The Daily Dish

Improving Non-Budgetary Policymaking

DOUGLAS HOLTZ-EAKIN | JULY 12, 2018

Eakinomics: Improving Non-Budgetary Policymaking

There are lots of ways to skin the proverbial policy cat. If you want employees to have paid family leave, you can set up a federal program that pays those firms for the time employees take leave. Or, you can provide a tax credit to employers to compensate them for the cost of paying workers who are on leave. There is no real difference between the federal government writing a check to businesses and asking them to send fewer tax checks in; the net impact is the same for the federal budget, employers, and incentives for employees to take leave.

There is a big difference, however, between the oversight and scrutiny of spending programs — especially in the annual appropriations process — and so-called tax expenditures. When was the last time a congressional committee scrutinized whether the child tax credit, for example, was meeting its policy objectives? Wait a minute, what is the policy objective? How to redress the imbalance in oversight is the subject of a new paper by Ben Harris, Gene Steuerle, and Caleb Quakenbush. I shared my thoughts on the issue at a recent Bipartisan Policy Center event.

But there is a third way to get paid leave: mandate that employers provide their employees paid leave. That doesn't show up on the budget at all; shifting the costs to the employers but still having the same incentives for taking leave by employees. To control the federal government's temptation to reach policy objectives for "free," Congress passed the Unfunded Mandates Reform Act of 1995 (UMRA). UMRA did not stop unfunded mandates. But it did require that the Congressional Budget Office identify unfunded mandates imposed on state, local, or tribal governments and those imposed on the private sector when it reviewed legislation. If financially significant mandates are found in a bill, they become a procedural roadblock (which is nearly always waived) to consideration and passage of the legislation. In the executive branch, UMRA required agencies to issue a written statement showing that it analyzed likely unfunded mandates, considered regulatory alternatives to mitigate those mandates, and solicited input from affected state, local, and tribal governments.

As outlined by AAF's Dan Bosch, the House is considering legislation that would further address unfunded mandates that continue to bedevil state, local, and tribal governments and private business. The proposed bill would make several changes to the current process for addressing unfunded mandates. It would expand the number of agencies that must address unfunded mandates in their rulemaking; in principle every agency should face the same incentives in rulemaking and not just the Cabinet agencies. It would expand judicial review, allowing the courts to "stay, enjoin, or invalidate a rule because of an agency's failure to comply with the written statements requirement for unfunded mandates." Currently there is no real penalty for failing to provide the written documentation of unfunded mandates.

As the years progress, federal budget money will become increasingly tight. The temptation to use less-scrutinized tax expenditures or off-the-book mandates to achieve policy goals will rise correspondingly. It is important to guard against imbalances in oversight that skew the policy process.