



Reducing Regulatory Overlap in the 21st Century



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REDUCING REGULATORY OVERLAP IN THE 21ST CENTURY

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Executive Summary

Federal regulations play a crucial role in ensuring that the products we consume are safe; the environment in which we live is clean; and the markets we depend on are fair, transparent and competitive. Business Roundtable recognizes that a sound federal regulatory system is critical to protect American consumers and strongly supports this important policy goal.

At times, however, multiple federal agencies are responsible for overseeing a given market activity, creating the potential for inefficiency. Such regulatory overlap poses significant challenges to American businesses and can dampen economic activity across the wider U.S. economy. Regulatory overlap can inflict real costs on businesses through repetitive inspections and data collection efforts and is particularly burdensome when agencies issue conflicting rules with inconsistent standards. Examples drawn from the food manufacturing, surface transportation and financial sectors demonstrate how overlapping regulatory jurisdiction results in higher costs, increases policy uncertainty, erects new barriers to entry and reduces competitiveness — which, in turn, stifles job creation, innovation and investment. Within the U.S. federal system, additional regulation at the state and local levels often exacerbates these challenges.

Almost every U.S. President since Herbert Hoover, including Presidents George W. Bush and Barack Obama, has recognized such challenges and taken steps to improve regulatory efficiency and effectiveness, testifying to the bipartisan nature of this issue.¹ Over the past two years, the Trump Administration has also demonstrated a clear commitment to regulatory reform and addressing regulatory overlap. President Trump's Regulatory Freedom Agenda, guided by Executive Orders 13771, 13777 and 13781, highlights the Administration's interest in advancing solutions to regulatory challenges, and regulatory activity over the past two years has reflected this objective.² In response, agencies have initiated collaborative efforts intended to improve coordination and reduce overlap across their regulatory activities. For example, over the past two years at least 18 federal departments and agencies have established notable memoranda of understanding that are designed to address the issue of regulatory overlap.³ These reform efforts have extended across a variety of industrial sectors, including food manufacturing, surface transportation and financial services.

While recent progress is encouraging, more work is needed to reduce unnecessary regulatory overlap. Legislative action to clarify the jurisdictions of various federal agencies is often the most effective and lasting intervention, but additional executive action can help address the problem. To that end, Business Roundtable encourages the President and federal agencies to identify instances of overlap across the U.S. regulatory framework and employ the procedural measures laid out in this report to efficiently and effectively address that overlap. This new direction, which can be accomplished through an executive order or a Presidential memorandum, should also be applied in a forward-looking manner to avoid new instances of overlap that may arise as U.S. businesses and entrepreneurs continue to innovate using the latest technologies. Anticipating the potential for regulatory overlap in emerging industries and taking steps to avoid it will help ensure that U.S. businesses continue to serve as global leaders in innovation — which, in turn, will drive sustainable, long-term economic growth that benefits all Americans.

The imperative to improve regulatory efficiency is clear: The President, Congress and federal regulators should work together to build a 21st century regulatory system that encourages investment, innovation and growth; minimizes overlap; and preserves a healthy, clean and safe America.

BUSINESS ROUNDTABLE RECOMMENDATIONS FOR POLICYMAKERS REGARDING REGULATORY OVERLAP

- ▶ Negotiate memoranda of understanding and establish interagency working groups to improve coordination among regulatory agencies.
- ▶ Designate a lead regulator for situations where multiple agencies have responsibility for oversight, with other regulators exercising both regulatory and enforcement deference to the primary regulator.
- ▶ Conduct joint rulemakings in instances where rules stretch across the jurisdiction of multiple agencies.
- ▶ Improve communication among regulators and industry actors, including increasing the clarity and availability of guidance in regulatory areas that are prone to jurisdictional overlap.
- ▶ Consider the role of state and local regulators and how the recommendations in this report could be used to improve coordination and streamline regulatory measures across levels of government (e.g., through national associations that promote uniformity among federal, state and local requirements).

Introduction

All Americans, regardless of background or economic position, want and deserve a clean environment, safe workplaces, access to healthy food and water, and protection from unscrupulous business practices. The members of Business Roundtable share this vision and recognize that federal regulations play a critical role in achieving it. By establishing effective and efficient standards that govern market behavior, regulators can protect the public while also fostering innovation and spurring investment — creating more jobs for U.S. workers and fueling the economy.

Every federal regulatory agency has an important role to play in safeguarding the public without unduly inhibiting economic activity. At times, however, more than one regulatory agency has oversight responsibilities for a given market activity, creating the potential for regulatory inefficiency. Indeed, such jurisdictional overlap is a significant driver of the cumulative regulatory burden, which surveys consistently show is one of the greatest cost pressures on American businesses. Too often, firms find themselves subject to multiple regulatory requirements from multiple agencies on a single issue, resulting in inefficiencies and higher compliance costs. In some cases, agencies may promulgate rules that are duplicative, inconsistent or conflicting, which increases costs, delays the efficient production of goods and provision of services, and reduces hiring and business investment.⁴

In recognition of the importance of streamlining efforts, the Office of Management and Budget (OMB) published a plan in June 2018 to reduce government overlap and reorganize the executive branch. The plan, entitled *Delivering Government Solutions in the 21st Century*, presents the Trump Administration's vision for a more efficient, effective and accountable government, which is to be achieved in part by eliminating jurisdictional overlap among U.S. regulatory agencies. Mandated by Executive Order 13781, the plan reflects a commitment to addressing overlap and reducing redundancy throughout the U.S. regulatory framework. Consistent with this objective, over the past two years at least 18 federal departments and agencies have endeavored to reduce the burden of regulatory overlap through the establishment of multiple interagency coordination mechanisms.⁵ These efforts echo those of prior Administrations: Almost every President since Herbert Hoover has endeavored to reorganize the executive branch to improve efficiency and effectiveness (including Presidents George W. Bush and Barack Obama), testifying to the issue's bipartisan nature.⁶ Executive Order 13563, issued by President Obama in 2011, specifically identified overlapping regulations and their effect on innovation as a problem, but in practice it has not led to significant change.⁷

Business Roundtable has encouraged the U.S. government to reduce regulatory overlap wherever possible to create a more efficient regulatory system for businesses and consumers without diminishing existing protections. The Roundtable thus welcomes the Administration's recent actions to address the issue. But more can, and should, be done. The purpose of this report is to shed light on some of the significant challenges that regulatory overlap poses to U.S. businesses today. Unwinding overlap will require additional effort and the firm commitment of all federal regulatory agencies, as well as cooperation with and among state and local regulatory agencies. Truly comprehensive reform in many cases will require Congress to take action. But there is much that the executive branch of government can accomplish.

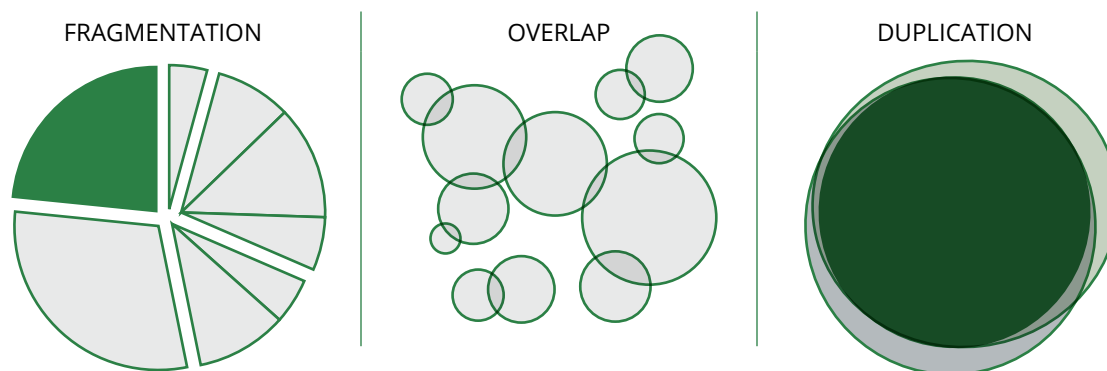
This report comprises five sections. Section I identifies three forms of regulatory overlap. Section II explains how this overlap harms American businesses and the wider U.S. economy. Section III provides illustrative examples of regulatory overlap and its impact on businesses today, focusing on the food manufacturing, surface transportation and financial sectors. Section IV summarizes recent progress agencies have made to address regulatory overlap. Section V offers recommendations for procedural measures to further these reforms.

I. What Is Regulatory Overlap?

In its annual report on government duplication and potential costs savings, the Government Accountability Office (GAO) subdivides the broad term “regulatory overlap” into three related challenges, differentiated by the extent to which the jurisdictions of agencies intersect: fragmentation, overlap and duplication. To promote clarity and consistency, this report adopts GAO’s definitions:

- **Fragmentation:** Fragmentation occurs when more than one federal agency (or more than one organization within an agency) is involved in overseeing the same broad policy area.⁸ For example, food safety oversight is highly fragmented in the United States, with more than 15 federal agencies responsible for ensuring the safety of related, but narrowly distinct, foods and food products.⁹
- **Overlap:** Overlap occurs when multiple agencies have similar goals, engage in similar regulatory activities and regulate similar entities.¹⁰ For example, overlap is prevalent in the surface transportation sector, where multiple agencies at the federal, state and local levels develop and administer regulation related to transportation system safety and security. Although their objectives and actions are not identical, these agencies share security-focused missions, develop standards and regulations pertaining to similar issues, and oversee the same entities.¹¹
- **Duplication:** Duplication occurs when two or more agencies or programs engage in the same regulatory activities and oversee the same entities.¹² For instance, within the financial regulatory system, four federal entities, as well as state banking regulators, are responsible for ensuring the soundness of depository institutions. Duplication occurs as these agencies conduct similar regulatory activities, such as examinations or data collection, on the same financial institutions.¹³

Figure 1: Fragmentation, Overlap and Duplication



Source: U.S. Government Accountability Office

II. Why Is Regulatory Overlap a Problem?

Regulatory overlap poses significant challenges to American businesses and, through its adverse impact on these enterprises, can dampen activity across the wider U.S. economy. For example, businesses whose operations fall under the overlapping oversight of different agencies face:

- ▶ **Increased administrative costs** due to the need to expend additional resources on overlapping or duplicative compliance measures issued by multiple agencies.
- ▶ **Regulatory delays** resulting from disagreements between agencies over the boundaries of their respective jurisdictions or from the need to wait for two or more agencies to promulgate rules or grant approvals related to a single area of operations.
- ▶ **Policy uncertainty** due to the potential for conflict among different agencies' rules regarding an area of business operations.
- ▶ **Barriers to entry** stemming from the additional time and expense of entering a marketplace overseen by multiple, and sometimes conflicting, regulators.¹⁴
- ▶ **Reduced competitiveness** in international markets, where foreign firms do not face the same regulatory pressures and compliance challenges due to regulatory overlap as U.S. firms.

As a result of these challenges, businesses routinely identify regulation generally, and regulatory overlap in particular, as one of their greatest cost pressures. Countless studies show that excessive regulation can reduce economic activity and discourage business investment.¹⁵ Most empirical research has focused on the business impact of regulation in general, but regulatory overlap makes a substantial contribution to the regulatory burden at the core of these analyses and exacerbates the issues they identify. For example, the National Federation of Independent Business' 2016 survey of small business owners showed that extra paperwork requirements constitute one of the greatest cost pressures for businesses, and such sentiments are widely echoed by larger firms. Given that companies have been estimated to spend billions of dollars on duplicative paperwork annually, seeing how duplicative regulation contributes to this challenge is easy.¹⁶

III. How Has Regulatory Overlap Affected Businesses?

Regulatory overlap inflicts real costs on businesses through needlessly repetitive inspections, tests, data collection efforts and enforcement actions — particularly when they are conducted using inconsistent standards and conflicting rules. The following real-world examples illustrate the significant consequences of regulatory overlap for American businesses.

Food Manufacturing

Fragmentation and overlap in federal food safety oversight began more than a century ago, when Congress established the Pure Food and Drug Act and the Federal Meat Inspection Act. These two statutes were respectively administered by the Bureau of Chemistry (later renamed the Food and Drug Administration, or FDA) and the Bureau of Animal Industry, laying the foundation for a bifurcated food safety system that has endured to this day. While both agencies were initially housed within the U.S. Department of Agriculture (USDA), FDA was eventually transferred out of USDA, exacerbating fragmentation and overlap in the food safety system. Over time, these regulatory issues have become more acute, as USDA and FDA have developed distinct regulatory regimes, cultures and approaches to food safety.¹⁷

Overlapping and fragmented oversight among FDA, USDA's Food Safety and Inspection Service (FSIS) and the Environmental Protection Agency (EPA) impose great costs on food manufacturers. In particular, interviews with Roundtable member companies reveal costly inefficiencies tied to inconsistent, overlapping inspection and food label regimes.

Inspections

- ▶ One food manufacturer noted that some of its products are regulated by USDA while others are regulated by FDA, leading to inspection inefficiencies. For instance, while examining the production of meat and poultry products, USDA inspectors do not inspect neighboring production lines where nonmeat products are made, despite their proximity. The representative questioned why a single inspector could not be trained to perform both inspections, thus reducing the delays and disruptions to production stemming from multiple, uncoordinated agency inspections.
- ▶ The same manufacturer noted that a new product's release was delayed for a month due to the unavailability of an FDA inspector to approve production, even while the production plant was visited and inspected regularly by a USDA inspector.
- ▶ FDA often delegates inspection authority to state health departments if a federal food inspector is unavailable — which leads to inconsistencies in how inspections are conducted and regulations are interpreted. The result of this confusion is increased costs for food manufacturers.

- Overlap is not isolated to USDA and FDA: A beverage manufacturer noted that bottled water products are overseen by EPA prior to arrival at the company's plant, at which point they are overseen by FDA. Due to the fragmentation in water oversight, the company must complete two sets of required paperwork, doubling the labor requirements for compliance.

Food Labeling

- Another example of regulatory overlap involves food labeling. As genetically modified organisms (GMOs) have become more common, food regulators have recognized the need for common standards and requirements for GMO labeling — but both FDA and USDA have asserted jurisdiction over this process. A food manufacturer and Roundtable member company coordinated with FDA to design GMO labels that would be compliant with future FDA regulatory requirements, but since Congress in 2017 gave USDA jurisdiction over GMO labeling, the company will likely incur additional costs to comply with USDA's labeling requirements.
- Additionally, lack of coordination between FDA and USDA regarding compliance deadlines for FDA's updated nutrition facts labels, issued in 2016, and USDA's GMO labeling requirements, proposed in 2018, will result in duplicative labeling costs for food manufacturers. A second Roundtable member company had already incurred costs to comply with FDA's nutrition fact updates. However, following the finalization of USDA's GMO-labeling requirements, the label design and printing process will have to be repeated for the company's 6,500 products, which the member company expects will double its compliance costs.

Surface Transportation

Regulatory overlap in the transportation sector has often emerged through legislative responses to crises. For example, shortly after the September 11th attacks, Congress established the Transportation Security Administration (TSA). While TSA was originally located in the Department of Transportation (DOT), when Congress established the Department of Homeland Security (DHS), it moved TSA to DHS. Because both departments now have responsibility for ensuring the security of the U.S. surface transportation system, that action created a jurisdictional overlap between DHS and DOT, which has never been corrected.¹⁸ Similarly, responsibility for the transportation of hazardous materials ("hazmat") by truck and rail has been allotted piecemeal among multiple DOT "modal" agencies and DHS in response to infrequent accidents involving hazmat carriers. Today, the surface transportation sector is overseen by a host of agencies with overlapping responsibility for safety, security, environmental protection, and worker training and credentialing. While redundant regulatory activity occurs in each of these arenas, overlapping missions regarding the security of the transportation system and credentialing of transportation workers inflict unnecessary costs on U.S. businesses.

Security Oversight

Although DHS' TSA is primarily responsible for the security of the transportation system and DOT is primarily responsible for its safety, DOT continues to hold authority to regulate transportation security, and as a result both TSA and DOT conduct security assessments. This situation has led to overlapping and duplicative security-focused activities, with cost implications for the enterprises that own, manage and use surface transportation assets.

- ▶ Stakeholders in the commercial trucking industry have expressed concern about a lack of coordinated inspection scheduling and data sharing between TSA and DOT's Federal Motor Carrier Safety Administration (FMCSA). More specifically, TSA's security assessments for hazmat trucking companies, called Corporate Security Reviews, overlap with FMCSA's Security Contact Reviews of those same companies. In its most recent report on the issue, GAO determined that almost half of the 95 questions in a TSA review are either similar to or duplicative of questions included in the FMCSA review and almost all of the 48 questions in FMCSA's review are either similar to or duplicative of questions in a TSA review. Furthermore, duplicative reviews occur frequently: GAO found that 71 of the 200 TSA reviews conducted between 2006 and 2010 were at hazmat trucking companies that had received an FMCSA review within the same period.¹⁹
- ▶ GAO has reported similar jurisdictional overlap and lack of coordination between TSA and DOT's Federal Railroad Administration (FRA) and Pipeline and Hazardous Materials Safety Administration (PHMSA) regarding the transportation of hazardous material by rail. Specifically, GAO notes that these three agencies have historically failed to coordinate their field inspection and enforcement activities and do not effectively share the data they collect.²⁰

Credentialing Oversight

Workers in the transportation sector — including rail workers, commercial drivers, pilots, and airline and other aviation personnel, as well as vessel officers and crew members — face multiple, overlapping credentialing requirements that impose costs on their employers. Depending upon the materials and itineraries involved in their deliveries, workers may be required to obtain up to 19 safety, security or dual credentials. The division of the credentialing process among seven federal agencies, as well as numerous local agencies, can prove costly and result in excessive delays for transportation companies as they wait for workers to receive their documents.²¹

- ▶ For example, a truck driver carrying hazmat must hold a Commercial Driver's License with a Hazardous Materials Endorsement. If accessing an airport, the driver must also hold a Secure Identification Display Area credential, and if accessing a port, the driver must have a Transportation Worker Identification Credential. Finally, if transporting freight across a U.S. border, the driver also must hold a Free and Secure Trade program credential. At as much as \$400 each, obtaining these credentials impose costs and lengthy delays on employers whose businesses increasingly depend on quick and efficient freight delivery.²²

Finance

U.S. financial regulation has evolved for more than a century, often in response to a financial crisis or sudden market development. As a result, the financial regulatory system has become increasingly fragmented over time, with multiple agencies having overlapping missions and, at times, duplicative requirements.²³ For example, the Federal Reserve Act of 1913, which established the Federal Reserve System and granted the Federal Reserve Board (the Fed) the authority to supervise banks and bank holding companies, emerged in response to a series of severe financial panics. Twenty years later, the Federal Deposit Insurance Corporation (FDIC) was established to insure bank deposits in the wake of the bank failures that preceded the Great Depression. FDIC also obtained examination and enforcement authority over the banks it insured, creating overlap with the Fed's responsibility to oversee banks and bank holding companies. The Dodd-Frank Act established several new regulatory bodies and oversight responsibilities while abolishing others, introducing new areas of fragmentation and overlap.²⁴

A sound regulatory system is unquestionably necessary to achieve a well-functioning financial system, but the current regime contains substantial jurisdictional overlap. As GAO outlined in a recent report, multiple agencies have been tasked with regulatory oversight over the safety and soundness of depository institutions, consumer protection, and securities and derivatives markets.²⁵ Reducing this regulatory overlap could lower compliance costs while also providing important and effective oversight, resulting in a more efficient system overall.

Safety and Soundness Oversight

Safety and soundness oversight refers to the supervision of the health of financial institutions, including their capital requirements, portfolio quality and diversification, risk management, liquidity and funds management, and procedures for internal controls. The Fed, FDIC, Office of the Comptroller of the Currency (OCC), National Credit Union Administration (NCUA) and state banking regulators conduct safety and soundness oversight activities, principally affecting depository institutions.²⁶ Because these four federal regulators and their state-level counterparts share similar missions and oversee the same entities, deposit-accepting institutions often face overlapping and duplicative requirements. For example:

- ▶ Industry representatives interviewed by GAO noted costly overlap between the Fed's and OCC's data collection activities. Interviewees pointed out that the two regulators make similar data requests but seek information in different formats. Providing data in multiple formats is inefficient for financial institutions since staff members must identify original files and create new datasets to comply with various regulator-required formats.²⁷
- ▶ According to GAO, bank holding companies also reported that their subsidiary depository institutions struggle with jurisdictional overlap between their primary regulator (i.e., OCC) and the Fed, which is responsible for supervising the holding companies. As a result, the subsidiary depository institutions face duplicate examination activities.

Consumer Protection

Regulators responsible for consumer protection ensure that consumers have access to markets for consumer financial products and services and that these markets are fair, transparent and competitive. The Fed, FDIC, OCC, NCUA, state banking regulators, the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) conduct these consumer protection oversight activities, principally affecting depository institutions and nondepository institutions that offer financial products or services (e.g., mortgage companies, finance companies).²⁸

Protecting consumers in the financial marketplace is an important policy goal that Business Roundtable strongly supports. However, with six federal regulators focused on consumer protection, financial institutions are frequently subject to regulatory overlap. The overlapping and, in some cases, duplicative regulatory requirements promulgated by these agencies raise the cost of products and services offered to consumers and reduce financial product innovation. More importantly, if regulators fail to sufficiently coordinate their activities, regulatory overlap may ultimately undermine the shared goal of protecting consumers.

- ▶ GAO reports that the Fed and CFPB conduct overlapping or duplicative data collection activities, posing the same challenges to financial institutions described in the preceding section on “Safety and Soundness Oversight.” Such duplicative data collection does not occur infrequently: In 2016, four institutions that provided credit card data to the CFPB also provided the same type of data to the Fed.²⁹
- ▶ GAO also reports that CFPB and each of the prudential regulators (i.e., the Fed, FDIC, OCC and NCUA) share similar but slightly different regulatory responsibilities and regimes related to the prohibition of unfair or deceptive acts or practices.³⁰ Financial institutions note that this overlapping jurisdiction introduces duplicative examinations and enforcement actions. It also results in conflicting interpretations and applications of consumer protection laws, reducing the effectiveness of important consumer protection measures.³¹

Securities and Derivatives Markets

Regulators overseeing securities markets ensure the integrity of companies’ capital-raising processes by resolving conflicts of interest and requiring the full disclosure of material information. Similarly, regulators of derivatives markets protect the integrity of price discovery and risk transfer for financial instruments and commodities. The Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and state securities regulators oversee securities and derivatives markets, and their regulatory activities affect securities and derivatives market intermediaries (e.g., broker-dealers), investment companies and advisers, and financial market utilities (e.g., payment systems, central securities depositories and central clearing counterparties). As indicated by the following industry experiences, fragmentation of securities and derivatives markets oversight between SEC and CFTC poses challenges to industry actors, who do not differentiate between the two markets in practice.

- Asset managers recently interviewed by the Department of the Treasury indicated that the data collection activities of SEC, CFTC and the National Futures Association (a self-regulatory organization) vary in their definition of terms, methodologies and timing.³² These overlapping and conflicting reporting requirements increase compliance costs for firms, which must develop new information-retrieval systems, coordinate with third-party service providers and conduct testing to ensure the accuracy of submitted data.³³
- GAO reports that inconsistent regulatory regimes for swaps and security-based swaps, respectively administered by SEC and CFTC, present market and operational challenges because firms use the same trading and compliance systems for both. Disparities between the two regulators' regimes force firms to spend additional resources on compliance with two sets of rules over what they consider one financial product.³⁴
- GAO also has found that differences between SEC's and CFTC's rulemakings under the swap market reform areas of the Dodd-Frank Act can lead to operational challenges and uncertainty for businesses.³⁵ For example, if SEC's finalized requirements differ from those of CFTC, financial institutions will have to revise their infrastructure, trading systems and documentation systems after having spent substantial resources to develop systems that are compliant with CFTC rules. Firms that cannot use their CFTC-compliant systems for security-based swaps may opt to avoid such transactions rather than expend additional resources on a second set of operating systems.³⁶

IV. What Progress Has Been Made to Reduce Regulatory Overlap?

The Roundtable appreciates the commitment of the Administration to regulatory reform and, specifically, to addressing regulatory overlap. In particular, the Regulatory Freedom Agenda, guided by Executive Orders 13771, 13777 and 13781, highlights the Administration's interest in advancing solutions to regulatory challenges, and regulatory activity over the past two years has reflected that objective.³⁷ While the number of regulations has increased since President Trump took office, it has grown at a much slower pace than under prior Administrations.³⁸ Furthermore, the Administration has established a strong track record of regulatory reform, including the rollback of 16 regulations through Congressional Review Act enactments and withdrawal or delay of 2,253 regulatory actions, resulting in a meaningful reduction in regulatory costs.³⁹ OMB also reports that in FY18, executive agencies issued 176 deregulatory actions and only 14 significant regulatory actions.⁴⁰ Additionally, agencies have initiated new collaborative efforts with the specific goal of reducing overlap across their regulatory activities. For example, at least 18 federal departments and agencies have established memoranda of understanding related to the issue over the past two years.⁴¹ These reform efforts have extended across a variety of regulators, including those involved in the food manufacturing, surface transportation and financial sectors.

Food Safety Oversight

At the beginning of 2018, the Administration signaled an interest in reducing overlap in food safety regulation with the establishment of a memorandum of understanding between USDA and FDA, followed by a call from OMB for the creation of a single food safety agency. While it is too soon to discern their impact on the food manufacturing industry, these actions indicate that the Administration is aware of issues related to fragmentation and overlap in the food safety system and is willing to act to address them.

USDA and FDA Memorandum of Understanding Relative to Cooperation and Coordination

In January 2018, Agriculture Secretary Sonny Perdue and FDA Commissioner Scott Gottlieb announced the establishment of a formal agreement to improve interagency coordination and collaboration related to dual-jurisdiction food facilities, produce safety and biotechnology products. Notably, the agreement aims to improve regulatory efficiency by identifying and reducing the number of food manufacturing establishments subject to the dual regulatory requirements of USDA and FDA. Regulators anticipate that this effort will bring greater clarity and consistency to jurisdictional decisions under USDA's and FDA's respective authorities and reduce unnecessary regulatory burdens. As part of this effort, both agencies have agreed to identify ways to streamline regulation and reduce inspection inefficiencies.⁴²

Formal Agreement Between USDA and FDA to Regulate Cell-Cultured Food Products

In March 2019, USDA and FDA announced the establishment of a formal agreement to jointly regulate food products derived from the cells of livestock and poultry.⁴³ These products, often referred to as cell-cultured meat, are part of the emerging field of “cellular agriculture” and do not fit exclusively into the respective jurisdictions of USDA or FDA — introducing the potential for regulatory overlap and uncertainty.⁴⁴ The new agreement between USDA and FDA seeks to address this concern by delineating the roles and responsibilities of each agency: FDA will oversee cell collection, cell banks, and cell growth and differentiation, while USDA will oversee production and labeling.⁴⁵ The agreement demonstrates how jurisdictional overlap can be alleviated through interagency cooperation, particularly at the frontier of technological development.

OMB Recommendation for Regulatory Consolidation

In June 2018, OMB published its vision for the reorganization of the U.S. government’s executive branch in response to Executive Order 13781. The report, *Delivering Government Solutions in the 21st Century*, includes a proposal to address fragmentation of federal food safety oversight by regrouping USDA’s FSIS and the food safety functions of FDA into a single agency within USDA. According to OMB’s vision, the proposed new Federal Food Safety Agency would serve as the central point for coordination among state and local entities, improve outreach to industry, and reduce the duplication of inspection at food processing facilities.⁴⁶ OMB’s recommendation follows several earlier proposals to establish a single federal food safety agency, including those of GAO, the National Research Council, the National Academy of Sciences, President Obama, and a 2015 joint proposal put forth by Congresswoman Rosa DeLauro and Sen. Richard Durbin.⁴⁷ While the report does not define a path to regulatory consolidation, the proposal nonetheless represents a positive step toward potential reform.

Surface Transportation Oversight

In September 2017, DOT proposed several rules to eliminate duplicative activities among its own regulatory agencies. The Administration has also taken steps to address regulatory duplication between DOT and DHS through the reinvigoration of a memorandum of understanding between PHMSA and TSA and recently recommended the transfer of TSA’s surface transportation activities to DOT as part of OMB’s government reorganization plan.

Proposed Program for Eliminating Duplication of Environmental Reviews

In November 2018, DOT adopted a new rule intended to harmonize FRA’s environmental review process with those of two of its other modal administrations, the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA). Specifically, the new rule allows FRA to follow FHWA and FTA’s joint environmental procedures for implementing the requirements of the National Environmental Policy Act (NEPA) and Section 4(f) of the Department of Transportation Act, thus establishing a single

environmental review process across the three agencies. DOT has suggested that this rule will make the review processes of FRA, FTA and FHWA more efficient and consistent, thus reducing compliance burdens for regulated entities involved in multimodal projects.⁴⁸

In September 2017, FTA, FHWA and FRA also jointly proposed a pilot program for eliminating the duplication of environmental reviews, as mandated by Section 1309 of the 2015 Fixing America's Surface Transportation Act.⁴⁹ The pilot program authorizes up to five states to use state environmental laws and regulations instead of NEPA for environmental review and approval of surface transportation projects.⁵⁰

Memorandum of Understanding Between PHMSA and TSA

In December 2017, PHMSA signed an annex to an existing memorandum of understanding with TSA intended to (1) delineate clear lines of authority and responsibility and (2) promote nonduplication of effort through cooperation and collaboration between the two agencies. PHMSA agreed to share compliance data and information from its security inspections and security plan reviews with TSA, and the agencies committed to coordinating their inspections, recommendations and enforcement actions in an effort to minimize disruption to covered entities and improve consistency and efficiency. Through the memorandum of understanding, PHMSA and TSA have also committed to harmonizing evaluation standards, regulations, guidelines, directives and new rulemakings to minimize duplication. To achieve these measures, the agencies have established a working group to develop, oversee and evaluate a multiyear action plan.⁵¹

Proposed Collaboration Between PHMSA and FRA

Although currently in the prerule stage of rulemaking, DOT's PHMSA and FRA intend to develop a joint framework for the safe transport of liquefied natural gas in rail tank cars. A proposed rule scheduled for publication in May 2019 could limit the extent of regulatory duplication related to the transportation of liquefied natural gas by rail cars in the future.⁵²

OMB Recommendation for Integrating TSA into DOT

As part of its June 2018 government reorganization plan, OMB has advocated integrating TSA's surface transportation inspection and guidance activities into DOT, expanding on earlier GAO recommendations for greater collaboration between the two agencies.⁵³ While OMB has not yet detailed how to implement such a consolidation, the proposal constitutes a promising vision for the elimination of duplicative inspections that currently burden the surface transportation sector.⁵⁴

Financial Regulatory Oversight

Since 2017, policymakers at various regulatory agencies and executive departments have addressed the issue of jurisdictional overlap within the financial regulatory regime. Their work, ranging from concrete legislative action to more aspirational recommendations for reform, are encouraging signs of progress.

Memorandum of Understanding Between SEC and CFTC

In June 2018, SEC and CFTC established a memorandum of understanding to enhance coordination, cooperation, information exchange and data sharing between the two agencies. The memorandum of understanding also aims to achieve regulatory efficiency by harmonizing SEC's and CFTC's Title VII rules under the Dodd-Frank Act. SEC Chairman Jay Clayton and CFTC Chairman Christopher Giancarlo expect the memorandum of understanding to help eliminate unnecessary complexity, streamline information sharing and reduce costs for both regulators and market participants.⁵⁵ Although it is too soon for the memorandum of understanding to have had an observable impact, statements from commissioners at both SEC and CFTC suggest that the two agencies are seeking ways to align their missions and reduce regulatory duplication, including the possible designation of a primary regulator in instances of overlap.⁵⁶

Department of Justice, FTC, CFPB and SEC Task Force

In July 2018, the Department of Justice, FTC, CFPB and SEC announced the creation of a joint antifraud task force intended to both deter fraud and coordinate fraud investigations among the task force's founders. According to former Deputy Attorney General Rod Rosenstein, the task force was established to discourage "piling on" and, to that end, will coordinate the regulatory activities of state, federal and foreign authorities.⁵⁷ While it is too soon to observe improvements in the regulatory coordination of these stakeholders, the task force may serve as a mechanism through which multiple agencies probing the same alleged misconduct may avoid duplication and overlap.

Treasury Recommendations for Regulatory Reform

Between June 2017 and July 2018, the Department of the Treasury issued four reports assessing the alignment of the existing regulatory regime with the "Core Principles for Regulating the United States Financial System" outlined in Executive Order 13772.⁵⁸ The Treasury's reports, which identify duplication and overlap throughout the regulatory system, also include legislative and administrative suggestions for related regulatory reform.

Economic Growth, Regulatory Relief and Consumer Protection Act

The Economic Growth, Regulatory Relief and Consumer Protection Act marks a recent legislative step toward reducing duplicative regulatory oversight. Signed into law in May 2018, the act raises the asset threshold above which financial institutions are automatically designated Systemically Important Financial Institutions from \$50 billion to \$250 billion, while leaving the application of enhanced prudential standards for banks with between \$100 billion and \$250 billion in assets at the discretion of the Fed. In February 2019, the Fed exercised this discretion, announcing that it would reduce the frequency of duplicative stress tests for firms with \$100 billion to \$250 billion in assets.⁵⁹ These actions and intentions are consistent with the Fed's broader expressed interest in refining the current regulatory regime to eliminate redundancy and inefficiency.⁶⁰ As a result, the act, in tandem with revisions to Fed policy, has reduced the number of banks subject to the duplicative "enhanced supervision" of the Fed mandated by the Dodd-Frank Act.⁶¹ The law is thus a noteworthy example of Congress taking action to reduce regulatory overlap and a step toward a smarter regulatory system.

V. What Else Should Be Done?

Business Roundtable welcomes the Administration's efforts over the past two years to address regulatory overlap. However, given the detrimental impact of such overlap on U.S. firms and on broader economic growth, more should be done to reduce its burden at all levels of government. Legislative action to clarify the jurisdictions of various federal agencies is often the most effective and lasting way to streamline regulation and eliminate overlap, and it may be the only path forward in situations where complex jurisdictional issues arise (particularly as a consequence of judicial precedents). As such, Business Roundtable hopes that the industry perspectives presented in this report, as well as those previously provided by commenters in response to the President's Executive Order on Reorganizing the Executive Branch, prove valuable and informative to legislative efforts aimed at reforming the federal regulatory system.

However, Business Roundtable also recognizes that executive branch actions can make progress toward reducing regulatory overlap, even without new legislation. To that end, we encourage the President and federal agencies to adopt a policy of evaluating all instances of regulatory overlap across the U.S. regulatory framework, whether identified by an agency or outside stakeholders, and employing the following procedural measures to efficiently and effectively address that overlap. This new direction could be accomplished through an executive order or a Presidential memorandum.

- 1. Negotiate memoranda of understanding and establish interagency working groups** to achieve better coordination among regulatory agencies. In particular, agencies should seek opportunities to use these cooperative mechanisms to:
 - Clarify their respective roles and responsibilities;
 - Articulate individual and shared regulatory goals;
 - Harmonize guidance provided to jointly covered entities;
 - Standardize adjudication processes;
 - Coordinate regulatory activities, including data requests and examinations; and
 - Establish data-sharing agreements and uniform data collection formats.
- 2. Designate a lead regulator** for situations where multiple agencies have responsibility for oversight, with other regulators exercising both regulatory and enforcement deference to the primary regulator. In addition to eliminating duplicative regulatory activity, this action will reduce the potential for duplicative penalties that are disproportionate to the alleged wrongdoing.
- 3. Conduct joint rulemakings** in instances where new rules stretch across the jurisdiction of multiple agencies. Joint rulemakings ensure governmentwide consistency and eliminate regulatory uncertainty.

4. **Improve communication among regulators and industry actors**, including increasing the clarity and availability of guidance in regulatory areas that are prone to jurisdictional overlap. Agencies should also establish mechanisms to seek out industry input regarding the consequences of regulatory overlap, as well as potential solutions.
5. **Consider the role of state and local regulators** and how the recommendations in this report could be used to improve coordination and streamline regulatory measures across levels of government (e.g., through national associations that promote uniformity among federal, state and local requirements).

Conclusion

Regulatory overlap levies unnecessary costs on American businesses and needlessly constrains U.S. economic growth. It also runs counter to basic precepts of good government, which require the elimination of wasteful and duplicative arrangements wherever possible. Business Roundtable appreciates the Administration's recognition of this challenge and welcomes recent efforts to simplify and streamline government while continuing to provide the services and protections all Americans expect and deserve. However, more can and should be done to target areas of overlap that inhibit hiring, investment and economic growth.

Processes are needed not only to address existing areas of overlap but also to navigate those that will inevitably arise as U.S. businesses and entrepreneurs continue to innovate at the technological frontier. For example, the recent debate over who should regulate cell-cultured, as opposed to farm-raised, meats reveals how regulatory overlap has the potential to impede the development and adoption of new and promising technologies. Although USDA and FDA have established an agreement for the joint regulation of this new technology, lab-grown protein is the tip of the iceberg. In addition, uncertainty regarding regulatory authority over cybersecurity and data security issues threatens to undermine innovation, economic growth, and public safety and security. Looking ahead, questions about agency jurisdiction are likely to become increasingly complex given advances in automation, artificial intelligence, "big data" analytics and the Internet of Things.⁶² Given the rapid pace of technological change, it is critical that agencies proactively identify and rationalize potential regulatory overlap involving new technologies. Waiting until problems emerge, and then having to undo established policies and practices, will diminish the benefits that innovation can produce and undermine the global competitiveness of U.S. businesses.

Appendix: Table of Acronyms

CFPB	Consumer Financial Protection Bureau
CFTC	Commodity Futures Trading Commission
DHS	Department of Homeland Security
DOC	Department of Commerce
DOT	Department of Transportation
EPA	Environmental Protection Agency
FAST Act	Fixing America's Surface Transportation Act
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FDIC	Federal Deposit Insurance Corporation
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FSIS	Food Safety and Inspection Service
FTA	Federal Transit Administration
FTC	Federal Trade Commission
GAO	Government Accountability Office
GMO	Genetically Modified Organism
NCUA	National Credit Union Administration
NEPA	National Environmental Policy Act
OCC	Office of the Comptroller of the Currency
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PHMSA	Pipeline and Hazardous Materials Safety Administration
SEC	Securities and Exchange Commission
TSA	Transportation Security Administration
USDA	U.S. Department of Agriculture

Endnotes

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- 60 In his first remarks on bank regulation after assuming the chairmanship of the Fed, Jerome Powell stated, “I would say the post-crisis reform program has been mostly completed and has mostly been successful. ... It’s our obligation now, as we reach completion, to look back over it and ask what aspects of it may be redundant, or inefficient, or utterly essential and should be protected down to every letter. But there are going to be some adjustments, and I think that’s only appropriate. A lot of this stuff was novel, and it would be very surprising if we got it all exactly right the first time.” See Heltman, J. (2018). Quarles details how Fed may regulate \$100B-\$250B banks. *AmericanBanker*. Retrieved from https://www.americanbanker.com/news/quarles-details-how-fed-may-regulate-100b-250b-banks?utm_campaign=regulation-jul%2023%202018&utm_medium=email&utm_source=newsletter&eid=df09d5ef2c326215b726e3b88180ae28&bxid=5b4f5ac36780894705649d11
- 61 Banks with \$50 billion–\$100 billion in assets are left out of the regime, while the Fed has 18 months to decide if those with assets of between \$100 billion and \$250 billion should be subject to “enhanced supervision.” See Economic Growth, Regulatory Relief, and Consumer Protection Act (S.2155), U.S.C. (2018); and American Bankers Association. (2018, March). *The Economic Growth, Regulatory Relief, and Consumer Protection Act*. Retrieved from <https://www.aba.com/Compliance/Documents/Executive-Summary-S2155-Senate.pdf>
- 62 For example, a 2017 hearing before the U.S. Senate Committee on Homeland Security & Governmental Affairs on cybersecurity regulation harmonization recognized that 12 federal agencies and each state banking, insurance and securities regulator have authority to oversee cybersecurity in the insurance and financial services industries. These overlapping regulations needlessly draw resources into compliance efforts and away from customer service and the development of innovative products and services. See U.S. Senate Committee on Homeland Security & Governmental Affairs. (2017). Cybersecurity regulation harmonization. Retrieved from <https://www.hsgac.senate.gov/hearings/cybersecurity-regulation-harmonization>



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