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"EXAMINATION OF THE EFFECTS OF REGULATORY POLICY ON THE ECONOMY AND BUSINESS GROWTH"

Before the

U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT

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Good morning, Chairman Lankford, Ranking Member Heitkamp and Members of the Subcommittee. I am Maria Ghazal, Senior Vice President and Counsel of Business Roundtable. Thank you for inviting me to this important hearing to examine the effects of regulatory policy on the economy, business investment, economic growth and job creation. On this 10th anniversary of the beginning of the financial crisis, it is timely to look at policies that drive economic growth. I appreciate the opportunity to share with you the perspective of Business Roundtable.

Business Roundtable is an association of Chief Executive Officers (CEOs) of America's leading companies working to promote a thriving U.S. economy and expanded opportunity for all Americans through sound public policy. Business Roundtable is the only national organization that exclusively represents chief executive officers. These CEO members lead companies with more than 14 million employees and more than $7 trillion in annual revenues. As major employers in every state, Business Roundtable CEOs are responsible for creating quality jobs with good wages.

Business Roundtable supports a smarter approach to regulation – one that meets regulatory goals and promotes innovation, economic growth and job creation. We call this approach "smart regulation," and Business Roundtable formed a Committee focused exclusively on the topic. I oversee policy development and advocacy for this Committee.

My testimony explains how smart regulation can be achieved by reforming three areas: the process by which the federal government issues regulations and guidance; the degree of overlap between agency regulatory jurisdictions; and the system for permitting major infrastructure projects. The Trump Administration is taking major steps to improve each of these three areas. I will describe how the Administration's actions are already producing improvements. I will then highlight ways in which Congress — starting with this Subcommittee — can codify and extend those actions.

How to Promote Smart Regulation

Federal regulations can ensure that all Americans can enjoy a clean environment; safe workplaces; fair treatment; quality health care; access to healthy food and water; and protection from unscrupulous, unfair or predatory business practices. But, too often federal regulatory and permitting processes unnecessarily discourage innovation and investment. Improvements are needed in three key areas:

I. Improve the Regulatory Process

The first needed improvement is ***systematic reform of the process by which the federal government produces regulations and guidance documents***. At present, the current system obstructs innovation, investment and compliance. Agencies often impose rigid one-size-fits-all requirements that cut off promising opportunities, or impose overly prescriptive rules that prevent better solutions. The current regulatory process also creates uncertainty. If companies do not know what regulators will do, they understandably are reluctant to undertake major investments that often take years, if not decades, to execute and bear fruit. Finally, individual rules can also impose costs of hundreds of millions — or even billions — of dollars on consumers, companies and other organizations each year. And while any individual regulation might be cost-effective, the cumulative impact of *all* regulations can be overwhelming.

While a wide variety of process reforms would improve the manner in which federal agencies produce regulations and guidance, the most essential elements are:

- Objective analysis to ensure that regulations are based on the best available information, to carefully and transparently consider the costs and benefits of proposed rules, and to make sure that the benefits justify the costs;
- Early engagement with the affected stakeholders prior to development of a proposed rule, to better understand the issues involved and to gather recommendations for achieving regulatory goals most cost-effectively; and
- Mechanisms for agencies to receive information and feedback from the regulated community about how well existing regulations are accomplishing their regulatory objectives.

Together these actions — in effect, an improved quality control system for federal regulation — will best ensure that regulations are well-constructed, narrowly tailored, supported by sound science and analysis, and fit for their intended purpose.

II. Reduce Regulatory Redundancy and Overlap

The second needed improvement is to ***reduce and rationalize the widespread jurisdictional overlaps among U.S. regulatory agencies.*** 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 leads to costs that reduce hiring and business investment. Reform will require Congress to allocate agency jurisdictions more clearly. Congress could also encourage a variety of helpful practices among agencies, such as negotiating memoranda of understanding. Business Roundtable will release a white paper later this year describing the problem of regulatory overlap, the negative effect this overlap has on U.S. businesses, and constructive solutions for both regulatory agencies and Congress to consider.

III. Streamline and Expedite Permitting

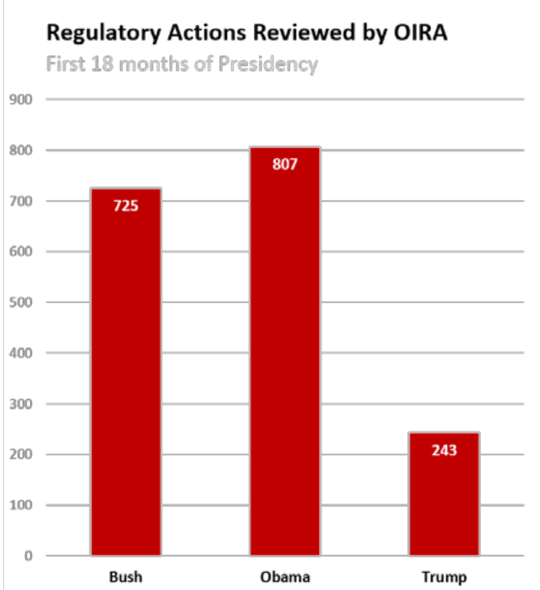
The third needed improvement is to ***streamline and expedite environmental reviews and other approval processes for major infrastructure projects***. Business Roundtable CEOs strongly advocate changes that will "simplify, streamline and accelerate America's permitting process with the goal of encouraging large-scale capital investments in the U.S. economy while maintaining the nation's commitments to health, safety and soundness."[1] Gaining approval to build a new bridge or factory typically involves review by multiple federal agencies with overlapping jurisdictions and no real deadlines. Often, no single federal entity is responsible for managing the process or has the power to compel other agencies to act promptly. Even after a project is granted permits, lawsuits can still hold things up for years — or, worse, halt a half-completed construction project.

Congress took a huge step forward when it passed title XLI of the Fixing America's Surface Transportation Act, generally referred to as FAST-41[2] — a bipartisan bill that originated in this committee.[3] But there is room for improvement, including extending FAST-41 reforms to a wider universe of projects and setting a presumptive deadline for reviews.

The Trump Administration's Actions Thus Far

Reforming the Regulatory Process

The President made reducing regulatory burden one of his first priorities, and the Administration has made progress in that regard. One of the President's first Executive Orders (E.O. 13771) was to establish a 1-in, 2-out goal for every significant regulation proposed. By the end of FY 2017, the Administration had eliminated 67 regulations and adopted only three significant new regulations. As of mid-December 2017, the Administration withdrew or delayed 1,579 rulemakings listed in the previous Administration's regulatory agenda. For FY 2018, the Administration announced plans to eliminate an additional 434 regulations while issuing 131. According to the Office of Management and Budget (OMB), $8.1 billion in regulatory savings were achieved in FY 2017 and nearly $10 billion in savings are being forecast for FY 2018. The Administration did not provide any updated data when it released its Spring 2018 Regulatory Agenda, but a recent study found that, in the first 18 months of the Trump Administration, the number of significant proposed or final rules reviewed by the OMB fell by 70 percent from the same period under the previous



Source: Dooling, B. (2018). Trump Administration Picks up the Regulatory Pace in its Second Year. The George Washington University Regulatory Studies Center.

[1] *See* Business Roundtable, *Permitting Jobs and Business Investment: Streamlining the Federal Permitting Process* (April 2012) at 3. This report may be accessed at: https://www.businessroundtable.org/sites/default/files/2012_04_23_BRT_Permitting_Jobs_and_Business_Investment.pdf.
[2] 42 U.S.C. § 4370m *et. seq.* (2015).
[3] Similar reforms are embodied in the Water Resources Development Act (WRDA) (included as part of the Water Infrastructure Improvement for the Nation Act, Pub. L. No. 114-322, § 1156 *et seq.*), for water resources projects, and the balance of the FAST Act (Pub. L. No. 114-94), for surface transportation projects.

Administration, and fell more than 50 percent from the same period under the George W. Bush Administration (see graph).[4]

The President also issued an Executive Order (E.O. 13777) institutionalizing his regulatory reform agenda by requiring each agency to designate a Regulatory Reform Officer responsible for reviewing current regulations and making recommendations on how to modify them. Agencies are also required to solicit public comment on regulations in need of repeal or reform. Business Roundtable submitted comments on several regulations.

The Administration also broke new ground when the Treasury Department and OMB issued a memorandum of agreement under which the OMB's Office of Information and Regulatory Affairs (OIRA) will review certain tax regulations. Further, the Environmental Protection Agency solicited early input on whether it should propose a rule to standardize its conduct of cost-benefit analyses for significant rulemakings.[5]

Business Roundtable members are encouraged by these actions and believe the Administration is serious about reducing cumulative regulatory burdens. Every year since 2002, Business Roundtable has surveyed its member CEOs about their expectations for their companies' sales, capital spending and employment over the following six months. In the fourth quarter of the year, CEOs are also asked to rank the most significant cost pressures their companies face. Beginning in 2012, CEOs cited regulatory costs as the top cost pressure for five consecutive years. Last year, however, regulatory costs slipped to the second-largest cost pressure, overtaken by labor costs.[6] We suspect the Administration's emphasis on reducing the regulatory burden facing U.S. businesses is a significant driver of this result.

More generally, Executive Orders 13771 and 13777 have effectively limited new significant rulemaking to those that are really necessary (e.g., required by statute or national security considerations). This dramatic shift in regulatory philosophy has reduced regulatory costs and allowed our members to make decisions in a more certain, predictable environment. The result is heightened optimism in the business community as well as the overall economy, as is evident in a variety of business confidence indices (including the Business Roundtable CEO Economic Outlook, which reached an all-time high earlier this year).[7] The Dow Jones Industrial Average and the S&P 500 continue to reach record highs, unemployment has fallen in 2018 to its lowest level since late 2000, and initial jobless claims are at their lowest point since the late 1960s.

Addressing the Problem of Regulatory Overlap

In March 2017, the President instructed the OMB to develop a plan to improve the efficiency,

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[4] Bridget C.E. Dooling, "Trump Administration Picks up the Regulatory Pace in its Second Year – Overall Pace Still Dramatically Slower than Prior Administrations," GW Regulatory Studies Center Regulatory Insight (Aug. 1, 2018), available at https://regulatorystudies.columbian.gwu.edu/sites/g/files/zaxdzs1866/f/downloads/Dooling_Trump%27sFirst18Months.pdf.
[5] 83 Fed. Reg. 27524 (June 13, 2018). Business Roundtable filed comments in this docket. *See* https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0107-1186.
[6] *See* https://www.businessroundtable.org/resources/ceo-survey/2017-Q4.
[7] *See* https://www.businessroundtable.org/resources/ceo-survey/2018-Q1.

effectiveness and accountability of federal agencies by, among other things, eliminating or reorganizing unnecessary or redundant federal agencies. The result was a report, released this past June, "Delivering Government Solutions in the 21st Century."[8] Noting that "[m]any Federal organizations are effectively fulfilling their missions and serving citizens but doing so in ways that duplicate other Federal activities,"[9] the plan proposes 32 structural reforms of the federal government. These include, for example, consolidating the food safety responsibilities of the Food & Drug Administration and the U.S. Department of Agriculture (USDA) within the USDA. As the report describes, while "some of the proposals are ready for agency implementation, others establish a vision for the Executive Branch that will require further exploration and partnership with the Congress."[10]

Individual agencies are also taking steps to rationalize their operations. A good example is the recent memorandum of understanding executed by the Federal Energy Regulatory Commission (FERC) and the Department of Transportation's Pipeline and Hazardous Materials Safety Administration to rationalize the safety review of liquefied natural gas pipelines during FERC permitting processes.[11]

Individual Business Roundtable members have expressed enthusiasm about both the food safety and pipeline safety reforms noted above, and our membership is optimistic that the Administration may be able to make significantly more progress on reducing regulatory overlap than its predecessors have.

Improving Infrastructure Permitting

The Administration is also accelerating and rationalizing the process of permitting infrastructure projects. Its most significant action has been issuance of Executive Order No. 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects."[12] This E.O. establishes a two-year goal for completing all federal environmental reviews and authorization decisions for major infrastructure projects. It also mandates that federal agencies involved in a project reach "One Federal Decision." This means that a lead agency will coordinate with all cooperating or participating agencies to reach one Record of Decision (ROD) under the National Environmental Policy Act (NEPA), and that all related federal approvals will be made within 90 days of issuance of the ROD. Finally, the E.O. extends elements of FAST-41 (e.g., permitting timetables and dispute resolution) to all projects subject to NEPA and involving more than one agency.

To implement these mandates, the 12 agencies on the Federal Permitting Improvement Steering Council (FPISC) jointly issued a memorandum of understanding that took effect in

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[8] Available at https://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf.
[9] *Id.* at 12.
[10] *Id*. at 4.
[11] Available at https://www.ferc.gov/legal/mou/2018/FERC-PHMSA-MOU.pdf?csrt=620057879745426299.
[12] 82 Fed. Reg. 40463 (August 24, 2017).

April 2018.[13] In addition, the Council on Environmental Quality has gathered public input on whether to propose to revise its regulations implementing the procedural provisions of NEPA.[14]

Business Roundtable members strongly support all of these actions.

Reforms Congress Could Act On

While the Trump Administration takes important steps to improve the three areas discussed above, Congress could also act to codify those improvements and to take actions the President, alone, cannot.

I. Regulatory Process Reforms

The single most important action Congress could take to improve the federal regulatory process would be to enact the Regulatory Accountability Act (RAA). Business Roundtable strongly supports this bill. The Senate bill (S. 951) strikes the appropriate balance in reforming the process without unduly burdening agencies or their decision-making processes. Most importantly, the RAA would:

- Promote earlier and greater public participation in the regulatory process;
- Codify the requirements of E.O. 12866 regarding cost-benefit analysis for major rules, and require agencies to pick the most cost-effective alternative, unless the benefits of a less cost-effective alternative justify its choice or the authorizing statute specifies a different standard;
- Extend this cost-benefit analysis requirement to independent agencies not now subject to E.O. 12866;
- Require that major rules include a framework for evaluating the ultimate effects of the rule — i.e., did it achieve what Congress intended; and
- Specify standards for agencies when they issue guidance documents.

II. Reducing Regulatory Overlaps

As noted earlier, Congress needs to address the many instances of regulatory overlap arising from the overlap of various statutes. In this regard, this Subcommittee and its parent Committee have important oversight responsibilities such as identifying specific examples of regulatory overlap and engaging with agencies to reduce the problem. It would be crucial for this oversight to include independent agencies, as they are a significant source of the problem. Options available to agencies to ameliorate overlap problems include:

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[13] *See* https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf.

[14] 83 Fed. Reg. 28591 (June 20, 2018). Business Roundtable filed comments in this docket. See https://www.regulations.gov/document?D=CEQ-2018-0001-11957.

- Negotiating memoranda of understanding between regulatory agencies or interagency working groups to achieve better coordination. In particular, agencies could 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.
- Designating a lead regulator where multiple agencies have responsibility for oversight, with other regulators exercising both regulatory and enforcement deference to the lead regulator.
- Conducting joint rulemakings in instances where new rules stretch across the jurisdiction of multiple agencies. Joint rulemakings ensure government-wide consistency and eliminate regulatory uncertainty.
- Improving communication with those being regulated, including increasing the clarity and availability of guidance in regulatory areas prone to jurisdictional overlap. Agencies could also establish platforms to seek out input regarding the consequences of regulatory overlap, as well as potential solutions.

III. Accelerating Permitting

The most important action Congress could take in this area would be to enact a FAST-41 Amendments Act that would:

- Repeal the seven-year sunset contained in FAST-41;
- Codify the two-year goal for environmental reviews established by E.O. 13807;
- Allow projects under FAST-41 to be prioritized;
- Require that some portion of the FAST-41 fees not be due until the final decision is made, and for the fee to be reduced if and to the extent the final decision is delayed; and
- Repeal Section 11503(b) of the FAST Act, which excludes from FAST-41 any project under a program administered by the Department of Transportation or any of its modal administrations or by any other agency under US Code Title 49.

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Once again, I appreciate the opportunity to testify before the Subcommittee today. This Subcommittee has led the way in focusing attention on the federal rulemaking process and has proposed a number of common-sense, bipartisan ideas for reforming this critical process. Thank you for the hard work that you do. I look forward to your questions.