COALITION FOR SENSIBLE SAFEGUARDS

Regulations Are a Critical Part of a Functioning Economy

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ABOUT THE COALITION

The Coalition for Sensible Safeguards is an alliance of more than 200 consumer, labor, scientific, research, faith, community, environmental, small business, good government, public health, and public interest groups — representing millions of Americans.

We are joined in the belief that our country's system of regulatory safeguards should secure our quality of life, pave the way for a sound economy, and benefit us all.

The coalition is led by an executive committee co-chaired by Public Citizen and Consumer Federation of America. The committee also includes the AFL-CIO, the Center for Progressive Reform, the Economic Policy Institute, the Natural Resources Defense Council, and the Union of Concerned Scientists.

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Regulations Are a Critical Part of a Functioning Economy

Critics of regulations frequently complain that they damage the economy by constraining markets, imposing unnecessary costs on businesses and consumers, and stifling innovation. But these blanket critiques of regulations ignore the critical role that well-crafted regulations play in the economy, creating the rules of the road that are necessary for markets to function well and, in some cases, at all.

The Financial Crisis of 2008, stemming in part from a significant lack of necessary regulations in the banking sector,[1] shows the potentially calamitous results when important regulatory protections are not in place or not properly enforced. But beyond preventing the most significant disasters, regulations also ensure that the economy functions effectively on a day-to-day basis, reducing costs for both sellers and buyers to effectively participate in markets.[2] Well-crafted regulations can result in more competitive markets, greater consumer welfare, increased innovation, and greater productivity.

While this report focuses on the economic benefits of regulations, that is just one among a number of benefits that regulations provide. Individuals protected from harm by worker safety regulations are not only more productive at work, but also are able to live longer and healthier lives because they are free from workplace harms. Consumer product safety regulations reduce information costs for market actors, and also protect those same consumers from harms resulting from defective or dangerous products.

Regulations can also improve distributional fairness by ensuring that costs of certain actions are not borne by those with the least resources. They can ensure that government programs operate more efficiently, such as by reducing unnecessary paperwork or eliminating burdensome processes when interacting with the government. They can protect people's civil rights by prohibiting discriminatory practices, advance democratic values by supporting free speech and political participation, and preserve natural beauty through conservation requirements, among other benefits.

To say that regulations are a critical part of a well-functioning economy does not mean that any regulation is by definition beneficial, either to the economy or otherwise. In fact, some federal regulations can improve market functioning by altering outdated federal regulatory requirements or ensuring greater consistency between different regulatory standards. And regulations frequently trade off economic benefits or costs with other benefits and costs. Each regulation needs to be considered on its merits, accounting for the full range of its effects. But blanket suggestions that regulations are harming the economy, or calls for artificial caps on the number of regulations that can be promulgated, rest on a false premise about the role that regulations play in a functioning economy.

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[1] Financial Crisis Inquiry Commission, *Financial Crisis Inquiry Report* (Jan., 2011), available at https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[2] For example, reducing information asymmetries through disclosure requirements can give buyers greater confidence to take part in a market and can also ensure that good faith sellers do not lose out to fraudulent actors.

Markets Need Regulation to Work Effectively

At the most basic level, markets are shaped by regulation, as markets cannot function without regulation of some kind.[3] Without well-defined property rights and an authority to enforce them, market actors would be reluctant to invest in infrastructure or seek to grow their business, given the risk that physical or intellectual property could simply be taken from them. In the absence of state-backed monetary systems, markets would have far less liquidity and exchanges of goods and services would be unnecessarily complicated. Established legal procedures for settling disputes are necessary to ensure predictability and peaceful resolution of the inevitable disagreements that arise in any market. And corporations, one of the principal market actors, are themselves legal creations that improve market functioning through features like limited liability.

Regulations can also obviate crippling market failures. Take, for example, deposit insurance regulations, which have significantly increased stability in the banking industry. Banks are susceptible to bank runs because they take in deposits and invest in less liquid loans. If too many investors demand their deposits back at the same time, then the bank has to sell its assets (likely at a loss) to cover those demands, which can lead to solvency issues. Depositors may do this even if they think the bank is financially solid, if they are concerned that other depositors might demand their money, leaving them at risk of losing their own deposit. Prior to deposit insurance regulations, these market dynamics resulted in large numbers of bank runs; nearly 40% of banks in the United States in 1929 had suspended their operation by 1933.[4]

To address this concern, deposit insurance provides account holders at insured banks with guaranteed protection for their funds up to a set amount, currently $250,000, funded by a small fee assessed on those insured banks. Because their assets are protected, depositors need not fear bank runs, leading to fewer bank runs overall. And banks benefit too, even though they pay a fee, from the reduction in bank runs. As the Federal Deposit Insurance Corporation (FDIC), which is tasked with enforcing these regulations, notes "deposit insurance is highly effective at preventing [bank] runs. At a high level, the rarity of bank runs in the United States, especially runs by insured depositors, since the creation of the FDIC is clear evidence of the stabilizing benefits of deposit insurance."[5]

Regulation can also be critical for markets that are based on common pool resources, where the provision of a resource to one individual results in the provision of the same resource to other individuals at no cost.[6] No one individual owns the common resource, so there is no individual

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[3] The term "regulation" is used here broadly to describe actions by government entities to set rules for how markets operate. This may include statutes, rules as defined in the Administrative Procedure Act (5 U.S.C. §§ 551-559), subregulatory actions, and permitting and licensing decisions, among other actions. It does not include self-regulation, in which industry actors or industries as a whole create standards that are not enforced by any government body. As evidenced by the Financial Crisis of 2008, replacing necessary regulations with self-regulation can have disastrous societal effects. *See* Financial Crisis Inquiry Commission, supra note 1.

[4] Kris James Mitchener, "Bank Supervision, Regulation, and Instability During the Great Depression," *Journal of Economic History*, Vol. 65, No. 1 (Mar., 2005).

[5] Federal Deposit Insurance Corporation, "Options for Deposit Insurance Reform," (May, 2023), 26, available at https://www.fdic.gov/analysis/options-deposit-insurance-reform.

[6] See Office of Management and Budget, "Circular A-4," (Nov., 2023), 15-16, available at https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf.

incentive for them to seek to conserve it. Thus, common pool resources are susceptible to being overused and depleted. Take, for example, fisheries: because each fisherman has equal access to the fish and seeks to maximize their own catch, in the absence of regulation they will ultimately overfish and damage the entire market.[7] Thus, conservation regulations in fisheries not only advance environmental goals, but also ensure that the market itself functions effectively for fishermen.

Beyond regulations that are necessary for markets to function at all, there are many regulations that help the economy to function more effectively. Regulations set the rules of the road for the economy; well-designed ones encourage beneficial actions (such as investment in the production of high quality, safe goods) and discourage harmful actions (such as fraud). And to the extent that the rules of the road are consistent over time, because of a relatively stable regulatory environment, businesses can more easily engage in long-term investments given the greater certainty about the economic environment. Regulations can also serve important coordination functions in a market, such as the Federal Communications Commission's (FCC) allocation of radio spectrum for non-federal government use.[8] By shaping how markets operate, regulations can make them more competitive, produce greater consumer welfare, drive innovation, and increase productivity.

Regulations can encourage greater market competition

Regulations can help shape markets that are more competitive, meaning they have greater numbers of producers and buyers, it is easier for producers and buyers to enter and exit a given market, and it is easier for buyers to switch between producers and producers to switch between buyers. These conditions lead market actors to compete to offer the highest value at the lowest price. More competitive markets can have a number of important economic benefits, including providing lower prices, higher quality products, new products, and higher paying jobs.[9]

Regulations can make markets more competitive in a number of ways. They can help ensure an increased number of competitors in the market by prohibiting practices by producers with greater market power that seek to limit new entrants. Take, for example, the Federal Trade Commission's (FTC) regulation of eyeglasses in the 1970s. Prior to FTC regulation, optometrists and ophthalmologists would utilize a range of practices to ensure that customers who received an eye exam from them would also purchase eyeglasses from them, including refusing to provide a prescription unless the customer purchased eyeglasses from them or charging an additional fee to release the prescription.[10] This practice limited the ability of opticians to effectively compete in

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[7] H. Scott Gordon, "The Economic Theory of a Common-Property Resource: The Fishery." *Journal of Political Economy*, Vol. 62, No. 2 (1954).

[8] See, e.g., 47 C.F.R. Subpart B, "Allocation, Assignment, and Use of Radio Frequencies," available at https://www.law.cornell.edu/cfr/text/47/part-2/subpart-B.

[9] Office of Information and Regulatory Affairs, "Guidance on Accounting for Competition Effects When Developing and Analyzing Regulatory Actions," (Oct., 2023), available at https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/10/RegulatoryCompetitionGuidance.pdf.

[10] Federal Trade Commission, "Staff Report on Advertising of Ophthalmic Goods and Services and Proposed Trade Regulation Rule (16 CFR Part 456)," (May, 1977), available at https://www.ftc.gov/system/files/documents/reports/staff-report-advertising-ophthalmic-goods-services-proposed-

the market. By requiring that customers be able to utilize a prescription to obtain eyeglasses from other providers, the FTC regulation expanded the number of market participants, making the market more competitive.

Regulations can also make markets more competitive by reducing switching costs, making it easier for customers to move from one producer to another, thereby driving down prices. One example is FCC regulations related to phone number portability.[11] Prior to regulations in this space, phone carriers could require individuals or businesses to take a new phone number if they switched carriers. This was a substantial impediment to competition: the FCC noted studies suggesting that more than 80% of customers would be unlikely to change their carrier if it required them to abandon their phone number.[12] By requiring that customers be able to keep their phone number when changing providers, the FCC noted that the regulation "promotes competition between telecommunications service providers…[and] competition should foster lower local telephone prices and, consequently, stimulate demand for telecommunications services and increase economic growth."[13]

Similarly, regulations can make it easier for producers and buyers to enter and exit a market, which in turn can increase competition. Regulations that establish nationwide standards in an industry can reduce barriers to entry by eliminating different standards between states, making it easier for producers to enter markets nationwide. Regulatory standards can also make it easier for producers of high value products to enter a new market characterized by significant informational asymmetries. In markets where there is significant informational asymmetries between producers and buyers, there will be a tendency for producers of low value goods to push out producers of high value goods, since it is harder for producers of high value goods to capture sufficient returns when consumers cannot easily distinguish between high value and low value goods.[14]

For example, consider the market for medical drugs. Prior to regulation, the market saw a proliferation of dangerous or ineffective medicines, as it was very hard for consumers to distinguish between products based on quality. National regulatory standards encouraged producers to compete to provide higher value products, which made it easier for those types of producers to enter the market. It also ensured that consumers would have to invest less of their time and effort to ensure their own safety–by allowing them to assume a baseline safety-level with respect to products that were sold–which made it easier for them to enter the marketplace as well.

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trade-regulation-rule-16-cfr-part-456/r611003_-_staff_report_on_advertising_of_ophthalmic_goods_and_services_and_proposed_trade_regulation.pdf.

[11] The FCC initiated rulemaking in 1995, and Congress then required carriers to offer number portability consistent with FCC regulations in the Telecommunications Act of 1996. See Federal Communications Commission, "First Report and Order and Notice of Proposed Rulemaking in the Matter of Telephone Number Portability," (July, 1996), available at https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1996/fcc96286.txt.

[12] *Id.*

[13] *Id.*

[14] George A. Ackerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," *Quarterly Journal of Economics*, Vol. 83, No. 3 (Aug., 1970).

Regulations can make markets work better for consumers

When markets are functioning correctly, they provide value to producers and consumers alike. However, in some markets, differences in market power between producers and customers can lead to poor outcomes for consumers. Regulations play a critical role in making markets work better for consumers, including by prohibiting fraudulent and deceptive practices, improving consumer information, and driving the production of more consumer friendly products.

When left unregulated, fraudulent and deceptive practices can have severely negative impacts on consumers, particularly in circumstances in which there are significant power imbalances between producers and consumers–including because of market consolidation and lack of competition–or where consumers have limited options to purchase a good or service. Predatory lending is a practice in which the lender imposes unfair or abusive terms on the borrower by taking advantage of the borrower's lack of choice and urgent need for funds. Concerns around predatory lending have been particularly prevalent with respect to payday loans, which are high-cost, low-dollar loans usually provided on a short-term basis to borrowers with low credit scores.

Payday loans can, in certain circumstances, provide people with needed money for unexpected costs–such as car repair–who would otherwise have limited access to credit. However, consumer advocates have documented how in the absence of proper regulation these loans can result in debt traps, in which individuals with limited options are unable to pay off one loan without taking out another payday loan over a continuous cycle, paying fees each time they do so. In 2013, the Consumer Financial Protection Bureau (CFPB) found that 75% of payday loan fees are generated by consumers who take out 10 or more loans in a year.[15] Regulators at the state and federal level have taken a number of approaches to regulate these loans, including underwriting requirements, interest rate caps, requiring lenders to offer extended repayment plans, restricting the number of payday loans that a borrower can obtain, and prohibiting coercive collection practices.[16]

Customers can also suffer when they lack sufficient information to make informed choices in a market. If customers cannot readily determine the price they are paying for a given product, particularly one for which they have a significant need, it will make it difficult for them to seek out the best price and may result in them making poor choices. Lack of information can be a particular challenge in markets in which consumers make costly purchases, but have only a limited number of transactions over the course of a lifetime. For example, buying a home is usually the largest purchase a consumer will ever make, and one in which they will have limited, if any, prior experience. And one of the most important financial decisions related to home purchases is the choice of a mortgage lender.

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[15] Consumer Financial Protection Bureau, "Payday Loans and Deposit Advance Products," (Apr., 2013), available at https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

[16] Consumer Financial Protection Bureau, "Payday, Vehicle Title, and Certain High-Cost Installment Loans Final Rule," 82 FR 54472 (Nov. 17, 2017), available at https://www.federalregister.gov/documents/2017/11/17/2017-21808/payday-vehicle-title-and-certain-high-cost-installment-loans. Note that the Consumer Financial Protection Bureau's regulation on payday loans has been subject to extensive, ongoing challenges from the payday loan industry.

Confusing information can make it difficult for home buyers to understand what they are paying and to effectively comparison-shop.[17] At the same time, regulations requiring disclosure of duplicative and voluminous information in an unclear format also limits consumers' ability to effectively understand mortgage costs.[18] CFPB sought to address these concerns in 2013 by issuing regulations to streamline the forms required to be provided to consumers, make those disclosures more readily understandable, and require that customers receive disclosures three days in advance of closing so they can adequately review the information.[19]

Similarly, as discussed earlier, the drug market suffers from informational asymmetries as well, given that customers have little ability on their own to determine the safety or efficacy of a medicine or medical device prior to use, and may even have difficulties determining safety and efficacy after use as well. By providing basic safety standards, as well as an established means of testing safety and efficacy by impartial experts, drug safety regulations reduce the burden placed on customers in the market and cause producers to compete on price and quality.

Regulations can also spur the development of products that improve consumer well-being. One such area is more energy efficient products. Energy efficient products frequently have higher up-front costs, but save consumers money on net over the life of the product in reduced energy costs. However, calculating the value of energy savings is difficult for consumers to do,[20] meaning that many might choose products that cost them more over the life of the product because the initial cost is lower. Requiring manufacturers to make more energy efficient products is thus good for both the environment and consumers alike; by one estimate, savings from Department of Energy standards finalized between January 2021 and July 2024 total $107 a year for a typical American household and over $2 billion a year for American businesses.[21]

Regulations can drive innovation in markets

Innovation is an important engine of economic growth. But it frequently takes investment in the form of time and resources, which become more difficult to commit the more uncertain the likelihood of returns on those investments. Regulations can help shape markets that are more

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[17] CFPB found that "[r]esearch points to a relationship between consumer confusion about loan terms and an increased likelihood of adopting higher-cost, higher-risk mortgage loans in the years leading up to the mortgage crisis." Consumer Financial Protection Bureau, "Integrated Mortgage Disclosure Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)," 78 FR 79730 (Dec. 31, 2013), available at https://www.federalregister.gov/documents/2013/12/31/2013-28210/integrated-mortgage-disclosures-under-the-real-estate-settlement-procedures-act-regulation-x-and-the.

[18] Consumer Financial Protection Bureau, "CFPB Finalizes 'Know Before You Owe' Mortgage Forms," (Nov. 13, 2013), available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-know-before-you-owe-mortgage-forms/.

[19] *Id*.

[20] David L. Greene, "Implications of Behavioral Economics for the Costs and Benefits of Fuel Economy Standards," *Current Sustainable/Renewable Energy Reports*, Vol. 6, (2019), available at https://link.springer.com/article/10.1007/s40518-019-00134-3.

[21] Jeremy Dunklin and Joanna Mauer, "Reducing Costs Across America: New Appliance Standards Save Consumers Money in Every State," PIRG (Aug., 2024), available at https://pirg.org/wp-content/uploads/2024/08/Reducing-Costs-Across-America.pdf.

likely to reward innovation and that thereby create the contexts that encourage more people to innovate.

One of the most significant drivers of innovation in the United States are regulations related to patents. The authority to establish patents was provided for in the United States Constitution[22] in order to drive innovation; by providing inventors with time-limited monopolies on the use of their inventions, patents ensure that inventors can realize financial gains to offset the investment of time and money needed to innovate in the first place. While there are certainly important discussions about the proper design of patents, the types of things that can be patented, and the use of patents to slow innovation by competitors, among other issues, there is little question that patents are a critical driver of innovation through their protection of intellectual property. The U.S. Patent and Trademark Office found that in 2019, intellectual property-intensive industries supported 44% of the U.S. job market and 41% of U.S. domestic economic activity.[23]

Another important part of innovation is the ability of entrepreneurs to start new companies and bring new ideas into markets. However, new entrants can challenge the position, and profits, of already-established firms. Established firms can respond by innovating themselves, or otherwise looking to increase quality or decrease price. But they can also seek to restrict access of new entrants to their markets, as discussed earlier. In these cases, regulation can help ensure that markets remain open to new competitors, so innovators have a place to sell their inventions.

Consider, for example, non-compete clauses, which are agreements entered into between employers and their employees that restrict the ability of employees to seek subsequent employment or start their own business. Given the power disparity between employers and employees, these clauses can be used to limit innovation and competition; the FTC estimates that 30 million workers are subject to a non-compete clause, even when such a clause would be unenforceable under State law.[24] The FTC estimates that its regulations prohibiting these non-compete clauses would result in 3,000-5,000 new patents in the first year, rising to 30,000-50,000 in the tenth year.[25] The FTC also estimates that eliminating non-compete clauses would increase new business formation by 2.7% a year, meaning 8,500 more new businesses would be created each year.[26]

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[22] "The Congress Shall Have the Power ...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Constitution, Article I, Section 8, clause 8.

[23] Andrew A. Toole, Richard D. Miller, and Nicholas Rada, United States Patent and Trademark Office, "Intellectual property and the U.S. economy: Third edition," (Mar., 2022), available at https://www.uspto.gov/sites/default/files/documents/uspto-ip-us-economy-third-edition.pdf.

[24] Federal Trade Commission, "Non Compete Clause Final Rule," 89 FR 38342 (May 7, 2024), available at https://www.federalregister.gov/documents/2024/05/07/2024-09171/non-compete-clause-rule.

[25] *Id*.

[26] Federal Trade Commission, "FTC Announces Rule Banning Noncompetes," (Apr. 23, 2024), available at https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes.

Regulations can increase productivity

Regulations can have a significant effect on productivity, by keeping workers safe and healthy and thus better able to do their work. While the Clean Air Act (CAA) is frequently thought of as a means of protecting the environment and human health, it also has a significant positive impact on productivity. In fact, in passing the CAA, Congress noted that the purpose of the Act was: "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the *productive capacity of its population*."[27] By reducing air pollution, the CAA increased productivity, employment, and lifetime earnings. One study found that the improvements in air quality were "associated with a 0.7% increase in the annual number of quarters worked and a 1% increase in mean annual earnings" which translated to a "cumulative lifetime income gain" per person of "approximately $4,300."[28] These productivity gains represent only one aspect of the benefits from air pollutant regulations under the CAA. The Environmental Protection Agency has found that every year these regulations prevent more than a hundred thousand deaths and millions of lost workdays, and that the benefits of the rules exceed the costs by a factor of 30.[29]

Moving Beyond the False Choice Between Regulation and Thriving Economy

Regulations are not an impediment to a thriving economy. Far from it; some amount of regulation is necessary for an economy to function at all. Regulations are needed to address critical market failures and set rules of the road. Moreover, they can improve the functioning of markets by increasing competition, protecting consumers, driving innovation, and increasing productivity. At the most basic level, regulations help to determine whether the economy works for most Americans: whether it allows them to obtain reasonable returns for their work, obtain the goods and services they need to thrive at a reasonable price, and encourages and rewards the type of actions that lead to a better society as a whole.

Given the centrality of regulation to markets, the question of how to regulate a market cannot be avoided. There can be no market devoid of any regulation and thus no choice simply not to regulate. Rather, the choice is always between the current set of rules that shape a market or a new set. As Steven Vogel put it, "real-world markets are *institutions*: humanly devised constraints that shape human interactions."[30] Regulations help to shape these institutions, determining who participates and who does not, what types of activities are encouraged and what are not, and who benefits and who does not.

Seen in this light, the discussion of regulation versus deregulation loses much of its rhetorical significance. There is no market that first exists on its own and then has regulations layered on it, as the market itself is created by regulation. So-called "deregulation" is not the return to a pre-

[27] 42 U.S.C. § 7401(b)(1) (emphasis added).

[28] Adam Isen, Maya Rossin-Slater, and W. Reed Walker, "Every breath you take—every dollar you'll make: The long-term consequences of the Clean Air Act of 1970," *Journal of Political Economy*, Vol. 125, No. 3 (June, 2017).

[29] Environmental Protection Agency, "Benefits and Costs of the Clean Air Act 1990-2020, the Second Prospective Study," (Mar., 2011), available at https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-second-prospective-study.

[30] Steven K. Vogel, *Marketcraft: How Governments Make Markets Work* (2018), 1.

regulatory market; rather, it's just a choice of another set of regulatory constraints, ones that encourage different sets of actions and benefit different sets of actors. Rather than cloud the issue by calling one set of actions regulatory and another deregulatory, the most helpful way to discuss regulatory changes is to consider who benefits from the changes and who bears the costs.

In addition, it is important to recognize the critical role that regulations can provide in a market by resolving coordination problems in a consistent manner. It is less important which side of the road vehicles are required to drive on, then that there is a clear requirement to drive on one of the two sides. Moreover it is just as important that the decision be a stable one, and that there are not sudden changes year to year as to the side of the road chosen.

To argue that regulations are necessary for the economy to function well is not to say that debates over specific regulations are unwarranted. Such discussions are critical, because regulations have such a significant effect on the shape of markets. Just as well-designed regulations can cause markets to work better, poorly designed or outdated regulations can cause markets to work much worse. However, as this report shows, it is inaccurate to start with the assumption that regulations inherently damage markets, or that they are an effort to trade off non-economic benefits against economic costs. Such tradeoffs can exist, and can be warranted. But regulations are a necessary part of thriving markets, and an effective tool for making markets, and the broader economy, work better for everyone.