



H.R. 2728, Paperwork & Regulatory Improvements Act *First Steps to Regulatory Rationing*

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Title V of H.R. 2728, titled the Paperwork and Regulatory Improvements Act of 2004, advances the causes of “**regulatory accounting**” and “**regulatory budgeting**”—concepts that were reinvented by anti-government think tanks and promoted earnestly by corporate opponents of tough protections of the public health, safety, civil rights, and environment. Regulatory accounting hides highly controversial value-laden assumptions under a veneer of pseudoscientific methodology in order to diminish the true value of public safeguards and rig the comparison of those shrunken benefits against inflated estimates of the costs to industry of complying with protective rules. Regulatory budgeting would take the calculations of regulatory accounting and make them the basis for policy decisions. H.R. 2728 threatens all protections of the public welfare across the board.

Another Push for Regulatory Budgeting

H.R. 2728 would move us closer to “regulatory budgeting,” a dangerous concept that treats the vital protections of public health, safety, and environment as though they were gratuitous expenses that must be rationed. The ultimate vision of regulatory budgeting is a world in which the economists have the final say on our public safeguards, as incalculable and literally priceless benefits, such as lives saved, irreplaceable natural resources conserved, and diseases prevented, are simply ignored while the costs to industry of complying with new protective rules determine whether any protections can be issued. In practice, regulatory budgeting means arbitrarily capping the total number of regulatory “costs” created by protective rules. Once an agency hits the cap in its “budget,” it would be forced to stop responding to existing needs, emerging threats, and its statutory mandate to protect the public welfare.

H.R. 2728 brings us another step closer to that kind of policy by having the White House study the feasibility of regulatory budgeting in its choice of public health, safety, and environment agencies, at least three of which must come from Labor, Transportation, Health and Human Services, or the Environmental Protection Agency. In the process of conducting this study, the White House will be using taxpayer dollars to create the data that will be used to make the case for turning the vision of regulatory budgeting into a frightening reality. The bill would shift even more resources to economists when agency budgets for enforcing protections of the public welfare have been slashed.

Regulatory budgeting was advocated during the Reagan administration, but it met stiff bipartisan congressional opposition. It reemerged as part of the Contract with America and was rejected as too extreme. Now the proposal is back: a little softer than before, but still a wolf in sheep's clothing.

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Paralysis by Analysis

This bill would further slow down the regulatory process by increasing the analysis that proposed rules have to go through. Agencies and OMB's Office of Information and Regulatory Affairs (OIRA) already subject a number of rules, those considered economically significant or major rules, to cost-benefit analysis. Cost-benefit analysis takes a lot of time, demands a large investment of resources, and produces very little benefit given that most major statutes demand standards for which cost-benefit analysis is irrelevant. Cost-benefit has increasingly become an exploitive tool used by those who oppose regulation. Using suspect methodologies—such as opinion polls in shopping malls eliciting the price that mallgoers would be willing to pay to preserve bald eagles, or calculations that cash out the value of human life by converting the numbers of life years saved into separate cash equivalents that inevitably result in lower cash total values for the elderly than for the young—cost-benefit accounting covers political judgment under a veneer of social science.

Two parts of H.R. 2728 would slow the process by requiring more cost-benefit analysis:

- One section would establish that yet another arm of the government, this time Congress' own General Accounting Office, will be required to conduct its own cost-benefit analysis of proposed regulations. H.R. 2728 would amend the Truth in Regulating Act of 2000, that established a pilot study in which GAO would report on economically significant rules when requested to do so by a committee chairperson or ranking member. That pilot study was never funded or carried out. Now, H.R. 2728 would make that requirement permanent—without ever having established the value of this extra cost-benefit analysis, and without ever earmarking funds for the purpose. GAO already cannot accept all member requests; this bill would prioritize redundant and useless economic analysis over requests for independent investigations of pressing concerns.
- Another section would expand the number of regulations subjected to these wasteful analytical efforts. Currently, agencies must annually submit to OIRA estimates of the costs and benefits of "significant regulatory actions," which for the most part are regulations that are estimated to impose costs of \$100 million or more. OIRA, in turn, must generate an annual report from those submissions. H.R. 2728 would add to that burden by forcing agencies to devote scarce resources to cost-benefit reporting for the entire agency and each agency program, the only limit being the words "to the extent feasible." This requirement would dramatically increase the number of protections for which agencies must apply cost-benefit methodologies riddled with uncertainties and controversial value assumptions.

When Congress required agencies to submit cost and benefit figures to OMB for an annual report, it did not intend to create new burdens on either agencies or OMB. In fact, a colloquy between Sen. Stevens and Sen. Levin made clear that the intent was not to generate new data or studies, but rather to pull together existing information. "I expect a rule of reason will prevail. Where the agencies can produce detail that will be informative to the Congress and the public, they should do so," Sen. Stevens said at the time. "Where it is extremely burdensome to provide such detail, broader estimates should suffice." Even though each annual report has identified a large number of shortcomings that make the data useless to policy makers (e.g., the data compare apples to oranges), the scope of the report has continued to expand. H.R. 2728 would expand it even more.

Hiding the White House Anti-Regulatory Agenda in Budget Secrecy

H.R. 2728 would also require the White House to incorporate its annual report on the costs and benefits of regulation into its annual budget preparation. Congress required OMB to seek public comment on the annual report. By making the regulatory report part of the budget preparation, however, OMB would be required to follow budget process rules which require strict secrecy in the preparation of materials. Thus, OMB would not be able to carry out the requirements on the regulatory report to seek public comment.

Unlike the budget, which is a request to Congress for spending, the regulatory report is a presentation of information for Congress and the public to review; it is not a request to Congress. Thus, it is not appropriate for inclusion in the budget. All in all, the H.R. 2728 provision simply is not workable. That may be why OIRA Administrator John Graham testified in the House as such.