



BUDGET BULLETIN

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The Regulatory Cliff: Regulatory Reform Outlook

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The rising cost to the economy of federal regulation is alarming. Private sector experts now estimate new federal rules in the health care, labor, financial, energy, and environmental sectors added \$1.2 trillion in costs to the economy last year. And the accumulation of regulations has resulted in trillions of lost gross domestic product (GDP) growth. Yet none of this is accounted for by any government agency.

Congress has used its best tools to address the problem of over-regulation. Several committees, including the Senate Budget Committee, and individual senators have held hearings and introduced legislation aimed at establishing better economic analysis on the cost of regulation and reducing the stock and flow of regulations. In addition, Congress has voted to roll back six different objectionable rules, including the Waters of the United States, overtime, and clean-power regulations.

But while advancing the debate, Congress still is unable to overturn these job-killing executive-branch rules. Moving forward, senators should attempt to strengthen current regulatory-review mechanisms. An examination of key issues follows.

Missing Cost Estimates

Commonly cited estimates of how much regulations cost the private sector range from \$800,000 to \$1.8 trillion. Missing are the government estimates to compare with those from the private

sector. The Congressional Budget Office (CBO) and Office of Management and Budget (OMB) are not required by law to produce them. CBO does not measure the cost of regulation. Only OMB, which oversees the White House Office of Information and Regulatory Affairs, is required to issue periodic cost reports, but these reports have limited usefulness since they are delivered late and are highly selective.

Without a CBO or OMB regulatory-cost measurement, regulation has no impact on official economic forecasting. At a September 14, 2016, Senate Budget Committee hearing, CBO Director Keith Hall declined to confirm that the agency has plans to incorporate recent estimates of the cost of regulation into its long-term economic forecasts. Peer-reviewed studies have estimated how much regulation slows GDP growth, and it would help provide more clarity if this cost estimate were incorporated into the budget baseline.

Another measurement that is needed is how much the federal government spends to regulate. The only information available from the agencies is limited staffing data on regulatory agencies and enforcement employees. What is needed is information regarding the cost of staff writing regulations, working on regulatory programs, and enforcing them.

For example, in 2013, OMB produced a “budget cross-cut report” on government-wide climate-change spending, as required by Congress, detailing funding by agencies on climate-change activities. A similar report on sectors of regulation would provide transparency at the regulatory agencies and help build a regulatory budget.

Regulatory Budget – One-in-One-Out

The Senate Budget Committee held two hearings in 2015 – one jointly with the Homeland Security and Government Affairs Committee – on regulatory budget proposals, including a fiscal regulatory budget and a Canadian-style one-in-one-out regulatory budget. During the hearings, regulatory experts testified that issues with estimating the cost of regulations could impede progress on establishing a regulatory budget.

One problem is the lack of coordination between Congress and the executive branch. Congress does not have any data of its own with respect to regulatory costs and must rely on the agencies it is tasked with overseeing. This lack of data makes it challenging to build a baseline for a budget.

Senator Mike Lee (R-UT) has introduced fiscal-based regulatory-budget legislation, the Article I Regulatory Budget Act of 2016, co-sponsored by Senate Budget Chairman Mike Enzi (R-WY). This bill would require the president to present Congress with a budget request specifically for regulations, in addition to the president’s general budget request, in order to comply with the

budget process. In addition, Senator Dan Sullivan (R-AK) has introduced the Red Tape Act, requiring an agency to repeal a rule before it can issue a new one – the one-in-one-out approach.

Economic Analysis – SCORE Act

The key to achieving better economic analysis regarding the impact of over-regulation is creating an agency to crunch the numbers, and deciding where to house it. Over the years, various legislative proposals, including a bill introduced by Senator Richard Shelby (R-AL) and Representative Sue Kelly (R-NY) during the 105th Congress, have sought to establish a Congressional Office of Regulatory Analysis to provide regulatory-review support for Congress. In addition, in 2015 Senators Amy Klobuchar (R-MN) and Susan Collins (R-ME) introduced another proposal, the SCORE Act, which would establish a regulatory-analysis division at CBO to analyze economically significant rules, defined as at least \$100 million in annual economic cost.

Congressional Review Act

One tool Congress has used to turn back executive-branch regulatory overreach is the Congressional Review Act (CRA). Congress has approved measures to overturn the Waters of the United States, clean-power, and overtime rules, although presidential vetoes followed for the Waters and clean-power bills. These congressional debates showed members' interest in the details of the rulemaking proposals and their costs.

Still, senators must rely on the agency cost estimates when reviewing individual rules. Under the CRA, the Government Accounting Office (GAO) is required to review a rule before it is sent to Congress and report that the agency performed due diligence in following the Administrative Procedures Act, which governs how rules are written. The problem is, GAO generally conducts only a perfunctory review. If Congress has enough information about whether the agency has exercised due diligence in rulemaking, then the CRA debate is diminished.

Congress needs to review the CRA and consider whether GAO is best suited to review the rules before sending it to Congress. Legislation has been introduced that would place this function in a Congressional Office of Regulatory Analysis. CBO also could house the agency. The goal is to conduct a thorough review of the rules, without the need for further regulatory-impact analysis.

BudgetSpeak

Unfunded Mandate Enforcement

Unfunded mandates are federal statutes and regulations that require spending by state, local, or tribal governments or the private sector without federal funding to cover the costs. The Unfunded Mandates Reform Act of 1995 (P.L. 104-4), or UMRA, directs the Congressional Budget Office (CBO) to estimate the direct costs of intergovernmental and private-sector mandates in legislative proposals. Two budgetary points of order stem from UMRA. The first, section 425(a)(1), prohibits considering any committee-reported legislation unless a CBO estimate of any federal intergovernmental or private-sector mandates has been printed in the committee report or in the *Congressional Record*. The second, section 425(a)(2), prohibits considering any legislation that contains an unfunded intergovernmental mandate in excess of statutory limits (\$80 million in fiscal year 2017) for the five consecutive years following the mandate's effective date. These points of order, if raised, can be waived by a three-fifths (60) Senate vote.