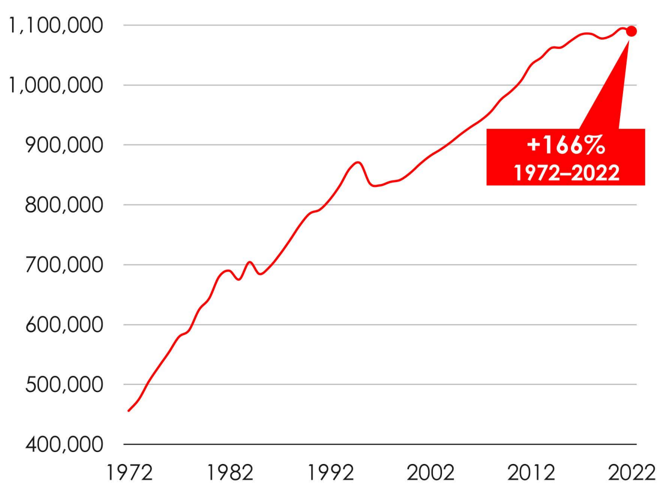
The Cumulative Regulatory Burden Is Substantial and Growing, Weighing on Businesses and the Broader U.S. Economy

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 the Business Roundtable philosophy of "Smart Regulation."

Based on agency estimates and annual reports issued by the Office of Management and Budget (OMB), the cost of "major" rules enacted from 2008–2023 totals nearly $229 billion in current dollars.[1] While regulators estimate that the benefits produced by these rules 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]

The $229 billion cost estimate over the last 16 years represents a floor estimate for the cumulative regulatory burden, as it is based on agency analyses conducted before rules went into effect, excludes thousands of "non-major" rules and ignores interactive effects. While a comprehensive estimate is difficult to determine, reputable research suggests that the impact is substantially higher:

- One study found that the labor costs of compliance alone were at least $79 billion per year in 2014 (or roughly $104 billion per year 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 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 or 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 stifle entrepreneurship and new business starts.[8,9,10]

> *"Redundant or poorly thought-out regulation … drags on our ability to operate profitably, which in turn limits investment and hiring."*
>
> – Business Roundtable member company

The Cumulative Cost of Environmental Regulation Has Exploded in Recent Years

Business Roundtable supports policies to ensure access to sustainable, reliable and affordable energy while reducing greenhouse gas emissions and combating climate change. At the same time, we oppose policies that are unachievable or fail to balance cost and other non-environmental impacts.

Environmental Protection Agency Drives the Regulatory Burden

Regulations are an important tool for the Environmental Protection Agency (EPA) to carry out its mission to protect human health and the environment. However, they also impose a large and rapidly growing burden on U.S. businesses, and the cumulative burden of EPA's rules is almost certainly larger than the sum of its parts.

According to EPA estimates, the cumulative cost of the major regulations the agency finalized from 2008–2023 is $110 billion and rose nearly 60% in the last two years (see graphic).[1] A decade ago, OMB reported that EPA's air regulations accounted for nearly two-thirds of the monetized regulatory costs across the entire federal government.[2] Given the recent sharp increase in EPA regulatory costs, the agency's contribution to the cumulative regulatory burden may be even larger today.

Further, EPA's cost estimates do not fully capture the cumulative costs of environmental regulation, such as delayed capital expenditure planning and foregone R&D activities that result in less innovation.[3,4] While these effects are difficult to quantify, they further reduce job creation and overall economic growth.

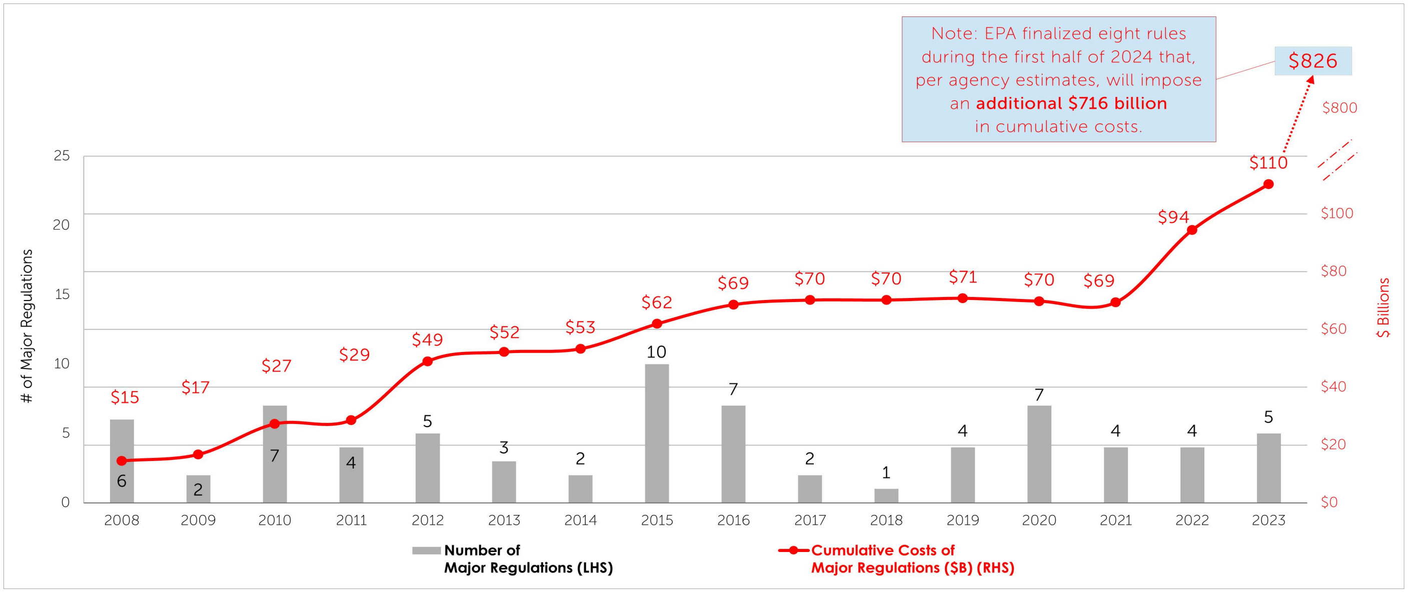
EPA Regulatory Costs Skyrocketed in 2024

Although OMB data is unavailable for 2024, EPA's regulatory costs have skyrocketed during this period.

For example, during a four-month period in 2024, EPA finalized eight rules that will impose a combined $716 billion in additional costs according to the agency's own estimates—or more than six times the total costs of all major EPA rules finalized from 2008–2023.[5] For two of these rules, the monetized cost estimates exceed the monetized benefits estimates.[6]

Regulatory Outlook

If policymakers fail to adopt a smarter approach to regulation, the burden of environmental rules is expected to grow in a way that is not commensurate with benefits. As an example, the Council on Environmental Quality recently finalized its Phase 2 rule implementing the National Environmental Policy Act (NEPA) and reversed earlier reforms to the NEPA process, which will make it more complex, costly and time-consuming to approve much-needed infrastructure projects.[7] Moreover, recent changes to Circular A-4 are likely to make it easier for EPA and other regulatory agencies to justify high-cost rules and may result in regulators undervaluing or ignoring the opportunity costs of their proposed rules.[8] Moving forward, environmental agencies should seek to increase regulatory efficiency while protecting public health and the environment.



Heavy-Handed Financial Regulations Inhibit Banks from Providing Critical Financial Services to Businesses and Consumers

Business Roundtable shares the policy objective of a strong and resilient banking sector and recognizes the need for targeted regulations that ensure competitive, fair and stable financial markets. The Roundtable supports targeted regulatory reform but opposes "one-size-fits-all" approaches and unnecessarily burdensome financial regulations that undermine banks' ability to lend to consumers and businesses.

Banks Face a Barrage of Regulatory Activity

Over the last three years, agencies overseeing financial institutions have proposed an onslaught of new regulations on lenders. These rules will impact a host of banking practices, including capital requirements, data collection processes, lending practices, penalty fees and electronic payments routing.[1]

In December 2023, the American Bankers Association voiced its concerns to regulators about the cumulative effect of these uncoordinated initiatives and warned of their potential to disrupt retail and commercial banking and negatively impact bank customers and the broader economy.[2] Since that time, financial regulators have forged ahead with additional rules, leading banks to file multiple lawsuits alleging regulatory overreach and questioning the economic analysis underpinning the rules.[3]

Direct and Indirect Effects of Financial Regulation

The federal agencies responsible for overseeing the financial sector are, with few exceptions, not required to assess the costs and benefits of their proposed regulations.[4] As a result, there is a dearth of information regarding the cumulative cost of financial regulation. According to OMB, only 28% of the 273 major rules issued by financial regulators from 2008–2023 included cost estimates.[5]

However, third-party estimates suggest that regulatory compliance is a substantial cost to banks. A 2018 study found that among large banks, the average cost of compliance is roughly $10,000 per employee and amounts to an 8% tax on financial firms.[6] This suggests that the largest U.S. banks each spend hundreds of millions of dollars per year on compliance.[7] Given the high volume of recent regulatory proposals, compliance costs are likely much higher today.

Banking regulations also pose indirect costs to financial institutions which, while difficult to quantify, can be substantial. For example, excessive regulation increases the cost of borrowing via higher interest rates and fees and can reduce or even eliminate access to credit for some consumers and small businesses. Excessive regulation can also deter businesses from expending capital through equipment acquisition and R&D investments or from expanding into new markets, resulting in fewer jobs created.

Future of Financial Services Regulation

Increased regulatory scrutiny on financial institutions will continue to sharpen as emerging technologies and financial innovations necessitate new regulatory regimes to ensure safety, security and a level playing field. At the same time, the experience of recent years underscores the importance of policymakers crafting carefully considered rules that strike the right balance between benefits and costs and promote innovation and access to affordable credit.

> *"[Effective policy] requires an ongoing, concerted effort to streamline regulations to cost-effectively drive better outcomes. The last thing we need is a constant pile-on of politically driven, fragmented policies."*
>
> –Jamie Dimon
> Chairman and CEO, JPMorgan Chase

Recent Actions Taken by the Securities and Exchange Commission Are Inconsistent with the Principles of Smart Regulation

The Securities and Exchange Commission (SEC) plays a critical role in protecting investors and promoting responsible shareholder engagement. However, in recent years, the agency has strayed from its core mission to protect investors; maintain fair, orderly and efficient markets; and facilitate capital formation.[1]

SEC Should Maintain the Materiality Standard

For eight decades, federal securities laws have relied on the materiality standard. This foundational principle has served investors well by filtering out irrelevant material and helping them make informed investment and voting decisions. It has also proven flexible enough to evolve as new investor-relevant issues arise.

However, in recent years, the SEC has strayed from the materiality standard and instead adopted increasingly prescriptive disclosure requirements that are untethered to materiality. For public companies, complying with these disclosure requirements has been costly and has compelled companies to provide information to investors that is often irrelevant to their investment and voting decisions and create confusion for investors as to what is truly material. Notably, because these requirements apply only to public companies, they also distort capital markets and discourage companies from going public.[2]

The materiality standard should underpin what information public companies must disclose. Deviating from this principle fails to serve investor interests and distracts from the SEC's core mission.

SEC's Regulatory Process Is Flawed

Over the last three years, the SEC has undertaken an aggressive rulemaking agenda that has largely consisted of voluntary actions and failed to adhere to the principles of smart regulation. For example:

- Many proposals were vague or ungrounded in statute, or failed to demonstrate a market failure or problem they seek to solve, or were issued without giving the public sufficient time to comment.[3]
- Many proposals have pertained to non-investment, non-investor and non-market-oriented changes that limit choice and flexibility and place unnecessary burdens on public companies.[4]
- Proposed rules are often not backed by sound cost-benefit analysis, and their interconnectedness with other rules is not considered.[5]
- Final rules often exhibit dramatic shifts from what was proposed, and the public has no opportunity to comment on the changes or their likely implications.[6]

SEC Reversals on Proxy Process Are Concerning

Rule 14a-8: Rule 14a-8 establishes standards for inclusion and exclusion of shareholder proposals in proxy statements. These standards are an important component of good corporate governance, but, over time, they have been misused by individuals who file the same proposal at many companies to advance goals unrelated to shareholders' economic interests.[7]

In 2020, the SEC reformed Rule 14a-8 to balance the interests of shareholders in being heard on issues of concern against the company resources that such proposals consume. These reforms have been largely undercut by a series of policy reversals that prioritize activist shareholders with little regard for the balancing considerations at the heart of Rule 14a-8, or for the interests of retail investors who must review and vote on lengthy special interest proposals.[8]

Proxy Voting Advice: Reasonable disclosure and procedural requirements for proxy voting advice businesses (or "proxy advisors") help make the proxy voting process more transparent and ensure voting recommendations do not contain false or misleading information.[9] After a decade-long process led by SEC staff, a new framework was implemented in 2020 to strengthen the rules governing proxy advisors. Over the last three years, the SEC has substantially weakened these rules without ever letting them take effect.[10] The SEC's effectiveness will be undermined if its directives are not enforced from one administration to the next, or if rules are the byproduct of political aims rather than thoughtful, data-driven processes.[11]

"Employees, customers, suppliers, social activists, local communities, and other interested non-investors will now line up to get the information they want to know included in disclosures for which shareholders have to pay." [12]

–Hester M. Peirce
Commissioner, U.S. Securities and Exchange Commission

The Federal Trade Commission's Regulatory Overreach and Aggressive Anti-Merger Campaign Is Misguided and Hurts Economic Growth

The Federal Trade Commission (FTC) plays a critical role in protecting consumers and promoting competition in the economy. Unfortunately, FTC's recent regulatory and legal pursuits highlight an agency set on expanding its authority without any clear benefit to the American consumer or sound economic underpinnings.

FTC Has Expanded its Reach Inappropriately

FTC's mission is to protect American consumers from deceptive or unfair business practices and hurtful methods of business competition.[1] However, in recent years the agency has aggressively issued new rules and guidelines that impose unnecessarily burdensome costs on businesses. These activities rely on a questionable and unprecedented expansion of the agency's authority.

- For example, FTC's prohibition on noncompete agreements is staggeringly overbroad and exceeds the agency's statutory authority. Simply put, Congress did not authorize the FTC to engage in legislative-type rulemaking to expansively prohibit noncompete agreements for all categories of workers and without reference to the relevant scope of competition. While Business Roundtable acknowledges that noncompete agreements are not appropriate in all circumstances, the final rule bans virtually all noncompete agreements across the economy and at all wage levels.[2] This blanket prohibition ignores important uses of noncompete agreements that encourage innovation and pro-competitive investment in employees, R&D and other aspects of business growth that benefit workers and the U.S. economy. It also ignores the importance of evaluating the use of noncompetes in specific circumstances, as the FTC is instructed to do using its case-by-case adjudicative function.[3]
- Similarly, FTC's efforts to revise the environmental marketing guides puts the agency in a position of defining, with specificity, what "sustainability" or other environmental terms mean.[4] This is a task for which FTC has neither the authority nor the expertise to properly execute — indeed, other regulators with more direct expertise have not done so. The overly prescriptive requirements for environmental marketing claims would raise compliance costs for businesses of all sizes without substantially helping consumers obtain important or useful information

FTC's Aggressive Stance on Mergers is Alarming

Merger and acquisition (M&A) activity is an enormous engine of economic growth in the United States and benefits businesses of all sizes and their customers. U.S. companies are most competitive when they can exercise the ability to put assets to their highest and best use, including to achieve economies of scale. This tool is especially important for keeping American companies competitive on the global stage with state-sponsored firms headquartered in other parts of the world. M&A is also essential for a dynamic economy: new uses and combinations of assets, as well as innovative breakthroughs, constantly renew the intensity of competition to improve products and services.

In the last three years, FTC has demonstrated a general distrust of M&A and seeming presumption against growth by acquisition. The agency has issued sweeping changes to its merger guidelines that indicate the agency will oppose proposed M&A activity that theoretically could have negative effects on competitors or workers — a major departure from its traditional role of evaluating whether consumers would be harmed.[6] FTC has also dramatically expanded pre-merger filing requirements, imposing mandates that will delay timelines and dramatically increase the regulatory burden for routing M&A transactions, regardless of whether they are potentially anticompetitive.[7] The excessive burden and delay will chill merger activity, to the detriment of the U.S. economy and innovation.

"Our Constitution assigns Congress the legislative power because Congress answers to the People for its choices. We are not a legislature; we are an administrative agency wielding only the power lawfully conferred on us by Congress."[8]

–Andrew Ferguson
Commissioner, Federal Trade Commission

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 Business Roundtable recommendations for improving the regulatory process and addressing the cumulative regulatory burden.

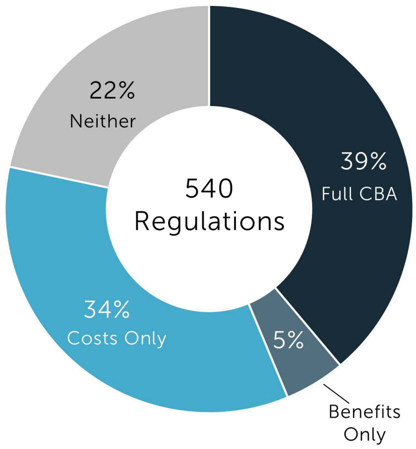
Conducting Cost-Benefit Analysis On Major Rules Is Critical

As Business Roundtable has long argued, rigorous cost-benefit analysis (CBA) is the cornerstone of effective regulatory planning and analysis.[1] By quantifying and comparing the likely costs and benefits of regulatory alternatives, CBA ensures that most regulations deliver net benefits to society.

However, to be effective, CBA must be done well and used to inform new rules. According to OMB, less than 40% of the 540 major rules issued from 2008–2023 included a full CBA in which agencies monetized both costs and benefits (see chart).[2] Since independent regulatory agencies, including the SEC and Federal Trade Commission, are generally not required to conduct CBAs, many more high-impact rules avoid rigorous scrutiny. For example, of the 273 major rules issued by independent agencies from 2008–2023, only 20 included monetized estimates of both benefits and costs.[3] The inconsistent application of CBA weakens regulatory planning and analysis and leads to rules that impose costs that are higher than necessary.

Major Regulations, FY 2008–2023

(*Non-transfer rules, excludes independent regulatory agencies*)



Source: Office of Management and Budget

Agencies Should Prioritize Retrospective Review

With retrospective review, or "look-back analysis," 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,[4] but it rarely occurs in practice.

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 into 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 Costs

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 government of the United Kingdom 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."* [9]
>
> – Richard Revesz, Administrator, OMB Office of Information and Regulatory Affairs; Michael Livermore, Class of 1957 Research Professor of Law, University of Virginia

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 asthey 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, 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 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.

> *"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

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 United States can help establish consistent regulatory practices and minimize areas of divergence that complicate compliance.

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, regulators 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 feedback 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 process would allow stakeholders to provide earlier input, 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

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1. Calculated from Office of Management and Budget (OMB) Reports to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act, 2008–2023. Calculations based on the average of the low and high cost estimate in 2001 dollars for all major rules for which agencies estimated costs. Cost estimates were converted to 2024 dollars using the Consumer Price Index for All Urban Consumers. 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 competitive-ness. 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.

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Endnotes

Page 2: The Cumulative Cost of Environmental Regulation Has Exploded in Recent Years

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