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CONGRESSIONAL REACTION TO THE REGULATORY BUDGET

Historians will probably conclude that the most permanent accomplishment of the Reagan Administration is its establishment of a regulatory review process in the White House Office of Management and Budget.

With minimal fanfare, and equally minimal press coverage, the Reagan Administration submitted on August 8, 1985 its regulatory program to the Congress. This regulatory program identifies the major regulations which are going to be developed by seventeen Executive Branch agencies. Of particular importance is not the regulations which are in the regulatory program but instead the regulations which were eliminated from the regulatory program. For this reason, the regulatory program is in reality a regulatory budget without numbers. The regulatory budget is the culmination of nearly a fifteen year effort by OMB to gain jurisdiction over Federal regulations.

The regulatory program is printed in the format of the fiscal budget, contains the regulatory program in brief (which is similar to the budget in brief) and, of extreme importance, contains the regulatory message of the President to the Congress of the United States.

How will the Congress react to the regulatory budget? It is possible that the submission of the regulatory budget to the Congress will be the opening round of a long turf war between the Executive and Legislative Branch, second only to the same war that took place some fifty years ago over the submission of the first fiscal budget.

To date, Congressional critics have focused their attention on the process by which the regulatory budget was developed. In a manner similar to the development of the fiscal budget, program managers in the respective agencies first identified the major regulations which could be developed during the ensuing twelve month period. Agency heads reviewed these proposals and subsequently selected, for inclusion in the regulatory budget, the most significant regulations across all the bureaus in their respective agencies. The agencies then submitted their proposed regulatory budget to the White House Office of Management and Budget.

OMB, well accustomed to reviewing federal budgets, then reviewed the particular proposals to ensure there was no duplication across agencies, to ensure the regulations were in accord with the program of the President and to ensure the regulations were cost-effective.

The need for a regulatory budget is apparent given that Federal regulations impose a cost in excess of \$100 billion each year on individuals, municipalities and businesses. Until the development of the regulatory budget, there was no defacto ceiling or cap on the total cost of Federal regulations. The implementation of a regulatory budget not only establishes such a cap, but it also forces the government to set priorities on a government-wide basis.

Presently, there is no such priority setting mechanism in Congress. Numerous Congressional committees and subcommittees propose, and eventually enact statutes which require the promulgation of a large number of regulations. In the absence of a regulatory budget, these uncoordinated Congressional activities often lead to regulatory overkill. The implementation of a regulatory budget reduces the possibility of such an overkill.

In the coming months there will be considerable criticism to the regulatory budget. Many members of Congress will feel that the Executive Branch is usurping its authority.

Consequently the Congress has one of two choices. It can either act as an obstructionist, thereby attempting to place statutory constraints on the President; or it can, as it did in 1921, decide to act in a constructive manner in the formulation of the regulatory budget as it decided to do in the formulation of the fiscal budget.

The genesis of the regulatory budget dates back to the Johnson Administration when a small group of analysts in the Department of Defense began to urge that benefit-cost analyses be performed on federal regulations. The first OMB review of regulations started in the Nixon Administration when agencies were directed to submit environmental regulations to OMB for review. Presidents Ford and Carter strengthened the process by issuing a number of executive orders which expanded the requirement that all executive agencies perform benefit-cost analyses of their major regulations.

However, it was the Reagan Administration that first required all Executive branch agencies to submit their regulations to OMB for review. Now, nearly five years later, the Reagan Administration issued the first regulatory budget of the United States.

Although OMB's authority to review regulations and to develop a regulatory budget evolved from the inherent powers of the President, the establishment of a regulatory review office in OMB is vested in statute, more specifically the Paperwork Reduction Act signed by President Carter. In fact the precursor to the regulatory budget is the paperwork budget, which has been in use for several years.

Consequently, four Presidents have endorsed the need for a centralized review of regulations in a manner similar to the discipline imposed on the expenditure of Federal funds. The question now is whether the Congress will act in an equally responsible manner with respect to the issuance of Federal regulations.

I believe the Congress will ultimately seize upon this opportunity to influence regulatory policy much in the same manner it influences fiscal policy. The mechanism that the Congress will use to exert such an influence is not clear.

It is possible that a number of Congressional committees will hold oversight hearings on those portions of the regulatory budget under their jurisdiction. As these hearings progress, it is not unlikely that a joint Senate-House Committee might be established to give oversight to the Executive regulatory budget much in the same manner that the Congressional Budget Committee reviews the Executive fiscal budget.

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