Insight

Bipartisan Letter on Regulatory Modernization

JULY 20, 2017

July 20, 2017

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Democratic Leader
United States Senate
Washington, DC 20510

Dear Majority Leader McConnell and Democratic Leader Schumer:

A modern regulatory process is vital to foster a growing and innovative economy, alleviate budgetary pressures, protect the health and welfare of all Americans, and contribute to the prosperity and quality of life needed to increase national standards of living.

As a result, we believe it is imperative that Congress enact regulatory modernization that strengthens the use of rigorous benefit-cost analysis across the federal government, requires agencies to better address outdated past rules, and enhances the public's access to the rulemaking process. We believe that such reforms can contribute to better rulemaking and increased economic growth and quality of life. While we may disagree on the specifics and the magnitude of potential reforms, we join together to endorse the following:

Benefit-cost analysis has been at the center of every administration since President Jimmy Carter. It has helped to inform and guide sound regulation through a deliberative process. The implementation of agency analysis has not been without its flaws, but we underscore the importance of every federal agency, including "independent agencies," conducting thorough analyses that weigh costs, benefits, and regulatory alternatives to address market failures. Practice for decades has proven that this approach lowers unnecessary cost impacts of regulation while securing or improving the protection of public health and safety. Codifying broader use of cost-benefit analysis, especially for major regulations, is one of the regulatory reforms that can best contribute to America's economic growth.

Retrospective review, also a feature of President Carter's reforms, but enhanced by Presidents Bill Clinton, George W. Bush, and Barack Obama, is critical to creating better regulation. Annually, the federal government issues roughly 80 major rules, but reviews just a fraction of the large stock of existing rules to determine actual effects after implementation. President Obama helped to improve the process of retrospective review through a 2011 Executive Order that led to billions of dollars in savings. Despite this important step, we believe the

economy, and future rulemakings, would be better served by a more comprehensive analysis of past major regulation. We also think that agencies should take steps during the rulemaking process to identify the metrics and process through which they will track the actual impacts of the major rules they issue, thereby facilitating later reviews.

Regulation, economic growth, and quality of life are intertwined. While the evidence on how regulations and the economy interact is mixed, we all agree that major rules that have become obsolete or costlier than expected, over time can reduce productivity, increase costs, and lower economic output; in economic terms, this means increased deadweight loss that prevents the U.S. economy from achieving its potential. Research also shows that regulatory uncertainty can have a chilling effect on investment and growth. We believe the kinds of regulatory reforms described above can generate economic gains by reducing unnecessary regulatory costs and uncertainty while continuing to protect and enhance the health and safety of Americans.

The goal of more-rapid, long-term economic growth and a higher quality of life cannot be achieved by any single policy or reform. But modernizing regulation could make a vital contribution to boosting output, investment, employment, and furthering public health and safety. Since the administration of Jimmy Carter, the principles outlined here have enjoyed bipartisan support. As a diverse group of experts, we can at least agree on the importance of a carefully balanced legislative proposal that further embeds the principles of cost-benefit analysis and retrospective review of rules into the American regulatory process. We realize agencies may require additional resources to implement these requirements. However, thoughtful legislative proposals that would make these principles a permanent feature of America's regulatory system are currently pending. While some among us think the pending proposals still need additional refinement, we all agree that work should be completed by Congress through a bipartisan process as soon as possible.

Sincerely,

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(Titles are for affiliation purposes only.)

cc: Members of the United States Senate