POLICY SPOTLIGHT

Improving the Regulatory Process through Regulatory Budgeting

JAMES BROUGHEL AND PATRICK A. MCLAUGHLIN | MARCH 2022

No matter how well intended, all government regulations create unintended consequences. The buildup of rules over time can distort business investment choices, deter innovation, hinder productivity, and slow economic growth, thereby reducing output and welfare. Compounding the problem, organizational and political incentives inherent to bureaucracies lead regulators to continually create new rules while often paying little attention to past regulations that over time may have become outdated, redundant, or conflicting. Such "regulatory accumulation" can particularly harm low-income households and would-be entrepreneurs. Regulatory budgeting can address this issue of undesirable regulatory accumulation, and in recent years, a series of experiments with regulatory budgets has unfolded in the states and in Washington, DC. In Virginia, Ohio, and elsewhere, state policymakers have made significant headway in reviewing old regulations, establishing budget infrastructure for regulations, and setting benchmarks for streamlining rules and reducing red tape.

PRIORITY-SETTING MECHANISM

Regulatory budgets, like other budgets, work best when they force the spender to identify and prioritize the most valuable options. Absent a budget, a household or business might spend without restraint. The problem is even more acute with a government agency issuing regulations because the economic costs of its rules are borne by others. Meanwhile, if there is no limit on the extent to which an agency can regulate, there is little incentive to evaluate the effectiveness and efficiency of past rules, given that an agency can issue another regulation whenever it pleases.

By contrast, an agency with a regulatory budget would have stronger incentives to

- eliminate old regulations that are ineffective or inefficient and
- avoid new regulations that do not achieve significant benefits relative to economic costs.

By placing a constraint on the overall volume of rules, a regulatory budget can force a process of prioritization and ensure that scarce resources are directed from lower-priority, less effective investments toward higher-priority, more effective ones. This outcome can be accomplished through legislative or executive reforms that rely on metrics such as estimates of regulatory cost or counts of rules, restrictions, or words.

VARIETIES OF REGULATORY BUDGETS

Place a cap on regulation levels. Caps can come in different forms, including a pay-as-you-go requirement. The Ohio legislature's one-in, two-out provision of 2019 prohibits state agencies from adopting a new regulatory restriction unless they simultaneously remove two or more other restrictions.

Set and achieve a reduction target. In 2016, Kentucky Governor Matt Bevin began the Red Tape Reduction Initiative with a stated goal of cutting regulations by 30 percent. Former Rhode Island Governor (and now US Secretary of Commerce) Gina Raimondo set a reduction goal of 15 percent during her tenure in office. In January 2022, Virginia Governor Glenn Youngkin directed state agencies to reduce the number of regulations not mandated by federal or state statute by 25 percent.

Focus on a subset of state regulatory agencies. Rather than implement a budget for all agencies at once, Virginia created a regulatory reduction pilot program in 2018, under the leadership of then-Governor Ralph Northam, which was limited to two agencies. The program was deemed a success and was subsequently expanded to all executive branch entities under the governor's authority.

Adopt a cumulative or an incremental approach. Most state experiments with regulatory budgets have come in cumulative form, affecting a broad swath of both new *and* existing regulations. However, a federal regulatory budget created in 2017 placed cost constraints on new regulations only.

RECORD OF SUCCESS, SCOPE TO DO MORE

The states have demonstrated that regulatory budgets can reduce the overall volume of regulations—and have done so while avoiding the daunting and expensive task of having to estimate the cost of each and every regulation on the books. However, without regulatory cost estimates, a great number of welfare-reducing regulations likely remain on the books, and the full potential of reform efforts is unrealized. Going forward, states should subject at least some of their most significant rulemakings to cost analysis. Over time, such efforts would raise the status of regulatory budgeting and, most important, raise societal well-being.

FURTHER READING

James Broughel, "The Mighty Waves of Regulatory Reform: Regulatory Budgets and the Future of Cost-Benefit Analysis," *Business, Entrepreneurship, and Tax Law Review* 3, no. 2 (2019): 206–23.

James Broughel, "The Regulatory Budget in Theory and Practice: Lessons from the US States" (working paper, C. Boyden Gray Center for the Study of the Administrative State, Arlington, VA, Spring 2021).

Patrick A. McLaughlin, "Regulatory Budgeting as a Solution to the Accumulation of Regulatory Errors" (Testimony before the House Committee on the Budget, Mercatus Center at George Mason University, Arlington, VA, July 7, 2016).

Patrick A. McLaughlin and Tyler Richards, "Regulatory Review Commission + Regulatory Budget = A Diet for Better, More Effective Regulations" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, November 2019).

Jeffrey A. Rosen and Brian Callanan, "The Regulatory Budget Revisited," *Administrative Law Review* 66, no. 4 (2014): 835–60.

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