ice-cream freezers, and other appliances.

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<sup>5</sup> The full eight years of the Obama administration is shown in Appendix I. As will become clearer in what follows, the cost comparisons are facilitated by showing administrations in similar stage of their auto regulation. Both the Biden and Obama administration finalized their first CAFE/GHG rules during the first two years, with plans for more ambitious rules later. The Trump Administration finalized its first CAFE/GHG rule in 2020.

<sup>6</sup> That is, the regulatory cost is a fraction of the transfer. Arguably student loan forgiveness also adds moral hazard costs on loan-seeking behavior, which I did not estimate.

**Table 1a. Regulatory costs by administration and category***Includes CRA disapprovals but not other statutes, guidance documents, antitrust cases, or Operation Warp Speed*

Regulatory Costs, billions of 2022 \$ per year of rulemaking						
Category	Biden 2021-22		Trump		Obama 2009-10	
	Estimated by:		Estimated by:		Estimated by:	
	agency	this report	agency	this report	agency	this report
Big 4 agencies: HHS, FCC, Labor, CFPB	13.7	257.7	6.9	-272.6	11.9	200.4
Auto fuel economy/GHG standards	108.6	186.5	-55.8	-150.9	36.8	187.3
Other EPA	-2.8	1.2	-1.7	-2.8	8.4	13.9
Dept. of Energy	3.8	6.2	0.5	0.8	38.6	63.5
Airworthiness Directives (part of DOT)	0.3	0.3	0.5	0.5	0.8	0.8
All other	49.8	164.8	58.2	101.0	51.5	69.0
All regulations	173.4	616.7	8.6	-323.9	147.9	534.8

**Table 1b. Regulatory counts by administration and category***Includes CRA disapprovals but not other statutes, guidance documents, antitrust cases, or Operation Warp Speed*

Category	Numbers of regulations per year of rulemaking								
	Biden 2021-22			Trump			Obama 2009-10		
	Large rules			Large rules			Large rules		
	reg's	dereg's	Other	reg's	dereg's	Other	reg's	dereg's	Other
Big 4 agencies: HHS, FCC, Labor, CFPB	3.7	0.5	35.5	2.3	2.3	60.3	2.1	0	44.3
Auto fuel economy/GHG standards	1.0	0.0	0.0	0.0	0.3	0.3	1.0	0	1.0
Other EPA	0.0	0.5	11.5	0.5	0.8	20.8	2.6	0	25.0
Dept. of Energy	1.6	0.0	1.0	0.3	0.0	4.0	2.1	0	9.4
Airworthiness Directives (part of DOT)	0.0	0.0	113.7	0.0	0.0	110.3	0.0	0	159.1
All other	2.1	1.0	93.9	4.3	2.0	142.8	6.3	0	142.4
All regulations	8.3	2.1	255.7	7.3	5.3	338.3	14.1	0	381.4

Notes for Tables 1a and 1b: All table entries are expressed as a rate per year of rulemaking (e.g., President Trump had four years of rulemaking). Rule counts and agency costs are based on the American Action Forum's regulation database, which exclude rules that quantify neither regulatory costs nor paperwork burdens. A "large" rule involves a net present value cost or cost savings of at least \$1 billion, as estimated by the agency.

The Biden administration has fewer regulations per year than Obama and Trump in almost every category other than the airworthiness directives. The Biden administration stands out for a few relatively costly regulations, especially the student loan action from the Department of Education or the vaccine mandates.

*Trump reduced costs almost as fast as the others add them*

The Trump administration's results are entirely different. On an annual basis, President Trump was on net reducing regulatory costs (more than \$300 billion per year of rulemaking) almost as fast as Presidents Obama and Biden were creating them (\$600 billion per year of rulemaking). The first three categories show a lot of deregulation, especially regarding CAFEGHG and the Big 4. These include removing the net neutrality price controls (FCC), the prohibition on short-term health insurance plans, and various DOL rules discouraging competition in labor markets.

From the perspective of the totals, all three administrations are similar in terms of the residual "all other" category, at least if we take out the Biden student loan action that contributes about \$80 billion per year of rulemaking to Table 1a. President Trump's highest-cost regulations in this area were 2020 Defense Department rules requiring cybersecurity processes and practices by its suppliers. After the student-loan action, President Biden's most costly rule in this area was a Treasury rule imposing ownership reporting requirements on both domestic and foreign companies. President Obama's most costly regulation in this category for 2009-10 was a DOT regulation.<sup>7</sup>

Table 1b shows 5.3 large deregulations (rules reducing regulatory costs by at least \$1 billion in present value) per year for President Trump compared to 7.3 large regulations. This finding appears to contradict Executive Order 13771, which established a regulatory budget requiring (among other things) "that for every one new regulation issued, at least two prior regulations be identified for elimination" (82 FR 9339). The discrepancy reflects the fact that the AAF sample of rules differs from the rules included in the Trump administration's regulatory budget, with both samples excluding a large number of minor rules. Especially, the regulatory budget included any deregulatory rule, even if it did not quantify regulatory costs or paperwork burden.

An example is the 2018 HHS rule "Removing outmoded regulations regarding the Ricky Ray Hemophilia Relief Fund Program" (83 FR 30081), which officially terminated a program that "is no longer in effect or funded." HHS designated the rule as neither a "significant regulatory action" under EO 12866 nor a "major rule" under the Congressional Review Act, adding that it "is not a substantive rule; rather it is administrative in nature and provides no cost savings ... [and] does not affect any information collections." As such, it is not part of the AAF database, but was included in the regulatory budget because HHS "identifies this final rule as a deregulatory action

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<sup>7</sup> See Horney and Ellig (2016) for a critical analysis of the rule's cost assessment.

(removing an obsolete rule from the Code of Federal Regulations).” While nonsubstantive deregulations are part of the regulatory budget, nonsubstantive regulations are not. With that said, the combined cost savings from the Trump administration’s large deregulatory actions was substantial. By my estimates (Table 1a), the combined savings far exceeds the combined cost of its regulatory actions despite my imputation of large amounts of missing regulatory costs for the Big 4 category.<sup>8</sup>

### *Does President Biden ever deregulate?*

While the Biden administration deregulates far less than the Trump administration did, it has some deregulatory actions. By comparison, the Obama administration had zero rules finalized in 2009 or 2010 that it expected to save at least \$1 billion in regulatory costs.

The Biden administration’s deregulations largely fit into four categories: following through on deregulations proposed in the Trump administration, reversing price-control regulations imposed by the Trump administration, updating regulations to reflect technological progress, and accounting gimmicks.

Selecting from all Biden rules 2021-22 with cost savings (as estimated by the agency) of at least \$100 million, Table 2 shows three agency rules, as well as a statute, that follow through deregulatory projects initiated during the Trump administration. Hearing aids have traditionally required a prescription, making them expensive and more difficult for patients to access. The 2017 Over-the-Counter Hearing Aid Act required the FDA to, with 3 years, propose (via rulemaking) a category of hearing aids that could be sold over the counter. The proposed rule was open for comment and was then supposed to be followed by a final rule 180 days later. As Table 2 shows, the FDA missed the first deadline, but the Biden administration did finalize the rule.

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<sup>8</sup> As shown in what follows, 2020 was, by a wide margin, the top year for imputing missing regulatory costs.

**Table 2. Deregulating by following Trump through**

Type of deregulation	Trump initiative	Biden finishing	Savings (agency est.)
Allow hearing aids to be sold over the counter	Over-the-Counter Hearing Aid Act (Aug 2017)	FDA proposed rule Oct 2021. Final rule Aug 2022	\$0.6B
Undo Michelle Obama's school nutrition program, reducing expense and waste by allowing a wider range of foods.	Proposed rule Nov 2020.	Final rule Feb 2022.	\$4.6B
Federal Acquisition Regulation: Revision of Limitations on Subcontracting	Proposed rule Dec 2018.	Final rule Aug 2021.	\$0.2B
Reduce restrictions on telehealth provided through Medicare	2020 CARES Act and CMS waivers	Consolidated Appr. Act Dec 2022	NA

The next two rows show rules that the Trump administration proposed in the second half of its term and the Biden administration finalized. During the pandemic, the Trump administration removed barriers to the use of telehealth in the Medicare program, which is the federal health insurance program for the elderly and disabled. The Biden administration made some of the changes permanent by statute at the end of 2022.

At the same time, the Biden administration promulgated costly rules pursuant to the No Surprises Act signed by President Trump.<sup>9</sup> Those rules contribute about the same to my estimate of the Biden cost total as the student loan actions and more than offset the cost savings of the rules shown in Table 2.

Table 3 shows two instances of Biden administration rules that reduce cost by adapting old rules to new technology. The first rule allows manufacturers of driverless cars to skip those mandatory parts and specifications, such as the placement of a steering wheel, that are intended for cars driven in the traditional manner. The second rule, which could also be in Table 2 because it was proposed in 2019, allows certain types of bridges to be inspected biannually rather than annually because better data and trained personnel became available.

<sup>9</sup> As part of the 2021 Consolidated Appropriations Act, the bill received bipartisan support in Congress. President Biden's HHS refers to the subsequent rules as "the Biden-Harris Administration's Actions to Prevent Surprise Billing" (Centers for Medicare and Medicaid Services 2021).



**Table 3. Deregulation by modernizing**

Rule name	Rule description	Savings (agency est.)
Occupant Protection for Vehicles With Automated Driving Systems	"eliminate the need for [driverless car] manufacturers to equip vehicles with redundant manual driving controls in vehicles that do not have manual driving capabilities...."	\$0.9B
National Bridge Inspection Standards	New technologies "allow[] for a potentially large number of bridges that currently use a 24-month inspection interval to use Method 1 48-month inspection interval instead."	\$0.1B

The Office of Management and Budget has long viewed price control regulations with significant skepticism based on “economic theory and actual experience” with their unintended harms. The Biden administration implemented several price control schemes through the so-called Inflation Reduction Act alone. Table 4 shows two cases – aptly understood as deregulations – where the Biden administration removed price controls. One of the price controls is a prohibition of health insurance plans serving Medicare patients and their agents to receive discounts from pharmaceutical manufacturers known as rebates. The Office of the Actuary and the Congressional Budget Office estimated that the rule would transfer billions of dollars annually from taxpayers to pharmaceutical manufacturers by reducing competition among manufacturers. A significant part of funding the 2022 Inflation Reduction Act was achieved by delaying the implementation of that price control until at least 2032. A second Trump price control would set drug prices in another part of Medicare (Part B) equal to the price control determined by another OECD country. President Biden’s Health and Human Services Department (HHS) rescinded the rule, which was already at risk of being vacated by the courts.

**Table 4. Deregulating by removing price controls**

Type of deregulation	Trump regulation	Biden deregulation	Savings (agency est.)
Business-to-business price controls in pharmaceuticals ("Rebate rule")	Final rule Nov 2020	2022 Inflation Recovery Act	\$1.1B
Mirroring European prescription price controls ("Most Favored Nation")	Final rule Nov 2020	Final rule Dec 2021	\$0.2B

Table 5 lists five Biden administration rules that might be called deregulation because their agency authors estimate that they reduce costs, but the purported reductions are gimmicks. A common pattern in these rules is to focus on the costs saved by bureaucrats and ignore costs created elsewhere in the market. In one instance, President Trump required HHS to periodically review its old rules or let them expire. This SUNSET rule might have been a kind of automatic

deregulation machine, but would have required some effort from the bureaucracy at HHS. The Biden administration halted it, yet show cost savings due to the reduced bureaucratic effort.

**Table 5. Biden administration gimmicks that give the appearance of deregulation**

Rule description	Why it is a gimmick	Savings (agency est.)
Part of Obamacare annual parameters allows exchanges to do less auditing to confirm eligibility for subsidies	Only exchange effort is counted, with no estimate of the amount of fraud and its consequences	\$0.6B
Repeal Trump's requirement that HHS periodically review its rules or let them expire.	Only counts the effort of HHS bureaucrats and not the costs associated with letting HHS rules go on too long.	\$0.4B
Prohibit hydrocarbons commonly used for refrigeration	Markets have revealed a preference for the refrigerants and the associated services, so eliminating them has an opportunity cost that EPA ignored.	\$6.4B
Inadmissibility on Public Charge Grounds	These costs were already saved when the rule was vacated by the courts.	\$0.4B
Electronic filing with the Department of Justice changed from optional to mandatory	Some parties have revealed a preference for paper filing. Removing that option is an opportunity cost that is ignored.	\$0.1B

### **Federal agencies significantly understate the costs of their regulations**

According to Professor Cass Sunstein, a former Administrator of the Office of Information and Regulatory Affairs (OIRA), federal agencies have witnessed a “triumph of the technocrats” via a “cost-benefit revolution [that] requires regulators to demonstrate a genuine need for government action ... weaken[ing] the hold of interest groups, popular opinion, anecdotes, and intuitions” (Sunstein 2018). Yet, despite executive orders and guidance from the Office of Management and Budget (OMB) mandating a cost-benefit analysis (CBA) for important new regulations, agencies neglect major categories of costs – or fail to quantify any costs – of their rules.

#### *Debunking the Myth*

Although previous studies have documented agencies’ poor cost assessments, this report is the first to formulate and estimate a measurement error model. The model more reliably estimates regulatory costs created or saved by the agencies each year. This model, explained in what follows, is the basis for the alternative cost assessments presented in Tables 1a and 1b.

Aside from DOT and EPA, most prolific rulemaking agencies routinely overlook opportunity and resource costs. Perhaps motivated by the Paperwork Reduction Act, these agencies either leave costs unquantified (McLaughlin and Mulligan 2022) or only quantify clerical costs, often by estimating the number of hours required to perform the paperwork and multiplying by an estimate of the hourly wage of the personnel doing the paperwork.

The basic idea is to conduct an audit of the rules finalized in 2016. This helps quantify patterns of missing costs, which can then be used to impute missing costs in the other years 2009-15 and 2017-2022. Because the purpose is to assess total costs in each category, the strategy is to audit the most important rules.<sup>10</sup> The CEA (2019a) selected important rules based on public attention – as indicated by either Congressional action or a large number of public comments, eleven of which were finalized in 2016. Four of these rules had no cost assessed. All of those were from one of the “Big 4” agencies.<sup>11</sup> One of the important rules with no costs assessed is

*“the 2016 prohibition of “junk” insurance plans. No cost was assessed for this rule (RIN 1210-AB75) because the rule was designated as not economically significant, but this designation is not supposed to be used unless there is no material adverse effect on any sector of the economy. It seems improbable that no material adverse effect would result from a regulation prohibiting a product that 2 million people would be purchasing (as estimated by the nonpartisan Congressional Budget Office). The CEA later estimated that the annual cost of this regulation was \$13 billion, which is 130 times the monetary threshold for economic significance.”* McLaughlin and Mulligan (2022, p. 16).

Six others assessed costs significantly lower than CEA did. Only one, from the Department of Agriculture, assessed (slightly) more cost than CEA did.

Table 6 shows the overall results of the 2016 audit.<sup>12</sup> For every dollar of costs that the Big 4 agency acknowledged in their final rules, the audit found another \$15.9 in costs in just six rules. Conservatively assuming that there are no missing costs in the other 68 rules from the Big 4, I assume that the true costs of the Big 4’s regulations in years other than 2016 are 16.9 times the

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<sup>10</sup> By any assessment, the distribution of regulatory costs across a year’s rules is highly skewed, with just a few rules accounting for most of the total. A random audit would therefore be unreliable because it would far understate the average in the likely case that the few large rules were not sampled. Conversely, if the sample happened to include one of the high-cost rules, the random sample method would significantly overestimate the costs of the unsampled rules.

<sup>11</sup> CFPB’s final rules in 2016 reported essentially no costs. More important rules would be finalized in 2017 by President Obama’s director, one of which would assess no costs (82 FR 54472) and the other assess only \$380 million (82 FR 33210).

<sup>12</sup> In preparing improved cost estimates, CEA (2020a) reviewed “more than 6,000 pages of federal statutes, the Federal Register, and separate agency impact analyses.” As part of publishing several of the alternative estimates in *Economic Reports of the President*, the relevant agencies reviewed them with the opportunity to recommend changes or even veto their publication (Mulligan 2020).

costs that the combined agencies report for the year. Whenever the Big 4 deregulates, I make no adjustment to the agency's cost savings except for the three deregulatory rules audited by CEA.<sup>13</sup>

The missing-cost ratio for the remaining rule categories is much less: only 0.7. For all rules that are not from DOT, not CAFECHG, and not Big 4, I assumed that the true costs and costs savings are 1.7 times the reported amount. I assume no missing costs for DOT rules. CAFECHG rules are each audited.

The \$16 missing costs per dollar reported for the Big 4 is measured in 2016, but imputed for other years. About one-third of the imputed (NPV) costs are in 2020 (about \$1 trillion, contributing about \$250 billion per year of rulemaking to the Trump-administration total). Most of these are from HHS, including the "rebate rule" (see below), the "Transparency rule," and various rules special for the pandemic. \$450 billion of the imputed costs are for 2021, and are primarily rules from HHS and Labor regarding the pandemic such as vaccine mandates.

Indeed, a lot of missing costs are expected from the Big 4, although further auditing would be required to know whether they occur in the same 16-to-1 ratio as they did in 2016.<sup>14</sup> For one, more than half of the FCC rules fail to quantify costs. HHS and DOL rarely consider opportunity or resource costs. Several examples, both before and after 2016, have a significant amount of missing costs. Take the 2020 "rebate" rule imposing price controls on business-to-business transactions in the pharmaceutical supply chain. Although OMB circular A-4 instructs that "a particularly demanding burden of proof is required to demonstrate the need for ... price controls," the rule only quantified clerical costs. I estimate the costs to be about \$10 billion per year, compared to the \$56 million in annual clerical costs assessed by the agency (a ratio of at least 170).<sup>15</sup> McLaughlin and Mulligan cite a 2012 HHS rule that mandated Medicare cover benzodiazepines, known to be at risk of "misuse and abuse" and subsequently identified in tens of thousands of drug overdoses. No cost was reported by the rule for this coverage provision. A July 2021 rule essentially reinstated the definition of "joint employer" made by President Obama's DOL. Although the rule jeopardizes the franchise business model, which is common throughout retail and real estate industries, it cites only \$4 million in annual costs.

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<sup>13</sup> These are DOL's Fiduciary rule (82 FR 56545), DOL's rescission (83 FR 33826) of the Persuader rule, and the law enacted disapproving CFPB's prohibition of arbitration agreements in consumer finance transactions (Public Law 115-74).

<sup>14</sup> President Biden's Executive Order 14008 (86 FR 7619) directs his administration to take "a government-wide approach to the climate crisis." The order specifically cites at least 20 agencies, including several (HHS, Treasury, Labor, HUD) with traditional missions unrelated to carbon emissions or climate. Because these agencies are particularly ill-suited for assessing the costs of "tackling the climate crisis," the magnitude of unmeasured regulatory costs may be greater after 2020 than it was before.

<sup>15</sup> Table 1a reflects an imputation of \$17 billion in missing rebate-rule costs based on Table 6's factor of 16, which is also applied to other Big 4 regulations that are neither from 2016 nor in the CEA sample. The purpose of noting that the rebate rule was in fact missing costs by a factor of well more than 100 is to confirm that Big 4 missing costs are in the hundreds of billions while the agencies rarely acknowledge costs beyond \$10 billion.

**Table 6. 2016 Audit Results***Rule costs are in billions of 2022 dollars. DOT rules are excluded*

Category	Audited Rule costs			Unaudited Rule costs			Total Rule costs		Missing costs per \$ disclosed
	Rules	Agency	Missing	Rules	Agency	Missing	Agency	Missing	
Big 4 agencies: HHS, FCC, Labor, CFPB	6	38	1,229	68	39	0	77	1,229	15.9
Auto fuel economy/GHG standards	0	0	0	0	0	0	0	0	NA
Other EPA	0	0	0	27	39	0	39	0	NA
Dept. of Energy	0	0	0	11	23	0	23	0	NA
Airworthiness Directives (part of DOT)	0	0	0	0	0	0	0	0	NA
All other	5	7	71	137	37	0	45	71	1.6
Other EPA + DOE + "all other"	5	7	71	175	99	0	107	71	0.7

President Trump required HHS to regularly review its older rules or let them expire (86 FR 5694). President Biden’s HHS withdrew the SUNSET rule (87 FR 32246). In genuine doublespeak, HHS refers to the withdrawal as *saving* costs because of the administrative burden it anticipates for its staff in considering whether patients and providers are unduly burdened. The rescission rule makes no attempt to quantify the burdens on patients or providers of adhering to outdated rules.

### *“Paperwork” costs*

OIRA keeps an information collection budget that quantifies the “paperwork burden imposed on the public by the Federal Government” (Office of Management and Budget 2021). The total, which includes the burden of longstanding rules, has been about 10 billion person-hours per year. The annual trend has been an increase of about 100 million additional hours per year (Goldbeck 2023). If each rule adds or subtracts paperwork in perpetuity and each paperwork hour has a \$42 opportunity cost, then a year with a 100-million-hour increase is adding a \$4.2 billion/year perpetuity of paperwork costs.<sup>16</sup> At the 7% discount rate that agencies often use and AAF uses in assembling its database, the net present value of such a year’s paperwork cost would be \$60 billion.

Recall from Table 1a that, excluding the CAFEGHG and EPA rules that are largely opportunity and resource costs, the agency costs total about \$70 billion per year of rulemaking during the Biden and Trump administrations and about \$100 billion during the Obama administration. If the paperwork part of this is \$60 billion, then we have another indicator that agencies are not quantifying much regulatory cost beyond paperwork.

### *Auto manufacturing regulation (CAFEGHG rules)*

I found six rules between 2009 and 2022 that change either fuel economy or emissions standards for light-duty vehicles. Because their costs are potentially orders of magnitude more than the costs of other “major” rules, I treated them individually as follows.

Between 2018 and 2020, the CEA constructed a model based on the inter-manufacturer market for compliance credits (Mulligan 2020). As the amount of real money that market participants pay to relax their compliance, and what other participants receive to voluntarily exceed the standards, the price of these credits is a market indicator of compliance costs. Furthermore, the credits are closely related to the effects of regulation on auto-industry real GDP as the national accounts traditionally assess them.

CEA used the model to assess the costs of the 2012 rule for 2017 and later model years, which it estimated to be almost \$800 billion in net present value. The 2020 “SAFE” rule rolled back that rule halfway in terms of fuel economy and emissions, but more than halfway in terms of costs because of the exorbitant costs of the last bits of abatement (in economics terms, “rising marginal cost”). In a report published in 2020, CEA estimated the cost savings to be about \$500 billion in

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<sup>16</sup> The U.S. Bureau of Labor Statistics (2023) estimates that employee compensation per hour in 2022 was \$42. A more detailed accounting would recognize that a year with a net increase in 100 million hours has new paperwork of more than that amount, offset by expiring paperwork requirements.

net present value (Council of Economic Advisers 2020b). In preparing this report, I used the same model to estimate the cost of EPA’s 2021 rule for light-duty vehicle emissions. I estimated a cost of \$309 billion, which is about 70 percent more than the EPA reported.<sup>17</sup> My cost estimate for the smaller 2009 and 2010 rules takes the agencies’ cost estimate and rescale it by a factor of 5.1, which is what CEA found for the 2012 rule.

## **Other sources of regulatory costs**

### *Other executive actions*

The executive branch sometimes regulates or deregulates without rulemaking. Such administrative actions include guidance documents, “administrator interpretations,” and “Secretary’s Orders.” The latter appear to be contributing to, among other things, low production of fossil fuels in the U.S. since 2020 (Moore and Mulligan 2022). These actions are not reflected in Tables 1a and 1b, which are limited to final rules and Congressional disapproval thereof.<sup>18</sup>

To some extent, executive orders are just precursors to rulemaking and other executive actions. As such, they help households and businesses anticipate future regulations, which may increase or decrease the costs of those regulations relative to what they would be if the regulations took effect more suddenly. Anticipation of future regulations may also play a role in low production of fossil fuels of late.

Two other significant examples of regulation without rulemaking occurred at the FDA during the Trump administration. In one, FDA commissioner Scott Gottlieb facilitated generic drug approvals beginning in 2017; it was followed by increases in the number of manufacturers and the first reduction in the consumer price index for prescription drugs in 46 calendar years (Mulligan 2022). Another instance was the improved regulatory procedures under Operation Warp Speed, which allowed vaccines for Covid-19 to become available to the public before the end of 2020 – many months, if not years, ahead of experts’ predictions. Warp Speed reduced the opportunity costs of regulation – months without a vaccination opportunity – by a trillion dollars or more.

### *Anti-trust policy*

While many federal agencies issue rulemaking to clarify their interpretation of the public laws under their jurisdiction, anti-trust enforcement is largely conducted on a case-by-case basis. The Department of Justice’s Antitrust Division, the Federal Trade Commission, or private parties may bring a case against a specific company it believes has violated anti-trust law. The court decisions in those cases are public information that other companies can use to assess what actions might be permissible for them.

Therefore, Table 1a does not reflect regulatory costs created or saved by changes in anti-trust policy over time. Some indicators suggest significant opportunity costs from the Biden administration’s stance against corporate mergers (Nylen and Davis 2023).

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<sup>17</sup> In 2022, DOT finalized a companion rule with comparatively little incremental cost. I rescaled that cost in the same 1.7 proportion that I found for the more costly 2021 EPA rule.

<sup>18</sup> One DOL administrator interpretation was included for the reasons cited at the beginning of this report.

### *Statutes: The Inflation Reduction Act*

Congress creates regulation too, ranging from the Merchant Marine Act of 1920 (Jones Act) to the so-called Inflation Reduction Act (IRA). The IRA is already famous for its spending, but it also creates several new regulations including at least four regulations that are, from an economic perspective, price controls. The IRA has the federal government setting three types of price ceilings on prescription drugs as well as price ceilings on drug-insurance premiums. The IRA also has a deregulation element, which is to delay the aforementioned rebate rule.

Among the regulatory costs of the IRA's price controls is a reduced pace of drug innovation (Philipson and Durie 2021). A rigorous analysis of the IRA's various regulatory provisions is beyond the scope of this report, but the costs could easily exceed \$100 billion in present value.

Note that the costs and cost savings of new statutes like the IRA, Dodd-Frank, or the Affordable Care Act may be counted in whole or in part as the agencies make rules pursuant to the statute. A simple example is the FDA rule allowing hearing aids to be sold over the counter (87 FR 50698). The rule assessed cost savings relative to a baseline of having no rule, even though it would be illegal to have no rule: the 2017 Over-the-Counter Hearing Aid Act required it. The point is not that FDA erred, but rather that it would be double counting to assess the costs savings of the 2017 Over-the-Counter Hearing Aid Act and add it to the cost savings reported in the FDA rule.

### *Statutes: The Congressional Review Act*

Pursuant to the Congressional Review Act, 19 rules have been overturned since 2009: 16 during the Trump administration and 3 so far during the Biden administration. I added the latter 3 as records in the rulemaking database, as I did for the six most economically important of the 16 during the Trump administration. Each is added as a rule from the same agency having the same title but with (i) cost equal to the negative of the cost that the agency assessed for the rule disapproved by Congress and (ii) date equal to the date enacted.

### *Statutes: PAYGO rule for Executive Branch Actions*

The Administrative Pay-as-you-go Act of 2023 requires agencies engaging in discretionary rulemaking that affects federal spending to estimate the rule's budgetary effects. Those that increase spending must include a proposal for additional administrative actions to reduce spending by a commensurate amount.

Note that the budgetary effects of a regulation, while relevant to preparing the federal budget, are distinct from regulatory costs which can be the result of transfers from taxpayers to others but are not identical to those transfers. As OMB Circular A-4 directs rule makers, "Transfers occur when wealth or income is redistributed without any direct change in aggregate social welfare. To the extent that regulatory outputs reflect transfers rather than net welfare gains to society, you should identify them as transfers rather than benefits or costs. ... If transfers have sufficient efficiency effects ... you should report them [as costs]" (Office of Management and Budget 2003). An example is the aforementioned rebate rule, which was expected to transfer about \$20 billion per year from taxpayers to pharmaceutical manufacturers, but the net efficiency cost of that transfer is



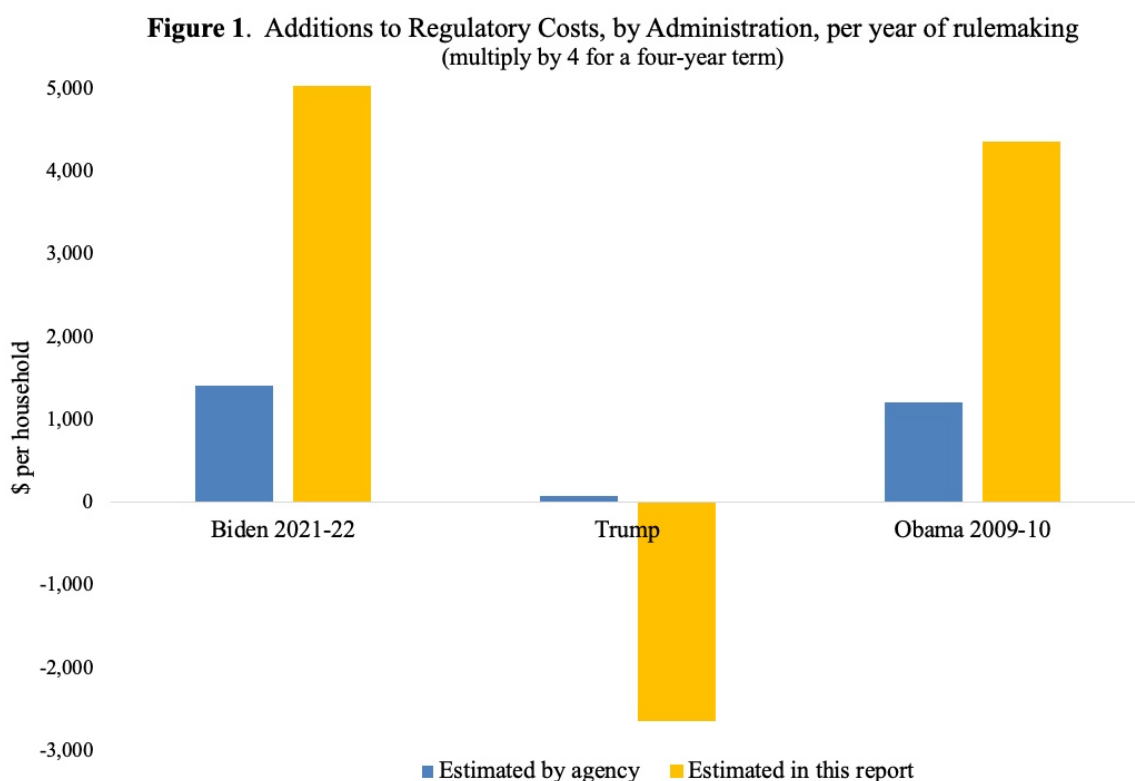
some fraction of the \$20 billion. Moreover, regulations can impose costs on households and businesses without any commensurate effect on the federal budget.

The relationship between transfers and regulatory costs also sheds light on the relationship between administrative PAYGO and the regulatory budget that President Trump initiated with his Executive Order 13771. The regulatory budget required each agency to initially have net regulatory costs of zero (negative in subsequent years) but put no official limit on budgetary costs. PAYGO limits the budgetary costs but not the regulatory costs.

## Conclusions

Table 1a shows that the Biden administration has so far been adding regulatory costs at a rate of \$617 billion per year of rulemaking, not counting regulatory costs created by statutes and other non-rule regulatory actions. Assuming that the U.S. has 123 million households, the amount shown in Table 1a is equivalent to about \$9,600 per household for the rules finalized in 2021 and 2022. These costs are spread over time rather than concentrated in the first year that the rule takes effect.

Table 1a's results are shown graphically in Figure 1, expressed per year of rulemaking. That is, multiply by four for an estimate of regulatory costs during a full presidential term of rulemaking or by eight for two terms.



Each time frame includes the administration's first round of rules setting fuel-economy standards for light-duty vehicles, but not subsequent rules.

More rulemaking is ahead for the Biden administration. If its rulemaking costs accelerate at the same pace that the Obama administration's did, the result after eight years would be a cumulative \$7 trillion, which is almost \$60,000 per household.

President Trump showed that regulatory costs can be subtracted rather than perpetually added. Four years of President Trump reduced regulatory costs by about \$11,000 per household. Eight years would have saved a total of more than \$21,000, which is a gap of \$61,000 to \$80,000 from the Biden trajectory.

Even if we ignore the large number of regulatory costs missing from the agency estimates, they show a meaningful gap too.<sup>19</sup> Eight years of President Trump would add only \$561 to the average household's cost (agency estimate), whereas eight years of Biden staying 15 percent ahead of the Obama administration would cost households almost \$11,000 each on average. The stagnation of economic growth, declining worker productivity, and wages that fail to keep up with inflation could well be linked to the resurgence of regulatory burdens.

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<sup>19</sup> Appendix II shows how these estimates compare to previous estimates of the regulatory-cost gap between the Trump and Obama administrations.

## Appendix I: Regulatory cost averages for all eight years of the Obama administration

Whereas Tables 1a and 1b compare the first two years (closer to 23 months) of the Biden and Obama administration, Table A-1 below shows all eight years the Obama administration. Because all three tables show the results per year of rulemaking, cumulative costs are estimated by multiplying by the number of years that the administration was engaged in rulemaking.

**Table A-1. Regulatory costs and counts for eight years of the Obama administration**

*Includes CRA disapprovals but not other statutes, guidance documents, or antitrust cases*

Category	Regulatory costs estimated by:		Numbers of rules		
	agency	this report	Large rules		Other
Big 4 agencies: HHS, FCC, Labor, CFPB	20.5	489.7	3.8	0.3	60.6
Auto fuel economy/GHG standards	33.6	171.2	0.4	0.0	0.4
Other EPA	21.1	26.6	2.5	0.0	23.5
Dept. of Energy	31.0	46.3	3.0	0.0	7.8
Airworthiness Directives (part of DOT)	0.9	1.4	0.0	0.0	146.9
All other	33.7	55.0	7.1	0.3	138.0
All regulations	140.9	790.3	16.8	0.5	377.1

Note: all table entries are expressed per year of rulemaking, of which the Obama administration had eight.

## Appendix II: Comparison with CEA estimates

This report's purpose is to consistently estimate regulatory costs across three administrations and 14 years. In doing so, the scope of the quantitative work is limited to exclude statutes and subregulatory actions such as guidance documents. The Council of Economic Advisers (2019a, 2020a, 2020b) focused on the cost savings between 2017 and 2019 but included statutes and subregulatory guidance. It concluded that *annual* regulatory costs were reduced about \$220 billion against a baseline of a \$238 billion increase.

If Tables 1a and A-1 are converted to annualized costs with a 7 percent rate, they show \$91 billion savings against a baseline of a \$220 billion increase (not to be confused with CEA's \$220 billion). \$70 billion of the difference between the two cost savings estimates is the cost savings that CEA estimated for the statutes and subregulatory actions. Moreover, the year 2020 proved to be different from 2017-19. Aside from the CAFEGHG rules, more than 90 percent of the Trump-agency costs shown in Table 1a (\$66 billion per year of rulemaking) are due to regulations finalized in 2020. Some of the more notable of these regulations are cited in the main text of this report.

On the other hand, neither Table 1a nor the CEA estimates includes Operation Warp Speed, whose cost savings dwarf even those of President Trump's CAFEGHG rules.<sup>20</sup>

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<sup>20</sup> In 2019, CEA (2019b) did consider a hypothetical pandemic, concluding that removing regulatory barriers would be worth a trillion dollars or more.

## Bibliography

- American Action Forum. 2023. "Regulation Rodeo." *regrodeo.com*.
- Centers for Medicare and Medicaid Services. 2021. "What You Need to Know about the Biden-Harris Administration's Actions to Prevent Surprise Billing." *cms.gov*. July 1.  
<https://www.cms.gov/newsroom/fact-sheets/what-you-need-know-about-biden-harris-administrations-actions-prevent-surprise-billing>.
- Congressional Budget Office. 2023. "Cost Estimate (H.J. Res 45)." *cbo.gov*. May 18.  
<https://www.cbo.gov/system/files/2023-05/hjres45.pdf>.
- Council of Economic Advisers. 2020a. *Economic Report of the President*. Executive Office of the President.
- Council of Economic Advisers. 2020b. *Estimating the Value of Deregulating Automobile Manufacturing Using Market Prices for Emissions Credits*. Executive Office of the President. [https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/12/CEA\\_SAFE\\_Report.pdf](https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/12/CEA_SAFE_Report.pdf).
- . 2019b. "Mitigating the Impact of Pandemic Influenza through Vaccine Innovation." *trumpwhitehouse.archives.gov*. September. <https://trumpwhitehouse.archives.gov/wp-content/uploads/2019/09/Mitigating-the-Impact-of-Pandemic-Influenza-through-Vaccine-Innovation.pdf>.
- Council of Economic Advisers. 2019a. *The Economic Effects of Federal Deregulation since January 2017: An Interim Report*. Executive Office of the President.  
<https://www.whitehouse.gov/wp-content/uploads/2019/06/The-Economic-Effects-of-Federal-Deregulation-Interim-Report.pdf>.
- Crews, Clyde Wayne. 2015. "Less than 1 Percent of Federal Regulations Get Cost-Benefit Analysis." *cei.org*. November 17. <https://cei.org/blog/less-1-percent-federal-regulations-get-cost-benefit-analysis>.
- Ellig, Jerry. 2016. "Evaluating the Quality and Use of Regulatory Impact Analysis: The Mercatus Center's Regulatory Report Card, 2008-2013." (Mercatus).  
<https://www.mercatus.org/system/files/Ellig-Reg-Report-Card-Eval-v1.pdf>.
- Goldbeck, Dan. 2023. "Catching Up With the National Paperwork "Budget"." *americanactionforum.org*. June 1.  
<https://www.americanactionforum.org/insight/catching-up-with-the-national-paperwork-budget/>.
- Horney, Michael, and Jerry Ellig. 2016. "Preventing a Regulatory Train Wreck: Mandated Regulation and the Cautionary Tale of Positive Train Control." (Mercatus Working Paper).
- McLaughlin, Patrick A., and Casey B. Mulligan. 2022. "Three Misconceptions about Federal Regulation." *Journal of Benefit-Cost Analysis* 13: 287–309.
- Moore, Stephen, and Casey B. Mulligan. 2022. "The Cost of Biden's War on Oil and Gas: Nearly \$100 Billion a Year in Lost Output." *committeetounleashprosperity.com*. October.  
[https://committeetounleashprosperity.com/wp-content/uploads/2022/10/221004\\_CTUP\\_TheCostOfBidensWarOnOilAndGas.pdf](https://committeetounleashprosperity.com/wp-content/uploads/2022/10/221004_CTUP_TheCostOfBidensWarOnOilAndGas.pdf).
- Mulligan, Casey B. 2022. "Peltzman Revisited: Quantifying 21st-Century Opportunity Costs of Food and Drug Administration Regulation." *The Journal of Law and Economics* 65: S355–S387.
- . 2020. *You're Hired! Untold Successes and Failures of a Populist President*. Alexandria, VA: Republic Book Publishers.

- Nylen, Leah, and Michelle F. Davis. 2023. "US Antitrust Enforcers Are Chilling Big Mergers." *bloomberg.com*. May 10. <https://www.bloomberg.com/news/articles/2023-05-10/m-a-deal-pace-slows-as-biden-administration-cracks-down-on-antitrust#xj4y7vzkg>.
- Office of Management and Budget. 2003. "Circular A-4: Regulatory Analysis." (OMB, Office of Information and Regulatory Affairs).
- Office of Management and Budget. 1992. "Circular A-94: Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs." (OMB, Office of Information and Regulatory Affairs).  
<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A94/a094.pdf>.
- . 2021. "Information Collection Budget of the United States Government: 2018-2021." *whitehouse.gov*. <https://www.whitehouse.gov/wp-content/uploads/2023/05/2018-2021-ICB.pdf>.
- . 2019. "Marginal Excess Tax Burden as a Potential Cost Under E.O. 13771." *regulations.gov*.  
<https://www.regulations.gov/document?D=OMB-2017-0002-0055>.
- Philipson, Tomas, and Troy Durie. 2021. "The Evidence Base on the Impact of Price Controls on Medical Innovation." Tech. rep., Becker Friedman Institute Working Papers.
- Sunstein, Cass R. 2018. *The cost-benefit revolution*. Cambridge, MA: MIT Press.
- U.S. Bureau of Labor Statistics. 2023. "Employer Costs for Employee Compensation by ownership." *bls.gov*. March 17. <https://www.bls.gov/news.release/ecec.t01.htm>.
- U.S. Department of Labor, Wages and Hour Division. 2016. "Administrator's Interpretation No. 2016-1." *archive.org*. January 20.  
[https://web.archive.org/web/20160305010322/http://www.dol.gov/whd/flsa/Joint\\_Employment\\_AI.pdf](https://web.archive.org/web/20160305010322/http://www.dol.gov/whd/flsa/Joint_Employment_AI.pdf).
- U.S. Government Accountability Office. 2023. "U.S. Department of Education—Applicability of the Congressional Review Act to the Department of Education's Student Loan Debt Relief Website and Accompanying Federal Register Publication." *gao.gov*. March 17.  
<https://www.gao.gov/products/b-334644>.