Insight

Senate on Regulation: National Regulatory Budget Act

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Senator Marco Rubio recently introduced S.__, the ‘‘National Regulatory Budget Act of 2014.” As the name suggests, the bill would establish a budgetary process for regulatory actions in the same vein as current fiscal procedures.

Beginning with a cumulative baseline, federal agencies would need to balance new regulatory requirements by rescinding or consolidating past ones. It would be the most expansive regulatory reform package put forward recently, as it would establish an entirely new regulatory analysis framework, codify retrospective review, and create a more measured pace of rulemaking activity.

If fully implemented, the legislation has the potential to save billions of dollars in regulatory costs. For example, Congress would set a regulatory cap on costs for the entire government and for each agency. During the last ten years, the average annual cost of major new regulations is $8.3 billion (in 2001 $), according to OIRA. During the first three years of the Obama Administration, the average was $14 billion. Thus, if Congress simply sets the budget at the $8.3 billion average, Senator Rubio’s legislation could save $57 billion ($75 billion in today’s dollars) in regulatory costs over the next ten years.

These possible savings ($5.7 billion annually) assume that future regulatory costs will average what the Obama Administration has produced in its first term. However, these savings could be on the low-end if regulatory costs continue to increase. In addition, the bill demands that regulators examine all regulatory costs, not just major rules. The figures above are from OIRA’s Annual Report to Congress, which analyzes roughly a dozen major regulations that monetize both costs and benefits. A more comprehensive regulatory cap would need to address total annual regulatory costs, and then determine the appropriate amount of new regulation.

A REGULATORY BUDGET

The idea of a regulatory budget goes back decades and has taken a number of conceptual forms. In 1980, Christopher DeMuth proposed the basic framework of such a plan. The American Action Forum (AAF) recently proposed a framework that would simply manage paperwork requirements. The United Kingdom’s One In, Two Out program repeals two rules for every new regulation, and has saved £1.19 billion ($2 billion) in recent years. There have been some legislative proposals offered in the U.S. over the years, yet Senator Rubio’s bill appears to be the most extensive to date.

What makes this particular legislation so comprehensive is that it examines and affects virtually all aspects of the regulatory process. Beyond the estimated regulatory costs or savings in each regulation, this framework would also include the costs or savings of new paperwork requirements, guidance documents (that currently escape any cost estimation), and the direct fiscal costs of implementing the rules. Furthermore, this measure would also examine records from independent agencies under the same auspices as executive agencies; currently, there are differences in their required analyses.

To accomplish this, the bill creates a new “Office of Regulatory Analysis” (ORA). This new ORA would have a Presidentially-appointed Director, and would operate as a much more powerful version of the current Office of Information and Regulatory Affairs (OIRA). In particular, ORA would include a “Regulatory Analysis Advisory Board” to provide needed expertise in the plethora of issues that regulations cover. ORA would produce an annual report of regulatory burdens similar to OIRA’s current “Reports to Congress.” In contrast to OIRA’s reports, ORA’s would include information on the expanded areas of analysis mentioned above.

In addition, ORA would analyze each rule, instead of the current system of agency analyses. There is a specific timeframe for review, and agencies could face sanctions if they refuse to comply. Currently, OIRA’s “best” estimate of regulatory costs examines less than half a percent of all rulemakings. Barring all but a very particular set of exemptions (largely involving such issues as national security), ORA would cover all rulemakings. ORA would also disclose most of the methodology and data used.

This new “Report to Congress” would serve as Congress’s annual guide to set the actual regulatory budget. Each fiscal year, Congress would produce legislation that sets caps of regulatory costs for both the entire government and each individual agency – much as a current fiscal budget resolution does. If Congress does not pass such legislation, the previous fiscal year’s regulatory levels continue.

Under the budget framework, if an agency promulgates a new regulation with costs that exceed its current regulatory cap, then that rule is no longer enforceable. If an agency attempted to enforce such actions, interested parties would have judicial review as recourse. As a result, agencies would likely need to enact measures that reduce their aggregate burdens in order to make room for new measures.

CONCLUSION

The idea of a regulatory budget is not new, but it is needed. A comprehensive approach, such as the one proposed in this bill, provides the opportunity to balance certain regulatory priorities with outdated, superfluous rules that restrict economic growth.