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Evaluating the Trump Administration's Regulatory Reform Program

Ted Gayer
THE BROOKINGS INSTITUTION

Robert Litan
THE COUNCIL ON FOREIGN RELATIONS

Philip Wallach
THE BROOKINGS INSTITUTION

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Introduction

In his first week in office, President Trump issued Executive Order 13771, which aims to "manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations." It requires that "for every new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

At least since the Ford administration, there have been numerous efforts to require agencies to pay greater heed to analyzing the costs and benefits of major new regulations—indeed, the regulatory process has been the rare policy area in which presidents from the two major parties have broadly agreed, building on each other's efforts over the course of decades:

- President Carter formally launched White House oversight of major regulations (those with an estimated annual economic impact of at least $100 million) issued by executive branch agencies with Executive Order 12044, which mandated that agencies conduct regulatory analyses before issuing major rules, including a consideration of their economic consequences, but did not require balancing costs against estimated benefits.

- President Reagan replaced Carter's order with Executive Order 12291, which was the first to require that agencies explicitly balance estimated benefits of major regulations against their costs, assuming their underlying statutes permit it, stating that "regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society."

- President Clinton replaced that order with Executive Order 12866, which shifted from the requirement that benefits "outweigh" costs to the requirement that benefits "justify" costs, stating that "each agency shall assess both the costs and the benefits of the intended regulation and … propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs."

- President George W. Bush lightly amended E.O. 12866 through Executive Order 13422 (later revoked by President Obama), extending the White House oversight requirements to guidance documents issued by executive branch agencies.

- President Obama's Executive Order 13563 reaffirmed the principles established in E.O. 12866, including that agencies should propose or adopt a regulation only if "benefits justify its costs."[1]

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1. Each of the orders had other provisions, such as requiring agencies to publish regulatory agendas, or schedules of rules they intended to propose. We concentrate here on those provisions of the orders that specifically relate to the estimation and balancing of costs and benefits.

While prospective benefit-cost analyses have achieved a role in regulatory policymaking, regulations have accumulated for decades because agencies make little effort to eliminate or revise existing burdensome regulations. Congress addressed one particular burden of regulation with its Paperwork Reduction Acts of 1980 and 1995 (which created a nominal "budget" annually reported to Congress, though the reporting process has no budget-like properties), but the larger problem clearly persists (Dudley, 2016, p. 263). The Obama administration undertook a systematic "regulatory review" or "lookback" program beginning in 2011 meant to spur agencies to action in scrutinizing and updating old rules, with modest success (Raso, 2017).

The Trump administration's initiative, announced in Executive Order 13771, can be seen as a reaction to the limited use and effectiveness of the retrospective analyses called for by the Obama administration (and its predecessors). It is meant to force agencies to reexamine and prioritize existing regulations, by requiring that two old rules be eliminated for any new one proposed. Of course, it would be more desirable for harmful rules to be eliminated without any connection to new rules, but there are conceivable political economy reasons, discussed below, for why tying the elimination of old rules to the creation of new ones might make sense.

President Trump's executive order also establishes an administration-wide "regulatory budget," an idea that has percolated in academia and think tanks for some time. If properly implemented, a regulatory budget could have the most far-reaching impact of any executive branch regulatory reform since the Ford administration first introduced economic analysis into the regulatory review process.

There is every sign that the administration is serious about making its two-for-one requirement and the regulatory budget a reality in the coming months, although—as with many of the administration's policy goals—the likelihood of success is inhibited by the President's unfortunate and repeated tendency to divide rather than unite our body politic, and in the process divert attention from his own policy agenda.

This paper seeks to explain what Executive Order 13771 will mean in practice and identify the legal and practical challenges that administration officials responsible for implementing it will face. It then considers the worst- and best-case scenarios for the Trump administration's regulatory budget process and concludes by offering advice on how to make the most of this important opportunity.

The Rationale for a Regulatory Budget

The development of the regulatory policymaking process described above has been guided in large part by the economic principle that optimal policy (regulatory or otherwise) is achieved by maximizing net social benefits (the difference between total benefits and total costs to society). Indeed, President Carter's E.O. 12044 states that "regulatory objectives shall be chosen to maximize the net benefits to society," and the later executive orders also seek to "maximize net benefits," although the Clinton and Obama administrations explicitly require additional consideration of "distributive impacts" and "equity" when computing net benefits. These executive orders have spurred administrative guidance documents on best practices for agencies on how to measure benefits and costs of regulatory options. In short, it is now well established, through successive presidential administrations of both parties, that regulatory policymaking should be guided, to the extent permitted by law, by balancing benefits against costs.

This goal of maximizing net social benefits, accounting for distributive impacts and equity considerations, is the conceptually correct approach to regulating private activity. Regulations are meant to address market failures—such as firms taking illegal actions to acquire and exercise monopoly power, imposing costs on others through their production processes, or exploiting consumers' lack of information about the quality of their products and services. Agencies should identify the existence of market failures, evaluate the options for addressing them, analyze the benefits and costs associated with each option (including the benefits and costs of no government action), and choose the approach that maximizes net social benefits (which may or may not involve government intervention). Of course, in practice, the devil is in the details: conventions for evaluating costs and benefits, which are often difficult to quantify, have often been politically controversial. In addition, regulatory agencies may not fully account for new technologies when measuring the economic impacts of their proposed interventions; for example, new information sources on the Internet have the potential to reduce disclosure problems, and technologically advanced firms entering a market have the potential to mitigate monopoly.

In a world where regulatory agencies heeded the directive to maximize net social benefits—and where there was agreement on how to quantify them—a regulatory budget as proposed by President Trump would be unnecessary and likely harmful. If, and only if, regulations are adopted that maximize benefits less costs, then imposing a cost budget for the agencies would at best be non-binding or more likely block welfare-improving regulations. *At least as far as economic theory is concerned,* any *new regulation that offers more benefits than costs should be undertaken*, regardless of *its contribution to the aggregate regulatory cost to society*.

The justification for a regulatory budget, however, is that the real-world political economy of the regulatory policymaking process deviates from the conceptual ideal of maximizing net social benefits, leading to an inefficiently high burden from regulations. The main reason why the regulatory policymaking process might fall short of the conceptual ideal is that regulators are subject to public choice incentives that can make them prone to errors or misuse of the benefit-cost approach in regulatory decisionmaking. For example, regulators might succumb to incentives to maximize their authority rather than social welfare, pursuing regulatory actions that expand the scope of their agency but do not increase net benefits (Niskanen, 1971). Also, where a policy has high but diffuse costs and low but concentrated benefits, the stronger incentives of the few may have greater influence over the policymaker than the preferences of the many, leading to inefficient policies (Tullock, 2008). The concern is that these public choice incentives lead to inefficient regulations that impose a "government failure" whose costs outweigh any benefits from the attempted correction of a market failure (Winston, 2006). In addition, and perhaps most important, many regulatory statutes—those that authorize or compel agencies to issue rules in the first place—*do not permit* agencies to balance benefits against costs, or effectively limit their ability to do so.

As important as they are, institutional reforms of the regulatory process to increase adherence to the benefit-cost principle might not fully resolve the perverse incentives outlined above, and certainly cannot fix statutes that prohibit agency decisionmakers to act on their benefit-cost analyses. Examples of these reforms include proposals to establish an independent, bipartisan commission or a federal agency outside of the executive branch to either conduct or evaluate benefit-cost analyses, in order to address the perceived conflicts entailed when agencies conduct evaluations of their own regulatory proposals (Hahn and Litan, 1999; Greenstone, 2011); attempts by past administrations, such as President Obama's Executive Order 13563, to require agencies to conduct retrospective analyses of existing regulations, since evaluations made before regulations are implemented (when little is known about their effects) are likely

to have a high degree of error; proposals to require independent agencies to show benefits justify the costs (Hahn and Sunstein, 2002); or the proposal that agencies be required to undertake a new rulemaking when the results from a retrospective analysis find that the original analysis was misleading (Greenstone, 2011).

President Trump's approach—both the "two-for-one" requirement and the regulatory budget—breaks from the historical emphasis on maximizing net benefits and improving the use of and commitment to benefit-cost analysis, and instead offers a blunt institutional reform to rein in regulatory costs (without attention to benefits). This is presented as necessary to counter the political impulses that may produce excessive or inefficient regulation, or regulation that could be better designed (for example by using market-like incentives rather than commands and controls). Additionally, although the executive order does not make the point directly, a subsequent executive order (13777) on the enforcement of the two-for-one and regulatory budget requirements explicitly cites the concern that many existing regulations insufficiently value American jobs and job creation.

President Trump's cost-focused regulatory budget is not a new idea, though it is the first time the concept has actually been tried in the United States. A 1978 paper by Robert Crandall argues, "The most practical possibility for confronting regulators with the costs of their actions would be to construct a shadow budget to cover the resources that the agency requires private agents to consume in the pursuit of the regulatory goal" (Crandall, 1978, p. 429). The 1980 *Economic Report of the President* provides some cautions about the problems with a regulatory budget, but acknowledges the need for more consideration of "the impact of regulations on the economy" and the possibility that "tools like the regulatory budget may have to be developed" (Council of Economic Advisers, 1980, p. 126).

Indeed, the earlier proposals for adopting a regulatory budget recognize the merits of the benefit-cost approach and the goal of maximizing net social benefits; but they also acknowledge a need to counter the political incentives that can lead to overregulation. The logic of a regulatory budget is therefore political rather than economic. It is analogous to the fiscal budget for direct expenditures that limit the authority of agency spending. As discussed by DeMuth (1980, p. 34), using the two approaches (benefit-cost analysis and a cost budget) in tandem is "superior to either taken alone in constraining the costs of regulatory overreaching." Indeed, it is important to emphasize that these previous advocates for a regulatory budget see it as a supplement to, not as a replacement for, benefit-cost analysis; it is meant to counter the political impulses that can lead to overregulation. It was therefore a cause for concern that Trump's Executive Order 13771 did not reaffirm (as previous administrations have done) the important role of benefit-cost analysis, although this was rectified in a subsequent executive order (13777) and in the Office of Management and Budget's (OMB) guidance documents.

The regulatory budget idea is similar to the cost-effectiveness arguments for such policies as cap-and-trade to address climate change. Clearly, the goal is to reduce carbon emissions to the level that maximizes net benefits; but given the difficulty of measuring the benefits and costs of emissions abatement, a second-best approach is to develop a rough emissions target and use a price mechanism like cap-and-trade to achieve it at the least possible cost. Similarly, the regulatory budget attempts to fix the level of regulatory burden and provide incentives for prioritizing the highest-benefit regulations under this constraint.

Unlike the Trump regulatory budget, the earlier regulatory budget proposals advocated a strong role for Congress, similar to its role in the conventional fiscal expenditure budget process. As described by DeMuth (1980, pp. 30–31): "Each year (or at some longer interval), the federal government would establish an upper limit on the costs of its regulatory activities to the economy and would apportion this

sum among the individual regulatory agencies. This would presumably involve a budget proposal developed by the Office of Management and Budget in negotiation with the regulatory agencies, approved by the President, and submitted to Congress for review, revision, and passage." Litan and Nordhaus (1983) similarly argue that any budget-like process must "involve both the executive and legislative branches." In their approach, however, Congress would not vote on a total regulatory cost cap, given the complexities in quantifying regulatory costs (an issue with the Trump concept we discuss later), but rather approve a *list* of proposed rules compiled by the White House (or presumably OMB), each with estimated costs. Congress effectively would be voting on whether to permit the proposal to go forward through the conventional rulemaking process, though Congress could also modify the list if it desired.[2]

Whether or not a regulatory budget (in either dollar or list form) enhances social welfare depends on whether it is more likely to lead agencies to carefully prioritize their regulatory efforts, eliminating or revising their less effective regulations, or whether an exclusive focus on the cost constraint—absent consideration of the benefits of regulatory options—will lead agencies to forgo regulations that have high costs but positive net benefits. There are two categories of challenges that could limit the effectiveness of the regulatory budget approach: (i) regulatory policies, unlike expenditure policies, are subject to the Administrative Procedure Act, which limits the ability to eliminate, reform, or otherwise reallocate costs across regulations within and across agencies; (ii) there are many practical difficulties of implementing a regulatory budget, especially the challenge of measuring and monitoring regulatory costs. We address both of these challenges below. But first we turn to the lessons from other countries that have attempted a similar plan and then to the specific features of the regulatory budget plan that the Trump administration has announced.

Lessons from Canada and the United Kingdom

While the regulatory budget idea was first debated within the United States decades ago, Canada and the United Kingdom both moved to implement working systems before the U.S. In 2001, the Canadian province of British Columbia committed to reducing the regulatory burden by one-third in three years. It required that each ministry establish a baseline of its existing inventory of "regulatory requirements," defined as "an action or step that must be taken, or information that must be provided to access services, carry out business, or meet legal responsibilities under provincial legislation, regulation, policy, or forms" (British Columbia, 2016, p. 1). The initial count found over 330,000 such regulatory actions. In order to meet the three-year goal, each cabinet minister was required to match any new regulatory requirement with a plan to eliminate at least two offsetting requirements (Speer, 2016). In 2004, having surpassed the goal and achieving a 40 percent reduction in regulatory requirements, British Columbia imposed a regulatory cap mandating no net increase in regulatory requirements. This requirement has been extended three times, most recently to last until 2019, leading to a total reduction in regulatory requirements of 49 percent since 2001 (British Columbia, 2017).

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2. Posner (2002) advocates for a "net benefit account" budget, in which the benefit of every regulation from an agency would add to that agency's net benefit account and the cost would subtract from that account. Agencies would be required to keep positive balances.

Motivated by the success in British Columbia, in 2012 the Conservative-led Government of Canada released the Red Tape Reduction Action Plan, which required that for any new or amended regulation, regulators offset "an equal amount of administrative burden cost" from existing regulations (Government of Canada, 2012, p. 4). It also required at least one regulation be eliminated for every new one introduced (Government of Canada, 2016).

The Canada-wide regulatory plan differed from the approach taken by British Columbia in two important respects: (i) the Canadian regulatory budget is for "regulations," not the much more numerous "regulatory requirements"; (ii) the Canadian measure went beyond a cap on the number of requirements by imposing a *cost budget*, specifically, a cap on the "administrative burden cost," which is based on the Standard Cost Model used in many countries to estimate the amount of time and resources that businesses spend on complying with regulations (OECD, 2016). The Canadian measure considers these costs for only the first ten years of the regulation, applying a 7 percent discount rate (Government of Canada, 2015a). This internal rule of the government has led to reductions in administrative costs and fewer regulations (Government of Canada, 2015b), and was codified into Canadian law in 2015 (Jones, 2015).

In January 2011, the Conservative and Liberal Democrat coalition government of the United Kingdom instituted a regulatory reform plan that included a "one-in, one-out" system in which each department must assess the "net cost to business" of complying with any proposed regulation, ensure that the cost estimate is validated by an independent committee of experts (known as the Regulatory Policy Committee), and find a deregulatory measure that offsets the cost of the new regulation (HM Government, 2011). In January 2013, the requirement was increased to a "one-in, two-out" rule, which requires that the deregulatory measures must offset *twice the cost* of the new regulation, not merely eliminating two other regulations, as Canada has required and the Trump administration has just adopted (Department for Business, Innovation & Skills, 2014). In March 2016, the United Kingdom ramped up its regulatory offset program again, to become "one-in, three-out," again referring to costs, not the number of regulations (HM Government, 2016). The "net cost to business" under the United Kingdom's approach is computed as the "annualized direct net cost to business, incorporating direct recurring costs and transition costs, direct recurring benefits, and direct transitional benefits, spread out over the lifetime of the policy" (Department for Business, Innovation & Skills, 2014, p. 55).

The "deregulatory" measures pursued as offsets in the U.K. system often do not actually remove any regulatory requirements, but rather make regulatory compliance *less costly*, for instance by streamlining paperwork processes so that businesses could make some filings without the need of a lawyer (Kohli, 2017). Notably, European Union regulations and directives have been exempt from this requirement. The U.K. government reports that its regulatory offset polices have reduced both the number of regulations and the associated costs to businesses (Department for Business, Innovation & Skills, 2014). However, it is important to note that the U.K. system is designed only to offset the "net cost to business," which means that transfers from businesses to consumers or employees count as cost reductions. For example, almost half of the cost reduction required of the Department of Environment, Food & Rural Affairs was achieved by requiring larger retailers to charge for plastic bags, and substantial business cost reductions resulted from reducing required employer contributions to pension benefits (Morse, 2016). The United Kingdom's regulatory initiative, however, does not use a social welfare yardstick, and thus does not seek to maximize the net benefits of its regulations to society as a whole.

President Trump’s Two-for-One and Regulatory Budget Plans

The Trump administration’s push to join Canada and the United Kingdom as actual practitioners of regulatory budgeting is well underway, with many decisions having been made during the presidential transition and in the months following the inauguration.

President Trump issued Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” on January 30, 2017. As with the systems of Canada and the United Kingdom, it established a pay-as-you-go approach to constraining regulatory costs, requiring that “for every one new regulation issued, at least two prior regulations be identified for elimination.” In addition, for the remainder of fiscal year 2017, the agencies are required to keep their budgets neutral, meaning “the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero.” For fiscal year 2018 and continuing thereafter, during the presidential budget process, the OMB director must identify “a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency’s total incremental cost allowance will be permitted in that fiscal year.” Importantly, moving forward, the regulatory budget for each individual agency will be allowed to increase or decrease at the discretion of the OMB Director.

The regulatory budgets under the Trump order are agency-specific and not initially specified in the aggregate (though an aggregate incremental figure can be mathematically derived simply by adding up the agency budgets). It is reasonable to infer that legal constraints imposed by multiple regulatory authorizing statutes induced the administration to administer the regulatory budgets by agency, rather than in the aggregate.

Executive Order 13771 is deferential to legal constraints, citing that the regulatory cap in fiscal year 2017 applies “unless otherwise required by law,” that the requirement to offset future regulations applies “to the extent permitted by law,” and that “any agency eliminating existing costs associated with prior regulations … shall do so in accordance with the Administrative Procedure Act and applicable law.”

Executive Order 13771 takes an expansive view of what constitutes a regulation subject to the two-for-one requirement, including an “agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.” The order exempts “military regulations, national security, or foreign affairs function of the United States,” or “regulations related to agency organization, management, or personnel, or any other category of regulations exempted by the [OMB] Director.”[3] It also enables the OMB Director to provide guidance on how to measure and estimate regulatory costs, what qualifies as new and offsetting regulations, how to account for costs across different fiscal years and across different agencies, and which emergency or other circumstances might justify a waiver.

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3. It is ambiguous what is included in some of these categories. For example, “national security” can be interpreted broadly and can include such things as climate change (as President Obama directed the heads of the executive departments and agencies in a September 2016 memo).

Executive Order 13771 left unanswered many important questions on implementation. Two administration memos, issued on February 2, 2017, and April 5, 2017, provide further clarification about the regulatory cap (OMB, 2017a, 2017b).

The first (applicable to fiscal year 2017) states that the two-for-one requirement with full cost offset applies only to "significant regulatory actions,"[4] does not apply to transfers, is not required of independent agencies (for example, the Consumer Financial Protection Bureau, Securities and Exchange Commission, and Federal Reserve), and that new guidance or interpretative documents will be evaluated on a case-by-case basis to determine if they are subject to the requirements. The first memo requires that costs be measured as the opportunity cost to society, that future energy cost savings associated with energy efficiency regulations "in most cases" do not count as cost offsets, and that costs that occur across years be annualized in accordance with standard OMB practice. The memo states that "in general," the previously estimated costs from the original Regulatory Impact Analyses cannot be used, instead requiring "the most current information available on projected cost savings … to the extent feasible." It also allows agencies to request the OMB Director to transfer cost savings from another agency (a provision which if regularly invoked would effectively enable OMB to administer an aggregate executive branch regulatory cap). Finally, noting that the fiscal year 2017 requirements in Executive Order 13771 apply "unless otherwise required by law," the guidance allows agencies to "proceed with significant regulatory actions that need to be finalized in order to comply with an imminent statutory or judicial deadline even if they are not able to identify offsetting regulatory actions by the time of issuance."

The second memo (applicable to fiscal year 2017 and beyond) provides answers to numerous questions about the Executive Order. Notably, it indicates that regulatory actions stemming from statutes that prohibit the consideration of cost "will generally be required to offset the costs of such regulatory actions." This language seemingly represents an effort to circumvent statutory prohibitions against considering costs, and is likely to give rise to future litigation. Similarly, agencies must comply with any imminent statutory or judicially required deadlines, but are required to offset these regulatory actions "as soon as practicable thereafter."

The second memo instantiates many of the same requirements as the first: costs should be measured as the full opportunity cost to society and agencies should conform to prior practice in whether to categorize things as a benefit (which does not count in the offset) or a "negative cost." For example, future energy cost savings associated with energy efficiency regulations have typically been treated as benefits by the agencies, so should not count as cost savings when taking a 13771 deregulatory action. For costs and cost savings across years, agencies should compute present value estimates, using both a 7 and 3 percent discount rate. Agencies can bank deregulatory cost savings for future use, transfer deregulatory cost savings across the agency, and may submit a request to the OMB director for a deregulatory cost saving from another agency.

The final question of the second memo asks, "What happens if an agency is not in full compliance with the requirements of E.O. 13771 at the end of a fiscal year?" It instructs that within 30 days, the

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4. Executive Order 12866 defines "significant regulatory action" generally as any regulatory action that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

agency must submit for the OMB director's approval, a plan for coming into full compliance that addresses: (i) the reasons for, and magnitude of, non-compliance; (ii) how and when the agency will come into full compliance; and (iii) any other relevant information requested of the OMB director. Further, "OMB may recommend that an agency take additional steps to achieve compliance, such as publishing a notice in the *Federal Register* requesting ideas from the public on E.O. 13771 deregulatory actions to pursue. OMB may also request that agencies post plans approved by the [OMB] Director."

On February 24, 2017, the administration also issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda." This requires each agency, within 60 days, to designate an agency official as its Regulatory Reform Officer (RRO), who will oversee the implementation of Executive Order 13771 and other regulatory reform initiatives. This order further requires each agency to establish a Regulatory Reform Task Force (which includes the RRO as a member) to, among other things, "evaluate existing regulations … and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law."

Additional guidance on Executive Order 13777, issued on April 28, 2017 (OMB, 2017c), clarifies that it only applies to agencies subject to the regulatory review requirements of Executive Order 12866 (federal agencies of the executive branch, excluding "independent regulatory agencies"), although independent agencies "are still encouraged to comply."[5] It also requires that applicable agencies, starting with the fiscal year 2019 Annual Performance Plan, include performance indicators of the number of evaluations to identify potential deregulatory actions, the number of deregulatory actions recommend by the agency's Regulatory Reform Task Force, the number of deregulatory actions issued (recommended by the task force or otherwise), and the total incremental cost of all regulatory and deregulatory actions.

Legal Challenges

The Trump administration is clearly well on its way to instituting its two-for-one and zero-net-cost policies at this point, but before its plans can actually become effective it will have to work through a number of challenges, both legal and practical. This section works through the legal difficulties, and the next section explains why announcing these policies is easier than implementing them.

Historically, most regulatory budget plans have been envisioned as legal frameworks that Congress would enact into law. If that were the case, when the executive branch followed the prescribed procedures, it would be acting pursuant to Congress's instructions and would be in a very strong legal position. Because the Trump administration's two-for-one plan and zero-net-cost budget are unilateral executive

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5. Specifically, the E.O. applies to any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch, excluding the Government Accountability Office, Federal Election Commission, Federal Reserve Board, Commodity Futures Trading Commission, Consumer Product Safety Commission, Federal Communications Commission, Federal Deposit Insurance Corporation, Federal Energy Regulatory Commission, Federal Housing Finance Agency, Federal Maritime Commission, Federal Trade Commission, Interstate Commerce Commission, Mine Enforcement Safety and Health Review Commission, National Labor Relations Board, Nuclear Regulatory Commission, Occupational Safety and Health Review Commission, Postal Regulatory Commission, Securities and Exchange Commission, Consumer Financial Protection Bureau, Office of Financial Research, and Office of the Comptroller of the Currency.

branch maneuvers, they are in a much more precarious legal position.[6] Courts may well be suspicious that actions taken to satisfy the executive orders are in conflict with other laws—both procedural and substantive.[7]

Procedurally, the administration must comply with the Administrative Procedure Act's (APA) requirements. Especially important is the prohibition on any "arbitrary and capricious" decisions, which was applied to deregulatory actions in the seminal case of *Motor Vehicle Manufacturers' Association v. State Farm* (1983).[8] At issue in the case was a Reagan administration decision to withdraw a Carter administration rule issued by the National Highway Traffic Safety Administration (NHTSA) requiring all new cars to be equipped with either automatic seat belts or airbags. One of the incoming Reagan administration's first actions was a direction by the President to the NHTSA Administrator to effectively rescind the rule. Although NHTSA went through the APA's standard notice-and-comment procedure, the government argued that revocation of existing rules should be held to a lower standard of review than rules initially established. A unanimous Supreme Court explicitly rejected that view, holding that revocations or rescissions must pass the same "arbitrary and capricious" test required for all new rules, and then specifically held that NHTSA's particular revocation failed that test.

The Supreme Court's ruling in this case makes it virtually certain that the two-for-one requirement will require notice-and-comment procedures to be observed for the rules targeted for elimination. In other words, the administration cannot simply rescind existing rules at the moment it wants to promulgate a new rule, but must *propose* the elimination of two rules for each new *proposed* rule. Since some of the proposals to eliminate rules will undoubtedly invite legal challenges, there will be considerable uncertainty as to whether those rules really will end up being wiped from the *Code of Federal Regulations*. Any approach that attempted to bypass notice-and-comment procedures would likely run afoul of the APA, leading to defeats in courts and likely political backlash as well. Even when standard procedures are observed, there is no guarantee that attempts to roll back regulatory requirements will pass APA muster. Under *State Farm*, the administration will need to create an evidentiary record justifying any shift in policy rather than merely asserting that the relevant agency possesses the authority to reinterpret the statute at issue.

So far, it appears that the Trump administration is taking these APA requirements quite seriously. Rather than simply declaring Obama administration rules targeted for deregulation to be dead letters,

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6. Representative Mark Meadows (R-NC) recently introduced a bill (H.R. 2623) that would codify the two-for-one and regulatory budget requirements, as well as the implementation responsibilities of the Regulatory Reform Officers and Regulatory Reform Task Forces. Congressional passage of this bill (which seems unlikely any time soon) would remove some of the legal uncertainties over the Executive Order, though courts might still be required to sort out which statutory language prevails, that of this bill or the underlying regulatory statute.

7. The administration has already faced legal obstacles in delaying implementation of Obama-era rules, with the U.S. Court of Appeals for the District of Columbia Circuit ruling that the EPA must enforce the Obama administration's rule on methane emissions from oil and gas drilling and the subsequent reversal by the EPA of its plans to delay for one year the implementation of the Obama administration's ozone standards.

8. Chief Justice William Rehnquist, joined by three other justices, filed a separate concurring opinion, with a partial dissent. One of the coauthors of this paper (Litan) began his legal career in large measure as an associate attorney at the law firm representing State Farm, and worked on this litigation through the appellate court stage (he had joined another law firm before the case went to the Supreme Court). One of the other associates working on the matter at the time with Litan and others at the law firm was Merrick Garland, now the chief judge of the U.S. Court of Appeals for the D.C. Circuit.

they have couched their approach to these rules as initiated *reviews*, ostensibly without predetermined destinations. Rules targeted by these reviews include the Department of Labor's controversial and highly publicized "fiduciary rule" governing providers of retirement plan services (mutual funds and variable annuity products), whose effective date was delayed, but which the Secretary of Labor Alexander Acosta (2017) ultimately affirmed would be enforced while a full review took place; and the EPA's Clean Power Plan and other rules aimed at curbing carbon dioxide emissions to slow climate change. (The administration finally formally proposed rescinding the Clean Power Plan in October 2017, citing the rule's legal impermissibility as its main justification.) In each of these cases, the administration announced its intention to overturn these Obama rules, without technically doing so. Most readers, or even politicians in either party, are unlikely to read or put much emphasis on this last qualifier, but it is legally very important: reversal or change of an existing rule requires a new proposal, notice and comment under the APA, and a justification that the elimination or modification is not "arbitrary and capricious."

In any event, the Trump administration's regulatory actions to date—and possibly more similar announcements—will inevitably invite legal challenges, just as Reagan's reversal of the "airbag rule" was challenged in the early 1980s. Challengers to the replacements (or rescissions) of some rules will seek to strengthen their cases that the deregulatory actions ought to be seen as "arbitrary and capricious" by pointing out that the versions finalized by the Obama administration were blessed by federal appellate courts as consistent with the APA's requirements. This is the case for both the fiduciary rule and the controversial "net neutrality" rule issued by the Federal Communications Commission.[9] In both these cases, federal appellate courts already have upheld the rules against challenge (although at this writing, challengers to the fiduciary rule are still appealing a lower court ruling supporting the rule). Changes to these existing rules, if not ordered by fresh congressional enactments (unlikely to be forthcoming given Senate Democrats' willingness to filibuster), will need to be made on some basis that courts will find non-arbitrary. This is not impossible—courts are generally deferential to the statutory interpretations of executive branch agencies, so long as they can be justified. The administration may have new evidence regarding costs and benefits of the rules since they have gone into effect or were finalized, and there is no reason to think that there is only one non-arbitrary interpretation of most statutory requirements. Nonetheless, the arbitrary and capricious standard could represent a significant obstacle for the administration to overcome before policy changes can be effected with certainty.

It is worth noting at this point that the broad regulatory reform that currently has the strongest chance of passing Congress, the Regulatory Accountability Act (RAA), would significantly heighten the level of scrutiny agencies could expect to face in promulgating new rules and make it easier for outside groups to sue if they believed an agency mishandled some part of its benefit-cost analysis. While the ostensible goal of the RAA is to discipline new rulemaking, the greater level of scrutiny will also make it more legally difficult to rescind existing rules. Although much would depend on the particular language of whatever version of the RAA managed to secure passage (still very far from a sure thing), it is entirely possible that the RAA would thus make the Trump administration's deregulatory task more legally complicated.

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9. The latter rule subjects Internet Service Providers to regulation as "common carriers" under Title II of the Communications Act of 1934, and was issued by an independent agency, which is not covered by the president's executive order (nor could it be legally). But President Trump's FCC chair Ajit Pai has signaled his opposition to the current net neutrality rule. See Brodkin (2017).

The two-for-one deregulation requirement faces legal limits beyond the procedural obstacles. Laws require executive actions—often explicitly in the form of rulemakings—to implement statutory goals, with varying degrees of clarity. The president is constitutionally obligated to "take care that the laws be faithfully executed"—which means that he cannot disregard legal requirements without breaking his oath of office. Many deregulatory options that would be attractive to the administration on policy grounds are thus legally barred, since they remain mandated by law.

To give a brief example, consider the controversial Volcker Rule, which bars U.S. banks from proprietary trading. Although many would like to wipe the Volcker Rule off the books, section 619 of the Dodd-Frank Act requires its promulgation. Without some congressional amendment, this particular rule can only be replaced, not rescinded. Thousands of far less eye-catching statutory requirements are scattered throughout the *U.S. Code*, and the Trump administration must continue to respect these as it searches for deregulatory targets.

Practical Challenges to Instituting a Regulatory Budget

The legal challenges just described are considerable, but, on the whole, probably manageable given careful attention to the law. Some of the *practical* difficulties facing the Trump administration's regulatory budgeting, on the other hand, are fundamentally insoluble: they represent serious tradeoffs without clear right answers. How the administration resolves these practical problems nevertheless will define the potential for good and ill of its regulatory budgeting efforts; since many questions are apparently still unresolved, they deserve careful consideration.

The most fundamental question for any regulatory budget is how to measure costs. As a generalization, the more a measure gets at what we care about, the harder it is to measure cheaply, accurately, and with certainty. For example, measuring costs as pages of regulation is trivially easy to do, and one could imagine simply requiring that every new page of requirements be offset by the deletion of one page from the existing *Code of Federal Regulations*—but everyone with any knowledge of how regulations are written would agree that this would be a senseless exercise that fails to get at true social costs. Measuring the number of specific regulatory requirements or actions would be somewhat more meaningful; direct compliance and administrative costs more meaningful still; and best, but most difficult to measure, would be measuring the true opportunity cost of a regulation for society as a whole (Peacock, 2016).

According to its February 2017 guidance, the Trump administration will opt for the most difficult of these measures, opportunity cost. But that choice, and its reference to OMB Circular A-4, hardly ends the discussion. The Circular—a document defining internal OMB policies about how to measure costs for regulatory analyses—identifies opportunity cost with "willingness-to-pay" or "willingness-to-accept" or some combination of these concepts, but in no way definitively pins down the methodological choices needed to implement a system of estimating opportunity costs. The focus of Circular A-4 is on prospective new regulations, and thus may require updating to provide clear guidance on how to evaluate costs of existing regulations, subject to varying levels of available retrospective data. The greater complexity of opportunity cost estimates relative to the simpler (albeit less meaningful) alternative cost measures, could

lead to more imprecision, inconsistency, and misuse by the agencies in their efforts to fulfill their regulatory budget requirements. To mitigate this potential problem, OMB will need to develop a very detailed methodological guide that addresses such difficult questions as the treatment of indirect costs, which often requires estimating elasticities of supply and demand or risk aversion (Malyshev, 2010, pp. 72–73); whether effective transfers should be treated as costs or not; and whether there should ever be an inclusion of "negative costs," or whether this impermissibly strays into the realm of including benefits. How these thorny questions are resolved may, in the end, be less important than whether they are resolved decisively and clearly in the early stages of the regulatory budgeting experiment. If the administration fails to provide a clear set of guidelines early on, the whole exercise may be bogged down in endless accounting controversies that detract from agencies' ability to focus on substantive policymaking, whether regulatory or deregulatory.

Even supposing that the administration does furnish a relatively clear set of rules for estimating costs, the workload of doing so will be quite significant. This is especially the case because of OMB's instruction that agencies should not generally just dust off ex ante cost estimates previously conducted as part of the original rulemaking, but should instead do new cost estimates informed by evidence as to costs in practice. Some agencies may be able to cope better than others with this new burden, perhaps because their designated Regulatory Reform Officers have economics backgrounds of the sort necessary to conduct cost estimates. In any case, OMB should be attentive to the ways in which it could best farm out its analytic capabilities to agencies working to comply with the regulatory budget to facilitate speedy compliance. If it finds that there is an overall lack of capacity, it should appeal to Congress to increase the resources available, either to fund more analyst positions or to engage outside contractors *without conflicts* to provide these estimates.

OMB will also need to make some crucial choices about the timing and summing of costs incurred and costs saved. First, there is the choice of whether the zero-net-cost target is to be a global goal or whether each agency will have to achieve it individually. As discussed earlier, it appears the administration favors the latter approach, although allowing the possibility of some interagency cost transfers. If an agency successfully engages in major deregulation, it may have cost savings to spare, and it will be interesting to see whether those are allowed to be transferred to another agency as a way to manage its difficulties making budget. (OMB guidance also allows regulatory actions overturned by Congress—such as disapprovals of rules under the Congressional Review Act—to count as deregulatory actions for an agency's regulatory budget.)

Second, there is the question of when savings must happen, and whether they must be strictly contemporaneous with costs incurred. Agencies could be given maximum flexibility if they were allowed to "bank" cost savings eligible to be spent at any needed future time, or they could be required to align decisions about new regulatory costs and saved regulatory costs at a single moment of action. The latter might encourage shoddy, hurried estimates, whereas the former would give the agencies greater flexibility in applying the deregulatory offsets and allow them to build up inventories of cost savings. Current OMB guidelines only allow agencies to bank savings for the current and subsequent fiscal year.

Finally, there is the question of scope: just what kinds of agency actions are to be encompassed by this regulatory budgeting process? Saying "everything, but with some exemptions" just reframes the question: in what context will agency actions be exempt? Potential candidates include non-significant regulations (announced as exempt), non-rulemaking actions such as guidances (announced as non-exempt), actions from independent agencies (announced as exempt), rulemakings clearly fulfilling outstanding statutory or judicial obligations ("may qualify" as exempt), actions necessary to fulfilling international commitments

(unclear on whether exempt), and actions responding to civil emergencies ("may qualify" as exempt). Even if the exemptions do not overshadow the rule, there will be a danger that agency actors will see regulatory budgeting as a burden to be avoided by gaming exceptions when possible. Again, this puts a premium on up-front clarity.

Conclusion: Worst and Best Case Scenarios

It is fair to say that the Trump administration has launched the most ambitious regulatory budgeting program in human history—just a tremendous undertaking. Whereas Canada and the United Kingdom have managed to get their programs up and running with some success thanks to relying on relatively simple metrics of cost, in the United States the regulatory budget will attempt to get much closer to real social costs, at the expense of adding considerable complexity. That makes it potentially more meaningful and deep reaching, but also more likely to bog down and create a massive bureaucratic headache to go with those that already exist.

That makes the disappointing scenarios for the regulatory budget rather plausible, but not inevitable: that it will become not an engine for reform, but instead will provide a blunt instrument that either obstructs new regulations (irrespective of whether or not they are welfare-enhancing) or leads to new regulations coupled with haphazard cutting of existing regulations (again, failing to distinguish between the those that do and do not enhance social welfare).[10]

The former, which essentially means creating a giant bureaucratic headache for regulators, may sound downright lovely to a certain kind of libertarian who thinks that whatever is bad for the government must be good for everyone else. But if all that the Trump administration's regulatory budget turns out to be is an elaborate moratorium on new actions, that would represent a missed opportunity for would-be deregulators. The whole purpose of instituting a forcing mechanism is to confront the problem of accumulated and outdated regulatory requirements that burden U.S. businesses, thereby freeing Americans' energies for productive purposes and unleashing economic growth. If this administration's initiative ends up being nothing more than a pause in further accumulation—of both good and bad prospective regulations—it would stand as a harsh judgment on the likelihood that existing regulation would ever be seriously reformed.

Similarly, it will be a missed opportunity (although perhaps a less bad scenario than the one just noted) if Trump's regulatory budget efforts simply usher in a period of haphazard cutting in which important regulatory protections are abandoned simply to make the budgeting work out. There may well be a natural bias toward overregulation—and a regulatory budget may be a good way to counter that

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10. It is also possible that, notwithstanding the ambitions of the Trump administration's regulatory reforms, they could turn out to be rather inconsequential. One scenario, predicted by Belton, Krutilla, and Graham (2017), is that the two-for-one will be largely non-binding because the Trump administration will simply avoid proposing many new significant regulations that would trigger the requirement. Another possibility is that the procedures will never actually be observed. As of the end of FY2017, just a few rules have identified themselves as affected by E.O. 13771, with the vast majority of citations to the order noting why proposed rules are exempt (Bolen, 2017). This has led some observers to wonder if the potential legal headaches of the order (including a pending challenge brought by Public Citizen and others) will lead agencies to just avoid complying with it and OMB to avoid any kind of internal enforcement. Neither of these possibilities seems likely to us, however.

bias—but it does not follow that every regulation deserves equal scorn as a “job killer,” nor even that those regulations with the highest gross costs ought to be regarded with the most suspicion. The regulatory budget should work to focus our minds on the tradeoffs inherent in constraining private market behavior, not to give us cover for pretending that bigger cuts are necessarily better.

Expressing these concerns points us toward what should be considered the best-case scenario for the regulatory budget: that it will serve as an effective means of harnessing energy toward modernizing and streamlining regulation in a virtuous cycle involving both bureaucrats and regulated firms, which are the two groups with the most intimate knowledge of how the regulatory state actually functions. The promise of regulatory budgeting is that it asks both groups to furnish concrete, “scorable” ideas for cost savings that can be readily implemented in ways consistent with the law—and in fact says that if we cannot come up with these in practice, then new regulation must grind to a halt. If no ideas are forthcoming—if it turns out that the most that can be said about the economic burdens of regulation is that some people like to lodge more or less aesthetic complaints about them—then regulatory budgeting will fail. But if, as seems more likely, there are lots of opportunities to bring old regulations up to date with modern realities, and plenty of accumulated detritus to clear out, then the regulatory budget offers a much needed spur to action. It is up to the administration to carefully work this system out and realize this best-case scenario.

REFERENCES

Acosta, Alexander. 2017. “Deregulators Must Follow the Law, So Regulators Will Too.” *Wall Street Journal*, May 22.

Belton, Keith B., Kerry Krutilla, and John D. Graham. 2017. “Regulatory Reform in the Trump Era.” *Public Administration Review* 77, no. 5.

Bush, George W. 2007. “Executive Order 13422: Further Amendment to Executive Order 12866 on Regulatory Planning and Review.” Washington: White House. https://www.gpo.gov/fdsys/pkg/FR-2007-01-23/pdf/07-293.pdf

British Columbia. 2016. “How We Count.” Regulatory Reform Initiative. http://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/how_we_count_sept_2016.pdf

British Columbia. 2017. “Achieving a Modern Regulatory Environment.” 6th Annual Report. Regulatory Reform Initiative. http://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/5330_regreform_ar_2017_web.pdf

Brodkin, Jon. 2017. “Ajit Pai on Net Neutrality: ‘I Favor an Open Internet and I Oppose Title II.’” *Ars Technica*, January 31.

Bolen, Cheryl. 2017. “Trump’s 2-for-1 Regulatory Policy Yields Minimal Results.” *Bloomberg BNA*, September 29.

Carter, Jimmy. 1978. “Executive Order 12044: Improving Government Regulations.” Washington: White House. http://www.presidency.ucsb.edu/ws/?pid=30539

Clinton, William J. 1993. “Executive Order 12866: Regulatory Planning and Review.” Washington: White House. https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf

Council of Economic Advisers. 1980. *Economic Report of the President*. Washington: U.S. Government Printing Office.

Crandall, Robert W. 1978. “Federal Government Initiatives to Reduce the Price Level.” *Brookings Papers on Economic Activity*, no. 2: 401–40.

DeMuth, Christopher C. 1980. “The Regulatory Budget.” *Regulation* (March/April): 29–44.

Department for Business, Innovation & Skills. 2014. “The Ninth Statement of New Regulation.” London: HM Government. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397237/bis-14-p96b-ninth-statement-of-new-regulations-better-regulation-executive.pdf

Dudley, Susan E. 2016. “Can Fiscal Budget Concepts Improve Regulation?” *Legislation and Public Policy* 19, no. 2: 259–80.

Government of Canada. 2012. “Red Tape Reduction Action Plan.” https://www.canada.ca/content/dam/canada/tbs-sct/migration/hgw-cgf/priorities-priorites/rtrap-parfa/rtrapr-rparfa-eng.pdf

______. 2015a. “Red Tape Reduction Regulations: Regulatory Impact Analysis Statement.” http://www.gazette.gc.ca/rp-pr/p1/2015/2015-06-27/html/reg11-eng.php

______. 2015b. "Annual Report on the Application of the One-for-One Rule: 2014-15." https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/annual-report-application-one-for-one-rule-2014-2015.html

______. 2016. "One-for-One Rule." https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/one-for-one-rule.html

Greenstone, Michael. 2011. "Improving Regulatory Performance: Lessons from the United Kingdom." Testimony before the Budget Committee Task Force on Government Performance, U.S. Senate, November 16.

Hahn, Robert W., and Robert E. Litan. 1999. "The Regulatory Right-to-Know Act and the Congressional Office of Regulatory Analysis Act." Testimony before the Committee on Governmental Affairs, U.S. Senate, April 22.

Hahn, Robert W., and Cass R. Sunstein. 2002. "A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis." *University of Pennsylvania Law Review* 150, no. 5: 1489–552.

HM Government. 2011. "One-in, One-out: Statement of New Regulation." https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31617/11-p96a-one-in-one-out-new-regulation.pdf

______. 2016. "Government Going Further to Cut Red Tape by £10 Billion." Press release, March 3. https://www.gov.uk/government/news/government-going-further-to-cut-red-tape-by-10-billion

Jones, Laura. 2015. "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" Arlington, Va.: George Mason University, Mercatus Center. https://www.mercatus.org/system/files/Jones-Reg-Reform-British-Columbia.pdf

Kohli, Jitinder. 2017. "What President Trump Can Learn from the UK about Reducing Regulations." *Forbes*, January 27.

Litan, Robert E., and William D. Nordhaus. 1983. *Reforming Federal Regulation*. Yale University Press.

Malyshev, Nick. 2010. "A Primer on Regulatory Budgets." *OECD Journal on Budgeting*, no. 3: 69–78.

Morse, Amyas. 2016. "The Business Impact Target: Cutting the Cost of Regulation." London: National Audit Office. https://www.nao.org.uk/wp-content/uploads/2016/06/The-Business-Impact-Target-cutting-the-cost-of-regulation.pdf

Niskanen, William A. 1971. *Bureaucracy & Representative Government*. Chicago: AldineTransaction.

Obama, Barack. 2011. "Executive Order 13563: Improving Regulation and Regulatory Review." Washington: White House. https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review

______. 2016. "Climate Change and National Security." Presidential Memorandum, September 21. https://obamawhitehouse.archives.gov/the-press-office/2016/09/21/presidential-memorandum-climate-change-and-national-security

OECD (Organization for Economic Cooperation and Development). 2016. "International Standard Cost Model Manual: Measuring and Reducing Administrative Burdens for Businesses." http://www.oecd.org/gov/regulatory-policy/34227698.pdf

OMB (Office of Management and Budget). 2003. "Regulatory Analysis." Circular A-4, September 17. Washington. https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf

______. 2017a. "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled 'Reducing Regulation and Controlling Regulatory Costs.'" Memorandum, February 2. Washington: Office of Management and Budget, Office of Information and Regulatory Affairs. https://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/eo_iterim_guidance_reducing_regulations_controlling_regulatory_costs.pdf

______. 2017b. "Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs.'" Memorandum M-17-21, April 5. Washington: Office of Management and Budget, Office of Information and Regulatory Affairs. https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf

______. 2017c. "Guidance on Regulatory Reform Accountability under Executive Order 13777, titled 'Enforcing the Regulatory Reform Agenda.'" Memorandum M-17-23, April 28. Washington: Office of Management and Budget, Office of Information and Regulatory Affairs. https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-23.pdf

Peacock, Marcus. 2016. "Implementing a Two-for-One Regulatory Requirement in the U.S." Working Paper. Washington: George Washington University, Regulatory Studies Center.

Posner, Eric A. 2002. "Using Net Benefit Accounts to Discipline Agencies: A Thought Experiment." *University of Pennsylvania Law Review* 150, no. 5: 1473–88.

Raso, Connor. 2017. "Assessing Regulatory Retrospective Review under the Obama Administration." Report. Washington: Brookings Institution, Center on Regulation and Markets.

Reagan, Ronald. 1981. "Executive Order 12291: Federal Regulation." Washington: White House. https://www.archives.gov/federal-register/codification/executive-order/12291.html

Speer, Sean. 2016. "Regulatory Budgeting: Lessons from Canada." Policy Study no. 54. Washington: R Street Institute.

Trump, Donald J. 2017a. "Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs." Washington: White House. https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs

______. 2017b. “Executive Order 13777: Enforcing the Regulatory Reform Agenda.” Washington: White House. https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda

Tullock, Gordon. 2008. “Public Choice.” In *The New Palgrave Dictionary of Economics*, 2nd ed., edited by Steven N. Durlauf and Lawrence E. Blume. London: Palgrave Macmillan.

Winston, Clifford. 2006. *Government Failure versus Market Failure: Microeconomics Policy Research and Government Performance*. Washington: AEI-Brookings Joint Center for Regulatory Studies.

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