

Regulatory budgeting: A bad idea whose time has come?

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Abstract. Advocates of regulatory relief propose a budget that would annually cap regulatory costs. But emulating fiscal budgeting would be much more difficult than they envision. An arbitrary macrobudgetary constraint would have to be selected, and the potential scope of the regulatory budget would be vast. The process of regulatory budgeting would be very-time consuming, and could increase micromanagement by the Congress. Estimating regulatory costs would be challenging, and ignoring regulatory benefits would be unfair and inefficient. A preferable alternative to regulatory budgeting would be to expand the Government Performance and Results Act to include cost-effectiveness reviews for regulations.

To begin with a demurrer, regulatory policy is flawed. Government regulations impose large costs, and often these costs far exceed the benefits they generate. Regulators often use command-and-control when other tools would probably work better. Inspectors often would rather find 'gotcha' violations of detailed regulations than determine if these regulations are likely to improve social outcomes. Courts take a hard look at the substance of agency actions despite the judges' lack of policy expertise. These are only the major counts in the indictment of regulation, one which became accepted wisdom in the mid-1970s.

This case against regulation will always have some merit. Government regulations, by definition, coerce by stating what must or must not be done. Those whose job it is to coerce, for numerous reasons, sometimes coerce too much.

So the advocates of a regulatory budget process are correct when they claim it would reduce the amounts of overregulation (Thompson, 1997; Hughes, 1996; Crews, 1996; Morrall, 1992). However, regulatory budgeting would also be a poor way of making policy. This article explains some of its limitations, and concludes with a short description of a preferable alternative process. But first the paper examines why regulatory budgeting is being proposed.

for the first time since the regulatory budget was introduced.

Why propose regulatory budgeting?

Regulatory budgeting is now being revived after its first run during the late 1970s. That was also when fiscal budgeting began its long-running domination of national politics. The previews for fiscal budgeting began in 1976, when the Congress started using its new budget process. The Broadway version opened

with the 1980 budget, which Congress summarily rejected because of President Carter's planned deficits, and rave reviews followed the failure of the 'supply-side' experiment of the early 1980s. Fiscal budgeting has been drawing large crowds since then.

Efforts to limit regulatory burdens began in the Ford Administration, following a period of regulatory expansion. The Carter administration then institutionalized regulatory analysis and control within the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). It issued a regulatory calendar and conducted analyses of proposed regulations.

One of OIRA's administrators proposed to expand these features into a regulatory budget process (DeMuth, 1980; see also Litan and Nordhaus, 1983). But the Reagan administration preferred a process designed to grant regulatory relief by executive actions (Eads and Fix, 1984; Cooper and West, 1988; Friedman, 1995). Executive Order 12291, issued in 1981, mandated benefit-cost analyses for all major regulations and required OIRA approval before regulations could become final. Implementation of this order led to major political controversies. One dispute was over E.O. 12291's requirement that regulatory costs be weighed, even though some statutes required agencies to ignore these costs. Another dispute was over OIRA's ex parte contacts with representatives of regulated industries, which apparently violated provisions of the Administrative Procedure Act. (Such contacts are common in the fiscal budgetary process – OMB's Program Associate Directors, who are political appointees, regularly interact with groups affected by budgetary policies.) The Bush administration generally continued with this approach, though it moved much political decision-making on regulations to its Cabinet Council on Competitiveness.

This campaign for regulatory relief did not satisfy all conservatives. They complained that Republican presidents repeatedly compromised with regulation-favoring Congressional Democrats, especially after the Democrats regained control of the Senate in the 1986 election. To quell this criticism, President Bush declared a regulatory rule-making moratorium during his last year in office. But Bush lost, and conservatives feared that regulation would run rampant with the Democrats' unified control of government. President Clinton soon proposed his plan for expanding access to health care, one that relied on regulatory cross-subsidization, rather than on fiscal outlays.

The potentially-regulated health providers and financiers mobilized well; 'Harry and Louise' and talk-show hosts convinced many voters that Clinton's proposals would bar families from choosing their own doctors. In 1994, Congressional Republicans benefited from this anti-regulatory fervor, and their 'Contract with America' pledged an extension of the Reagan-Bush regulatory relief approach. Title IV of H.R. 9, the 'Job Creation and Wage Enhancement Act,' would have established a regulatory budget and required specified cuts in regulatory costs. Other provisions would have required detailed regulatory reviews for all rules, and added new procedures designed to promote regulatory relief—negative opinions by peer review panels would force agencies to restart rulemaking, property owners who suffered regulatory takings of over 10% of

