The Aggregate Economic Cost of New Labor Market Regulations

Center for Manufacturing Research

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Executive Summary

In its last year of governing, the Administration has made significant efforts to fix what it sees as myriad flaws in the labor market. As a result, new regulations and policies have been proposed and implemented ranging from reclassifying millions of workers from salaried to hourly employees, altering the well-established union election rules and definitions of who is an employer. Additionally, standards like permissible silica dust exposure and how employers will report injuries and illnesses in the workplace will be greatly amended at a considerable cost to private companies. Companies will also have to report more data to the federal government more frequently and in a more disaggregated way to make it easier to discern pay differentials. The simple fact is that these regulatory actions, taken together, will cost U.S. businesses billions of dollars a year, and a sizeable portion of this bill will be effectively paid by workers in the form of lower wages or fewer jobs.

We estimate that the rules issued by the Department of Labor (DOL), the National Labor Relations Board (NLRB) and Equal Employment Opportunity Commission (EEOC) in the Administration's last year will cost the economy roughly $80 billion over the next ten years, as well as over 400 million paperwork hours that companies will need to invest in compliance with the law. Taken together, these regulations constitute a significant burden for the industries most affected as well as their workers. They could also have the potential to undermine entrenched and successful business models, as well as completely change the economies of scale in several industries and all but drive out small, independent firms.

We also estimate that there will be an aggregate job loss in excess of 150,000 workers from the imposition of these regulations, along with more jobs being changed from full-time to part-time status. The normal job-loss analysis of the sort commonly done by executive branch agencies, which suggests a modest impact, assumes that we have fluid labor markets and that workers can move to other jobs in other industries or locales relatively quickly. We submit that such transitions often take years to occur.

The litany of these new labor laws has made it more costly for firms to employ workers. Forcing companies to spend more money in compliance costs has little to do with a company's main purpose–producing goods and services. These rules result in lower productivity growth, and companies end up paying lower wages and reducing employment.

Improved workplace protections are often presented as a low cost or nearly cost-free way to benefit employees. However, a truism in economics is that a tax or regulation is not necessarily borne by the entity that writes the check. Imposing greater employment costs on companies usually forces them to economize in other ways. In some situations they will try to substitute

capital for labor, charge higher prices for goods (and sell less), or reduce wages and fringe benefits for their employees.

Rather than yielding positive results, outcomes could engender more friction between employers and employees, more litigation, and a large economic deadweight loss without a discernible improvement in the compensation, employment and working conditions for workers, who are the intended beneficiaries. The costs of the regulations analyzed in this report are not justified by their likely benefits.

Introduction

It is standard operating procedure for an administration approaching the end of its tenure to accelerate the issuance of new rules and regulations and "clear the decks" before a new administration can set its own course. This phenomenon is commonly referred to as "midnight regulations," and has been carefully documented elsewhere.

The current administration is no exception to this pattern. In fact, it appears that the pace of rulemaking in the waning months of the Obama presidency will easily exceed that of the previous three two-term presidencies.

The problem with accelerated rulemakings is that they are frequently performed with less than a thorough analysis of their impact on the economy. While Executive Order 12866 requires that all major regulations–defined as those which are estimated to exceed $100 million in annual economic impact–undergo a cost-benefit analysis before being implemented, the reality is that executive branch agencies find it easy to rush through analyses to deliver an expedient answer or simply avoid such scrutiny altogether, often by declaring that a regulation is modest enough to forego the need for a cost-benefit analysis.

In no other agency is such bureaucratic behavior as evident as in the Department of Labor (DOL), including the Occupational Safety & Health Administration (OSHA). Since 2009, DOL has been one of the more aggressive regulators in the federal government, imposing regulations that have triggered compliance costs that exceed $50 billion by their own estimates, a figure that largely does not include an accounting of the cost of the estimated 400 million hours it will take the affected companies to comply with the reporting requirements of these regulations.[1]

According to the Government Accountability Office, the previous four administrations averaged 1.6 major rules from DOL annually.[2] In contrast, during the first seven years of President Obama's term, DOL has finalized three major regulations annually, on average, and it will likely end up with six such regulations in 2016.[3] The aggregate economic costs from lost wages, reduced employment, and added time spent on regulatory compliance continue to grow each year, and will spike to record levels in 2017, once all of the Administration's newly imposed regulations take effect. Figures One and Two show the spike both in costs and in the number of hours required for businesses to comply with anticipated reporting burdens caused by labor-market regulations, reporting requirements, or rules changes issued over the last decade.

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[1] *Regulation Rodeo: A Product of the American Action Forum.* Available at http://bit.ly/1LN8nKK
[2] "Congressional Review Act: Overview." *U.S. Government Accountability Office.* Available at http://www.gao.gov/legal/congressional-review-act/overview
[3] Ibid.

Figure One

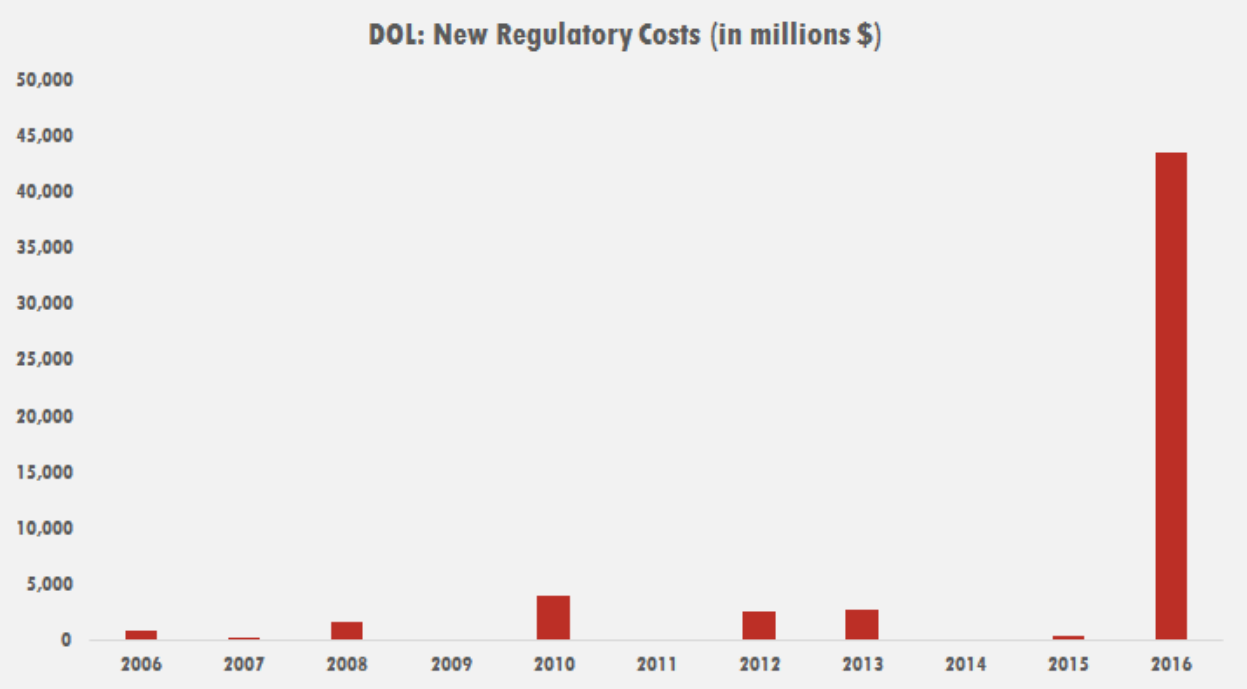
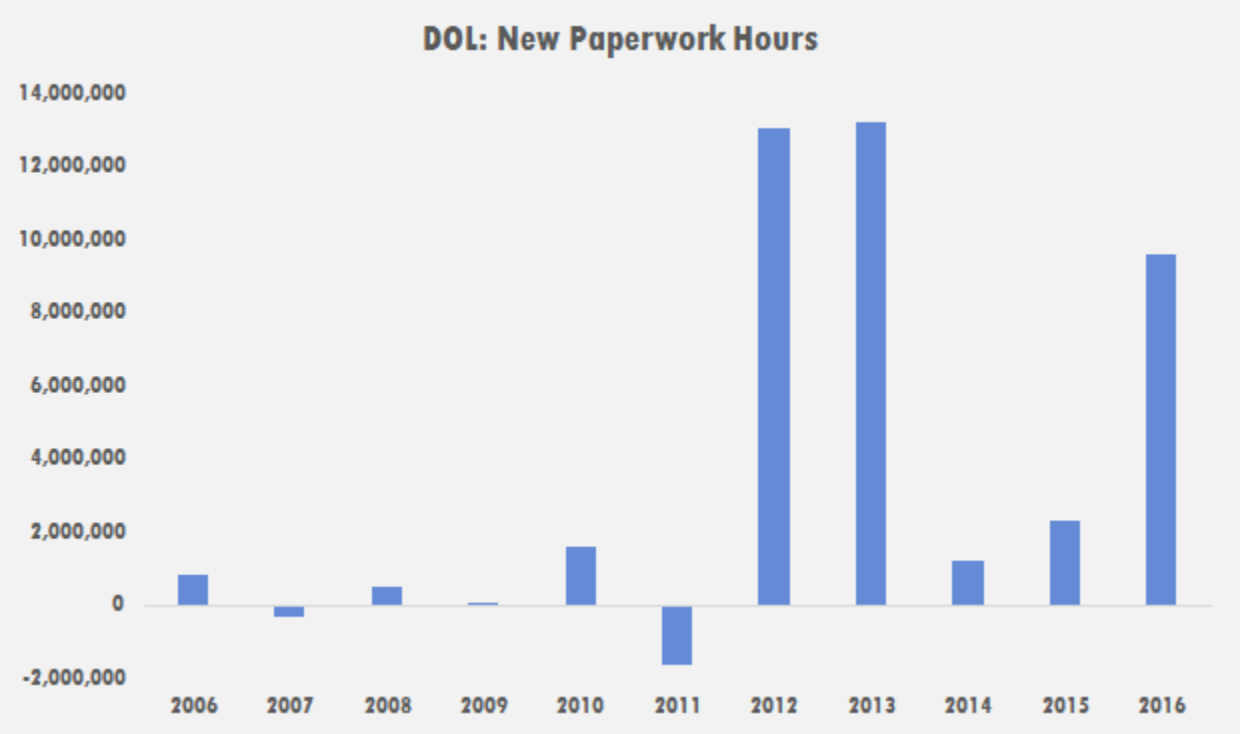


Figure Two



To help understand the impact of the recent flurry of labor market regulatory activity, we have analyzed seven notable regulations and alterations of labor law from DOL, OSHA, the Equal Opportunity Commission (EEOC) and the National Labor Relations Board (NLRB). They are the Fair Pay and Safe Workforces rule (also known as the "blacklisting" provisions); the updated overtime rules; the new silica standards in the workplace; the new EEOC rules requiring annual reporting of employment and wages, broken down by race, gender, and job category; the "Ambush Elections" rule; redefining what constitutes a "joint employer;" and the requirement that companies publish reports of all injuries and illnesses.

We estimate the aggregate economic costs of each rule, and in so doing we find that these regulations go beyond the agencies' calculations for total paperwork burden hours and employment losses.[4] We find that these seven regulations could cost the economy roughly $81.6 billion, impose 411 million paperwork burden hours, and result in as many as 155,700 fewer jobs in the near future. Table One displays agency cost estimates, industry figures, and our estimate of the full load factor during the next ten years (which incorporates costs beyond just wages, such as benefits and physical overhead associated with regulatory compliance).

Regulation	Annual Agency Costs	Industry Cost Estimates	Compliance & Paperwork Costs	Compliance Hours Required
Blacklisting	$400 million	$338 million	$3.2 billion	21.7 million
Overtime	$304 million	$33 billion	$24 billion	25 million
Silica	$1.1 billion	$5 billion	$25 billion	121.1 million
EEO-1	$53 million	N/A	$1.9 billion	18 million
Ambush and Joint Employer	N/A	N/A	$17.5 billion	136 million
Injury and Illness Reporting	$13 million	$1.1 billion	$10 billion	90 million
Totals	**$1.5 Billion**	**$39.4 Billion**	**$81.6 Billion Ten Years**	**411 Million Hours**

[4] Agencies use a general equilibrium model in their analysis. It assumes labor and capital can move freely between sectors and states and find their most productive use. This assumption is not descriptive of the actual economy and regulations can make labor markets even less flexible for the sectors of the economy most impacted. Family or social connections constrain people from moving to other communities, the necessity of retraining can make moving to a new industry costly or impractical, and capital constraints–not to mention political exigencies–can make it difficult for firms to quickly respond to a new regulatory environment.

Regulations constrain how a business operates in some way, which in turn makes it costlier to operate. Since labor productivity determines wages in the long run, reduced productivity growth ultimately results in wages below where they would otherwise be.

Blacklisting Provisions

On May 28, 2015, the Federal Acquisition Regulation Council and the Department of Labor proposed a rule to implement President Obama's Executive Order 13,673, entitled "Fair Pay and Safe Workforces."[5] The final rule was recently published on August 25, 2016 and is virtually unchanged from its proposal. The intent of this measure is to "improve contractor compliance with labor laws and increase efficiency and cost savings in federal contracting."

However, the supposed cost savings are fictitious, at least from the perspective of business: the proposals will necessitate that a company doing business with the federal government in some way create new tracking systems to monitor all 14 labor laws listed in the Executive Order for its own business as well as its subcontractors. These new systems will create new costs that will ultimately be borne by taxpayers in the federal contract price. It also requires federal contractors to disclose mere allegations of a violation of these laws to the government, and that subcontractors disclose any allegations to their prime contractors.

Additionally, the rule effectively bars companies from utilizing pre-dispute arbitration clauses as well as provides employees with additional data on compensation and employment status. All of these provisions will result in higher costs for contractors, which means higher prices for the federal government to contract for goods and services. These additional costs will also surely shrink the pool of available small businesses who decide to enter into the federal marketplace.

The Labor Department provided a modicum of informal guidance to accompany this executive order, and it estimates that the proposed rule could impose $91 million in annual costs and add nearly $8 million in burdens to the federal government.[6] It would also entail more than 1.6 million new paperwork hours to comply with these requirements. However, outside estimates have generally noted the agency never accounted for the full compliance costs of shifting labor from productive activities to regulatory compliance activities. Finally, many noted that the agency's analysis failed to account for the compliance differences between large and small entities, and instead relied on average potential burdens. The final rule increased these estimates to $400 million in annual costs and 2.1 million paperwork hours.[7]

The burden of this regulation will predominantly fall on the small businesses with resources that are already stretched thin. Many of these will simply decide to not to do business with the federal government. As a result, companies, who will have to develop and implement new reporting systems in house will have fewer potential suppliers, which will inevitably increase the cost of the contract passed on to the government and the taxpayer.

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[5] "Federal Acquisition Regulation; Fair Pay and Safe Workplaces." 80 FR 30547. *Proposed Rule by Defense Department, General Services Administration, and National Aeronautics and Space Administration* (proposed May 2015). Available at http://www.federalregister.gov/a/2015-12560/p-197.
[6] Ibid.
[7] "Federal Acquisition Regulation; Fair Pay and Safe Workplaces." 81 FR 58562. *Proposed Rule by Defense Department, General Services Administration, and National Aeronautics and Space Administration* (finalized August 2016). Available at https://federalregister.gov/a/2016-19676.

The Cost of Potential Lawsuits

The bigger potential cost of this rule has to do with the legal risks of increased lawsuits. By making more data on employer rule violations more readily available while banning dispute resolution outside of the courts, it is likely that this rule will incentivize industrious lawyers. They can now identify patterns to urge potential clients to pursue legal action that will greatly boost the prevalence of lawsuits.

Some have argued that argued that legal judgments or settlements from such lawsuits are not an actual "cost" of the regulation, but are instead merely a transfer from the employer to the worker that resolves labor market imperfections in an expedient fashion. Such an argument represents facile reasoning, however: lawsuits are extremely costly to adjudicate, and the costs of litigation represent an almost pure deadweight loss.

However, it is not just the higher legal costs that will impact the economy–it is that companies will become more defensive in order to prevent lawsuits as much as possible. The rule will force companies to spend resources on minimizing legal costs rather than on providing goods and services, thus reducing productivity and growth. In the long run, that means wages will be reduced as well.

Update of Overtime Rules

Hourly employees who work more than 40 hours a week are entitled to receive a 50 percent premium for their overtime hours. Salaried workers or those who work in certain professions (including teachers, lawyers, and doctors) or who earn above a certain amount are generally exempt from overtime pay. Currently, workers whose salary is below $415 per week cannot be considered exempt.

The Administration's new regulation will raise the overtime salary threshold to $913 per week, or the annual equivalent of $47,476.[8] According to the Administration, this will cost businesses a little over $2.9 billion in compliance costs during the next ten years and more than $680 million in regulatory compliance costs in the first year alone.[9] There are also an estimated 2.5 million paperwork hours required to comply with the regulation. The final version was published on May 23 and will be effective by December 1 of this year.

Again, these costs do not include the higher wages that would need to be paid because of this rule, since those wages would represent a transfer from employer to employee: DOL estimated that the increase in paid wages would amount to $1.2 billion in the first year. Including this figure means that there will be nearly $2 billion in direct costs to employers in the first year.

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[8] "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees." 81 FR 32391. *Final Rule by Wage and Hour Division* (May 2016). Available at http://www.federalregister.gov/a/2016-11754/p-1293.

[9] Ibid.

The new overtime rule will place employers in difficult situations where they may be faced with having to tell an employee they will have to be converted into an hourly wage-earner rather than on salary because the employer cannot afford to increase the employee's salary to the new exemption level. While the employee may not be taking a pay decrease, based on the individual company's policies, the employee may be losing certain benefits that are afforded to only those in a salaried position, which may include the status of a job title, being able to attend to a family or personal matter without having to "punch a clock," or even being eligible for end-of-the-year bonuses, which may only be available to salaried workers.
On the other hand, an employer who decides to increase the salary of several of its employees, may be faced with financial hardships and unable to hire or promote new managers, or may be forced to cut training costs for current employees. Furthermore, employers may be forced to hire more part-time employees rather than full-time in order to ensure production keeps moving. All of these possibilities resulting from the overtime regulation would make it more difficult for young men and women to find positions where they can get the training and experience that would help them move up to jobs with more responsibility and flexibility later in their career. These costs could be significant and would fall almost exclusively on those this rule is supposed to help.

Quantifying the cost of the paperwork requirement to the direct compliance costs adds up to an aggregate burden between $952 million and $2.4 billion.[10] This figure excludes what we think would be the more significant long-term cost, namely the loss of human capital and managerial capabilities from a variety of industries moving towards a different personnel model.

The rule will surely do that for some subset of this cohort, but it is also true that it will raise the cost of labor, increase regulatory burdens, decrease hours worked, and cause deadweight loss in the market. During the next decade, we estimate the overtime rule could cause more than $24 billion in aggregate economic costs (after accounting for a load factor rate of 3.6), including 25 million paperwork hours.

Silica Standards

On March 25, 2016, the Occupational Safety & Health Administration (OSHA) issued its final "Silica" rule, long a priority for unions and workplace health advocates.[11] Prolonged exposure to silica dust can cause respiratory illnesses, lung cancer, and kidney disease. The agency's initial analysis estimated that the rule will cost approximately $1.1 billion annually and impose 2.5 million paperwork burden hours, which will increase OSHA's aggregate paperwork burden by

[10] "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees." 81 FR 32391. *Final Rule by Wage and Hour Division* (May 2016). Available at http://www.federalregister.gov/a/2016-11754/p-746.
[11] "Occupational Exposure to Respirable Crystalline Silica." 81 FR 16285. *Final Rule by Occupational Safety and Health Administration* (March 2016). Available at http://www.federalregister.gov/a/2016-04800/p-887

1.8 percent.[12] However, the administration recently concluded a major review of the regulation and drastically increased the estimated paperwork burden to 12.1 million hours.[13]

Other analyses,[14] however, suggest that the government's estimate is well below the true costs that will be borne by industry, even with the revised paperwork burden. For instance, merely accounting for the administrative cost of demonstrating and ensuring compliance will cost industry between $550 million to $1.4 billion, using the government's own standards.

The gap between the private estimates of the impacts of this rule and the government's estimates are enormous and worth exploring. For instance, the Construction Industry Safety Coalition argues that their industry's compliance costs will approach $5 billion a year, which they attribute to direct compliance costs being four times greater than the government's estimate, along with higher costs for construction materials. They also estimate that their industry could lose more than 50,000 jobs as a result of this regulation.[15] The American Chemistry Council also found that the rule could impose $5.5 billion in annual compliance costs and impact 17,000 jobs in their industry.[16] The National Federation of Independent Businesses predicted that total long-term costs could eclipse $70 billion.[17] By their own calculations, the silica measure is the second most expensive issued in the last decade by DOL, behind the Fiduciary Standards Rule.[18]

The impacts on small businesses resulting from this rule are particularly profound, perhaps the most consequential that we have studied in recent years. OSHA readily admits that this rule will impose "significant economic impacts on a substantial number of small entities." The scale of these burdens are notable and could drive many of these companies out of business altogether:

- Small entities in the pottery and ceramics industry will bear additional regulatory costs that exceed 38 percent of the aggregate industry profits.
- The clay building material industry faces additional costs that fully equal one-third of that industry's profits.
- The stone product manufacturing industry will encounter additional costs that are almost one-fourth of total profits.

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[12] Ibid.
[13] "Respirable Crystalline Silica Standards for General Industry, Shipyard Employment and Marine Terminals." 29 CFR 1910.1053. In *Office of Management and Budget* (June 2016). Available at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201509-1218-004.
[14] "Preliminary Letter Report of Environomics to the American Chemistry Council's Crystalline Silica Panel Regarding the Economic Impact of the Occupational Safety and Health Administration's Proposed Standard for Occupational Exposure to Respirable Crystalline Silica." Environomics (February 2014). Available at http://bit.ly/2blAl4E.
[15] "Study: OSHA underestimated cost of silica rule by $4.5 billion per year." *Construction & Demolition Recycling* (April 2015). Available at http://www.cdrecycler.com/article/csic-osha-silica-rule-underestimates/.
[16] Environomics Incorporated and URS Corporation, "Potential New Silica Standard with a PEL of 50 ug/m3 and Ancillary Requirements: Analysis of Compliance Costs, Economic Impacts, Measurability," ACC Crystalline Silica Panel, American Chemistry Council, August 2, 2011.
[17] National Federation of Independent Businesses. Available at http://bit.ly/29FXKZB.
[18] *Regulation Rodeo: A Product of the American Action Forum*. Available at http://bit.ly/1LN8nKK

- The relative costs in the so-called "very small" entities are even higher, amounting to 90 percent of profits for pottery and ceramics, 58 percent for clay building materials, and 30 percent for stone product manufacturing. This single regulation could eliminate nearly all of the profits for these small entities.[19]

OSHA reckons that the impact of an additional $1 billion in operating costs and 2.5 million hours of paperwork compliance on employment "should be viewed as negligible…and not statistically different from an estimate of zero job-years." This is clearly a stretch: just as OSHA measured the cost of the rule on specific industry profits and revenues, it should have estimated the employment impact in the industries and sectors most affected by the rule, while acknowledging the fact that they could easily lose employment.

EEO-1 Form Change

The Equal Employment Opportunity Commission's (EEOC) new EEO-1 form, a change imposed under the Paperwork Reduction Act and slated to take effect in 2017, will require all employers with 100 or more workers to submit to the federal government data on earnings and hours worked for employees as well as the employees' ethnicity, race, and sex.[20] This would add over 3400 data fields to the current reporting requirements already in place. In addition to submitting employee information broken down by occupation, gender, race and ethnicity employers would now provide employees' W-2 data and then categorize the employee by 12 annual pay bands for each occupation by gender, race, and ethnicity. The information, however, would be incomplete, as it does not provide the total compensation of each employee, which may include 401k contributions, healthcare benefits or even dependent care elections. It does not distinguish between employees of different tenure or educational attainment. Additionally, this not only significantly increases the burden on those who have to fill out and submit the forms, but privacy concerns arise in giving the government an employee's personal pay information.

EEOC projects that this would impose a one-time implementation burden of just $53 million in annual reporting costs for companies and 1.8 million paperwork burden hours, a discordant outcome for a change that is ostensibly supposed to reduce red tape, but four times higher than EEOC's original estimates.[21] EEOC declined to provide a comprehensive regulatory impact analysis, arguing that it represented a simple paperwork change and as such does not require

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[19] *Final OSHA Silica Standards*. American Action Forum. Available at https://www.americanactionforum.org/regulation-review/final-osha-silica-standards/.

[20] "Agency Information Collection Activities: Revision of the Employer Information Report (EEO-1) and Comment Request." 81 FR 5113. *Notice by Equal Employment Opportunity Commission* (February 2016). Available at http://www.federalregister.gov/a/2016-01544/p-141.

[21] Agency Information Collection Activities; Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO-1) Agency Information Collection Activities: Revision of the Employer Information Report (EEO-1) and Comment Request." 81 FR 511345479. *Notice by Equal Employment Opportunity Commission* (July 2016). Available at http://www.federalregister.gov/a/2016-16692/p-358http://www.federalregister.gov/a/2016-01544/p-139.

one. However, not every company has systems to track or record hours worked for exempt, salaried employees. Save for entities that bill by the hour, this might be nearly impossible to accomplish.

However, pretending that this would be the only cost borne by employers misses the overt intent of the change, which is to spur employees–and agents ostensibly acting on their behalf–to look for significant pay differences that correlate with race, gender, or age. The most costly impact of this paperwork change is likely to be the increased probability of litigation. The ostensible goal of the change is to encourage and facilitate equal pay and to determine if there is pervasive and quantifiable pay discrimination. Measuring the productivity of workers who are not piece-rate is all but impossible in most instances.

Simply put, a disparity in wages is not *de facto* evidence of wage discrimination, and companies need some safe harbors to ensure they are not subject to virtually limitless liability. The duties and responsibilities of an accountant are not similar to those of an in-house attorney and neither is the pay, but both would be classified broadly as "professionals" under EEO-1.

Another potential problem with the EEO-1 is that it relies on an overly broad metric of employee pay: wages reported on a worker's W-2. Using this as a barometer for pay actually could create a bias against employees with families or dependents, and give the impression that they are paid less than their colleagues. For example, an employee that maximizes pre-tax deductions for 401(k), child reimbursement, college savings, and a Health Savings Account has a lower reported income on their W-2 than another employee classified as a "professional" who eschews pre-tax deductions. Using only the reported W-2 income may create the impression that there is a wage gap, even if none exists.

The agency takes for granted that current payroll systems have the data and capabilities to capture this new information. There is evidence that many small businesses, for example, would need to expand their HR systems to capture this additional data or pay their HR contractors more money to do this not-costless task, imposing yet more economic burdens. We have not quantified and monetized this cost here, but it is nevertheless significant.

Employers' base compensation on numerous factors, many of which are unmeasurable–as is performance itself, for most occupations. Nevertheless, this rule will push towards a world where pay differences among people who have similar education, experience and jobs may be presumed to be *prima facie* evidence of discrimination of some sort. Such an outcome would have a deleterious effect on hiring and promotion decisions throughout the economy.

The EEO-1 data, in concert with the Department of Labor's "Persuader Rule," and the Securities and Exchange Commission's "Pay Ratio," "Resource Extraction," and "Conflict Minerals" rules, form a core group of regulations that are intended to "nudge" corporations into doing the right thing, a key principle taken from behavioral economics. Taken together, these measures will not improve workplace safety or environmental quality, nor prevent another Great Recession. On the contrary, they will impose billions of dollars in costs, lower industry employment, and generate countless paperwork hours to the benefit of only the regulators and trial lawyers.

Tipping the Scales

The National Labor Relations Board (NLRB) has issued two notable regulations that have altered decades-old labor policy with respect to union organization elections and the definition of a "joint employer." First, finalized in 2015, the "Representation-Case Procedures" rule, more commonly referred to as the "Ambush Elections" rule, takes several steps to expedite union elections.[22] For instance, union elections can no longer be stayed in anticipation for requests for review, a move that typically lasted 25-30 days. In addition, the employer now has 48 hours to electronically transmit a list of employees' contact information after a Direction of Election, a process that had previously taken up to a week. NLRB estimated the burden to employers to be only $2,000 nationally.

Second is a legal redefinition of the term "joint employer,"[23] which will affect more than 770,000 employers employing 8.4 million workers in franchise industries alone. It will also affect every other employer who contracts for any type of service.[24] The issue concerns whether a host company is responsible for the working conditions at a contract company. Previously, a parent company was generally not responsible for the conditions and wages at individual franchises unless they exercised "direct control;" this standard has been changed to "indirect control."

Treating business relationships between two companies as joint employers will have implications for liability in labor violations and perhaps force the parent corporation to enter collective bargaining where the corporation does not even participate. This change in labor law is technical and legal in nature, but it has vast implications for the labor market and could affect all types of business relationships. The previous standard had been in place for more than three decades, with little evidence that employees were mistreated as a result of this vertical arrangement.

The law does not require NLRB to perform a benefit-cost analysis when issuing case decisions or new regulations, but the absence of any analysis does not mean these new measures will not cost the business community anything.

We suggest that there is a way to use previous work done by NLRB to conceive of just such an estimate. In NLRB's 2011 measure to require notice of union rights, through posters and other electronic communication, the Board estimated it would take each of the six million affected firms roughly two hours annually to comply with the new requirement.[25] It applied an average hourly wage rate of $32.20 to the two hours of additional work. Multiplying that by the six million

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[22] "Representation-Case Procedures." 79 FR 74307. *Final Rule by National Labor Relations Board* (December 2014). Available at https://federalregister.gov/a/2014-28777.
[23] "Board Issues Decision in Browning-Ferris Industries." *National Labor Relations Board, Office of Public Affairs* (August 2015). Available at http://bit.ly/1LDMtlx.
[24] Ben Gitis and Sam Batkins. "A Regulatory Wave Impacts Franchises." *American Action Forum* (February 2015). Available at https://www.americanactionforum.org/research/a-regulatory-wave-impacts-franchises/.
[25] "Regulation Summary: Notification of Employee Rights, National Labor Relations Act [OVERTURNED]". *Regulation Rodeo: A Product of the American Action Forum*. Available at http://bit.ly/29ANSkq

affected firms yielded an estimated $386 million in compliance costs, along with 12 million paperwork burden hours. We observe this estimate would qualify this to be considered a major rule.[26]

This calculus can be applied to the joint employer rule as well: there are almost 800,000 franchise businesses in the U.S, although it is worth noting that the joint employer rule impacts non-franchisees, too.[27] If it also takes these businesses two hours to ensure familiarization and compliance, then that represents a cost of $103 million. A load factor of 3.6 would push compliance costs past $370 million, exclusive of legal costs, other compliance burdens, and secondary economic losses.[28]

We arrived at our cost estimate through the same method used for the ambush elections rule: we multiply the six million affected establishments, which represent roughly two-thirds of all workplaces in the U.S.,[29] by two hours at $32.20 an hour, which is $386 million in costs. Using a load factor of 3.6 for the hours ultimately needed to ensure compliance yields a burden of $1.38 billion.

Thus, exclusive of employer transfers, the joint employer and ambush elections rules could generate 13.6 million compliance hours and $1.75 billion in economic costs. Over the next ten years (the typical budget time window), this would result in 136 million compliance hours and $17.5 billion in costs.

The Annual Reporting of Injuries and Illnesses

The final rulemaking emanating from DOL would require employers to transmit an electronic notice of all workplace injuries and illnesses on an annual basis. Employers are already required to log and retain this information, but DOL assumes *de minimis* costs for the transmission of data as well. Critics of the rule also note much of this data is already reported by the Bureau of Labor Statistics (BLS). Since 1972, BLS has collected information on injuries, illnesses, and fatalities. In 1992, it launched a separate "Census of Fatal Occupational Injuries," making DOL's new effort largely duplicative.[30] The agency has estimated that the rule will add $28 million in

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[26] "Notification of Employee Rights Under the National Labor Relations Act." 76 FR 54005. *Final Rule by National Labor Relations Board* (August 2011). Available at http://www.federalregister.gov/a/2011-21724/p-612.

[27] IHS Economics. "Franchise Business Economic Outlook for 2016." *International Franchise Association Educational Foundation* (January 2016). Available at http://emarket.franchise.org/FranchiseOutlookJan2016.pdf.

[28] "Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform." 81 FR 43337. *Final Rule by Natural Resources Revenue Office* (July 2016). Available at http://www.federalregister.gov/a/2016-15420/p-323.

[29] *Bureau of Labor Statistics.* http://data.bls.gov/cgi-bin/dsrv

[30] OSH Overview. *Bureau of Labor Statistics*. Available at http://www.bls.gov/iif/oshover.htm.

long-term costs and $14 million in annual compliance burdens, including more than 254,000 hours of new paperwork requirements.[31]

However, a review of this regulation suggests that the costs are likely to be drastically higher than the agency estimates. For comparison, outside figures placed the full burden of the 72-page regulation at $1.1 billion, or 78 times initial government estimates.[32]

The Labor Department's estimated cost per establishment–$183 for large employers and $9 per year for small employees–seems incredibly low in today's economy: the latter number is below the hourly minimum wage in many jurisdictions.

There are roughly nine million private establishments in the U.S. and if they each required an average of just one hour to comply with this rule, the cost of the annual burdens would approach $300 million (assuming nine million hours, $33.26 in hourly costs, and absolutely no other costs).[33] Outside estimates place the cost at $1.1 billion.

DOL estimated the rule would cost affected firms $28 million and as a result the administration declared it was not "economically significant."[34] However, applying the load factors of 1.4 to 3.6 to the $300 million estimate discussed above generates a possible cost range of $420 million to $1.08 billion, exclusive of possible reputational harm and heightened legal liability. In sum, this "routine" update of injury and illness data could impose up to $10 billion in costs during the next ten years, in addition to nine million compliance hours, possibly resulting in 4,500 fewer full-time-equivalent employees.

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[31] "Regulation Summary: Improve Tracking of Workplace Injuries and Illness." *Regulation Rodeo: A Product of The American Action Forum.* Available at http://bit.ly/29C8mfa

[32] US Chamber of Commerce. Comment on Occupational Safety and Health Administration (OSHA) Proposed Rule: Improve Tracking of Workplace Injuries and Illnesses; Extension of Comment Period (March 2014). Available at https://www.regulations.gov/document?D=OSHA-2013-0023-1396.

[33] "Occupational Employment and Wages, May 2015." *Bureau of Labor Statistics* (May 2015). Available at http://data.bls.gov/cgi-bin/dsrv; http://www.bls.gov/oes/current/oes131041.htm.

[34] "Improve Tracking of Workplace Injuries and Illnesses." 81 FR 2963. *Final Rule by Occupational Safety and Health Administration* (May 2016). Available at http://www.federalregister.gov/a/2016-10443/p-559.

Conclusion

Labor market regulations invariably increase the cost of hiring or employing labor. In a world where demand slopes down and supply slopes up–that is, the basis for the neoclassical model that economists have been describing since the 19th century–when labor demand falls, employment and wages fall below where they would otherwise be.

Employers do not have the luxury of picking and choosing which changes to labor laws and regulations they wish to comply with: they must hew to every single one issued by any of the many agencies that have jurisdiction over labor law.

Our intent has been to elucidate the costs of six major labor policy regulations recently enacted or set to be implemented soon. While the impact of these regulations crucially depends on the relevant industries, the aggregate costs estimated for these regulations using independent, non-agency estimates that also account for the burden of demonstrating compliance approach roughly $80 billion over the next ten years, as well as over 400 million paperwork hours.

Our analysis includes a broad range of direct short-term job losses from these regulations. This range of short-term job losses stemming directly from regulatory compliance with these regulations is estimated at 155,000 jobs in our analysis.

The notion that regulations can direct companies to take steps to improve worker health and safety, compensation, or self-governance with no untoward economic consequences to workers is an appealing one but, unfortunately, not one that comports with economic analysis. The collective impact of these labor market regulations will make it more costly for firms to hire workers in numerous industries. The particulars of the labor markets will determine to what extent the workers themselves will bear these costs via reduced employment or lower wages. These are not costless nudges that push companies into doing something that saves them money in the long run–each imposes a significant cost on the economy that goes beyond the Administration's analysis.

The United States has a labor market with almost 160 million participants. It is an incredibly robust market, much more flexible than those in other developed countries, which has left it better able to react and adjust to the economic vicissitudes that come its way. It is the main reason that the U.S. economy's growth rate, while below what most would desire, has exceeded Europe's for the past three decades.

The recent efforts by the Department of Labor and other agencies will reduce that flexibility. They will foreclose some compensation structures that have served workers and employers well, reduce the flexibility of employers to respond to short-term shocks, and in general make it more costly and complicated to hire and employ workers and conduct commerce.

Appendix

Job Loss and Economic Costs

Executive branch agencies routinely make unrealistic assumptions regarding how the labor market functions in their regulatory analyses, which allows government agencies to understate the potential job losses from their actions. Michael Livermore, Elizabeth Piennar, and Jason Schwartz point out that the Environmental Protection Agency (EPA) assumes an efficient labor market when estimating the impact of regulations on wages and employment. A regulation may reduce employment in the affected industry, which leads workers to seek jobs in (much larger) unaffected sectors of the economy. They hold that these jobs will be found relatively quickly and at a wage rate similar to what the displaced workers had been earning before.[35] In essence, they assume that regulations primarily inflict transitory costs on labor markets in their modeling.

Economists have found fault with that assumption. Reed Walker, in a paper published in the *Quarterly Journal of Economics*, suggests that such transitory disruptions are far from the only costs of job dislocation, and that they need to be supplemented with an accounting for the permanent changes that occur in labor markets.[36] Walker's paper studies the 1990 Clean Air Act and its impact on employment in the industries most affected by the law. Using detailed, disaggregated micro-data, he tracked workers who lost their jobs due to the act to see how they subsequently fared.

He found that the law imposed a significant cost on those who lost jobs as a result of the regulations associated with the Clean Air Act, equivalent to 20 percent of each worker's pre-law wages. Nearly all of this cost is borne by workers who lose their jobs, but he also attributes a small portion of this cost to the reduced wages of workers who remained in their current job but saw their compensation fall concomitant with their productivity. Using an average annual compensation of $64,300[37] for a manufacturing worker produces a cost per lost job of roughly $12,800 per worker, according to Walker's analysis.

Jonathan Masur and Eric Posner believe that even this number underestimates the costs of unemployment caused by regulatory oversight, and they estimate a cost per lost job to be in the vicinity of $100,000.[38] Job losses from regulatory activities that occur during a business cycle

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[35] Michael A. Livermore, Elizabeth Piennar, and Jason A. Schwartz. "The Regulatory Red Herring: The Role of Job Impact Analyses in Environmental Policy Debates." *Institute for Policy Integrity, New York University School of Law* (2012).
[36] W. Reed Walker. "The Transitional Costs of Sectoral Reallocation: Evidence from the Clean Air Act and the Workforce." *Quarterly Journal of Economics, Harvard University Department of Economics* (2013).
[37] Bureau of Labor Statistics, http://data.bls.gov/cgi-bin/dsrv.
[38] Jonathan S. Masur and Eric Posner. "Regulation, Unemployment, and Cost-Benefit Analysis." *University of Chicago Law & Economics, Olin Working Paper No. 571* (2011).

downturn tend to be be much more durable than Walker acknowledges, and our recent spate of regulatory activity occurred during a business cycle trough.[39]

Michael Greenstone (currently chief economist for the president's Council of Economic Advisers), John List, and Chad Syverson found[40] that the stricter EPA regulations also reduced total factor productivity by three to five percent, which in turn reduced wages, profits, and output of the affected plants. The total economic cost of the decline in productivity alone is over $20 billion per annum.

There are other identifiable--albeit less quantifiable--costs related to regulations that can increase unemployment. Urban Janlert, Anthony H. Winefield, and Anne Hammarström observed that men's health generally deteriorates during extended spells of unemployment.[41] The psychiatrist Heinz Hafner found that for certain demographic groups (namely middle-aged men) unemployment can significantly increase alcohol and tobacco use, engendering health problems for a subset of these cohorts.[42] Lawrence Michel and Heidi Shierholz have observed that even the children of the long-term unemployed see their future income reduced by their parents' unemployment.[43]

How to assign a cost to the Paperwork Burden Imposed by Regulations

Federal agencies assign an hourly labor cost of $63 when quantifying the cost of meeting the paperwork mandates that accompany some regulations, a figure which generally includes wages and sometimes fringe benefits. For the Blacklisting Provision that would make the annual paperwork costs of establishing compliance equal to $102 million, which exceeds all other estimated compliance costs.

However, $63 per hour underestimates the true cost of this regulatory imposition. The problem is that the time and effort involved to meet a new regulation typically requires more than just having extant workers put in more time to complete the new task. For instance, in other contexts the federal government acknowledges that there are significant overhead or "load" costs beyond the direct wage costs of compliance. An examination of government contracts from the General Services Administration reveals government routinely pays $189 to $225 per hour for

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[39] Christopher Goodman and Stephen Mance. "Employment Losses and the 2007-2009 Recession." *Monthly Labor Review* (April 2011). Available at http://www.bls.gov/mlr/2011/04/art1full.pdf

[40] Michael Greenstone, John List and Chad Syverson. " The Effect of Environmental Regulations on the Competitiveness of U.S. Manufacturing." *The National Bureau of Economic Research, Working Paper No. 18932* (September 2012). Available at http://www.nber.org/papers/w18392.pdf.

[41] Urban Janlert, Anthony H. Winefield and Anne Hammarström. "Length of unemployment and health-related outcomes: a life-course analysis." *The European Journal of Public Health* (2014). Available at http://eurpub.oxfordjournals.org/content/early/2014/11/22/eurpub.cku186.abstract.

[42] Heinz Hafner. "Does Unemployment Cause Illness?" *Fortschritte der Neurologie-Psychiatrie* (1988). Available at http://europepmc.org/abstract/med/3069675

[43] Lawrence Mishel and Heidi Shierholz. "The Sad but True Story of Wages in America." *Economic Policy Institute, Issue Brief No. 297* (March 2011). Available at http://www.epi.org/publication/the_sad_but_true_story_of_wages_in_america/

contracting services,[44] 3.6 times higher than the $63 it puts forth in government benefit-cost analyses. This likely accounts for non-wage benefits associated with employee compensation, infrastructure (office space most notably), and administrative and management support.

In the extreme, regulators have estimated hourly compliance as high as $400 an hour, or 6.3 times the $63 hourly rate.[45] In the seven rules analyzed, the government never attempted to quantify any overhead costs, which provides an unrealistically low estimate of compliance costs. We include a load factor when we analyze the cumulative costs of the seven regulations.

The federal government's initial cost estimate of $91 million for the Blacklisting provision fails to account for any of the paperwork burden. Applying the standard load factor and the $63 hourly wage yields a cost of $328 million for the 1.6 million paperwork burden hours imposed on the affected firms, or roughly $3 billion during the next decade.

[44] U.S. Chamber of Commerce Comments on Proposed FAR Regulation and DOL Guidance for Executive Order 13673. Available at https://www.regulations.gov/document?D=FAR-2014-0025-0920.
[45] Sam Batkins. "What Does an Hour of Regulatory Compliance Cost?" *Regulation,* Summer 2012. Available at http://www.cato.org/pubs/regulation/regv35n2/v35n2-7.pdf#page=8.