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**Regulatory Reform in Maryland:  
A Good Start but More Work to Do**

by

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In December 2016, the Mercatus Center at George Mason University published an essay entitled “[Regulatory Reform 101: A Guide for the States](#)” by James Broughel. Mr. Broughel discusses two principal ways states can implement regulatory process reforms: he calls them “regulatory look-back reforms” and “*ex ante* regulatory process reforms.”

Regulatory look-backs, in one way or another, involve retrospective reviews of regulations already in place to examine their efficiency and effectiveness in light of their original purpose. *Ex ante* regulatory process reforms, on the other hand, involve changes to the process employed in adopting and implementing regulations. Some tools that may be employed *ex ante*, or beforehand, in connection with the consideration of proposed rules include adherence to a regulatory budget, employing economic analysis requirements, and engaging in centralized review by an executive branch office. Both look-backs and *ex ante* regulatory reforms can be carried out without compromising public health and safety regulatory protections.

In a July 2015 blog, “[Maryland Needs to Improve Its Regulatory Climate.](#)” I proposed a number of regulatory look-back reforms and *ex ante* process reforms that Maryland could employ to improve its regulatory climate and, hence, foster more entrepreneurial and economic activity within the state. For example, I suggested that Maryland adopt a sunset provision for all new

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regulations. This would mean the regulations would expire on a specified “sunset” date if not affirmatively readopted before the expiration date.

I also proposed that Maryland establish a “central entity within the executive branch to review regulations before they are promulgated to determine that the projected benefits outweigh the costs and they are not inconsistent with other regulations.” Finally, like Mercatus’ Mr. Broughel now, I suggested then that Maryland adopt a formal retrospective review (look-back) process to assess whether regulations are, in fact, achieving their purported objectives in the most efficient and effective manner.

Since Governor Larry Hogan took office in January 2015, his Administration has made a good start in the regulatory reform area, specifically implementing a regulatory look-back process. In July 2015, Governor Hogan established a Regulatory Reform Commission with the expressed goal of streamlining government, stimulating economic activity, and creating jobs. In April 2016, Lt. Governor Boyd K. Rutherford created four workgroups under the Regulatory Reform Commission: Occupational and Business Licensing; Financial Services; Environment and Land Use; and Health Care. Each workgroup was asked to review regulations that affect their respective subject area and identify regulations that could be repealed or amended.

In December 2016, the Regulatory Reform Commission issued a [report](#) with 187 recommendations. The 187 recommendations fall under one of the workgroup’s four reform categories: streamlining and clarifying revisions; modernization and electronic submissions; obsolete references; and state and federal statutory requirements.

See the Table below for a breakdown of the 187 regulatory proposals by workgroup (along the top) and reform category (along the left side).

	Occupational and Business Licensing	Financial Services	Environment and Land Use	Health Care	Sub Total
Streamlining and Clarifying Revisions	25	19	21	3	<b>68</b>
Modernization and Electronic Submissions	10	5	3	24	<b>42</b>
Obsolete References	46	3	3	4	<b>56</b>
State or Federal Statutory Requirements	9	10	0	2	<b>21</b>
<b>Total</b>	<b>90</b>	<b>37</b>	<b>27</b>	<b>33</b>	<b>187</b>

Governor Hogan has stated that one of the major goals of his Administration is to “transform Maryland into a business-friendly state.” And, to his credit, he has taken meaningful steps to achieve this goal. The Regulatory Reform Commission, consistent with my [July 2015](#)

[recommendation](#), has identified 187 regulations that are “redundant, unreasonable, unnecessary, unduly burdensome or obsolete” and that can be eliminated or modified to lessen the burdens and costs on consumers and entrepreneurs – without compromising existing public health and safety measures. Of course, identifying the targeted regulations is not the same as actually removing them or streamlining them. That needs to be done. But the Commission’s December 2016 report says that Maryland agencies were helpful during the workgroup identification process. So there is reason to be optimistic.

Repealing outdated and unnecessary regulations is an important step. But this type of “look-back” retrospective review does not address the imposition of new regulations. Thus, the Hogan Administration also needs to continue focusing on *ex ante* regulatory reforms, specifically including my suggestion for the need of some “central entity within the executive branch to review regulations before they are promulgated to determine that the projected benefits outweigh the costs and they are not inconsistent with other regulations.”

When analyzing a regulation’s cost-effectiveness, the first questions that should be asked and answered are: Does the regulation address a market failure or systemic problem? If it does, how does it propose to address the perceived market failure or systemic problem? Are there less restrictive, less costly alternative solutions than those proposed? And do the benefits of the proposed regulatory solution outweigh the costs?

At the federal level, the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget currently performs this type of regulatory analysis for all proposed economically significant (an economic impact of \$100 million or more) regulations. In Maryland, a centralized review office within the executive branch, staffed with only a very few persons with expertise in regulatory economics, could evaluate proposed rules which are estimated to have a substantial impact on Maryland’s economy, say an economic impact of at least \$4 million.

Both retrospective regulatory reviews to eliminate or modify outdated or no longer necessary rules (look-backs along the lines of the one performed by Governor Hogan’s Regulatory Reform Commission) and *ex ante* (before-the-fact) changes in the regulatory process are important regulatory reform elements. Already, Governor Hogan’s Regulatory Reform Commission has done some good work, without compromising public health or safety, with the publication of the [December 2016 report](#) identifying nearly 200 regulations that should be eliminated or streamlined. If the recommendations are implemented, this will create a more entrepreneurial environment in Maryland, while at the same time enhancing overall long-run consumer welfare.

But the Hogan Administration shouldn’t be content to rest on its laurels. There is still room for further improvements to be made in Maryland’s regulatory environment.

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