

Reform Regulation:
Make it Easy to Do the
Right Thing, Hard to
Do the Wrong Thing

High performance. Delivered.



Governments regulate to protect people from unsafe food, drivers, working conditions, air and water, unfair business practices and a host of other things. People want regulation because it protects them. But not at any and all cost.

People want the results of regulation—the value of the protection they receive—to greatly exceed both the costs of creating and enforcing regulations, and the costs of complying with them.

The costs of regulation have been rising each year as governments pile new regulations on top of old—and not just in one agency, but in multiple agencies often affecting the same people and organizations. As they do so they make the web of regulation that a person or business must navigate ever more tangled. And that, in turn, raises the costs of enforcement and compliance, sometimes to the point of hurting the very people the regulations are trying to help.

For example, in one jurisdiction the burden of complying with electrical codes intended to prevent electrocution got so high that people evaded the codes. The result: increased electrocutions.¹

Another example, in the 1950s only about 5 percent of occupations required a license; today it is 30 percent. The result: one analyst has concluded that the explosion in occupational licensing by states has actually become a barrier to worker mobility and economic growth.²

The challenge: how to reduce the burden and cost of regulation while increasing its effectiveness in protecting the public.

Needed: A better design for regulation

Every organization produces exactly the results it is designed to produce, and none other. If we want better results, we need a better design. Our design for regulation was developed almost 100 years ago and little has changed since. That design was based on the assumption that people and organizations had

to be coerced into complying. It is the design now deeply embedded into the DNA of virtually every regulatory organization. The key elements of that coerced compliance DNA are listed in Figure 1.

As a result, many government regulatory organizations rely almost exclusively on the tools of enforcement (i.e., inspection, apprehension, prosecution, adjudication and remediation or incarceration) to achieve compliance. These tools are not only expensive to apply, but they exact terrible costs on those trying to comply by treating all of them as guilty until proven innocent.

The result: Lots of rules that are costly to enforce and hard to comply with, leading to inconsistent results.

Different Designs, Different Results

Consider these three cases:

- The vast majority of people pay the taxes they owe even though the odds of them getting caught are pretty low.
- Virtually no one obeys the speed limit, though the odds of getting caught are actually much greater than for not paying taxes—and it's a lot more public.
- Most people recycle though there is no punishment for not doing so.

What accounts for the differences? Most people say they pay their taxes because it's their duty and because they actually are afraid of getting caught if they don't. Most people don't obey the posted speed limit but they do drive at about the same speed as those around them—think of that as obeying a mutually agreed upon speed limit, a social norm that is different than what's in the law. It is social pressure that enforces that norm. Most people recycle because it too is a social norm—one in which social pressure is applied through the special bins that allow each of us to track the participation of our neighbors.

Figure 1. The DNA of Coerced Compliance

Purpose—how is it defined?	By statutes, rules and policies
Accountability—to whom? For what?	To elected officials and superiors for making sure that people follow the rules
Incentives—what is rewarded?	Catching and punishing wrong doers—those who do not follow the rules
Control—who decides what?	Control is centralized—everyone is treated the same—one size fits all
Culture—what is the core belief?	People cannot be trusted; they will resist; enforcement is required to get compliance

Figure 2. The DNA of Winning Results

Purpose—how is it defined?	By a results-based mission: make and keep people safe
Accountability—to whom? For what?	To citizens for their safety; to those who must comply for facilitating compliance
Incentives—what is rewarded?	Achieving maximum compliance at the lowest cost
Control—who decides what?	Control is decentralized—people and organizations may be treated differently based on their ability/willingness
Culture—what is the core belief?	Most people can be trusted; they will reinforce social norms; enforcement is required only for the unwilling

These examples tell us that:

- Most people want to do the right thing.
- Most people want to do what other people do and don't want to get caught not doing so.

Governments can use these lessons to develop the DNA of a very different approach to regulation and compliance. The key elements of this "winning results" approach are listed in Figure 2.

Regulatory Reform Agenda

Governments can win greater compliance at lower costs by putting this Winning Results DNA to work in a regulatory reform agenda as follows:

1. Regulate for Results

Regulation can only be justified if it produces a result of value to the public. Create results-based rather than prescriptive, process-based regulations. Seek compliance with a result, not with how the result is produced. Require that every existing or proposed regulation answer:

- What harm will it prevent?
- How much will it cost the public to comply and the government to administer?
- What evidence is there that the public needs and values such protection?
- How will we know if this regulation has succeeded? How and how often will we measure its effectiveness? What is the level of harm today compared to the past or to our goal?

2. Create public support

Make the intended regulatory result a social expectation. People and organizations are more likely to comply legally when they are expected to comply socially—to conform to a social norm. People and organizations are also more likely to comply when they are involved in the process—so that they can learn firsthand about the public's need for protection and the public can learn how best to foster their compliance.

- Get the public and those who must comply in an open dialogue about what is expected and why.
- Get the law and regulations aligned with public expectations.

3. Make It Easy to Do the Right Thing, Hard to Do the Wrong Thing

People and organizations often find it too confusing, too complicated, too time consuming, or too expensive to comply. These regulatory inefficiencies are often confused with over-regulation.

- Educate—make sure those who must comply know how.
- Simplify—take out any step in the process that does not add to achieving the results.
- Re-engineer—assure that processes and systems make it easier to do the right thing and harder to do the wrong thing.
- Default to compliance—use the principles of 'Nudge' and behavioral science to make doing the right thing the default and the wrong thing an intentional act.³

Regulatory Reform: Inside and Out

Governments regulate both inside and out. Inside, governments regulate how agencies and the people in them spend money, employ people and use assets. Just like on the outside, too often governments rely on coercing compliance to achieve their internal regulatory goals. The result: demoralized, rule-bound employees working in a culture of distrust. The six winning results principles suggested here can help create a culture that delivers results instead.

Better for Business

The State of Florida put these ideas into action. Florida's Department of Business and Professional Regulation transformed nearly all of its business processes and in doing so gained the trust of the businesses it regulates. In the course of implementing a new technology platform, the Department restructured more than 30 regulatory programs. The results were dramatic.

The business community took note of Florida's commitment to business. The state jumped from a tenth place ranking in 2008 to second place in 2012 in *Chief Executive magazine's* "Best and Worst States for Business" rankings.⁴ Florida has maintained its second place ranking for the past three years. More importantly, the organizational culture and performance improvements have become self-sustaining, resulting in the Legislature transferring additional regulatory programs to the agency for similar reform. The agency was able to transform its DNA to achieve real results.



Decreased time-to-licensure by 90 percent.



Decreased agency errors to less than 3 percent.



Increased customer satisfaction from 30 percent to above 95 percent.



Increased customer first call resolution rates to 95 percent.



Increased compliance with statutory regulatory timeframes to nearly 100 percent.



Decreased wait and hold time for businesses contacting the agency by 90 percent.

The NextGen Regulatory Agency

The NextGen regulatory agency will focus on four main things:

1. Results: how much difference it makes and at what cost.
2. Smart enforcement: using data and analytics to target their resources.
3. Creating a positive experience for those who must comply: responding quickly and efficiently to applications and requests and creating a two-way dialogue on how to improve.
4. Supporting economic growth: reduce the burden on business by eliminating inefficiencies and streamlining the process of complying.

ENDNOTES:

1. REGULATORY REFORM IN FLORIDA An Opportunity for Greater Competitiveness and Economic Efficiency: http://mercatus.org/sites/default/files/McLaughlin_RegulatoryReformFlorida_v1.pdf
2. NGA Issue Brief: Creating and Refining Results Oriented Regulation
3. Nudge: Improving Decisions About Health, Wealth and Happiness, Richard H Thaler and Cass R Sunstein
4. Chief Executive magazine, Best and Worst States for Business, <http://chiefexecutive.net/2014-best-worst-states-for-business>

4. Position agencies to be accountable for outcomes

Regulatory agencies need to be accountable for two things:

- The results—the level of harm to the public and the cost.
 - Levels and costs of compliance need to be measured and reported regularly, and
 - Agencies should be expected to continuously improve.
- Process efficiency and effectiveness
 - Establish standards for agency performance of its compliance process (e.g. set a standard for the turnaround time on permit applications), publish the standards so that compliers will know what to expect when they deal with the agency, offer guarantees about meeting the standards and provide redress to compliers when the standards are not met. Measure, report and continuously improve.

5. Make performance public

Put the power of peer pressure to work by letting people and organizations know how they are doing, and let the public know as well.

- Give people and organizations real-time data on how their level of compliance compares with their peers and with public expectations.
- Make their level of compliance visible—assure recognition to those who have achieved compliance, and those who have not.

6. Treat different compliers differently

One size does not fit all. Each person or organization differs in its capability, willingness and past performance. By treating them accordingly, agencies can get the most compliance from the resources they have. Data analytics can help agencies determine where to target which strategies so that they:

- Educate and simplify compliance for the willing but unable.
- Recognize and celebrate the willing and able.
- Penalize the able and unwilling.

The people and the economies of states depend on regulation for protection from harm. But they are increasingly concerned that the tangled web of regulation may unintentionally be doing more harm than good. Untangling that web is not as simple as conducting a regulatory review. Such a review will not by itself alter the coerced compliance DNA that is embedded in many regulatory agencies. Rather it will take the six steps outlined above to inject Winning Results DNA into regulatory practices. Doing so will reduce the burden of regulation while improving its results leading to lower costs and increased protection.

For more information, please contact:

Peter C. Hutchinson

Managing Director, Public Service Strategy
Health & Public Service
peter.c.hutchinson@accenture.com

Geoffrey O'Connell

Managing Director, North American
Regulatory Lead
geoffrey.oconnell@accenture.com

Mark Howard

Global Lead, Public Administration/Regulatory
mark.h.howard@accenture.com

About Accenture

Accenture is a leading global professional services company, providing a broad range of services and solutions in strategy, consulting, digital, technology and operations. Combining unmatched experience and specialized skills across more than 40 industries and all business functions—underpinned by the world's largest delivery network—Accenture works at the intersection of business and technology to help clients improve their performance and create sustainable value for their stakeholders. With approximately 373,000 people serving clients in more than 120 countries, Accenture drives innovation to improve the way the world works and lives. Visit us at www.accenture.com.