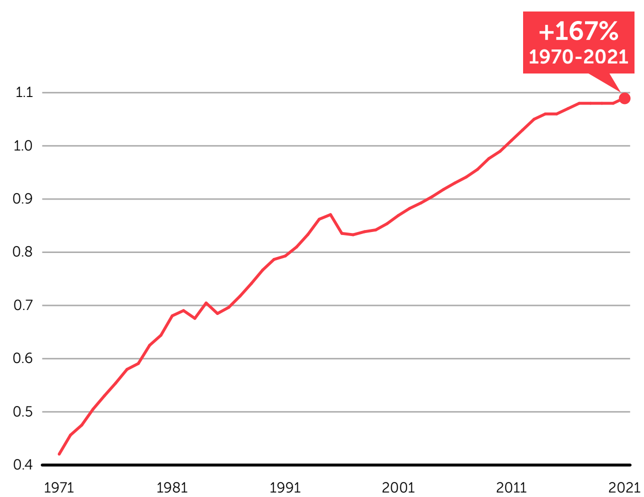
The Cumulative Regulatory Burden is Substantial and Growing, Weighing on Businesses and the Broader U.S. Economy

Regulations ensure a healthy environment, safe workplaces, and fair and competitive markets. However, they can be costly for consumers, businesses and the economy. Balancing desired regulatory objectives with growth and innovation should be central to U.S. regulatory policy and lies at the heart of Business Roundtable's philosophy of "Smart Regulation."

The Office of Management and Budget (OMB) estimates the cost of "major" rules enacted in the last decade total nearly $100 billion per year in current dollars.[1] While regulators estimate that the benefits produced by these regulations are even larger, regulations often interact with one another, creating additional market distortions and leading to higher and often underestimated costs.[2]

Total Number of Restrictions in Federal Regulations
Millions of restrictions



Source: RegHub[3]

This "cumulative regulatory burden" is difficult to quantify, but reputable estimates suggest that the impact is substantial:

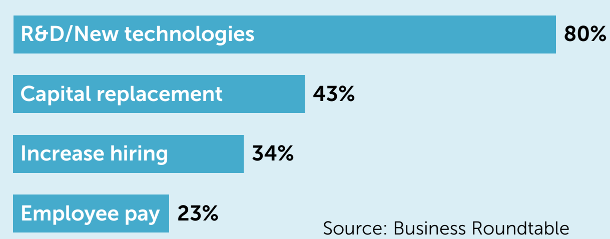
- One study found that the labor costs of compliance alone were **at least $79 billion per year** in 2014 (or nearly $100 billion in current dollars).[4]
- Another found that regulatory restrictions **dampen economic growth by 0.8% per year**, suggesting that the cumulative regulatory burden imposed roughly $200 billion in additional costs in 2022.[5]

The cumulative regulatory burden affects businesses and the broader economy in two key ways:

1. **Compliance Costs** — New regulations require significant investment in labor, equipment and processes to ensure compliance, with labor typically accounting for two-thirds or more of compliance costs.[6] Some of these costs are one-time investments (e.g., developing a compliance system; installing new equipment), but many others are recurring, particularly those related to hiring or retaining compliance workers.

2. **Opportunity Costs** — Estimates of the cumulative regulatory burden often focus on compliance costs because they are easier to measure, but opportunity costs are arguably even more important. High regulatory costs can lead firms to shift resources away from R&D activities, reduce investment, and delay or prevent new projects, resulting in less innovation.[7] Excessive regulation can also cause job and wage losses, deter companies from going public, and reduce entrepreneurship and new business starts.[8, 9, 10]

If your regulatory costs decreased by 20%, how would your company invest the savings?



Source: Business Roundtable

"Redundant or poorly thought-out regulation ... drags on our ability to operate profitably, which in turn limits investment and hiring."

– Business Roundtable member company

Agency Overreach

A well-designed regulatory framework can and should protect public health and the environment, keep Americans safe and foster a fair and competitive playing field for businesses of all sizes. Recently, the SEC, FTC, EPA and other regulatory agencies have been pursuing a regulatory agenda that exceeds their statutory remits and will impose unnecessary costs on the economy, undermining U.S. global competitiveness. Below are a sample of issues affecting a broad swath of Business Roundtable member companies.

Securities and Exchange Commission (SEC)

The SEC proposed a **climate disclosure rule** that would require public companies to produce overwhelming amounts of information that would not be comparable, reliable or meaningful to investors and does not hinge disclosure requirements on whether or not the information is material. It would also subject companies to significant liability for disclosures that inherently involve a high degree of uncertainty, including Scope 3 greenhouse gas emissions disclosure.

The **SEC's Rollback of Proxy Advisor Reforms** adopted in 2020 ignored the importance of regulatory oversight and rescinded efforts to improve the accuracy of information informing proxy vote recommendations. The agency's rushed decision to prevent these modest, commonsense reforms from taking effect makes it more difficult for investors to differentiate fact from fiction when considering proposals.

The proposed amendments to **Shareholder Proposals Under Exchange Act Rule 14a-8** would further limit the circumstances under which companies could exclude shareholder proposals that have already been implemented or that are repetitive or duplicative of other proposals that have been submitted to the company.

Federal Trade Commission

The **Guides for the Use of Environmental Marketing Claims** could result in significant costs and burdens without meaningfully increasing clarity for consumers. The **Non-Compete Clause Rulemaking** exceeds the agency's authority and ignores important valid uses that encourage innovation and investment in employees, R&D and other aspects of business growth.

The proposed revisions to the premerger notification requirements will burden mergers that are competitively neutral or beneficial and are at odds with Congress's intent to minimize burden on transactions that do not raise competitive concerns.

Overreach Leads to Overlap

When agencies become activists, ideologies can hinder sound rulemaking. One common result is regulatory overlap which increases the cumulative regulatory burden. Disclosures, for example, are necessary for informing investment and purchasing decisions. But the resources required for data collection and reporting are substantial, particularly when multiple agencies require overlapping, duplicative or conflicting information.

For example, in March of 2022, the SEC proposed (as noted above) to require extensive climate disclosures from publicly traded companies. In November of 2022, the General Services Administration, the Department of Defense, and NASA proposed extensive climate disclosure requirements for federal contractors. The EPA has its own requirements for emissions reporting. While well-intended, there is little to no alignment in timing and methodologies for these various related disclosures. In situations where multiple agencies intend to put forth similar regulations, it is important to designate a lead regulator (or conduct joint rulemakings) and communicate with industry representatives to avoid duplication. Tools such as memoranda of understanding and interagency working groups can also be helpful.

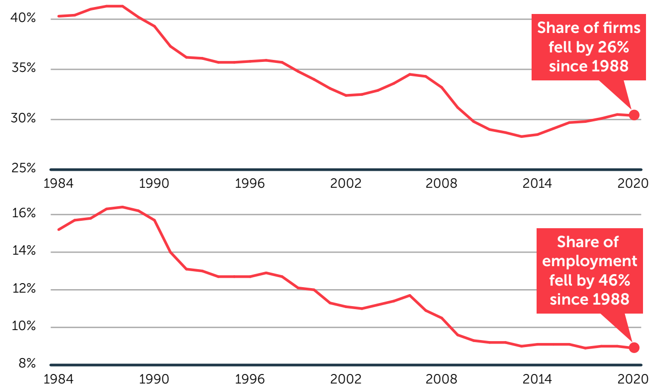
The Cumulative Regulatory Burden Acutely Impacts Small Business

While the cumulative regulatory burden hampers businesses of all sizes, smaller firms — which are integral to our supply chains — are particularly exposed because they lack the scale to efficiently manage compliance. In recognition of this reality, Congress established the Regulatory Flexibility Act (RFA) to ensure federal agencies carefully considered regulatory alternatives and exemptions for small entities.[1] The RFA saved $3.3 billion in regulatory costs in FY2021 — helpful relief to be sure — but representing just a small sliver of the cumulative regulatory burden.

Despite the RFA and other similar efforts, small businesses still face substantial regulatory burdens:

- The U.S. Small Businesses Administration convened dozens of roundtables across the country and heard recurring concerns about compliance costs and rules that are "so complex businesses do not know whether they comply."[2]
- In industry surveys, small business owners routinely flag government regulation as one of their biggest challenges.[3]
- In recent quarters, about one-third of small business owners said the cost of meeting regulatory requirements had risen in the past six months, while fewer than 10% said it declined.[4]
- The National Small Business Association estimates that, on average, small business owners spend over $14,900 on regulatory costs each year (in current dollars).[5]

New Firms as Share of Total Firms and Employment
Percent



Source: Census Bureau[6]

Regulatory burdens also make it difficult for would-be entrepreneurs to start and grow businesses. Compared to 35 years ago, new firms comprise a far smaller share of total firms and employ a much smaller portion of the workforce.[7] Some studies attribute declining entrepreneurship to the cumulative regulatory burden, among other reasons.[8] Regulatory barriers also help to explain the United States' mediocre performance in global rankings on the ease of starting a business.

Ultimately, the cumulative regulatory burden makes the U.S. a difficult place to both start and sustain a business.

U.S. Performance in Global Rankings for Starting a Business

55th	24th	31st
Overall[9]	Cost[10]	Time[11]

"For small businesses, [compliance] may impose significant costs. As firms increase in size, fixed costs of regulatory compliance are spread over a larger revenue and employee base."

– Office of Management and Budget[12]

A Vibrant Small Business Community Benefits Everyone

Business Roundtable represents America's leading corporations, but our companies depend on small businesses in a multitude of ways. Costs pressures for small businesses ripple throughout supply chains, impacting costs for consumers and businesses alike. Moreover, start-ups are a critical source of new products, technologies and other innovations that are essential to the United States' long-term economic success.[13] Large U.S. businesses benefit when small businesses thrive, which is why reducing the cumulative regulatory burden is critical to both Wall Street and Main Street.

Several Tools Underpin Effective Regulatory Planning and Analysis

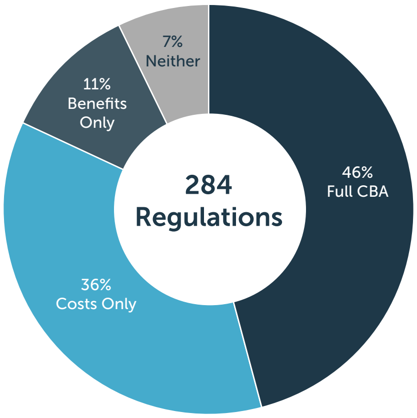
Regulatory planning and analysis — including cost-benefit analysis, regulatory budgeting and retrospective review — is essential to ensuring rules achieve their policy objectives without imposing excessive costs on U.S. businesses and consumers. These three pillars underpin many of Business Roundtable's recommendations for improving the regulatory process and addressing the cumulative regulatory burden.[1]

Conducting comprehensive cost-benefit analysis on major rules is critical.

As Business Roundtable has long argued, rigorous cost-benefit analysis (CBA) is the cornerstone of effective regulatory planning and analysis. By quantifying and comparing the likely costs and benefits of regulatory alternatives, CBA ensures that most regulations deliver net benefits to society.

But CBA is only effective if it is done well and used to inform new rules. According to OMB, fewer than half of the 284 major rules issued from 2010–2019 included a full CBA in which agencies monetized both costs and benefits. Since independent regulatory agencies (IRAs), including the SEC and Federal Trade Commission, are generally not required to conduct CBAs, many more high-impact rules avoid rigorous scrutiny: of the 15 major rules issued by IRAs in FY2019, *none* included a full CBA.[2] The inconsistent application of CBA weakens regulatory planning and analysis and leads to rules that impose higher-than-necessary costs.

Total Major Final Non-Transfer Regulations
FY 2010-2019, excludes rules from IRAs



Source: OMB[3]

Retrospective reviews should be integrated into the rulemaking process.

With retrospective review, agencies periodically assess rules to determine how well they are achieving their policy goals. Administrations of both parties have advocated for expanding the use of retrospective review (or "look-back" analysis), but in practice it is rarely applied.[4]

The limited use of retrospective reviews is in part due to agencies needing to develop assessment tools and methods years after rules have been issued. Incorporating retrospective review plans in the rulemaking process would make look-back analyses easier for agencies to perform. This "prospective" approach to retrospective review enjoys broad, bipartisan support and would help agencies identify rules that should be revisited, reworked or repealed.[5]

Regulatory budgets can help rein in the costs imposed by new rules.

Regulatory budgets impose constraints on the costs that regulators can impose when issuing new rules. Compared to CBA and retrospective review, regulatory budgets are less commonly used. For example:

- The Trump Administration capped the total costs that agencies could impose in all their rules and, in some cases, required agencies to eliminate existing regulations before adding new ones.[6]
- The UK government has used regulatory budgeting at various periods to reduce the cumulative regulatory burden (e.g., "one in, one out").[7]

Critics of regulatory budgets often point to the need to account for benefits as well as costs, but a regulatory budget could allow offsets for net benefits or for achieving cost savings by revising existing rules.[8]

"Properly designed, regulatory budgets could be socially beneficial, increasing net benefits to society … however, agencies would necessarily need to consider benefits in setting those budgets."
– Richard Revesz, Current OIRA Administrator; Michael Livermore, University of Virginia, 2020[9]

Recommendations to Ease the Cumulative Regulatory Burden

Business Roundtable has identified policy recommendations that reflect the principles of our "Smart Regulation" philosophy. These recommendations can guide Congress and the federal government as they consider policies to modernize our regulatory system and ease the cumulative regulatory burden.

1. Improve regulatory planning and analysis to produce smarter regulations.

OMB provides federal agencies with detailed guidance for how to develop smart regulation. However, agencies still have significant latitude when developing rules, and some hew more closely to best practices than others. Sometimes, poorly-formulated rules are the result of agencies not following OMB guidance or conducting unsound analysis, but there are also actions that OMB and Congress should take that would lead to higher-quality rules.

To improve planning and analysis, policymakers should:

- **Codify key principles of rigorous, transparent cost-benefit analysis.** By creating an enforceable legal requirement, Congress would ensure that rules address a compelling public need and produce benefits that justify the costs they impose and are achieved in a cost-effective manner. Congress can also improve transparency by requiring agencies to disclose all data, assumptions, methods and models used in their analyses.
- **Require agencies to use proper discount rates or shadow prices to ensure full consideration of opportunity costs when developing new rules.** Recent changes to OMB guidance regarding how to conduct cost-benefit analysis raise serious concerns that agencies will fail to fully factor in the opportunity costs imposed by new regulations. Whether done through higher discount rates or via a realistic "shadow price of capital," properly accounting for opportunity costs is a regulatory imperative.
- **Ensure agencies conduct sensitivity and uncertainty analyses.** Information about uncertainties and how they may alter a rule's impact can better inform policymakers and the public about how likely a rule will achieve its estimated benefits.
- **Require agencies to provide additional justification of major rules that depend heavily on ancillary benefits.** When indirect benefits are a primary driver of a proposed rule's societal value, agencies should demonstrate why they are regulating in a manner that achieves these benefits through indirect means when a direct approach could be more cost-effective.
- **Require independent regulatory agencies to conduct cost-benefit analyses.** Closing the independent agency loophole would ensure that every impactful rule is subject to the same rigorous evaluation.
- **Require agencies to develop retrospective review plans during the rulemaking process.** Prospective planning can make look-back analysis more accurate, less costly and more likely to occur.
- **Consider establishing agency-specific regulatory budgets.** A carefully considered regulatory budgeting regime that also accounts for benefits can encourage agencies to more fully consider the cumulative costs of new rules.

2. Improve coordination to harmonize rules and reduce overlap.

Businesses must comply with an array of federal, state, local and international regulations that often overlap, resulting in confusing, duplicative and sometimes conflicting requirements.

To reduce regulatory overlap, policymakers should:

- **Enhance interagency coordination within the federal government.** For example, federal agencies should establish memoranda of understanding and interagency working groups to promote coordination; conduct joint rulemakings for cross-cutting regulatory activities to improve consistency; and designate a lead agency to avoid duplicative rules.

- **Facilitate coordination between regulatory agencies at federal, state and local levels.** Convening federal, state and local regulators to discuss and harmonize rules would streamline compliance for business and reduce costs.
- **Strengthen international regulatory cooperation.** Communicating and coordinating with regulators outside the U.S. can help establish consistent regulatory practices and minimize areas of divergence that complicate compliance.

"The volume of overlapping regulations is growing, so ensuring compliance becomes even more complex … Where regulations overlap, there should be harmonization of reporting/disclosure requirements or mutual recognition regarding compliance."

– Business Roundtable member company

3. Better engage the public to develop less costly rules.

Agencies do not always use the public engagement tools available to them. These tools, if used more frequently, could help agencies develop policy alternatives that accomplish regulatory objectives in a less costly manner and communicate more effectively with affected stakeholders.

To enhance public engagement, policymakers should:

- **Make greater use of Requests for Information (RFIs) and Advance Notices of Proposed Rulemaking (ANPRMs).** These tools inform agency decision-making by creating opportunities for the public to provide input. Requiring agencies to use them would foster public engagement and equip regulators with valuable input as they develop regulatory alternatives.
- **Require a "Notice of Initiation" for each major rule.** RFIs and ANPRMs are often issued after agencies have already made key policy decisions. Requiring agencies to first issue a "Notice of Initiation" when beginning a major rulemaking would allow stakeholders to provide input earlier in the process, thereby helping agencies formulate and shape potential regulatory alternatives before getting too far down the road on a given approach.
- **Target and engage relevant stakeholder groups early in the rulemaking process.** The Small Business Regulatory Enforcement Fairness Act (SBREFA) creates special outreach requirements for rules from designated agencies that are likely to have a significant impact on small entities. OIRA should encourage all agencies to experiment with an expanded SBREFA-like process that encompasses a broader set of rules and stakeholders to help identify optimal regulatory approaches.

"The rulemaking process should include focus group discussions with the significant parties impacted by the change and provide a draft of the rule to participants to discuss gaps in information/instructions."

– Business Roundtable member company

Endnotes

Page 1: The Cumulative Regulatory Burden is Substantial and Growing, Weighing on Businesses and the Broader U.S. Economy

1 Calculated from Office of Management and Budget (OMB) *Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*, 2018-2020 [Link] and 2017 [Link]. Historically, "major" rules have been defined by OMB as those that have over $100 million in annual economic effect; significant effects on costs or prices for consumers; or significant adverse effects on employment, competition, investment, productivity, innovation, or global competitiveness. [Link]. As part of President Biden's Executive Order 14094, the "major rule" threshold was raised to $200 million and will be adjusted every three years to reflect GDP growth. [Link]

2 NERA Economic Consulting *Macroeconomic Impacts of Federal Regulation of the Manufacturing Sector* 2012 [Link]

3 Trebbi, F. and Zhang, M. *The Cost of Regulatory Compliance in the United States* 2022 [Link]

4 Coffey et. al *The Cumulative Cost of Regulations* 2020 [Link]

5 Analysis of RegHub Data [Link]. "Restrictions" refer to the number of times restrictive words (e.g., may not, prohibited) appear in regulatory text.

6 Gorman, L, *Tracking the Cost of Complying with Government Regulation* [Link]

7 Marcus, A. *Policy Uncertainty and Technological Innovation* 1981 [Link]

8 Bailey, J. and Thomas, D. *Regulating Away Competition: The Effect of Regulation on Entrepreneurship and Employment* 2017 [Link]

9 PwC *Considering an IPO? First, understand the costs* [Link]

10 Bailey and Thomas 2017

Page 2: Agency Overreach

1 **SEC Climate Disclosure Rule:** The proposed rule would require a domestic or foreign registrant to include certain climate-related information in its registration statements and periodic reports, such as on Form 10-K, including: climate-related risks and their actual or likely material impacts on the registrant's business, strategy, and outlook; the registrant's governance of climate-related risks, including discussion of board climate expertise, and relevant risk management processes; the registrant's greenhouse gas emissions (Scopes 1, 2 and 3), which, for accelerated and large accelerated filers and with respect to certain emissions, would be subject to assurance; certain climate-related financial statement metrics and related disclosures in a note to its audited financial statements (including disaggregated climate-related impacts on existing financial statement line items if climate risks affect 1% or more of the absolute value of the line item); and information about climate-related targets and goals, and transition plan, if any. As proposed, the rule would significantly increase the disclosure burden for companies and would expose registrants to significant liability due to inherently uncertain disclosures.

2 **Rollback of Proxy Advisor Rule:** Adopted in 2022, the final rule rescinded two rules applicable to proxy advisory firms that the SEC adopted in 2020 to address issues including conflicts of interest and accuracy in proxy advisory firm advice. In rescinding the 2020 rules, the SEC said its action "aims to avoid burdens on proxy voting advice businesses that may impair the timeliness and independence of their advice. It also "seeks to address misperceptions about liability standards applicable to proxy voting advice while also preserving investors' confidence in the integrity of such advice." This new rule is likely to create confusion for both investors and registrants by rescinding changes that made the proxy voting process more transparent and accurate.

3 **Shareholder Proposals Under Exchange Act Rule 14a-8:** This proposed rule would amend Rule 14a-8, which governs the process for including shareholder proposals in a company's proxy statement, by revising three bases for exclusion: substantial implementation, duplication and resubmission. The rule change is expected to exacerbate abuses of the shareholder proposal process and complicate the

process by introducing yet another substantial rule change.

4 **Non-Compete Clause Rule:** The proposed rule would provide that it is an unfair method of competition for an employer to enter into or attempt to enter into a non compete clause with a worker; to maintain with a worker a non compete clause; or, under certain circumstances, to represent to a worker that the worker is subject to a non compete clause. This rule would prioritize speculative competitive harms arising from a minority of non-compete agreements over important benefits of these clauses, including protecting investments in research and development and promoting workforce training.

5 **Merger Enforcement:** The merger guidelines set forth analytical techniques, practices, and enforcement policy of the agencies and are under review to ensure that they (1) reflect current learning about competition based on modern market realities, 4 and (2) faithfully track the statutory text, legislative history, and established case law around merger enforcement. A key overriding question is how effectively the current guidance documents capture the competitive issues raised by mergers today and whether these documents adequately equip enforcers to identify and proscribe unlawful, anticompetitive transactions.

Page 3: The Cumulative Regulatory Burden Acutely Impacts Small Business

1 Congressional Research Service *The Regulatory Flexibility Act: An Overview* 2021 [Link]

2 Office of Advocacy of the U.S. Small Business Administration *Reforming Regulations and Listening to Small Business: Second Progress Report on the Office of Advocacy's Regional Regulatory Reform Roundtables, June 2017-December 2019* 2020 [Link]

3 National Federation of Independent Business (NFIB) *Small Business Economic Trends* data [Link]; NFIB *Small Business Problems & Priorities* report 2020 [Link]; National Small Business Association (NSBA) *2023 Economic Report* [Link]; NSBA *Small Business Regulations Survey* 2017 [Link]

4 U.S. Chamber of Commerce *Small Business Index* 2019-2023 [Link]

5 NSBA 2017

6 Census Bureau *Business Dynamics Statistics* [Link]

7 Census Bureau *Business Dynamics Statistics*

8 Cato Institute *Entrepreneurs and Regulations: Removing State and Local Barriers to New Businesses* 2021 [Link]

9 World Bank *Doing Business* 2020 [Link]

10 World Economic Forum *Global Competitiveness Report* 2019 [Link]

11 World Economic Forum

12 Office of Management and Budget, Office of Information and Regulatory Affairs *2017 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* [Link]

13 Congressional Budget Office (CBO) *Federal Policies in Response to Declining Entrepreneurship* 2020 [Link]

Page 4: Efforts to Improve Regulatory Analysis Span Administrations

Page 5: Several Tools Underpin Effective Regulatory Planning and Analysis

1 Business Roundtable *Using Cost-Benefit Analysis To Craft Smart Regulation: A Primer and Key Considerations for Congress and Federal Agencies* 2014 [Link]

2 Office of Management and Budget (OMB) *Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* 2011-2020 [Link]

3 OMB *2018, 2019, and 2020 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* [Link]

Endnotes

4 See, for example: President Reagan's Task Force on Regulatory Relief; President George H.W. Bush's Council on Competitiveness; President Clinton's National Performance Review framework; President George W. Bush's request for public nominations of problematic rules for OIRA review; President Obama's Executive Order 13563 [Link] and Executive Order 13610 [Link], requiring covered agencies to submit retrospective review plans.

5 See Sunstein, C. *The Regulatory Lookback* 2014 [Link]; Greenstone, M. *Toward a Culture of Persistent Regulatory Experimentation and Evaluation* 2009 [Link]; Livermore, M. and Revesz, R. 2020; Morgenstern, R. *Retrospective Analysis of U.S. Federal Environmental Regulation* 2017 [Link]; Dudley, S. 2019

6 Executive Order 13771 *Reducing Regulation and Controlling Regulatory Costs* 2017 [Link]; American Action Forum *The Legacy of the Regulatory Budget* 2021 [Link]

7 GOV.UK *Press Release: Government going further to cut red tape by £10 billion* 2016 [Link]; Cato Institute *President Trump's "One-in, Two-out" Rule: Lessons from the UK* 2017 [Link]

8 Brookings *The limits of thinking of a regulatory budget like a fiscal budget* 2019 [Link]

9 Livermore, M. and Revesz, R. *Reviving Rationality: Saving Cost-Benefit Analysis for the Sake of the Environment and Our Health* 2020 [Link]