

Written Testimony of

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before the

**The Subcommittee on Oversight, Agency Action, Federal Rights and Federal
Courts**
U.S. Senate Judiciary Committee

on

“Opportunity Denied: How Overregulation Harms Minorities”

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Mr. Chairman Cruz, Ranking Member Coons, and Members of the Subcommittee,

Thank you for the opportunity to testify today on the importance of regulations to all members of the public, including minorities. I am Amit Narang, Regulatory Policy Advocate at Public Citizen's Congress Watch. Public Citizen is a national public interest organization with more than 400,000 members and supporters. For more than 40 years, we have successfully advocated for stronger health, safety, consumer protection and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest.

Public Citizen co-chairs the Coalition for Sensible Safeguards (CSS). CSS is an alliance of more than 150 consumer, small business, labor, scientific, research, good government, faith, community, health and environmental organizations joined in the belief that our country's system of regulatory safeguards provides a stable framework that secures our quality of life and paves the way for a sound economy that benefits us all. Time constraints prevented the Coalition from reviewing my testimony in advance, and I write only on behalf of Public Citizen.

Over the last century, and through the Obama administration, regulations have made our food supply safer; saved hundreds of thousands of lives by reducing smoking rates; improved air quality, protected children's brain development by phasing out leaded gasoline; saved consumers billions by facilitating price-lowering generic competition for pharmaceuticals; reduced toxic emissions into the air and water; empowered disabled persons by giving them improved access to public facilities and workplace opportunities; guaranteed a minimum wage, ended child labor and established limits on the length of the work week; saved the lives of thousands of workers every year; protected the elderly and vulnerable consumers from a wide array of unfair and deceptive advertising techniques; ensured financial system stability (at least when appropriate rules were in place and enforced); made toys safer; saved tens of thousands of lives by making our cars safer; and much more.

Regulations have been also crucial to both protecting but also creating opportunities for minority populations by combating discrimination in employment and housing, ensuring basic voting rights, outlawing unfair and targeted lending practices by unscrupulous lenders, redressing inequities in exposure to environmental toxins, and much more.

To review the facts of how regulation has benefitted and strengthened our country, however, is not to suggest that all is well with the regulatory system. Indeed, our regulatory system is in need of reform, but not because there is too much regulation. Rather, under-regulation is the status quo and too little regulation is hurting the public, including minority populations.

The evidence of under-regulation includes both massive and dramatic disasters that catch the public's attention as well as daily tragedies that could have been easily prevented with regulatory standards in place. In both instances, the common link is a complete absence of any regulatory standards or ineffective and weak standards that do not protect the public. The costs of under-regulation are real and are borne by working families, consumers, taxpayers, and the public.

Regulations are Smart for our Economy

Regulation has led to some of the most important public health, safety, environmental and economic success stories in our country's history. Regulation has:

- Made our food safer.¹
- Saved tens of thousands of lives by making our cars safer.²
- Made it safer to breathe, saving hundreds of thousands of lives annually.³
- Protected children's brain development by phasing out leaded gasoline and dramatically reducing average blood levels.⁴
- Empowered disabled persons by giving them improved access to public facilities and workplace opportunities, through implementation of the Americans with Disabilities Act.⁵
- Guaranteed a minimum wage, ended child labor and established limits on the length of the work week.⁶
- Saved the lives of thousands of workers every year.⁷

¹ American Public Health Association. (2010, November 30). *APHA Commends Senate for Passing Strong Food Safety Legislation*. Retrieved 24 February, 2012, from http://www.makeourfoodsafesafe.org/tools/assets/files/APHA_Senate-Passage-Food-Act_FINAL2.pdf

² NHTSA's vehicle safety standards have reduced the traffic fatality rate from nearly 3.5 fatalities per 100 million vehicles traveled in 1980 to 1.41 fatalities per 100 million vehicles traveled in 2006. Steinzor, R., & Shapiro, S. (2010). *The People's Agents and the Battle to Protect the American Public: Special Interests, Government, and Threats to Health, Safety, and the Environment*: University of Chicago Press.

³ Clean Air Act rules saved 164,300 adult lives in 2010. In February 2011, EPA estimated that by 2020 they will save 237,000 lives annually. EPA air pollution controls saved 13 million days of lost work and 3.2 million days of lost school in 2010, and EPA estimates that they will save 17 million work-loss days and 5.4 million school-loss days annually by 2020. See U.S. Environmental Protection Agency, Office of Air and Radiation. (2011, March). *The Benefits and Costs of the Clean Air and Radiation Act from 1990 to 2020*. Available from: <<http://www.epa.gov/oar/sect812/feb11/fullreport.pdf>>.

⁴ EPA regulations phasing out lead in gasoline helped reduce the average blood lead level in U.S. children ages 1 to 5. During the years 1976 to 1980, 88 percent of all U.S. children had blood levels in excess of 10µg/dL; during the years 1991 to 1994, only 4.4 percent of all U.S. children had blood levels in excess of that dangerous amount. Office of Management and Budget, Office of Information and Regulatory Affairs. (2011). *2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*. Available from: <http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf>.

⁵ National Council on Disability. (2007). *The Impact of the Americans with Disabilities Act*. Available from: <<http://www.ncd.gov/publications/2007/07262007>>.

⁶ There are important exceptions to the child labor prohibition; significant enforcement failures regarding the minimum wage, child labor and length of work week (before time and a half compensation is mandated). But the quality of improvement in American lives has nonetheless been dramatic. Lardner, J. (2011). *Good Rules: 10 Stories of Successful Regulation*. Demos. Available from: <http://www.demos.org/sites/default/files/publications/goodrules_1_11.pdf>.

⁷ Deaths on the job have declined from more than 14,000 per year in 1970, when the Occupational Safety and Health Administration was created to under 4,500 at present. See AFL-CIO. (2015, April.) *Death on the Job: The Toll of*

- Saved consumers and taxpayers billions of dollars by facilitating generic competition for medicines.⁸
- Protected the elderly and vulnerable consumers from a wide array of unfair and deceptive advertising techniques.⁹
- For half a century in the mid-twentieth century, and until the onset of financial deregulation, provided financial stability and a right-sized financial sector, helping create the conditions for robust economic growth and shared prosperity.¹⁰

Regulation continues to improve the quality of life for every American, every day. Ongoing and emerging problems as well as a rapidly changing economy require the continual issuance of new rules to ensure that America is strong, safe, healthy and economically prosperous. Below is a selective and small sampling of rules recently issued, pending, or under consideration:

- **Fuel efficiency standards.** Pursuant to the Energy Policy and Conservation Act, the Energy Independence and Security Act and the Clean Air Act, the National Highway Safety and Transportation Agency and the Environmental Protection Agency have proposed new automobile and vehicular fuel efficiency standards. The new rules, on an average industry fleet-wide basis for cars and trucks combined, establish standards of 40.1 miles per gallon (mpg) in model year 2021, and 49.6 mpg in model year 2025. The agencies estimate that fuel savings will far outweigh higher vehicle costs, and that the net benefits to society from 2017-2025 will be in the range of \$311 billion to \$421 billion. The auto industry was integrally involved in the development of these proposed standards, and supports their promulgation.
- **Food safety rules.** In 2010, with support from both industry and consumer groups, and in response to a series of food contamination incidents that rocked the nation, Congress passed the Food Safety Modernization Act. The Act should improve the safety of eggs, dairy, seafood, fruits, vegetable and many processed and imported foods, but its effective implementation depends on rulemaking. Not so incidentally, food contamination

Neglect. p. 1. Available from:

<<http://www.aflcio.org/content/download/154671/3868441/DOTJ2015Finalnobug.pdf>>. Mining deaths fell by half shortly after creation of the Mine Safety and Health Administration. Weeks, J. L., & Fox, M. (1983). Fatality rates and regulatory policies in bituminous coal mining, United States, 1959-1981. *American journal of public health*, 73(11), 1278.

⁸ Through regulations facilitating effective implementation of the Drug Price Competition and Patent Term Restoration Act of 1984 ("Hatch-Waxman"), including by limiting the ability of brand-name pharmaceutical companies to extend and maintain government-granted monopolies. Troy, D. E. (2003). *Drug Price Competition and Patent Term Restoration Act of 1984 (Hatch-Waxman Amendments)*. Statement before the Senate Committee on the Judiciary. Available from: <<http://www.fda.gov/newsevents/testimony/ucm115033.htm>>.

⁹ See 16 CFR 410-460.

¹⁰ See Stiglitz, J. E. (2010). *Freefall: America, free markets, and the sinking of the world economy*: WW Norton & Co Inc.; Kuttner, R. (2008). *The Squandering of America: how the failure of our politics undermines our prosperity*: Vintage.

incidents have major harmful economic impact on the agriculture and food industries and job creation and preservation in those industries.

- **Energy efficiency standards.** Pursuant to the Energy Security and Independence Act, the Department of Energy has proposed energy efficiency standards for a range of products, including Metal Halide Lamp Fixtures, Commercial Refrigeration Equipment, and Battery Chargers and External Power Supplies, Walk-In Coolers and Walk-In Freezers, Residential Clothes Washers.¹¹ The Department of Energy estimates the net savings from implementation of the Energy Security and Independence Act to be \$48 billion - \$105 billion (in 2007 dollars).¹²
- **Rules to avert workplace hazards.** By way of example, consider the case of beryllium, a toxic substance to which workers in the electronics, nuclear, and metalwork sector are exposed. The current OSHA beryllium standard, based on science from the 1950s, allows workers to be exposed at levels that are ten times higher than those allowed by Department of Energy for nuclear power plant workers. Public Citizen petitioned OSHA to update the standard in 2001. In response, the agency began a rulemaking in November 2002. It is a testament to major problems in the regulatory process that OSHA has still not issued appropriate rules. Issuance of a rule could avert thousands of cases of serious disease.¹³
- **Wall Street Accountability.** As discussed in more detail below, the 2008 financial crash was a direct result of regulatory failures. These failures including inadequate regulation of mortgages and other consumer financial products, on the one hand, and esoteric financial products and the markets on which they trade, on the other. Another critical failure was permitting the rise of too-big-to-fail financial institutions, traceable both to the failure to enforce existing rules and policies, and the repeal and nonissuance of important rules. While the Dodd-Frank Act is not perfect, it does include an array of very important reforms that will make our financial system fairer and more stable—if properly implemented through robust rulemaking.

Among many other important provisions are crucial consumer protections. Dodd-Frank created the Consumer Financial Protection Bureau, charging the agency with the single mission of protecting consumers and empowering it to issue new consumer protection rules. Given the very considerable extent to which the financial industry has constructed a

¹¹ List of Regulatory Actions Currently Under Review. Available from: <<http://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp>>.

¹² U.S. Department of Energy. (2007). *Energy Independence and Security Act of 2007 Prescribed Standards*. Available from: <http://www1.eere.energy.gov/buildings/appliance_standards/m/eisa2007.html>.

¹³ U.S. Occupational Safety and Health Administration. (2007). *Preliminary Initial Regulatory Flexibility Analysis of the Preliminary Draft Standard for Occupational Exposure to Beryllium*.

business model around deception and unjust fees, CFPB rulemaking can afford consumer dramatic benefits. Such rules concern matters including: requiring mortgage lenders to consider borrowers' ability to pay; prohibiting banks from charging excessive overdraft fees or tricking consumers into opting in to unreasonable overdraft fee harvesting schemes; eliminating forced arbitration provisions in consumer financial contracts; banning unfair practices in the payday loan industry; prohibiting kickbacks to auto dealers who steer buyers into overpriced loans; stopping student loan companies from tricking students into taking high-priced private loans before they exhaust cheaper federal loans.¹⁴

- **Generic competition for biotech medicines.** An overlooked component of the Affordable Care Act was the creation of a process for the Food and Drug Administration to grant regulatory approval for generic biologic pharmaceutical products—essentially generic versions of biotech medicines. Because the molecular composition of biologic drugs is more complicated than traditional medicines, FDA had adopted the position that, with some exceptions, it could not grant regulatory approval for biologics under its previously existing authority. In an important provision of the Affordable Care Act—supported by the biotech industry—FDA was explicitly granted such authority. The provision wrongly grants extended monopolies to brand-name biologic manufacturers, but belated generic competition is better than none. Implementation of the new regulatory pathway for biogenerics, however, depends on issuance of rules by the FDA. Biogeneric competition will save consumers and the government billions of dollars annually.
- **Crib safety.** Pursuant to the Consumer Product Safety Improvement Act of 2008, the Consumer Product Safety Commission (CPSC) finalized updated safety standards for cribs that halted the manufacture and sale of traditional drop-side cribs, required stronger mattress supports, more durable hardware and regular safety testing. These new crib safety standards mean "that parents, grandparents, and caregivers can now shop for cribs with more confidence—confidence that the rules put the safety of infants above all else."¹⁵
- **The Physician Payment Sunshine Act.** This component of the Affordable Care Act requires the disclosure of payments and gifts by pharmaceutical and medical device companies to physicians and hospitals. The mere fact of disclosure is expected to curtail

¹⁴ National Consumer Law Center. (2010). *An Agenda for the Consumer Financial Protection Bureau: Challenges for a New Era in Consumer Protection*. Retrieved 24 February, 2012, Available from: <http://www.nclc.org/images/pdf/regulatory_reform/pr-cfpb-agenda.pdf>

¹⁵ Consumer Federation of America. (2011, June 28). *Senators, CPSC, Consumer Advocates Applaud Strong Crib Safety Standards to Prevent Infant Deaths and Injuries*. Available from: <<http://www.consumerfed.org/pdfs/crib-standards-press-release-6-28-11.pdf>>.

the improper influence of industry over research, education and clinical decision making. Putting the Act into place required implementing rules.¹⁶

- **Other examples.** The list of regulatory benefits is almost endless. Other recent examples from the wide spectrum include rules to address invasive species, require labeling of sourcing and origin in food, establishing standards for school lunch programs and specifying the migratory bird hunting season.

When viewed in the aggregate, regulations are overwhelmingly positive for the economy and reinforce the examples above. According to official government figures, the benefits that federal regulations provide to our country consistently dwarf the costs of those regulations. Every year, the Office of Management and Budget (OMB) analyzes the costs and benefits of rules with a major economic impact in a report to Congress. The most recent OMB report found that:

The estimated annual benefits of major Federal regulations reviewed by OMB from October 1, 2003, to September 30, 2013, for which agencies estimated and monetized both benefits and costs, are in the aggregate between \$217 billion and \$863 billion, while the estimated annual costs are in the aggregate between \$57 billion and \$84 billion. These ranges are reported in 2001 dollars and reflect uncertainty in the benefits and costs of each rule at the time that it was evaluated.¹⁷

This means that even by the most conservative OMB estimates, the benefits of major federal regulations over the last decade have exceeded their costs by a factor of more than two-to-one, and benefits may have exceeded costs by a factor of up to fourteen. This makes regulation one of the best returns on investment and one that rivals some of the top performing businesses.

The Myth of Regulations Hurting our Economy

Sadly, false and misleading rhetoric propagates the myth that our country cannot have a strong economy without sacrificing bedrock public health, safety, environmental, and financial stability protections. There is simply no credible, independent, and peer-reviewed empirical evidence supporting the claim that there is a trade-off between economic growth and strong, effective regulatory standards. Experts from across the political spectrum have acknowledged that arguments linking regulations to job losses are nothing more than mere fiction. For example, Bruce Bartlett, a prominent conservative economist who worked in both the Reagan and George

¹⁶ 42 CFR Parts 402 and 403. February 8, 2013.

¹⁷ Office of Management and Budget, Office of Information and Regulatory Affairs. (2014). Draft 2014 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities. p.1. available at:

H.W. Bush administrations, referred to the argument that cutting regulations will lead to significant economic growth as “just nonsense” and “made up.”¹⁸

Mr. Bartlett’s claims are backed up by a recent book entitled “Does Regulation Kill Jobs?”¹⁹, a comprehensive empirical study conducted by numerous distinguished regulatory experts and academics that closely scrutinized the claim that regulations are linked to job loss and concluded that “to date the empirical work suggests that regulation plays relatively little role in affecting the aggregate number of jobs in the United States.”²⁰ The authors go on to definitively state that “the empirical evidence actually provides little reason to expect that U.S. economic woes can be solved by reforming the regulatory process.”²¹

By contrast, the so-called “evidence” that regulations are killing jobs or ruining the economy comes from biased and partisan sources using methodology that is not peer-reviewed and doesn’t pass muster under scrutiny. For example, the *Washington Post* recently vetted a report entitled “the Ten Thousand Commandments” from the Competitive Enterprise Institute claiming that the annual regulatory burden adds up to \$15,000 for each household in America or 1.8 trillion for the whole country.²² As the *Post* notes, the report foregoes any attempt at computing the benefits of the regulations it includes and the *Post* found that the report has “serious methodological problems” and deserved “two pinocchios” given that the report’s authors themselves admit that the report is “not scientific” and “back of the envelope.”²³ Reports using similar methodology and reporting similar trillion dollar cost figures have also been exposed as flawed and have been disavowed.²⁴

These latest implausible and unfounded claims about regulations hurting the economy follow a long history of business complaining about the cost of regulations and predicting that the next regulation will impose unbearable burdens. Yet, in a 2013 report,²⁵ Public Citizen looked back at previous claims linking job losses to regulations, and found that none of them turned out to be even remotely accurate. Indeed, the disconnect between rhetoric and reality could not be more stark. In each case covered in the report, industry’s claims look preposterous in retrospect. For instance, in the late-1970s, the petrochemical industry claimed that the phasing out of lead from

¹⁸ Charles Babington, Bruce Bartlett, Ex-Reagan Economist: Idea That Deregulation Leads to Jobs ‘Just Made Up,’ Huffington Post, October 30, 2011, http://www.huffingtonpost.com/2011/10/31/gop-candidates-plans-on-economy-housing_n_1066949.html?view=print&comm_ref=false.

¹⁹ CARY COGLIANESE & ADAM M. FINKEL & CHRISTOPHER CARRIGAN, DOES REGULATION KILL JOBS (2013).

²⁰ *Id.* at 7

²¹ *Id.* at 10

²² Glenn Kessler, *The Claim That American Households Have a 15,000 Regulatory ‘Burden’*, WASHINGTON POST (Jan 14, 2015), <http://www.washingtonpost.com/blogs/fact-checker/wp/2015/01/14/the-claim-that-american-households-have-a-15000-regulatory-burden/>

²³ *Id.*

²⁴ Mark Drajem, *Rules Study Backed by Republicans ‘Deeply Flawed,’ Sunstein Says* (Bloomberg, June 3, 2011) available at <http://www.bloomberg.com/news/2011-06-03/rules-study-backed-by-republicans-deeply-flawed-sunstein-says.html>

²⁵ <http://www.citizen.org/regulations-are-entirely-to-blame-report>

gasoline would threaten an eye-popping 43 million jobs. Instead, the phase-out became an unmitigated public health and safety success story across the world. A 2011 study backed by the United Nations concluded that banning lead from gasoline had led to \$2.4 trillion in annual benefits and 1.2 million fewer premature deaths, annually. The technological hurdles to find a suitable substitute for lead to stop engine “knock” barely rated a speed bump. Similar success stories regarding fuel efficiency measures, banning of carcinogenic vinyl chloride, Clean Air Act pollution standards, and unpaid family leave regulations proved that apocalyptic predictions from industry had no empirical basis whatsoever.

Lack of Strong and Effective Regulations Hurts Americans and Our Economy

Under-regulation is a form of regulatory failure that costs lives, results in preventable injuries, harms the environment often irreversibly, leaves consumers vulnerable to unsafe products and abusive practices, and leads to instability and recklessness in our financial system. Under-regulation touches virtually every regulatory sector and agency. Below is a sample of recent and current instances of under-regulation and the costs borne by the public and our economy:

- 2008 Wall Street Crash: The rampant deregulation that led to the crash cost our economy anywhere from 6 trillion to 14 trillion dollars or 50,000 to 120,000 for every US household. In addition, 8.7 million Americans lost their jobs during or immediately following the crisis.²⁶
- Climate Change Inaction: Blocking or delaying new carbon emission rules from the EPA and other climate change measures will cost our country up to 150 billion dollars annually in economic damage in the future.²⁷
- Preventable Workplace Deaths and Injuries: Every day, an average of 150 workers die from job injuries or occupational diseases. Every year, the lack of effective workplace safety protections costs our country 250 billion to 330 billion dollars in injuries and illnesses.²⁸
- BP Oil Spill: This massive environmental disaster in the Gulf ended up costing more than 42 billion dollars. The oil spill harmed thousands of Gulf Coast residents and destroyed many local small businesses. BP has now been found “grossly negligent” in causing the disaster and faces up to 18 billion dollars in fines, some of which will go to Gulf Coast restoration projects.²⁹

²⁶ <http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2012/09/Costs-of-The-Financial-Crisis-September-20142.pdf>

²⁷ <http://fortune.com/2014/07/29/white-house-inaction-on-climate-costs-150-billion-a-year/>

²⁸ AFL-CIO. (2015, April.) Death on the Job: The Toll of Neglect., <http://www.aflcio.org/content/download/126621/3464561/DOTJ2014.pdf>

²⁹ <http://www.edf.org/blog/2014/09/05/bp-oil-spill-ruling-could-jumpstart-gulf-coast-restoration-work>

- 2014 West Virginia Elk River Chemical Spill: those who were hurt by the damage caused by the spill are claiming 160 million in damages from the spill. These include small businesses in Charleston who were forced to shut down for days and the many thousands of residents who were forced to buy bottled water because of the severe water contamination.³⁰
- Oil Freight Train Explosions: Trains carrying highly explosive crude oil are traveling through communities every day without most of those communities even aware of the threat. In 2013, a massive oil train derailment and explosion in Canada killed 47 people. The Department of Transportation expects an average of 10 oil train derailments each year over the next ten years totaling over 4.5 billion dollars in damages.³¹
- Lake Erie Algae Bloom: a half million Ohio residents were forced to buy bottled water because their water had become so badly contaminated from algae. In 2008, the government estimated algae blooms resulted in 82 million dollars annually in economic damages.³² Algae Bloom damage to Lake Erie can be directly traced to successful attempts to roll back the Clean Water Act by special interests.³³

Regulatory Paralysis Is One of the Main Causes of Under-Regulation

It is true that the regulatory system is broken, but not because there is too much regulation. Rather the system is broken because the current regulatory process is too slow, too calcified, and too inflexible to respond to public health and safety threats as they emerge. As Public Citizen's striking visual depiction of the regulatory process shows,³⁴ the current process is a model of inefficiency, with a dizzying array of duplicative and redundant requirements interspersed throughout a byzantine network that is a virtual maze for agencies to navigate. This is the result of an accumulation of analyses and procedures that Congress and the Executive have imposed on agencies over the years leaving agencies in a state of "paralysis by analysis." Far from the popular conception of "regulators run amok," the reality is that agency delays are rampant, congressional and judicial deadlines are routinely missed or pushed back, and ample evidence exists that the situation is getting worse. Below is a sampling of recent instances of regulatory delay that has hurt the public and our economy. As is apparent, delay permeates all aspects of the rulemaking process, touching virtually all agencies and regulatory sectors:

³⁰ <http://www.insurancejournal.com/news/southeast/2014/08/12/337282.htm>

³¹ <http://www.sfgate.com/nation/article/Oil-trains-forecast-to-derail-at-10-per-year-in-6095446.php>

³² http://www.cop.noaa.gov/stressors/extremeevents/hab/current/econimpact_08.pdf the

³³ <http://www.foodandwaterwatch.org/blogs/the-toledo-water-crisis-wont-be-the-last/>

³⁴ Public Citizen, *The Federal Rulemaking Process*, <http://www.citizen.org/documents/Regulations-Flowchart.pdf>.

- **Food Safety:** Last month, the U.S. Food and Drug Administration (FDA) finally completed new food safety rules implementing the 2011 Food Safety Modernization Act. The regulations are intended to transform our food safety system into one that prevents tainted food outbreaks instead of just reacting to them. But the congressional deadline for finalizing these rules was in 2012. The cost of delay is steep: One in six Americans, or 48 million people, suffers from a foodborne illness each year, causing 128,000 hospitalizations and 3,000 deaths, according to the U.S. Centers for Disease Control and Prevention.³⁵
- **Workplace Safety:** In a recent report, The Government Accountability Office (GAO) found that it takes the Occupational Safety and Health Administration (OSHA) an astonishing seven years on average to complete new rules to protect workers from known workplace safety hazards.³⁶ The GAO report points to OSHA's cumbersome rulemaking process as the culprit for delay. Many of the most important pending workplace safety rules have taken far longer than seven years to complete, including updates to decades-old standards on highly carcinogenic hazards such as beryllium and silica.
- **Wall Street Reform:** Significant delays have occurred at every stage of the implementation of the Dodd-Frank Act and continue to occur more than five years after passage of the Act. Almost a third of the rules required under Dodd-Frank have missed their statutory deadlines and dozens have yet to be proposed.³⁷ Overall, only sixty percent of Dodd-Frank rules have been finalized and roughly twenty percent of Dodd-Frank rules have yet to even be proposed.³⁸ The unfortunate reality is that five years after Dodd-Frank was passed, our country still doesn't have all the rules in place to prevent the next massive financial crisis.
- **Oil Train Safety Standards:** Earlier this year, The U.S. Department of Transportation (DOT) finalized new standards for trains transporting highly volatile oil, often through highly populated areas. This followed bi-partisan criticism that DOT had taken too long to put new rules in place while multiple oil train derailments and explosions occurred across the country. One of the regulators made clear why DOT was unable to move faster saying, "To be clear, I think we have to function in the regulatory process that exists. And it's not built for speed."³⁹
- **Passenger Rail Safety:** The Rail Safety Improvement Act was passed in 2008 in response to multiple passenger rail accidents that claimed lives. One of the key elements of the law requires that railroad operators install positive train control systems (PTC), an automated train control technology that is designed to prevent train-to-train collisions. If PTC

³⁵ <http://www.cdc.gov/foodsafety/>

³⁶ Workplace Safety and Health: Multiple Challenges Lengthen OSHA's Standard Setting, <http://www.gao.gov/assets/590/589825.pdf>

³⁷ <http://www.davispolk.com/Dodd-Frank-Rulemaking-Progress-Report/>

³⁸ *Id.*

³⁹ U.S. House Transportation and Infrastructure Comm., Oversight of the Ongoing Rail, Pipeline, and Hazmat Rulemakings, <http://transportation.house.gov/calendar/eventsingle.aspx?EventID=398734>

technology had been in place, it would have prevented the Amtrak crash outside of Philadelphia earlier this year that killed seven passengers and injured many others.⁴⁰ Instead, railroad operators have indicated that they will not be able to meet the deadline under the 2008 law to install PTC technology by December 31st of this year. This means further delays for a technology that is proven to save lives.

- **Offshore Drilling Safety Measures:** it has taken the U.S. Department of the Interior five years after the catastrophic British Petroleum (BP) oil spill in the Gulf of Mexico to propose new safety standards for blowout preventers on oil rigs. The failure of the blowout preventer on BP's Deepwater Horizon rig was a primary cause of this catastrophe, arguably the biggest ecological disaster of the past decade. The rule has yet to be finalized and implemented to prevent another offshore drilling disaster on the scale of BP.
- **Truck Driver Training:** In 1991, Congress passed a law requiring a rulemaking on training for entry-level commercial motor vehicle operators. More than 20 years, three lawsuits, and another statutory mandate later, DOT still has not enacted regulations requiring entry-level drivers to receive training in how to drive a commercial motor vehicle. It now says it plans to complete the rule in 2016.⁴¹
- **Backover Rule:** Each year, 292 people are killed, many of whom are children, due to backover collisions where drivers moving vehicles backward do not see people or objects behind the vehicle. Congress passed a law in 2008 requiring the DOT to update safety standards by requiring automakers to install technology to allow drivers to see behind their vehicles when moving backwards. DOT finally issued the standard in 2014, 3 years after the statutory deadline to issue the standard and after Public Citizen engaged in protracted litigation to force the finalization of the rule. The delay led to hundreds of pointless deaths.
- **Cranes and Derricks:** After a dozen years of delay, OSHA finally issued a rule demanded by both industry and workers alike to prevent accidents involving cranes and derricks toppling over at construction sites and injuring both workers and onlookers who were passing by the construction site. As a Public Citizen report explains in detail, OSHA held at least 18 meetings about the rule, published at least 40 notices in the federal register, and was required to repeatedly prove that the rule was needed, that no alternative could work, and that it had minimized effects on small businesses, even though many small businesses were requesting that the rule be implemented swiftly.⁴²

⁴⁰ <http://www.cbsnews.com/videos/ntsb-investigator-positive-train-control-would-have-prevented-amtrak-crash/>

⁴¹ A full account of this history is included in *In Re Advocates for Highway and Auto Safety: Petition for Writ of Mandamus*, September 18, 2014. Available from: <<http://www.citizen.org/documents/in-re-advocates-for-highway-and-auto-safety-petition-for-writ-of-mandamus.pdf>>.

⁴² Lincoln, T. and Mouzoon, N. (2011, April.) *Cranes & Derricks: The Prolonged Creation of a Key Public Safety Rule*. Public Citizen. p. 4. Available from: <<http://www.citizen.org/documents/CranesAndDerricks.pdf>>.

These numerous examples are anything but isolated incidents and are the rule with respect to the paralysis in our regulatory system, not the exception. Studies from organizations and think tanks across the political spectrum have conclusively demonstrated that regulatory delay is the current norm. For example, the R Street Institute, a conservative libertarian think tank, released a study⁴³ this summer that looked at all of the regulations that Congress had required over the last twenty years and where Congress had mandated that agencies meet rulemaking deadlines. The results of the study are astounding and should be deeply troubling for members of Congress. According to the study, federal agencies have only been able to meet *half* of the rulemaking deadlines that Congress has set out over the last twenty years. In other words, agencies have been unable to comply with congressional deadlines, in other words the law, an astonishing fifty percent of the time.

With respect to important public health and safety standards, environmental and consumer protections, and financial security measures, the situation may be even worse. In 2012, Public Citizen analyzed a list of rulemakings with statutory deadlines in the areas of food safety, Wall Street Reform, and auto safety among others. Our analysis showed that most rules are issued long after their deadlines have passed, needlessly putting American lives at risk. Of the 159 rules analyzed, seventy-eight percent missed their deadline. Federal agencies miss these deadlines for a variety of reasons, including having to conduct onerous analyses, dealing with politically motivated delays, inadequate resources or agency commitment, and fear of judicial review.⁴⁴

Regulations Have Created Important Opportunities for Minorities

Regulations implementing laws passed by Congress to address racial discrimination, environmental injustice, and market practices in certain sectors which unfairly target minority populations have been among the most important and groundbreaking developments in the fight to level the playing field for minorities. Without these crucial regulations, numerous opportunities would have been denied to minority populations and would have reinforced the historical discrimination and unfair treatment that these populations have faced. These regulations range from prohibitions on employment and housing discrimination, to prohibitions on predatory lending practices that disproportionately impact minorities, to workplace safety protections that provide safe workplaces in industries dominated by Hispanic and immigrant workers, to establishment of voting rights for historically disenfranchised minority populations, to prioritizing lending to minority-owned small businesses and much, much more. While much has been accomplished in the past, much more regulation is necessary to fulfill the promise of equal and fair treatment under the law. Below is a sample of recent or pending regulations that will create opportunities for minorities:

⁴³ Atherley, S. (2015, August) Federal Agency Compliance with Regulatory Deadlines, R Street Policy Study No. 39, <http://www.rstreet.org/wp-content/uploads/2015/07/RSTREET39.pdf>

⁴⁴ Mouzoon, N. (2012). *Public Safeguards Past Due: Missed Deadlines Leave Public Unprotected*. Public Citizen. Available from: <<http://www.citizen.org/documents/public-safeguards-past-due-report.pdf>>.

- Environmental Justice: In 1994, President Clinton promulgated Executive Order 12898 which directed federal agencies to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high adverse human health or environmental effects of its activities on minority and low-income populations. This was an explicit recognition that minority populations, and particularly African Americans, are disproportionately harmed by air pollution from dirty energy sources including fossil fuel. Indeed, there are volumes of empirical evidence demonstrating that African Americans live in communities that violate air quality standards at a higher rate than whites, that African Americans are significantly more likely to live near a coal-fired power plant, that African Americans suffer from asthma at a far greater rate than whites, including a death rate from asthma that is twice that of whites.⁴⁵ Last week, the Environmental Protection Agency tightened the ozone or smog standard after many delays. While the standard will help increase air quality standards and reduce smog, the rule likely did not go far enough.
- Predatory Lending Practices that Target Minorities: while predatory lending affects many consumers, entrapping borrowers in a cycle of debt from which they cannot escape and funneling fees and charges to unscrupulous and abusive lenders, studies show that minorities are more vulnerable to predatory lenders than the general public. For example, African-American and Latino borrowers with credit scores above 660 were more than three times as likely as white borrowers with the same credit profile to receive a high-cost mortgage loan.⁴⁶ Across multiple loan categories, studies show that minorities receive predatory loans at higher rates than white borrowers. For example, African Americans are more than twice as likely to receive a payday loan as white borrowers. According to an analysis of automobile loans by the Consumer Financial Protection Bureau (CFPB), African Americans and Hispanic paid significantly higher interest rates compared to whites. Specifically, African Americans paid an additional twenty nine basis points and Hispanics paid an additional twenty basis points on auto loans relative to whites.
- Housing Discrimination: in 1968, Congress passed the Fair Housing Act (FHA) to address discrimination in the housing market that had led to geographic segregation. Many courts, including most recently the Supreme Court,⁴⁷ have acknowledged that addressing disparate treatment in the housing market would not fully achieve the FHA's goal of eradicating housing discrimination. Instead, disparate impacts on minority populations in the housing market would also demonstrate unlawful discrimination irrespective of discriminatory intent. The Department of Housing and Urban Development's forthcoming disparate impact rule under its Affirmatively Furthering Fair

⁴⁵ Air of Injustice, African Americans & Power Plant Pollution (October 2002).

⁴⁶ Wolff, S. State of Lending in American & Its Impact on U.S. Households, Center for Responsible Lending (June 2015), <http://www.responsiblelending.org/state-of-lending/reports/13-Cumulative-Impact.pdf>

⁴⁷ *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* (June, 2015) opinion available at http://www.supremecourt.gov/opinions/14pdf/13-1371_m64o.pdf

Housing program will be a landmark step in ensuring that minorities are not subject to unfair discrimination in the housing market.

- **Workplace Safety:** Hazards at worksites disproportionately impact minorities, particularly Hispanics. According to the AFL-CIO, The fatality rate among Latino workers increased in 2013 to 3.9 per 100,000 workers, up from a rate of 3.7 per 100,000 in 2012. At the same time, the number and rate of fatalities for all other races declined or stayed the same. There were 817 Latino workers killed on the job in 2013 up from 748 deaths in 2012.⁴⁸

Conclusion: Strengthening the System of Regulatory Protections to Strengthen America

There is much to celebrate in our nation's system of regulatory protections. It has tamed marketplace abuses and advanced the values we hold most dear: freedom, safety, security, justice, equality, competition and sustainability. We should celebrate the achievements of regulatory protections.

But in its current form, the regulatory system is failing to meet its promise. Rather than looking at how to scale back or hinder the regulatory system, Congress should look to reforms to strengthen the rulemaking process and regulatory enforcement which would address under-regulation that costs lives and our economy and would lead to new opportunities for minority populations.

⁴⁸ AFL-CIO. (2015, April.) Death on the Job: The Toll of Neglect, <<http://www.aflcio.org/content/download/154671/3868441/DOTJ2015Finalnobug.pdf>>.