

STATEMENT OF JIM J TOZZI
BEFORE
THE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

March 11, 2003

Mr. Chairman and distinguished members of the committee,

Background

I am pleased to appear before the Committee. I have been asked to speak on a very specific topic, the eventual utility of a regulatory budget. I was asked to speak on this issue because I was the OMB official in charge of putting together a regulatory budget for the Environmental Protection Agency during the Carter Administration. A regulatory budget is a mechanism for placing a ceiling on the costs imposed on non-federal entities by the federal government.

Appended to my testimony as Attachment 1 is the document prepared by OMB, entitled "A Working Paper on the Cost of Federal Regulation." An earlier version of this paper was entitled "Towards a Regulatory Budget".

The attached paper consists of nearly one hundred forty pages of text divided into ten chapters. The purpose of the paper was to: 1) develop as detailed a regulatory budget as possible based on available data; and 2) have a number of experts critique the work product. The paper and subsequent evaluation was to serve as a basis for assessing the merits of implementing a regulatory budget on a government-wide basis.

Remember, this paper was written more than twenty years ago. At that time, OMB was going through a transformation which involved examining regulatory programs with the same scrutiny as they accorded to programs receiving appropriated funds.

OMB was not the only entity involved in the debate, the Congress was considering a number of bills ranging from legislation to require cost-benefit analysis of rules to allowing a Congressional veto of rules. Our task was to explore whether the Executive Branch could develop and implement a regulatory budget B both with and without explicit statutory authority. The ultimate objective was to determine if the President could exert the same degree of managerial control over regulatory programs as he did over programs discharged through appropriated funds.

Our first job was to determine whether there was sufficient cost information available to develop a regulatory budget.

On a government-wide basis there was insufficient data. However, we determined that there might be enough information if we limited our efforts to one area B environmental programs within EPA. EPA had one of the richest databases because of the requirements set forth in the Quality of Life Review initiated by the Nixon Administration. In this process, EPA was required to perform detailed analyses of their regulations. Consequently, EPA was not chosen because it was doing a poor job but instead because it was doing a good job.

Cost Information

EPA programs had considerable cost data. With the passage of each environmental statute, there was often a requirement to report on the total costs of the programs. Thus, there were a number of reports dealing with the cost of clean air and clean water regulations. Remember, at that time, a number of the current EPA programs were not in place.

In addition to the EPA reports, the Bureau of Economic Analysis had performed a number of sectoral cost studies and updated them each year. Consequently, as the result of the above reports, we had some idea as to the total costs environmental programs on a national basis, albeit with considerable uncertainties. For the purpose of the exercise, we assumed the cost information we had was accurate.

As to the other actions that had to be taken to establish a regulatory budget, one of the most basic was to define what a regulatory budget did and did not do.

Consequently, Chapter 3 of the attached report delineates a number of options. Was the regulatory budget to be strictly informational, i.e., an after the fact description of the costs, or was it going to be advisory in the terms of no binding ceilings, or was it going to be controlling through the use of binding budget ceilings?

A complete set of other questions had to be addressed. For example, what type of costs were to be included? Options included the cost of new regulations, the cost of existing regulations, direct compliance costs and/or indirect costs. Also, decisions would have to be made with respect to which agencies were to be included, environmental, economic, and/or social? Furthermore decisions had to be made with respect to the structure of the budget, was it going to be developed by agency or by program type across a number of agencies. This last decision would be guided, in part, by the availability of cost data.

Management of a Regulatory Budget

Some one had to manage the preparation of the regulatory budget. Therefore, regulatory budget offices would have to be established in each agency, cost analysis procedures would have to be developed and reporting mechanisms would need to be established. This part of the exercise was particularly telling because of the resource requirements to carry out these tasks.

Of particular interest was how the regulatory budget would fit into macroeconomic policies. After all, with appropriated funds, we have an idea if we were overspending, but what did overspending mean in the context of a regulatory budget? These were difficult questions that needed to be addressed.

Legal Foundations

Any establishment of a regulatory budget would need to be developed and implemented in accord with existing law. One of the first questions was whether the independent agencies would be covered. After all, they impose costs comparable to those of the environmental and social agencies, why should they not be included? Clearly the regulatory budget would have to recognize explicit Congressional mandates on specific agencies.

The Regulatory Budget for EPA

Given all of the above issues and conditions, a regulatory budget was developed for EPA and is set forth in Attachment 1. The document is also available on the CRE website and can be viewed at <http://thecre.com/ombpapers/regbudget.html>. I will not go into all the details, but suffice it to say it had considerable room for improvement.

Notwithstanding the inaccuracies and data limitations, the regulatory budget as presented in the report did demonstrate the fact that we were simply adding regulatory costs upon regulatory costs without any program for controlling the total. Furthermore, even with the best economic analyses on a regulation-by-regulation basis, we had no idea what the total costs were, what the optimum level of the budget was and we did not have even a clue as to the macro benefits.

Regulatory Cost Accounting

The heart of any regulatory budget is the underlying cost information. Having prepared the regulatory budget for EPA, it was very evident that more accurate and comprehensive cost information was required. Consequently, OMB worked to delineate the types of cost information which would be needed to implement a regulatory budget in an orderly and continuing fashion.

Once that delineation of needed cost information was completed, OMB drafted the Regulatory Cost Accounting Act of 1980. This proposed legislation had three components:

1. Regulatory Cost Accounting Manual. OMB was required to develop a cost accounting manual that would set forth general guidelines for measuring direct and indirect costs.
2. Agency Procedures. Agencies, based on the OMB manual, would prepare detailed, agency-specific, regulatory cost accounting procedures. The agencies would also develop a plan and time schedule for generating the needed cost information.
3. Reporting to OMB. Agencies, per a specific time schedule, would generate regulatory cost information for their particular programs and report such information to OMB.

The draft Regulatory Cost Accounting bill was put through the OMB legislative review process. Thus, the draft legislation was given to all Executive Branch agencies for review and comment. Virtually, all agencies opposed the legislation. The agencies cited a number of reasons for their opposition. First, they stated that the time and funds needed to implement the program were too great. Second, they stated that they believed the cost accounting program was of marginal utility since it was uncertain as to both what the cost information would mean by itself and to what additional information would be needed to establish budget levels.

The proposed Regulatory Accounting Act of 1980, and its attendant section-by-section analysis, can be found on the CRE website, www.TheCRE.com, at:

http://thecre.com/pdf/Carter_ProposedBill.PDF; and
http://thecre.com/pdf/Carter_SectionBySectionAnal.PDF.

Unresolved Issue

Notwithstanding the lack of success in moving forward with a regulatory cost accounting bill, the issue that sparked the drafting on the bill remained; we were continuing to promulgate regulations on a case-by-case basis, imposing substantial costs on the public, state and local governments, and small, medium and large businesses, with no idea as to their total cost to the economy.

Some argued that there was no reason to be concerned since, if each regulation were judged on its merits, the sum total of all regulatory actions would be beneficial. Others argued that such an approach is completely counter to the thrust of fiscal budgeting, i.e, even though there are many potentially beneficial programs, priorities must be established given that we have finite resources.

Proponents of a regulatory budget argued that it was fiscally unwise to continue promulgating regulations without any control on the total costs being imposed on society. Furthermore, they argued that there was no other attempt whatsoever to even move in the direction of addressing the issue.

I personally agree that there is little need to develop a regulatory cost accounting system if ultimately it is not going to be used to implement a regulatory budget.

The Utilization of the Semi-Annual Agenda: A Middle Ground

The issue of setting limits on the total cost of federal regulations never went away. While think tanks gave scant attention to the matter, the issue was kept alive in OMB since the underlying issue, not having a mechanism for understanding and controlling total regulatory costs, remained unresolved. On the one hand, we were aware of the formidable difficulties in implementing a regulatory budget, but on the other hand we knew we were vulnerable in not having an answer to why there was no attempt to control the total cost of regulations.

At the same time these discussions concerning a regulatory budget were underway, the statutory requirement that agencies develop semi-annual regulatory agendas was beginning to bear fruit. More specifically, every six months agencies had to report all the regulations they were working on to OMB. Furthermore, they had to report the time frames for each rule as well as the statutory authority for the rule and, on some occasions, discuss the alternatives they were going to examine. The agenda described all rules under consideration including Advance Notices of Proposed Rulemaking, and rules in their final stage of development. The current edition of each agency's semi-annual agenda is available at, <http://there.com/quality/rudba.html>.

A detailed review of the semi-annual agenda provided a way to look at an agency's regulatory program in total which provided an opportunity to set priorities. Thus, the agenda allowed consideration of issues such as what regulations were most significant, whether there was a statutory mandate for the regulation and how could the regulation be developed to reduce cost?

Consequently, President Reagan issued Executive Order 12498. This Executive Order required:

1. Agencies to submit their regulatory agenda, including a description of all significant planned actions, to OMB for review.
2. That OMB, in conjunction with the agencies, agree on the elements of the agenda.
3. That anytime an agency wanted to add or delete an item from the agenda, they needed to receive OMB approval.

Clearly, the semi-annual agenda was not a regulatory budget. However, equally clear was that the agenda could be used to accomplish some but not all of the objectives of a regulatory budget. First, it provided a basis for establishing priorities. Second, it provided an opportunity to shape the development of a regulation, from the alternatives to be considered to the acceptable level of costs. Overall, the agenda in conjunction with OMB review and oversight gave you some idea, although not quantified, of the regulatory burden imposed by an agency. What the agenda could not do was give you a cumulative total of the burden being placed on society by federal regulations.

Executive Order 12498 was rescinded by the Clinton Administration.

Recommendations

1. Resource Requirements. Legislation should not be enacted prior to appropriations committees adding additional personnel for OMB to oversee the process. OMB= Office of Information and Regulatory Affairs has already had a nearly 50% reduction in staff over the past twenty years. During this time, OMB has been assigned a number of new responsibilities. They would not be able to address the regulatory budget issue without adequate staff resources.
2. Pilot Program. Implementing a regulatory budget would require considerable resources. Consequently, if a regulatory budget program is to proceed, it should do so on a pilot basis. It is questionable whether a regulatory budget should even be tested on an agency-wide basis. Instead, it should be implemented in one or more select program areas in a particular agency.
3. Independent Agencies. Independent agencies should be included in any pilot program for a number of reasons. First, they are generally not subjected to much regulatory scrutiny and, therefore, imposition of a regulatory budget or cost accounting system would be a step forward. Second, they are smaller than Cabinet size agencies and could be examined in with fewer resources.
4. Use of the Semi-Annual Agenda as a Regulatory Budget. OMB, in conjunction with each agency, should review the semi-annual agenda. As part of their review, they could assess which regulations should be developed, in what time frame they should be developed, what alternatives should be considered, and what detailed cost analyses should be prepared. In essence, OMB would be re-implementing Executive Order 12498.

Thank you.