Too Many Regulations, Too Few Jobs

March 11, 2012

President Ronald Reagan once famously quipped: "Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it."

But if Reagan thought the growth and intrusiveness of the federal government was a problem 25 years ago, he would be truly horrified to see the skyrocketing number of federal regulations since he left office, both under Republican and Democrat administrations. The Federal Register is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents. George W. Bush was no model of regulatory restraint, adding an average 77,000 pages to the Federal Register during each year of his presidency. But this trend has accelerated during the first years of President Obama and a regulation-happy Democratic Congress: More than 82,300 pages were added to the Federal Register in 2011, including more than 6,000 pages of Obamacare regulations alone.

Over-regulation is killing jobs and holding back our economic recovery. It is time to roll-back the over-regulation of American business so we can go back to the business of creating jobs and prosperity for Americans. Doing just that will be the subject of the first legislation I will introduce in Congress.

Some federal regulations are comical. Here are a few:

1. The Federal Railroad Administration requires that all locomotives have an "F" painted on both sides of their front ends, so people know which end is which.
2. Federal guidelines now require hotels, restaurants, and airlines to accommodate miniature horses as service animals for people with dog allergies or religious objections to being accompanied by a dog – a prohibition found only within Islam.
3. According to the Cato Institute, Obamacare is expected to increase the number of Medicare reimbursement codes from 18,000 to more than 140,000, including 36 separate codes for treating a snake bite and nine for hang-gliding injuries, creating a bureaucratic nightmare for doctors and hospitals.

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4. A rancher who wants to hire a foreign sheepherder or goat herder must file an application to government officials between 60 and 75 days before the "date of need" and then must provide that sheepherder with a free cell phone and three free meals a day.

These are funny examples, but they would be more humorous if they weren't such a real representation of how burdensome the regulatory state has become. Unfortunately, the cost of over regulation – and the impact on the pockets and jobs of Americans – is no laughing matter.

Consider the following from two of the most over-reaching pieces of legislation passed by the Democratic Congress and signed by President Obama:

1. Dodd-Frank (passed July 2010): This 848-page law regulates the financial industry with the goal of avoiding another financial meltdown. But it goes too far. And the regulators who interpret and implement the law have published regulations that are thousands of pages long. Even the regulators admit that no one understands all the new rules.

Sections 404 and 406 of the law are just 2 pages long. They require certain firms to detail their exposure to risky securities. Regulators are implementing these 2 pages by creating a form that is 192 pages long. Firms estimate that the cost to complete the form will be over $100,000 the first time the form is completed, and $40,000 per year every year after.

BB&T, a major bank based in North Carolina, noted in its SEC filings that "Additional regulations resulting from the Dodd-Frank act may materially adversely affect BB&T's business, financial condition or results of operations".

We all understand that for the economy to come back, banks have to increase the amount of lending to small businesses. But because of Dodd-Frank and other regulations, banks are spending their money complying with regulations, or hoarding cash out of fear of new regulatory requirements, instead of lending it to firms ready to hire workers and entrepreneurs looking to start a new business .

2. ObamaCare (passed March 2010): The price tag of the government's *de facto* takeover of the health insurance industry is enormous. The CBO's most recent estimate puts the cost of full implementation to be over $1.7 trillion dollars over its first 10 years. That's $1.7 trillion out of employers' and taxpayers' pockets that could have been used to hire workers, grow businesses, and make America prosperous again. For perspective, at the end of Reagan's second term in office the entire federal budget was $1 trillion. The $1.7 trillion estimated cost of Obamacare almost certainly underestimates the bill's true cost by a substantial margin. While strong arming the bill through Congress in 2009-2010, the White House and Congressional Democrat leaders employed various smoke and mirror tactics to try and sell the public on the bill's supposed benefits. But now, each time the Congressional Budget Office rescores Obamacare, the cost goes up substantially. So look for a much higher ultimate price tag.

Almost as distressing as the large price tag is the intrusiveness of the government into our private lives. When President Obama told us repeatedly that if you like your current health insurance you can keep it, it was, to put it bluntly, a lie, and was always intended to be. The federal government will regulate the terms of the insurance contracts (policies) we all enter into with our health insurers, reducing our choices while increasing already crushing health insurance premiums. These regulations span thousands of pages already, and they haven't all been written yet.

These are just the two largest regulation-producing bills supported by incumbent Congressman Jared Polis and signed by President Obama.

Unfortunately, there are many more regulations stifling job creation and economic growth. Since 2009 when Obama came into office, according to the Heritage Foundation, 75 new major federal regulations have been implemented costing more than $380 billion over 10 years. In addition, under the Obama administration there have been 219 more "economically significant regulations" enacted, each costing businesses – and thus American workers and consumers - $100 million or more per year.

No administration has ever piled so many extremely expensive regulations on Americans' backs every year as this current government. They must be stopped.

The morality of these regulations is debatable. But what is not debatable is the rising cost of regulations. And this rising cost is stifling our economic recovery.

A study in 2010 for the SBA[i] concluded that the cost of complying with regulations costs businesses almost $1.2 trillion dollars per year. That is not a typo. Over $1 trillion per year dealing with government micromanagement of our economic lives, and that was before Dodd-Frank, Obamacare, or the rest of the Democrats' recent regulatory onslaught. The US Department of Labor reported that there were 12.8 million unemployed Americans in February, 2012. In other words, if the costs of regulations were cut only in half, the money saved would enough to hire every unemployed American in the country at a salary of nearly $50,000 per year.

According to this same study, the costs of complying with regulations increased by $445 billion between 2005 and 2010, a period of time in which the Democrats controlled Congress for the most part. Again, just the increase in costs over those five years is enough to pay the salary of every unemployed worker in America in 2012.

Voters should be furious, but part of the reason this issue flies under the radar is that Congress intentionally delegates the making of many damaging, expensive rules to government agencies to provide Congressmen and Senators cover from their constituents. Since these rules come from faceless, nameless bureaucrats instead of elected representatives, most Americans are unaware of them – which is precisely what both Congress and the regulators want.

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It is time to shine a bright light on the damage caused to Americans by over-regulation, and there are some common-sense solutions I will bring to Congress. Clearly, there is a need for some regulation. But we must find a way to weed out the many bad regulations whose costs outweigh the benefits. Here are some proposals, each of which will be included in the Easing American Regulation Now (EARN) Act which I will introduce as my first bill in Congress:

1. Pay-Go. The economic cost of any new regulation must be offset by a reduction in the cost of an existing regulation, or by the repeal of an existing regulation. There is no need to increase the total cost of regulatory compliance, which is already far too high. If new regulations must be passed, the cost will be offset by the reduction or elimination of the costs of existing regulations.

2. Regulations need to be shorter and simpler. It shouldn't take an army of lawyers and bureaucrats to figure out what government dictates mean – especially those which impact most or all of the American population. In 1956, Congress passed legislation creating the Interstate Highway System. The entire law was 29 pages long. Obamacare is about 2,700 pages long. It's no wonder that no member of Congress even knew what was in it before Nancy Pelosi forced a vote in the House on it. And that's the good news. Regulations issued under Obamacare are now more than five times the length of the law itself, reaching well over 2 million words – or about two and a half times as long as the Bible. The EARN Act will require that all "economically significant" regulation – those with impact over $100 million, must be ratified by a majority vote of both houses of Congress; further, any regulation over 50 pages must be broken into segments of no more than 50 pages, with a separate vote required for each. While this is no panacea – Congress has often abandoned common sense and enacted monstrosities, voter accountability may restrain the worst regulatory impacts.

3. All rules must be subject to a cost-benefit analysis. Today the Regulatory Flexibility Act (5 U.S.C. 601-612) requires federal agencies to consider the effects of their regulatory actions on small businesses to minimize any undue disproportionate burden. But the analysis is done by the president's administration, and has a bias towards overstating benefits and understating costs. The judge of whether a regulation's benefit outweighs the cost should not be a partisan official, but a non-partisan organization. It's time to take partisanship out of rule-making and have regulatory economic impact reviews performed by the Congressional Budget Office, operating under a requirement that the analysis must include a rule's economic impact, not just the direct cost to those who are covered directly by the rule.

4. Regulations will sunset after 10 years. This means that all regulations will automatically expire 10 years after they are enacted unless Congress and the regulatory agency explicitly

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reauthorize them. If it's a good rule, then it can be reenacted. If it's a bad rule, this mechanism will make sure it goes away.

Some fear that Congress and regulatory agencies will get around this requirement by passing a law each year renewing any and all regulations about to sunset. So instead of each regulation being subject to review every 10 years to make sure it is still worthwhile, Congress might sidestep the issue and simply renew every regulation. To prevent this, I propose that every regulation be subject to a new Pay-Go analysis prior to a 10-year renewal. Any regulation failing the cost-benefit test will not be authorized for renewal without an offset. Furthermore, any regulation which exceeds initial cost estimates for two years in a row will automatically expire at the end of its third year. These failing regulations will be subject to mandatory public hearings before legislation reauthorizing them can be considered.

President Reagan had a corollary to his remarks on government's view on the economy: "The nearest thing to eternal life we will ever see on this earth is a government program." The same can be said for a government regulation. Federal regulations are overly burdensome, unintelligible, and too costly. While many regulations may be well-intentioned, they are stifling our country's businesses and killing jobs. As the *Economist* magazine noted in a recent article entitled "Over-Regulated America"[1], "It's a wonder the jobless rate isn't even higher than it is".

Simply stated, it's time for some government regulations to die, so that our economy can live. With my EARN Act's common-sense solutions to the over-regulation problem, we can put balance back in our economy and Americans back to work.

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http://www.sba.gov/sites/default/files/The%20Impact%20of%20Regulatory%20Costs%20on%20Small%20Firms%20(Summary).pdf

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[1] The Economist, Feb 18, 2012 edition

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