New American

Written by **William P. Hoar** on June 6, 2016

Published in the June 6, 2016 issue of the New American magazine. Vol. 32, No. 11

Correction, Please!

Ruinous Rule by Regulations

ITEM: *The* New York Times *for April 6, 2016, reported: "The rules governing how financial professionals handle the trillions of dollars they invest on behalf of Americans saving for retirement are about to get a lot tougher."*

The U.S. Labor Department, went on the Times, *"after years of battling Wall Street and the insurance industry, issued new regulations on Wednesday that will require financial advisers and brokers handling individual retirement and 401(k) accounts to act in the best interests of their clients. The government move is expected to encourage a shift of retirement funds into lower-cost investments — potentially saving billions of dollars for many ordinary investors — while setting off one of the biggest upheavals in the financial services industry in decades."*

ITEM: The Hill (*Washington, D.C.) for May 4, 2016, noted that the Social Security Administration "is proposing to report people who receive disability benefits and have a mental health condition to the FBI's background check system. The proposal, which stems from a memorandum that President Obama issued in 2013, would essentially block some people with severe mental health problems from buying guns."*

ITEM: *In an article entitled "FDA to Regulate E-Cigarette Industry," the* Wall Street Journal *for May 6, 2016, reported: "The U.S. government issued a tough set of rules for the e-cigarette industry on Thursday that included banning sales to anyone under 18, requiring package warning labels, and making all products — even those currently on the market — subject to government approval. In an action e-cigarette makers had been dreading, the Food and Drug Administration said it was assuming regulatory authority over e-cigarettes."*

ITEM: *The FDA announcement of the imposition of federal regulations on electronic cigarettes, according to a statement from Health and Human Services Secretary Sylvia Mathews Burwell, "is an important step in the fight for a tobacco-free generation." It will, she said, "help us catch up with changes in the marketplace."*

CORRECTION: *Isn't it thoughtful of our civil servants to "catch up" with what used to be known as a free market in a free country?*

The examples selected above illustrate the extent to which we have become a nation ruled not by laws passed by elected representatives, but by regulations handed down by faceless bureaucrats. Many other samples could have been chosen. All of this costs not just our freedoms but also huge amounts of money. Federal regulations are calculated not in the thousands or millions or billions of dollars — but in *trillions*.

Adding insult to injury, the officials weighing us down with balls and chains want us to think this is being done for our good. And of course they are the ones deciding what will be good for us.

You and your investment broker, if you can afford one after the new regs are in place, will be forced to follow "tougher" rules. Such measures almost always have unintended consequences, though many are predictable and many were also intended from the get-go. It's no coincidence that the regulations tend to favor those large interests already doing well enough to be able to withstand the changes. In many cases, they have had a hand in creating the rules, along with the aid of their lobbyists. That practice has become known as "regulatory capture," with the force of the federal government being used to help the interests — certain of those, at least — that it is supposedly regulating.

It has taken at least six years to get the "fiduciary standard" generally imposed on retirement advisors. The president says this is all a "very simple principle." As he has put it: "You want to give financial advice, you've got to put your client's interest first." He wants us to know that he is saving us from "bilkers." Never mind that financial fraud is already illegal.

Back in 2010, when the Obama Labor Department began this push, there was "industry pushback and criticism from lawmakers in both parties" that scuttled the plan, as the *Baltimore Sun* reported last year: "Opponents argued that the rules as written would have inadvertently prevented investors from receiving important advice and would have dictated how firms could compensate their employees."

The president wasn't buying any of that. "These industry doomsday predictions have not come true in other countries that have taken even more aggressive action on this issue than we're proposing," Obama said. "And if your business model rests on taking advantage, bilking hardworking Americans out of their retirement money, then you shouldn't be in business."

But under the plan, the protectors will mainly put out of business small firms, not unscrupulous ones. The rank and file in the business won't be pleased. As noted by David Jacobs in the *Business Report* (Baton Rouge) in April: "The costs to comply with the new rules will be more burdensome for small firms. As for the impact on consumers, critics say the greater costs and risks created by the new rule could price out smaller investors, forcing them to handle their investments themselves or use a so-called robo-adviser." Unsurprisingly, Jacobs writes, "prominent computerized investing services have come out in favor of the changes."

We are also about to be protected by the Social Security Administration, according to the rules it is making up. (The SSA says it is being forced to do this because of a 2007 law, if you want to believe that.) One might be a tad suspicious about the underlying intent of the new rules, given the Obama administration's obvious enmity to firearms in the hands of citizens and a similar push that has been made through the Department of Veterans Affairs.

The VA efforts "have met with controversy," as has been reported by *The Hill*. Senator Chuck Grassley (R-Iowa) has charged that "the VA has been reporting veterans to the FBI simply because they cannot manage their personal finances and must be assigned a fiduciary." The SSA now wants to do likewise with those receiving disability payments because they are unable to work due to mental health disorders, which is very broadly defined.

The administration would like us to think they are just defending us from a few people, in the words of the proposal, who have been "adjudicated as a mental defective."

Such as? *The Washington Times* has explained that the SSA has not provided "an estimate of how many people would be affected, but independent calculations suggest there are millions of people receiving benefits who have a 'representative payee' managing their affairs." The proposal has already started to draw "strong opposition from a powerful mix of groups, particularly disability advocates, who called the move 'extremely offensive' and based on broad generalizations," reported the *Times*. "Cheryl Bates-Harris at the National Disability Rights Network said there's no evidence connecting someone's ability to manage finances with being a dangerous gun owner. She said drawing that connection was stigmatizing and stereotyping those with disabilities."

Then, to mention another regulatory assault, there is the attack on the e-cigarette industry. One need not be a fan of the product to recognize the overstepping of the FDA's rule-making. Indeed, considering the political atmosphere these days, it's a surprise that the name of "Raleigh" in North Carolina has not been outlawed. When the FDA took it upon itself to regulate electronic cigarettes (as well as cigars, hookah tobacco, and pipe tobacco, among others), the head of the American Vaping Association said that is going to be "a grim day in the history of tobacco-harm reduction. It will be a day where thousands of small businesses will be contemplating whether they will continue to stay in business and employ people."

While not everyone agrees, there are many who make a good case that the use of e-cigs can be helpful in stopping traditional tobacco smoking. Boston University Professor Michael Siegel, a longtime advocate for anti-smoking policies, recently commented in a piece in the *Wall Street Journal* that the rules against e-cigs "will actually protect tobacco-cigarette sales at the expense of the public's health. They will also destroy thousands of small businesses and effectively hand the e-cigarette market over to a small number of large companies, including the tobacco companies."

The agency's actions, in other words, might well be a boon for "Big Tobacco" — which is probably why the large companies were happy when the little guys in the $3.5 billion industry got smacked by the new rules. Part of the regulations, as Jonathan Adler originally wrote for the "Volokh Conspiracy" blog (it was also published by the *Washington Post* and by the Foundation for Economic Education),

"deems" e-cigarettes to be tobacco products and subjects them to extensive regulatory requirements … more likely to harm public health than to help it. Big Tobacco, meanwhile, is likely to be pleased with the new regulations.

The new FDA regulation "deems" e-cigarettes to be tobacco products, for the purposes of federal law, but e-cigarettes do not contain tobacco and do not present anywhere near the health risks of smoking. E-cigarettes create vapor, not smoke (hence the term "vaping"), and the lack of combustion means that e-cigarettes expose users to relatively few of the harmful substances contained in tobacco smoke.

Most e-cigs do contain nicotine, however, which makes them a potential substitute for cigarettes. So, while e-cig use may not be risk-free (and what is?), e-cigs present a small fraction of the risks posed by smoking. This is but one reason the United Kingdom's Royal College of Physicians urges the use of e-cigs as a tool to help smokers quit.

Adler, a professor at Case Western University School of Law, has also noted that the large tobacco companies have their own e-cig brands and have been pushing for regulations that will hurt their smaller competitors. The FDA helped in the regard.

The regulators never rest. There is not enough room to list them all. The FDA, for example, has also been busy denying an experimental drug for boys with muscular dystrophy; the Consumer Financial Protection Bureau is doing its best to prove that large banks should be too big to fail; and the Environmental Protection Agency has been taking aim at bringing ruin to the coal industry — in this case by using a "haze rule" that is likely to close the West's largest coal plant, causing considerable harm to the nearby Navajo Nation. American Indians, of course, have a long history of being "beneficiaries" of paternal government actions.

Some of this would be amusing if it weren't hitting us in the pocketbook. A while ago, the London-based *Economist* mocked our over-regulated nation, mentioning (for example) a requirement by the Federal Railroad Administration: All trains must be painted with the letter "F" on the front so we will be able tell which end is which. To which we should say thanks to the feds for all of its B.S. (for "bureaucratic savvy").

This paperwork may well turn out to be injurious (though please don't tell the Occupational Safety and Health Administration). *The Economist* also pointed to some of the fallout because of government-required red tape in the healthcare industry. Every hour spent, said the publication,

treating a patient in America creates at least 30 minutes of paperwork, and often a whole hour. Next year [in 2013] the number of federally mandated categories of illness and injury for which hospitals may claim reimbursement will rise from 18,000 to 140,000. There are nine codes relating to injuries caused by parrots, and three relating to burns from flaming water-skis.

While the Obama White House and its many arms have paid lip service to employing "cost-benefit" analysis to new regulations, the *Economist* noted that "the administration has a bias towards overstating benefits and underestimating costs."

This adds up. A valuable study by the Mercatus Center at George Mason University has done the addition for 22 industries in its research on the long-term costs of regulation. Its recently released study found that the economic growth in the United States has, on average, been slowed by 0.8 percent per year since 1980 because of the cumulative effects of regulation. Among the findings (here paraphrasing its summary):

• If regulation had been held constant at levels observed in 1980, the U.S. economy would have been about 25 percent larger than it actually was as of 2012.

• This means that, in 2012, the economy was $4 trillion smaller than it would have been in the absence of regulatory growth since 1980.

• This amounts to a loss of approximately $13,000 per capita, a significant amount for most American workers.

As the year began, by one count, there were nearly 4,000 new rules and regulations snaking their way through the various bureaus of the U.S. government. They never stop.

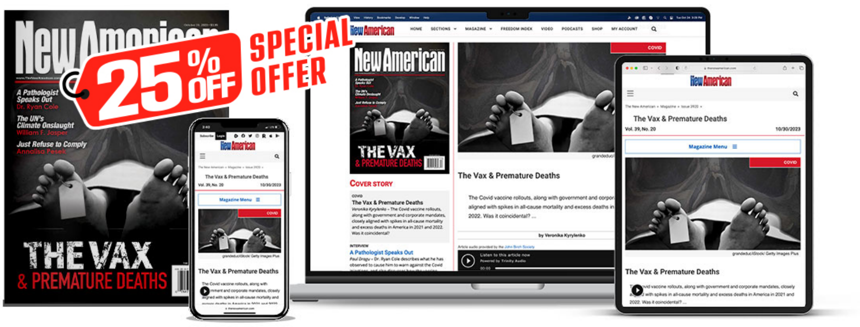
Written by William P. Hoar on June 6, 2016
Published in the June 6, 2016 issue of the New American magazine. Vol. 32, No. 11

Subscribe to the New American

Get exclusive digital access to the most informative,
non-partisan truthful news source for patriotic Americans!

Discover a refreshing blend of time-honored values, principles and insightful perspectives within the pages of "The New American" magazine. Delve into a world where tradition is the foundation, and exploration knows no bounds.

From politics and finance to foreign affairs, environment, culture, and technology, we bring you an unparalleled array of topics that matter most.



Subscribe

What's Included?

24 Issues Per Year
Optional Print Edition
Digital Edition Access
Exclusive Subscriber Content
Audio provided for all articles
Unlimited access to past issues
Coming Soon! Ad FREE
60-Day money back guarantee!
Cancel anytime.