



## CUT THE RED TAPE

### Prosperity Districts and Reinventing the Role of Regulations

■ **By Adrian Moore, PhD**

Regulations are not the ultimate weapon for good. The fact is that they are a blunt weapon at best. They are rarely effective and more often do more harm than good. But the formation of Prosperity Districts, which promise a regulatory reset for a local community that wants to experiment with regulatory best practices can change that outcome. States that allow the formation of Prosperity Districts by joining the Prosperity States Compact can secure all of the benefits of a well-regulated free market by authorizing regulation only when truly necessary and when carefully tailored to address the harm in question.

#### Introduction

America is overregulated and people increasingly recognize it. Gallop's latest (2014) opinion poll on regulation found that 49% of Americans assert there is too much regulation of business and industry and only 22% think there is too little, and those attitudes haven't changed much in the previous five years.<sup>1</sup> An earlier (2012) PEW poll found that 52% of Americans thought government regulation of business does more harm than good while only 40% thought regulation of business is necessary to protect the public interest.<sup>2</sup> Regulation seeks to prevent bad acting, but at the same time it is costly, complex, often unknown by those subject to its rules, inflexible, and too often driven by political interests rather than protecting the public.

Lawmakers seem to think regulations are the ultimate weapon, capable of solving any problem. To be fair, they face a constant clamoring of requests to solve

every problem that arises, typically without waiting to see if people and markets can work things out on their own. Regulation is their most versatile tool to "do something." This has led to ridiculously picayune rules, like Colorado daycare regulations specifying the number of crayons per box provided the kiddies,<sup>3</sup> and endeavors of astonishing hubris. Consider the Dodd-Frank financial market rules, an 848-page attempt to regulate a vast, globally-integrated financial market, demanding that regulatory agencies spin off thousands more pages of regulations. One section alone asks regulators to address 1,420 specific questions in their rulemaking.<sup>4</sup>

Too often, regulations create their own bad action. Because they can often raise the cost of market entry by competing firms—or even ban them outright, or otherwise give some an advantage over others—regulations essentially increase the profits of those who

*Dr. Adrian Moore is Vice President of Policy at Reason Foundation and leads Reason's policy implementation efforts. He also conducts his own research on topics such as privatization, government and regulatory reform, air quality, transportation and urban growth, prisons and utilities. Dr. Moore regularly advises federal, state and local officials on ways to streamline government and reduce costs. His work has been published in the Wall Street Journal, Los Angeles Times, Boston Globe, Houston Chronicle, Atlanta Journal-Constitution, Orange County Register, as well as in, Public Policy and Management, Transportation Research Part A, Urban Affairs Review, Economic Affairs, and numerous other publications.*

lobby for them, rather than serving the public interest. Economic literature is rife with examples of industries or firms lobbying for unfair protective regulations.<sup>5</sup> From taxicab medallions to the certification of florists, regulations often benefit one group to the detriment of another, and the former become a special interest groups lobbying vigorously for regulatory advantages. Such regulations harm consumers by denying new competition to the market and driving up prices. After all, is anyone really suffering from uncertified flower arrangement?

The bottom line is that, while it might be extreme to assume all regulations do more harm than good, it is at least as wrong to think that regulations always do more good than harm. Many current regulations exist simply because they have existed for so long, and it's a legislative chore in itself to pry them up for review. Prosperity districts offer an opportunity to start from scratch, by removing politics and lobbying from the picture, and demanding that any regulation has to prove its worthiness when calculated against its harm.

### **Prosperity Districts: A Regulatory Blank Slate**

Prosperity Districts are optimally regulated and taxed greenfield areas, at least one square mile in size, that are designed to be easily formed and later expanded by consenting property owners and residents.<sup>6</sup>

Prosperity districts are created to provide a sort of blank slate—a designated area where the participants design the laws and regulations that will apply without having to accept all the laws and regulations that exist elsewhere. These districts allow participants to maximize freedom and economic opportunity, and to resort to laws and regulations only when they are demonstrably needed, agreed upon, and subject to limitations. Importantly, any legislative process that advances the prosperity district effort cannot help but shine a spot light on the overall regulatory environment, forcing policy makers to decide which rules on the books for decades still make sense in 2016 and which have outlived their usefulness, leaving only their unintended harms.

This brief explores why starting from a regulatory blank slate is a good idea for prosperity districts and how it would work.

## **Problems with Regulations**

- Costs
- One size fits all
- Inflexible and unchanging
- Indirect unintended consequences

### **Why Reduce Regulations?**

When a regulation seeks to prevent a harm or bad acting, it seems like a no-brainer. But many problematic side effects of regulations are hidden, or they address a harm that has been overcome by societal change or technology. Especially when they target rightful action for extreme scrutiny or severe punishment, regulations often don't make sense.

### **Problems with Regulations**

#### *Costs*

Even regulations that appear to have redeeming value have great costs—not minor “cost of doing business” costs. They are massive. Some of us graduated from high school in 1980, when accidental deaths were 5.3% of all deaths. In 2013, accidental death accounted for a slightly lower 5% of all deaths. Even if we assumed all of the decrease in accidental death was caused by regulations enacted since 1980 (rather than improvements in technology or knowledge), we are not dramatically safer after 36 years of massive growth in regulations. But the costs of such regulation have been staggering.

If the United States had frozen regulations in 1980, accidental death rates might have been slightly higher: about five fewer people per 100,000 die of accidents now than in 1980.<sup>7</sup> But at the same time economic growth would have been 0.8% higher per year, the overall U.S. economy would be 25% larger than it is now, meaning \$4 trillion per year more wealth, or about \$13,000 per year for every man, woman and child in the country.<sup>8</sup> And that is just the cost of federal regulations. State and local government regulations add considerably to those costs, though there are no reliable measurements of the total.

So while regulations may have slightly reduced ac-



cidental deaths (and likely had other beneficial effects as well) the costs were massive. A typical family's income would be more than double were it not for the high cost of regulations. How much health, welfare and happiness would that higher wealth have brought about? The link between greater wealth and higher individual health and longer lives has been well-established.<sup>9</sup>

### *One Size Fits All*

Cost is particularly high for low income earners. Regulations, particularly federal ones, but also to a great extent state and local regulations, typically try to impose one set of rules, requirements or restrictions on everyone despite the huge differences among individuals or firms.

The Regulatory Studies Center at George Washington University argues that “one size fits all regulations

half that work for the doctor, and a family doctor with a small office who probably has to spend more like two days per week on administration.

The U.S. Chamber of Commerce has been pointing out that “one size fits all financial regulation is harming consumers and our economy.”<sup>12</sup> It finds that the financial regulations passed after the Great Recession aimed at big banks also apply to small local credit unions that committed none of the sins that led to the financial market chaos. These rules raised regulatory costs for credit unions 39%, to \$6.1 billion in 2014.<sup>13</sup> Those costs don't fix any problem; they are just the “collateral damage” of one-size-fits-all financial regulations. And everyone who wants to save money or get a loan is paying a share of those costs, as businesses are forced to pass the costs on to their customers. Such broad-brush regulations allow big business, which can afford the costs because of their economies of scale, to

If the U.S. had frozen regulations in 1980, the overall U.S. economy would be 25% larger than it is now, meaning \$4 trillion per year more wealth or about \$13,000 per year for every man, woman and child in the country.

are a bad deal for low income Americans,” imposing “unavoidable costs that are passed on to every household, regardless of income.”<sup>10</sup> Forcing, for example, the same energy efficient appliance regulations (and the higher costs of them) on a poor family of six living in a 900 square foot apartment as on a wealthy childless couple living in a 3000 square foot beach house does not have the same outcomes for the environment or the same impact on the consumers.

Examples abound in regulations of business as well. A study of the regulatory requirements on doctors found that an average doctor spends 8.7 hours per week, one whole working day, on paperwork, reporting, and administration, up substantially from two decades ago.<sup>11</sup> If doctors on average spend a full day per week on meeting regulatory requirements, that means some doctors probably spend much more time on administration, and some much less. Imagine the difference between a doctor at a large hospital, with a massive administrative staff that probably does at least

survive, while regulating smaller businesses out of the market.

Consider the strange case of skim milk regulations in Florida. Small dairies want to take the fat out of milk, creating skim milk, and sell it. But big dairies, and state regulators say that is bad for consumers and require that all dairies add artificial vitamins to the milk before they can label it as “skim”.<sup>14</sup> This is not only an example of an industry seeking regulations to limit competition, but an attempt by regulators to impose one rule unnecessarily and denying consumers choices in the process. Consumers clearly can handle the choice between skim milk with vitamin A added and skim milk without it. They do not need regulators to step in and force all dairies to offer one kind of skim milk.

### *Inflexible and Unchanging*

The process of putting a regulation in place is long and complex. Passing the law is fraught with all the



politics one would expect, and regulatory bills tend to be long and technical. This is bad enough when ordinary people and businesses are held to the standard of knowing the law. But then the regulatory agency undergoes a rulemaking process to implement the law as a set of rules and requirements. In 2001 one “federal agency found that it needed an 18-foot chart, with 373 boxes, to explain its rulemaking process.”<sup>15</sup> At the federal level:

The development of regulations involves four key players: (1) Congress passes legislation to authorize or require an agency to issue regulations; (2) the executive branch decides the form and extent of regulations; (3) interested parties may comment on proposed regulations or challenge final ones in court; and (4) federal courts, which review regulations that are challenged in lawsuits, sometimes order agencies to revise the challenged regulations.<sup>16</sup>

Such an arduous and lengthy process, at all levels of government, results in regulations that are just as difficult to amend or dismantle as they were to create. But people, technology, and the economy change, and they change rapidly. Regulations based on the technology and economic forces in place in 2005 are completely outdated now, but they are still in place and making it hard for people, firms, and the market to adapt.

When the OECD looked at the challenge of keeping slow-moving regulations up with a fast-changing world, it argued:

[R]egulations can also erect barriers to the development of new, improved products and production processes. They can encourage or discourage research efforts by firms. They can distort the choice of technologies that are explored and adopted. They can create barriers to innovation by increasing the uncertainty and costs of the development process. And they can affect technology diffusion...

Not only do regulation and regulatory reform affect innovation and technology development, but technology can also have a powerful effect on regulation. This is most often the case when technical change makes certain regulations obsolete or inefficient. Industries considered natural monopolies due to the nature of existing technology and regulated as such can find themselves undermined by technologi-

**Regulations based on the technology and economic forces in place in 2005 are completely outdated now, but they are still in place and making it hard for people, firms, and the market to adapt.**

cal developments. For example, telecommunications, electric utilities and transport were long regulated by governments as monopoly structures, partly for considerations of public service and national security. But over time, the technologies underlying these sectors changed, lessening their monopoly character by lowering costs and introducing potential new actors.

The effect of changing technology on regulation is demonstrated powerfully in the telecommunications industry, where the development of digital technology and other advances continue to revolutionise the sector. Here, outdated regulations are governing products and services which didn’t even exist when the rules were formulated. Technology has blurred the boundaries between different service providers – local telephone companies, long-distance companies, international carriers, satellite transmitters, radio broadcasters, cable television companies, cellular carriers, fibre-optics access providers, wireless cable operators, specialised radio services, etc. Innovation is leading to new multimedia products and a gradual merger of telecommunications with broadcasting, computing and entertainment. Still, in many countries, regulations continue to govern these suppliers and products based on the old technological regime.<sup>17</sup>

We can see this all around us, from building codes that don’t recognize the characteristics of new materials<sup>18</sup> to utility regulations that struggle with distributed generation such as wind and solar on people’s properties. But maybe the best example is one familiar to all of us—the rise of Uber, Lyft, and other ridesharing services.

Taxi markets have long been heavily regulated with



rules very slow to keep up with changing times and which served the interests of taxi firms, not of consumers.<sup>19</sup> But the gap between regulations and the market exploded when ridesharing apps and services appeared on the scene to serve pent-up demand for better taxi service. Using smartphones and related technologies, these services allowed for new and greater competition in the “taxi” market, but also solved the problems of consumer information and driver accountability that taxi regulations purported to address. In one fell swoop taxi regulations were made obsolete. For years now cities have been struggling with how to respond, some trying to fit the new services into the old rules, some getting rid of the old rules and deregulating, and many doing nothing while they struggle to figure out what they want to do. It is a textbook example of how the regulatory process has great difficulty keeping up with change in the world.

there are fewer regulations, it never shows up in the first county. The cost of housing unbuilt is invisible because it never existed, even as a proposal, in the first place. And the original regulatory purpose of more low-cost housing never happens either. In this way, all consumers lose, and so does the government that would have received those property taxes loses too.

Regulations can also prevent beneficial things from ever existing, a cost uncounted because it was never known. Think about the challenge an inventor faces. He has to come up with the idea, make sure it works, and then convince customers that his product is better than what they already have—a very tough process, and more inventors fail than succeed. But now add regulation into the story.

For example, cement factories are required by regulations to have certain technologies in place to “scrub” harmful gasses created in the process of baking lime-

**One very common unintended consequence is the “island effect,” whereby regulators do not take into account that making life harder for workers and consumers in one place merely results in that market migrating to another, less-regulated location. It’s like they imagine everyone the regulation effects is stuck on an island and not mobile and part of a global economy.**

#### *Indirect Unintended Consequences of Regulation*

Regulations have many indirect effects that are often overlooked. Many “downstream” costs to a regulation are not evaluated when measuring the costs. One very common unintended consequence is the “island effect,” whereby regulators do not take into account that making life harder for workers and consumers in one place merely results in that market migrating to another, less-regulated location. It’s like they imagine everyone the regulation effects is stuck on an island and not mobile and part of a global economy. For example, regulations requiring developers to provide affordable housing by selling some units at below-market prices leads to some housing being shifted to other, less onerous jurisdictions.<sup>20</sup> If some homes are not proposed to be built in one county, but are built elsewhere where

stone and other materials in the kiln. It is conceivable someone could invent a new process that either did not emit harmful gasses or which scrubbed them more effectively or efficiently. But this inventor has a truly massive mountain to climb. Even if he can complete the invention and convince cement companies it is better, he must also convince regulators that it is a better approach and convince them to go through the laborious, costly, and political process of changing the regulations to allow the use of the new technology. His invention is thus “illegal” before it ever gets out of the workshop, which discourages innovation. We have no idea how many better ways of doing things that are regulated might be explored, but that would-be inventors fail to overcome this incredible obstacle course, or, in many cases, don’t even try.



In spite of all these failings of regulation, it is essentially the “default solution” when a problem emerges. When something fails in the market, people rarely try to figure out a market solution. Instead the immediate response is “the government should step in and prevent this!” It is so automatic sometime it is shocking and it explains why city councils and state legislators never run out of new regulations to pass. Less restrictive approaches that allow individual choices to operate and market competition to fix problems are too often overlooked because that amounts to “doing nothing” while passing a regulation is bread and butter for the political process.

### **Prosperity District: Regulatory Square One**

Given regulations’ complex downsides that accompany what good they accomplish (if any), their highly politicized nature, and their intractability once established—no matter how the world changes—a Prosperity District wisely starts from scratch in its establishment, takes a minimalist approach, and creates mechanisms for avoiding the pitfalls of the existing regulatory regime. Indeed, its very value depends on this blank-slate attribute. Crucial to that is understanding how the pitfalls of regulations are mitigated.

### **Best Practices in Regulatory Reform**

Many attempts to reduce or reform regulations or the regulatory process, have been attempted, with some working better than others. Prosperity Districts will draw upon the best practices from those efforts to minimize the role of regulation within the district.

#### *Sunsetting*

Sunset provisions are essentially a built-in expiration date for regulations. They establish a date on which the regulation will cease to be law, unless the legislature takes action to renew it. A sunset provision is even stronger if it sets criteria for evaluation and defines success for the regulation to guide the decision whether or not to renew the regulation. Importantly, sunset provisions recognize how our fast-changing society and economy renders regulation inherently perishable, and how obsolete regulation causes harm, even as its intended use diminishes.

Thirty-six states have some type of sunset provi-

## **Regulatory Reform Best Practices**

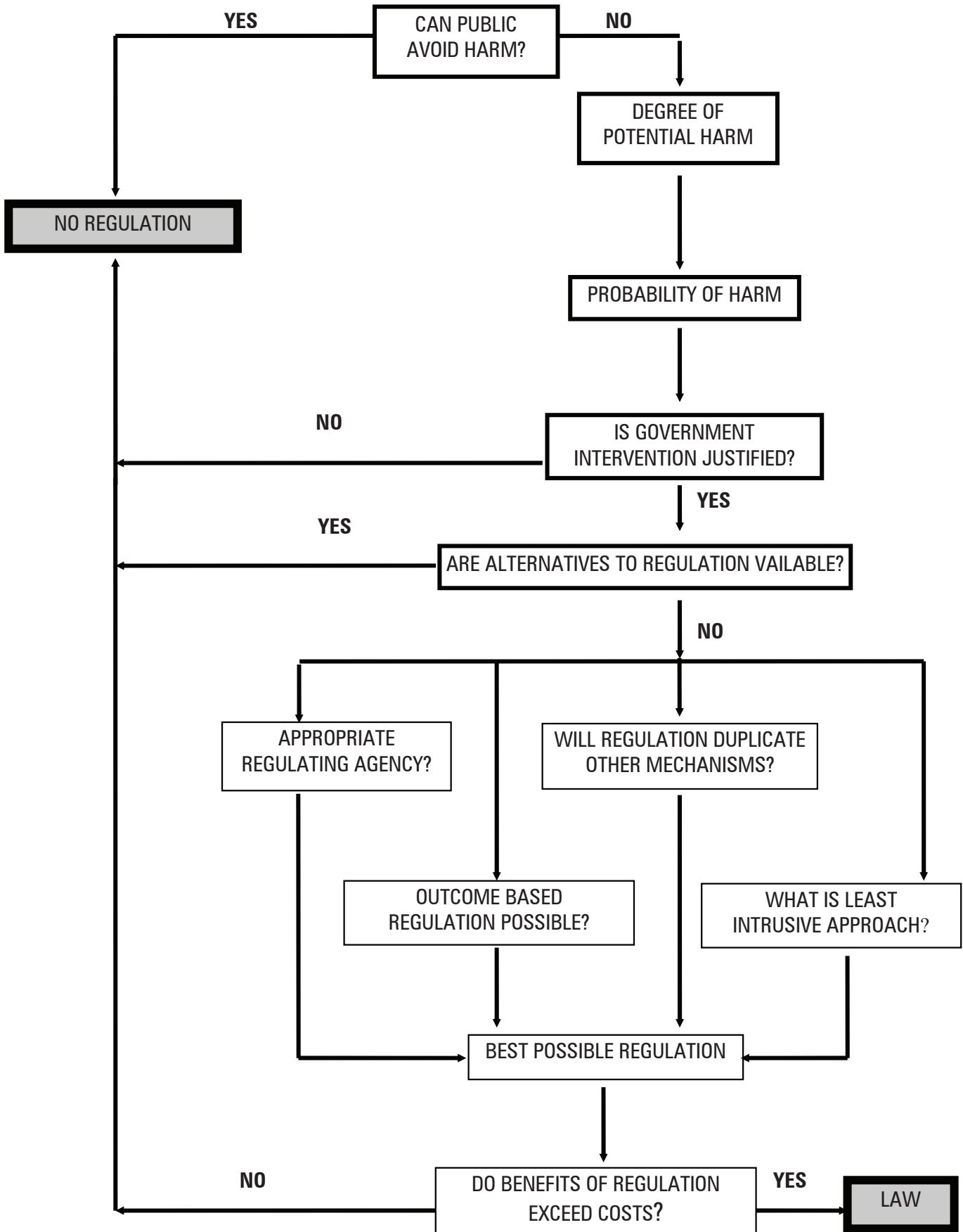
- sunset regulations
- adopt better a-priori and ex-post analysis
- create an independent reform body
- recognize the merits of competition
- acknowledge interest group influence
- focus on outcomes, not process
- weigh both costs and benefits
- keep regulations simple and narrow
- adopt a transparent analytical framework

sion, and 10 states have comprehensive ones—they are broadly considered effective at limiting ineffective regulations and balancing the oversight powers of the legislative and executive branches.<sup>21</sup>

A review of regulatory review processes in the 50 states found that “sunset provisions are the most effective means of reducing state regulatory levels.”<sup>22</sup> The research found that sunset provisions alone among all the regulatory review processes examined is strongly effective in limiting the number of regulations and their costs.

Australia makes extensive use of sunset provisions. An OECD report examining its effectiveness conclud-

# RSC Analytic Framework



**Indirect regulations, aimed at process rather than results, increase the chances of unintended outcomes. If the concern is the safety of taxicabs, policymakers should enforce laws against negligence or publicize safe operators to help the market information process.**

ed that sunset provisions “substantially reduced the overall number of regulations in force, removed much redundant regulation from the statute books and encouraged the updating and rewriting of much that remained.”<sup>23</sup>

### *Better A-Priori and Ex-Post Analysis*

Legislative bodies forge most regulations in an atmosphere of politically charged emotional arguments combined with data and analysis. Emotion often overcomes data and analysis. Given the large potential costs and benefits of most regulations, the complexity of figuring out the full range of effects, and prevalence of special interest pleading and political grandstanding, applying more data and cold, hard analysis to regulatory decisions is essential.

Such analysis helps in two ways: First in considering the merits of a proposed regulation, and second in evaluating how well a regulation has worked, weighing both costs and benefits, to determine if it should remain in place. The former happens sometimes, the latter rarely does.

In up-front analysis, regulations should be evaluated for a full range of costs and benefits, including ones that can't be quantified, though those should be considered in that light. Potential unintended consequences and secondary effects should be considered, as well as comparing effectiveness and other issues with similar regulations. Most importantly, the analysis should examine all feasible means of addressing the problem, including doing nothing, that the regulation seeks to solve and compare the merits and weaknesses of each to ensure the most overall effective approach is being used.<sup>24</sup>

Ex-post analysis of regulations doesn't happen nearly enough and politicians don't always follow through even when it is done. An Australian study of regulatory analysis in its states found the analysis process to be

very effective in identifying problems with regulations and suggesting improvements, but determined that legislators rarely follow through to implement the recommendations.<sup>25</sup> Hence, it is best to tie ex-post analysis to a sunset provision that forces the legislature to act.

In my own work looking at efforts by federal agencies and state and local governments to review and analyze existing regulations and determine whether to keep, modify, or eliminate them, I conclude the following practices are crucial.<sup>26</sup>

### *Create an Independent Reform Body*

Someone must have ownership of the reform process and an incentive for objective review. Individual agencies are too often wedded to the status quo.

### *Recognize the Merits of Competition*

Competitive markets are more diverse, creating incentives for innovation, customer service and efficiency. Always examine if there are ways market forces can solve the problem the regulation is addressing.

### *Acknowledge the Influence of Interest Groups*

Even if a policy change produces net gains for the community, the losers have an incentive to oppose change. Encourage those groups burdened by existing regulations to participate in reform. Analysis should take into account diffuse effects.

### *Focus on Outcomes Rather Than Process*

Indirect regulations, aimed at process rather than results, increase the chances of unintended outcomes. If the concern is the safety of taxicabs, policymakers should enforce laws against negligence or publicize safe operators to help the market information process. They should not limit the number of taxis on the theory that by controlling licenses they can induce safety. Focusing on outcomes makes the impact of a regula-



tion more transparent, less vulnerable to special interests, and allows officials and the public to see and measure the direct effects of a regulation.

### *Weigh Both the Costs and the Benefits of a Regulation in Deciding Its Worth*

The success of a regulation should be tied to its intended effect, not to the behavior of regulators. It's not how many fines are levied, but how many harmful actions are prevented, and what costs to society are avoided, that measures the success of a regulation.

### *Regulations Should Be Simple and Narrow*

The broader or more complex a regulation, the more likely it is to cause unintended consequences. Also, the less likely it is that ordinary citizens can understand the rule and its impact. An opaque regulation plays into the hands of the special interests that benefit from it, without measurable good effect.

### *Adopt a Transparent Analytic Framework*

A decision process like the one in the preceding figure, created for a regulatory study commission, assures a consistent analysis on each regulation, and that no steps are overlooked. Being transparent at every stage of the process will improve citizen and interest group visibility of the reform process, and encourages their input.

## **Prosperity District Regulatory Structure**

Since prosperity districts are a regulatory blank slate, some effort has gone into creating an initial set of conditions and procedures, embedded within the enabling legislation and within the charter of the district itself. The following characteristics of a prosperity district incorporate much of the best practices discussed above, and enable the district governing board to incorporate more of them when desired.

### **Authority within the District**

A prosperity district will have a special purpose regulatory authority, created by its charter, charged with protecting the individual rights of life, liberty and property, which, for competent adults, shall be strictly limited to defending the freedom of all such individuals to pursue a flourishing and productive existence

**A prosperity district will have a special purpose regulatory authority, created by its charter, charged with protecting the individual rights of life, liberty and property, which, for competent adults, shall be strictly limited to defending the freedom of all such individuals to pursue a flourishing and productive existence either alone or in consensual association with others.**

either alone or in consensual association with others.

The managing board of the district has exclusive governing authority and jurisdiction within its boundaries. There are specific limits, however, and that authority:

- may not exercise the power of eminent domain, nor engage in property or asset forfeitures based on actions or omissions that constitute a violation of criminal law without first proving beyond a reasonable doubt that such criminal law has been violated by each owner of such property or asset, or levy any tax;
- may only exercise its police power in the course of promulgating and enforcing: (1) malum in se criminal law, the common law of torts, property and contracts, or the common law or equitable remedies specified by its respective district charter or otherwise in effect within the boundaries of the respective Prosperity District; or (2) regulations authorized in strict conformity with this Article;
- may not authorize by regulation or otherwise any monopoly or cartel in the provision of any good or service within its jurisdiction;
- may not accept gifts or conditional grants from any government, including, but not limited to, any state, county, municipality or the United States



government, which are sourced from taxes, government-imposed fees or fines, or borrowing which is secured or to be repaid by taxes or fines;

- may only furnish services, functions, utilities and infrastructure (“municipal function(s)”) through open and competitive bidding provided that: (1) no regulation promulgated or enforced by the Prosperity District directly or in combination with other regulations restricts free and open competition in the provision of the proposed municipal function(s); and (2) all costs incurred in furnishing the proposed municipal function(s) are to be reimbursed by either i) uniform, non-discriminatory user fees paid voluntarily by all users of the proposed municipal service or ii) otherwise paid pursuant to a separate contract voluntarily and consensually binding all persons domiciled in the Prosperity District during the provision of the municipal function(s);
- shall not furnish any subsidy to private enterprise;
- may only borrow funds to the extent of net assets; and
- may only have such additional duty, power and authority that is expressly specified in the district charter and also strictly compliant with its enabling legislation.

Living or owning property in a prosperity district is entirely voluntary, and 100% consensus from affected landowners and electors is required to form or expand the district. The members of any prosperity district are free include in their charters whatever additional measures are desired that do not violate the limitations listed above. The idea is to allow the rules to evolve anew based on prior assumptions of limiting regulations and maximizing freedom. Districts can experiment and learn from each other as well.

### **A Baseline of Rules**

No district is required to adopt any particular rules. However, a typical prosperity district charter will adopt certain baseline rules that have served civilization well, including malum in se criminal law to prevent initiation of violence against one another, and some or all of the common law of torts, property or contracts or common law or equitable remedies.

**Living or owning property in a prosperity district is entirely voluntary, and 100% consensus from affected landowners and electors is required to form or expand the district.**

### **What the District Governing Authority May Regulate and What It May Not**

The model enabling legislation for a prosperity district includes restrictions on regulation. Any regulation must fulfill each of the following criteria:

- the regulation either: (i) governs or protects the rights to life, liberty and property of those who are not parties to a contract that furnishes a rule of governance covering the same subject matter as the regulation; or (ii) governs only those who are in breach of a contract covering the same subject matter as the regulation, provided that the dispute resolution procedures specified in the contract, if any, are not being observed by all parties to the contract, and at least one party to the contract requests such regulation or enforcement;
- the regulation and its enforcement implements or prospectively modifies the malum in se criminal law, the common law of torts, property or contracts, or the common law or equitable remedies adopted by the Prosperity District’s respective district charter or otherwise in effect within the boundaries of the Prosperity District, or governs an act, activity, occupation, profession, use of property, person, entity, condition or state of affairs that is not ordinarily peaceful, non-violent and non-fraudulent;
- neither the predominant effect of the regulation considered alone or in the context of the Prosperity District’s existing regulatory framework, nor any part of its purpose is to protect any individual, entity, or group from otherwise rightful competition or to restrain competent adults for their own good; and
- the act, activity, occupation, profession, use of property, person, entity, condition or state of affairs



**The chief benefit of starting from a blank slate of regulation in a prosperity district is not only getting clear of the decades of politicized regulatory decision making, but also having the opportunity to approach any market or behavioral failure with the least restrictive approach that solves the problem.**

targeted for regulation has violated, is violating or is an actual threat to individual rights of life, liberty and/or property.

### **Impact Statement and A-Priori Analysis**

The enabling legislation for prosperity districts requires the use of regulatory impact statements both a priori and ex post. Significantly, there is a separation of powers requirement that precludes the same district managers from being involved in promulgating a regulation who are also involved in enforcing the regulation--and vice versa. This will ensure that the regulatory promulgation and review process is conducted by an essentially independent reform body. They must fully explore the effects of a proposed regulation or one up for review and must:

- articulate the nature and magnitude of the threat to the individual right to life, liberty or property targeted by the regulation by, at a minimum, characterizing the risk pathways, populations exposed and consequences of exposure and assessing whether the regulation or similar regulations have been effective in reducing the targeted risks;
- articulate a theory of cause and effect, consistent with established economic and scientific theories, that shows how the regulation could or did produce the desired outcomes and that also explicitly assesses whether the risks addressed by the regulation are likely to increase, decrease or stay the same in the absence of the regulation;
- demonstrate consideration of a wide variety of alternate and less restrictive or burdensome regulatory approaches consistent with the hierarchy of regulation contemplated by this Article, including, but not limited to, expressly assessing whether the

regulation has a negative effect on competition, whether the regulation can be modified to reduce its anti-competitive effects, and determining whether and how private voluntary action can reduce the risks addressed by the regulation;

- comprehensively assess the benefits and costs of a wide variety of alternative regulatory approaches or solutions to the asserted threat to individual rights of life, liberty or property, including a showing of how much of the problem the regulation is likely to solve;
- consider the foregoing criteria in light of all actual evidence of the regulation's efficacy or lack thereof from any previous promulgation or enforcement of the same or similar regulation; and
- specify the data utilized to make the assessments shown in the report.

### **Process for Finding the Least Restrictive Regulatory Approach**

The chief benefit of starting from a blank slate of regulation in a prosperity district is not only getting clear of the decades of politicized regulatory decision making, but also having the opportunity to approach any market or behavioral failure with the least restrictive approach that solves the problem.

Prosperity district enabling legislation limits the scope of regulations. Any regulation must be the least restrictive means to achieve its asserted purpose and may only:

- furnish additional or augmented civil remedies to render actions under the malum in se criminal law, the common law of torts, property or contracts, or the common law or equitable remedies adopted by its respective district charter, or otherwise in effect within the boundaries of the Prosperity District,



more effective in protecting the individual rights of life, liberty or property;

- impose clear, objective legal standards only if the foregoing mode of regulation will not reasonably reduce the threat to the individual rights of life, liberty or property;
- enable the enforcement of clear, objective legal standards by inspections and enforcement of violations by civil penalty only if the foregoing modes of regulation will not reasonably reduce the threat to the individual rights of life, liberty or property;
- enable the enforcement of clear, objective legal standards by permitting, licensing or other regulatory pre-approval processes only if the foregoing modes of regulation will not reasonably reduce the threat to the individual rights of life, liberty or property; or
- enable the enforcement of clear, objective legal standards by criminal sanctions only if the foregoing modes of regulation will not reasonably reduce the threat to the individual rights of life, liberty or property.

### **Sunsets and Reviews**

All regulations promulgated in a prosperity district must be automatically repealed no later than five years from their effective date and may only be reinstated subject to the analysis and review requirements in the district charter.

### **Conclusion**

The model laid out for prosperity districts incor-

porates the best practices available in minimizing regulatory impacts, ensuring their effectiveness, and avoiding the pitfalls of the traditional regulatory apparatus in the rest of the United States. It is a worthy experiment in starting from scratch and assessing the extent to which less restrictive approaches and more freedom and voluntary cooperation can prevent public problems from emerging.

Since living, working or owning property in a prosperity district is 100% voluntary, only those who choose to participate in the experiment will reap the benefits or the consequences of the rules at work in the district. There will be learning and there will be adjustment. Surrounding areas are protected by their own laws, and tangible external effects of the prosperity district will be subject to state and local laws.

Fundamentally, this is an experiment in economic liberty. Can a voluntary, very free and unrestricted district provide a booming economic opportunity? And can it do so in a way that people find desirable and enjoyable and do others seek to join or emulate the effort? The proof can only be found in the experiment itself, but the success of economic liberty in delivering prosperity is a defining part of history. A well-structured prosperity district presents no threat to those happy with the current rules while others explore the opportunities and consequences of changing the rules of the game. All of us will be able to learn from such experiments and should expect the effort would lead to great examples for others to follow.

## Endnotes

1. Frank Newport, Few Americans Want More Gov't Regulation of Business, Gallup, September 15, 2014, <http://www.gallup.com/poll/176015/few-americans-gov-regulation-business.aspx>
2. PEW Research Center, "Section 2: Views of Government Regulation," February 23, 2012, <http://www.people-press.org/2012/02/23/section-2-views-of-government-regulation/>
3. "GOP seeks limits on new Colo. child-care rules," Associated Press, January 27, 2012, <http://www.cnsnews.com/news/article/gop-seeks-limits-new-colo-child-care-rules>
4. "Over-regulated America," The Economist, Feb 18th 2012 <http://www.economist.com/node/21547789>
5. For a short overview see David R. Henderson, "Rent Seeking," The Concise Encyclopedia of Economics, <http://www.econlib.org/library/Enc/RentSeeking.html> . The seminal work identifying the phenomenon of lobbying for regulations that restrict competition and benefit firms not consumers is Anne O. Krueger, "The Political Economy of the Rent Seeking Society," American Economic Review, Vol. 64 No. 3, 1974, pp. 291-303, <https://assets.aeaweb.org/assets/production/journals/aer/top20/64.3.291-303.pdf> . And for a layman's overview with current examples, see Ben Casselman, "The Rent-Seeking Is Too Damn High," FiveThirtyEight, February 5, 2016, <http://fivethirtyeight.com/features/the-rent-seeking-is-too-damn-high/>
6. Nick Dranias, The Prosperity Zone Compact, Compact for America, July 2016, p1.
7. Mortality data from the Center for Disease Control, crude death rates. 1980 data from Table 1.5 of Vital Statistics of the United States 1980, [https://www.cdc.gov/nchs/data/vsus/mort80\\_2a.pdf](https://www.cdc.gov/nchs/data/vsus/mort80_2a.pdf). 2013 data from National Vital Statistics Report, February 2016, [http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64\\_02.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_02.pdf)
8. Bentley Coffey, Patrick McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations," Mercatus Center, April 2016, <http://mercatus.org/publication/cumulative-cost-regulations>
9. See Steven H. Woolf et. al, How Are Income and Wealth Linked to Health and Longevity? Urban Institute and VCU Center on Society and Health, April 2015, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000178-How-are-Income-and-Wealth-Linked-to-Health-and-Longevity.pdf>
10. Ibid
11. Physicians for a National Health Plan, "Administrative work consumes one-sixth of U.S. physicians' time and erodes their morale, researchers say, " <http://www.pnhp.org/news/2014/october/administrative-work-consumes-one-sixth-of-us-physicians%E2%80%99-time-and-erodes-their-mor>
12. Jim Nussle, "One-Size-Fits-All Financial Regulation Is Harming Consumers and Our Economy," U.S. Chamber of Commerce, June 01, 2016, <https://www.uschamber.com/above-the-fold/one-size-fits-all-financial-regulation-harming-consumers-and-our-economy>
13. Ibid



14. Baylen Linnekin, "Dairy Lobby Sides with Florida in Orwellian Attempt to Redefine 'Skim Milk,'" Reason, September 10, 2016, <http://reason.com/archives/2016/09/10/dairy-lobby-sides-with-florida-in-orwell>
15. National Partnership for Reinventing Government, "Improving Regulatory Systems," <http://govinfo.library.unt.edu/npr/library/reports/regexec.html>
16. Ibid
17. Organisation for Economic Co-Operation and Development, Regulatory Reform and Innovation, pp. 12 &14, <http://www.oecd.org/sti/inno/2102514.pdf>
18. For example regulations of theaters based on celluloid movie film still in place long after celluloid was replaced with safe materials. Adrian Moore and Tom Rose, Regulatory Reform at the Local Level, Reason Foundation Policy Study No. 238, January 1998, p.28, <http://reason.org/files/651f8c83166f18b6ccaa77fc75739c84.pdf>
19. See Adrian Moore and Ted Balaker, "Do Economists Reach a Conclusion on Taxi Deregulation?", EconJournalWatch, 2006, Vol. 3, No.1
20. Benjamin Powell and Edward Stringham, Housing Supply and Affordability: Do Affordable Housing Mandates Work?, Reason Foundation, April 2004, <http://reason.org/files/020624933d4c04a615569374fdbef41.pdf>
21. See Brian Baugus and Feler Bose, Sunset Legislation in the States: Balancing the Legislature and the Executive, Mercatus Center, August, 2015 <http://mercatus.org/publication/sunset-legislation-states-balancing-legislature-and-executive>
22. Russell Sobel and John Dove, "Analyzing the Effectiveness of State Regulatory Review," Public Finance Review, July 2016, vol. 44 no. 4 pp.446-477, <http://faculty.citadel.edu/sobel/All%20Pubs%20PDF/Analyzing%20Effectiveness%20of%20State%20Regulatory%20Review.pdf>
23. Organisation for Economic Co-Operation and Development , Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance, 2002, p. 38, [https://books.google.com/books?id=aNrR4ddR\\_Y8C&pg=PA38&lpg=PA38&dq=regulatory+sunsetting&source=bl&ots=CnxsMiCKhw&sig=0m\\_cXttklHDwyNSB1OIFLeS5V5A&hl=en&sa=X&ved=0a-hUKEwiom9S32enOAhXL1x4KHf93AnEQ6AEITTAG#v=onepage&q=regulatory%20sunsetting&f=false](https://books.google.com/books?id=aNrR4ddR_Y8C&pg=PA38&lpg=PA38&dq=regulatory+sunsetting&source=bl&ots=CnxsMiCKhw&sig=0m_cXttklHDwyNSB1OIFLeS5V5A&hl=en&sa=X&ved=0a-hUKEwiom9S32enOAhXL1x4KHf93AnEQ6AEITTAG#v=onepage&q=regulatory%20sunsetting&f=false)
24. For good overviews on a priori regulatory analysis, which focus on federal regulations but are generally useful, see Richard Williams and Jerry Ellig, Regulatory Oversight: The Basics of Regulatory Impact Analysis, Mercatus Center, September 2011, <http://mercatus.org/publication/regulatory-oversight> and Business Roundtable, Using Cost-Benefit Analysis To Craft Smart Regulation, December 2014, <http://businessroundtable.org/sites/default/files/reports/BRT%20Cost-Benefit%20Analysis.pdf>
25. Australian Government Productivity Commission, Regulatory Impact Analysis: Benchmarking, November 2012, <http://regulatoryreform.com/wp-content/uploads/2015/02/Australia-RIA-Benchmarking-Report-2012.pdf>
26. See for example Moore and Rose, Regulatory Reform at the Local Level.





## Council of Scholars

**Sam Batkins, JD**  
Director of Regulatory Policy  
American Action Forum

**Dean Clancy, MA**  
Vice President of Policy(fmr.),  
FreedomWorks

**Hon. Harold R. DeMoss, Jr.**  
Senior Federal Judge (ret.),  
U.S. Court of Appeals

**John Eastman, PhD, JD**  
Professor of Law and Former Dean,  
Chapman University Fowler School of Law

**Kevin R. Gutzman, PhD, JD**  
Chairman of History Department,  
Western Connecticut State University

**Jake Jacobs, PhD**  
Historian, Liberty Proclamation Education

**Steve Moore, MA**  
National Spokesman

**Rick Masters, JD**  
General Counsel (ret.),  
Council of State Governments

**Bill Norton**  
Visiting Scholar, Bellevue University

**Lawrence Reed, PhD, MA**  
President, Foundation for Economic Education

**Ben Scafidi, PhD**  
Professor of Economics,  
Kennesaw State University

**Byron Schlomach, PhD**  
State Policy Director, 1889 Institute

**Ilya Shapiro, JD**  
Senior Fellow in Constitutional Studies &  
Editor-in-Chief of the *Cato Supreme Court Review*

**Steve Slivinski, MA**  
Senior Research Fellow, Arizona State University

**Krystal Slivinski, MA**  
Assistant Professor of Economics,  
Grand Canyon University

**Baker Spring, MA**  
Fellow (fmr.), US Senate,  
Committee on the Budget

## Guarantee of Quality Scholarship

Compact for America Educational Foundation is committed to delivering the highest quality and most reliable research. The Foundation guarantees that all original factual data are true and correct and that information attributed to other sources is accurately represented. The Foundation encourages rigorous critique of its research. If the accuracy of any material fact or reference to an independent source is questioned and brought to the Foundation's attention with supporting evidence, the Foundation will respond in writing. If an error exists, it will be noted in a correction that will accompany all subsequent distribution of the publication.

## Compact for America Educational Foundation, Inc.

[www.CompactforAmerica.org](http://www.CompactforAmerica.org)  
2323 Clear Lake City Blvd.  
Suite 180-190  
Houston, TX 77062  
281-235-8311  
fax: 281-946-8177

Made possible by a generous grant from:

