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4-1-1999

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Recommended Citation

Weidenbaum, Murray L., "The Public and the Congress Need to Know More About Government Regulation", Policy Brief 194, 1999, doi:10.7936/K70K26R6.

Murray Weidenbaum Publications, https://openscholarship.wustl.edu/mlw_papers/152.

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Embargoed for release until
10:00 a.m. EDT
April 22, 1999



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Government Regulation*

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Policy Brief 194
April 1999

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THE PUBLIC AND THE CONGRESS NEED TO KNOW MORE ABOUT GOVERNMENT REGULATION

by Murray Weidenbaum

Testimony to the
Senate Committee on Government Affairs
Washington, DC

April 22, 1999

Thank you for the invitation to testify on S.59, the Regulatory Right-to-Know Act of 1999 and on proposals for a Congressional Office of Regulatory Analysis. This legislation provides a superb and unusual opportunity to raise the level of public understanding of an important and controversial area of public policy. (1) S.59 accomplishes that desirable objective in a very straightforward and nonpartisan manner: providing, on a regular basis, data on the benefits and costs of government regulation. (2) Likewise, a new Office of Regulatory Analysis would give Congress an independent source of information—provided its charter were broad enough for the task.

The Case for S.59

The reason S.59 is necessary is that neither the benefits nor the costs of compliance with government regulation shows up in any measure of federal spending or taxation. But these effects are very substantial—available estimates total hundreds of billions of dollars a year. The cost of operating the federal regulatory establishment, according to the Center for the Study of American Business, is reaching an all-time high of \$18 billion in fiscal year 1999.

The public surely has a right to know this information on a consistent and regular basis. As a former federal official, I know that such data would contribute to better-informed decision making on key issues of public policy. Government regulation affects so many aspects of our economy and society—economic factors such as employment, inflation, productivity, and competitiveness, as well as social factors such as the environment, consumer and employee safety, and public health.

Some sections of S.59 are especially noteworthy. Section 4(a) requires the President to trans-

mit the regulatory data with the annual budget. That is an excellent idea, to help ensure that regulatory programs receive adequate attention in the key public and congressional deliberations on federal activity. As a practical matter, I hope that the full regulatory report would be included in the accompanying volume of special analyses now covering credit programs, capital outlays, and other important categories of federal activity—and that the President's budget message would present the highlights.

As a general proposition, more information is better than less. Nevertheless, we must acknowledge and respond to the criticisms that have been raised. It is true that S.59 will require some modest expenditure of federal funds. But modest surely is the accurate description when we compare the minimal requirements of this bill with the enormous existing structure for preparing the estimates of federal revenues and expenditures.

A related criticism is that data on regulatory benefits and costs are not sufficiently reliable to be worthy of dissemination. As someone who has pioneered the development of statistical information on regulation, I certainly am aware of the shortcomings that we have encountered—as well as the progress that has been made. First of all, we should note that, to this day, strong criticism is also leveled against the data on gross domestic product and other aggregate measures of economic activity. Nevertheless, officials in both the public sector and the private sector find that information essential for their decision making.

Closer to home, there are well-known shortcomings in the budget data that Congress acts upon. In the area of taxation, it takes several years after the fact for the Internal Revenue Service to issue its key report, *Statistics of Income*. As a result, the historical revenue data contained in the budget document, especially for the past year, are preliminary and subject to likely change. More important, it is demonstrably difficult to estimate major portions of federal revenues under existing tax law, especially capital gains taxes and corporate income taxes. On occasion, the Treasury's projections are much too high or much too low. Similar problems arise on the expenditure side, notably in the case of spending not tied directly to annual appropriations. Examples where budget estimates can be way off range from the activities of the Commodity Credit Corporation to military

procurement outlays to entitlements.

The shortcomings of the budget statistics notwithstanding, the nation still bases important decisions on that information. Surely the available data on the benefits and costs of regulation, whatever their limitations, have been very useful in alerting the public to the large magnitude of resources that are involved and to the substantial range of impacts generated by regulatory activity. I see no advantage in depriving the public of such knowledge.

Moreover, there is a positive feedback effect at work. For example, because the revenue estimates are so vital in the budget process, considerable effort has gone into improving the procedures for estimating the various categories of federal taxation. The enactment of S.59 would provide a similar incentive to improve the data on the benefits and costs of federal regulation. By making permanent the now-temporary requirement for an annual regulatory accounting statement, S.59 would encourage the executive branch to devote additional resources to developing a regulatory database.

From time to time, lawyers criticize economists who attempt to estimate values of a statistical life for groups of individuals, data needed to quantify the impacts of some important regulatory programs. Such criticism is surprising in view of the great frequency with which lawyers—when they are in a courtroom—go far beyond such generalized statistics by introducing estimates of the value of a specific human life and urging that large financial indemnities be based on such data.

A Few Procedural Points

On the positive side, I am delighted to see the details specified in Section 4(a)(1). The OMB reports in response to the Stevens Amendment, albeit helpful, have been deficient in providing data on individual regulatory agencies and programs. Likewise, the requirement for presenting recommendations to reform government regulation should help to generate improvements in this important aspect of government activity.

On the other hand, including distributional effects generates a disproportionately large research requirement that would unduly burden and delay the entire effort to measure benefits and

costs. On this score, I urge the Committee to consider the House version, which does not contain this requirement. That treatment does not prevent the inclusion of distributional analyses, should they become available. Section 4(a)(2) might be interpreted as requiring a very extensive research effort in order to cover the indirect effects of federal rules. In terms of priority, estimating the costs and benefits of federal regulatory programs should receive the great bulk of the effort and attention. In contrast, the required analysis of direct and indirect impacts could rely on gathering relevant studies already prepared by government and private researchers.

As a general proposition, restraint is needed in adding to the existing paperwork burden of the regulatory review process, especially by avoiding items that are "nice to know," but where the expected use is not likely to justify the burden of preparation. In that spirit, the relatively clean Senate version of Section 4(c)(2) is preferable to the more extended version contained in Sections 4(c)(2) and 4(d)(2) of the House bill (H.R.2840).

However, there is merit in the proposal that estimates of costs and benefits be prepared for several years following the year for which the basic report is being made. Given the new burden that is being imposed by S.59 to prepare historical data, I suggest deferring and then phasing in the requirement to provide estimates for the future.

Such advance warning would give the regulatory agencies the time needed to develop the necessary new methodology. Aggregate benefit and cost projections might be required, say, in 2003, projections by agency in 2004, and estimates by program element in 2005.

Section 5(a)(2) requires OMB to consult with the Comptroller General before issuing the annual report on regulation. The House bill names, instead, the director of the Congressional Budget Office. I am not impressed by either requirement but, if pressed, would lean toward the House version.

In Section 6(a), a small procedural change would maintain a parallel relationship. The director of OMB should be required to consult with the chair of the Council of Economic Advisers. Both officials, of course, are free to delegate some of this responsibility.

Section 7, on peer review, can be a useful innovation in both improving the regulatory data

and in enhancing confidence in the data. Because peer reviews usually involve more than one reviewer, I urge the committee to adopt the language of H.R.1074, which provides for two or more reviewers. A number of public policy research organizations have the capability of performing the task. Several of them have provided detailed analyses of the first two OMB annual reports on regulatory benefits and costs.

A Proposed Congressional Office of Regulatory Analysis

With an expanded flow of data on regulatory programs, it would be helpful if Congress had its own expert staff to analyze such information and to prepare specific regulatory studies on its own. Legislation to establish a Congressional Office of Regulatory Analysis is an appropriate companion to S.59. However, the specific proposals that I have seen do not go far enough, although in some minor regard they may go too far.

Virtually all generic regulatory reform proposals focus on improving the way in which government agencies write regulations to carry out laws already enacted. Although such change is needed, this approach ignores the compelling fact that the key decisions on government regulation occur earlier in the process—when Congress writes an Occupational Safety and Health Act or an amendment to the Food, Drug, and Cosmetics Act or any other important regulatory law.

Each congressional committee, when drafting a regulatory statute, should present estimates of the expected benefits and costs of the regulatory program in the report accompanying the legislation. To the extent feasible, this report should include a monetary evaluation of costs and benefits as well as a description of other advantages and disadvantages of the regulatory proposal.

To help it carry out reviews of proposed regulatory laws and rules, Congress should establish its own professional, nonpartisan regulatory analysis organization to provide it with reliable data, including estimates of benefits and costs. This organization could be a part of the Congressional Budget Office (CBO). That would both minimize overhead costs and enable the new office to become operational more quickly.

In carrying out their respective functions, it would be helpful if OIRA (the regulatory office of

OMB) and its new congressional counterpart developed a cooperative attitude on exchanging statistical and technical information, consistent with the separation of powers between legislative and executive branches. Such an effort would be similar to existing cooperation between CBO and OMB on budget matters.

On the other hand, the new congressional regulatory office should be careful not to intrude into the process of executive branch drafting of regulations. Rather, as noted above, it should focus on the earlier stage where Congress is considering a new regulatory statute and also on the later stage where Congress is reviewing a proposed regulation under the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Additional analysis of these points is contained in the attached copy of the recent report of the Committee for Economic Development, *Modernizing Government Regulation* (I served as project director for the CED report).

Conclusion

In summary, the enactment of S.59 and of a bill to establish a Congressional Office of Regulatory Analysis would be important improvements in the federal regulatory system. It is especially gratifying to see the bipartisan nature of these bills and of their congressional supporters. Their enactment would raise the information level of deliberations on regulation—and might even lower the decibel level.

Murray Weidenbaum is chairman of the Center for the Study of American Business and Mallinckrodt Distinguished University Professor at Washington University in St. Louis. In 1980, he chaired President-elect Ronald Reagan's Task Force on Regulatory Reform and served on the Presidential Task Force on Regulatory Relief in 1981-82. In 1998, he wrote A New Approach to Regulatory Reform. The views expressed are entirely personal.