



Written by [Bob Adelman](#) on February 8, 2012

## Regulatory Agencies Continue to Slow the Economy

In a recent editorial entitled “Regulation without Representation,” Investors Business Daily pointed out that a new federal rule or regulation is published every two hours, 24 hours a day, 365 days a year. But most of them escape the notice of Congress. Congress itself passes fewer than 200 in each session, the rest are promulgated by agencies in the Executive Branch in contravention of explicit instructions in the Constitution.



In a [landmark study](#) prepared for the Small Business Administration (SBA), Nicole and Mark Crain (pictured at left), economists at Lafayette College, counted the cost and concluded that regulations cost the American economy more than half the federal budget and even more than the annual deficit: an astounding \$1.75 trillion annually. And most of those costs land squarely on small businesses with fewer than 20 employees — the very engine that drives the economy, or doesn’t.

According to the authors, the regulatory burden on a small business in 2008 exceeded \$10,000 *per employee*! When that burden is translated into the burden on the ultimate consuming household — recognizing that all costs are ultimately paid by the consumer, directly or indirectly — the burden exceeds \$15,000 a year. And that is using data from 2008. When the total federal burden, both regulatory and fiscal, is calculated, the average household in America is saddled with costs approaching \$40,000 a year.

Here is how such regulation works: Administrative law, [according to Wikipedia](#) “exists because the Congress often grants broad authority to Executive branch agencies to interpret the statutes...which the agencies are entrusted with enforcing.” Wiki explains:

Congress may be too busy, congested, or gridlocked to micromanage the jurisdiction of those agencies by writing statutes that cover every possible detail, or Congress may determine that the technical specialists at the agency are best equipped to develop detailed applications of statutes to particular facts as they arise.

And that is crux of the matter. Under the Constitution (Article I, Section 1), “all legislative powers herein contained shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” Nowhere is power granted in the Constitution for said Congress to “grant broad authority to Executive branch agencies,” but there it is: an entire Fourth Branch of government that has sprung up out of a Congress that is “too busy, congested, or gridlocked,” to conduct itself



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properly according to the rules.

An example will suffice to illustrate the mischief that results: Congress enacts a law that there must not be “excessive” levels of mercury in any body of water in the United States (ignoring for the moment whether such a law in itself is constitutional or not); the Environmental Protection Agency (EPA) would then take that law and determine what constitutes “excessive,” what bodies of water are to be regulated, and what penalties will be applied to miscreants and polluters. In other words, the EPA recombines the Executive, Legislative and Judicial branches of the government, which the founders so clearly feared and rejected. Multiply that example by dozens of agencies and hundreds of statutes enforced by agency bureaucrats and the result: one new regulation every two hours.

Almost immediately the “Crain and Crain” study was attacked by those threatened by such unhappy and profoundly important information: environmentalists and their enablers such as [OMB Watch](#) and the [Center for Progressive Reform](#) (CPR). The last thing they wanted was for Congress even to consider reining in or terminating such unconstitutional behavior and so they challenged the study itself: a classic misdirection strategy. Said OMB Watch: “the \$1.75 trillion cost estimate is heavily based on flawed methodology and flawed data [and]...should not be used as a guide for policy.”

Ben Somberg of CPR wrote: “It’s their favorite figure: \$1.75 trillion. Repeated *ad nauseam* in congressional hearings by members of congress and expert witnesses alike, it is the supposed annual cost of regulation...”

Is it correct? A CPR white paper found a series of flawed methods in the study...

Folks who have cited the SBA study triumphantly ought to take a step back and really look at the study: Is the SBA’s methodology something they’d want to defend?

Defenders of out-of-control government such as Cass Sunstein, administrator of Office of Information and Regulatory Affairs, said the study is “deeply flawed and should not be relied on,” while Austen Goolsbee, chairman of the Council of Economic Advisers, said that the \$1.75 trillion figure is “utterly erroneous.”

The “Crain and Crain” study for the SBA initially had such a profound effect on congressional leaders that Congressman Geoff Davis (R-Ky.) and Senator Rand Paul (R-Ky.) introduced a bill to rein in such extra-legal agencies enacting such heavy burdens on the economy, called appropriately, the REINS Act (Regulations for the Executive in Need of Scrutiny). The bill basically said that any major piece of administrative law that would cost \$100 million a year or more would have to be approved by both the House and the Senate and then signed into law by the President.

In slow motion, REINS inched its way through the legislative process and was finally passed by the House, 241-184, in December. The Senate is unlikely to take up consideration of the bill for reasons that only a statist such as House Minority Whip Steny Hoyer (D-Md.) [could love](#):

The REINS Act would undermine our ability to protect children...prevent asthma...and ensure that our small businesses can compete fairly...

At the same time, it would force Congress to play a larger role in the regulatory process, leading to even more gridlock in Washington.

Ah yes, gridlock — that wonderful confluence of competing interests deliberately built into the Constitution by the founders to keep government inside the box and off the backs of its citizens.

That is, as always, the battle that is being waged: overweening government versus individual freedom.



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Thanks be to Crain and Crain for bringing the costs of that overweening government to the attention of the Congress that allowed it to happen in the first place.



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