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A Better Form of Unemployment Protection

BY VERONIQUE DE RUGY

When it comes to finding creative ways to expand the size of government—especially with old, tired, and problematic programs—legislators are extremely resourceful. Case in point: 2020's expansion of unemployment insurance (UI) as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Expanding unemployment insurance during a recession is to be expected. What's unusual, though, was the scale and means of this latest expansion.

Like UI expansion in the past, and like UI benefits in general, this most recent program created major economic distortions and is likely to continue slowing the recovery even if firms are allowed to get back to business as usual. It is time for a serious reform of the program.

UI today / Unemployment insurance is a joint federal/state program financed through payroll taxes. Each state operates its own program under federal guidelines. States set their own eligibility requirements, coverage limits, financing methods, and formulas for determining benefits. However, in general, most states provide unemployment benefits that replace about half of a worker's previous wages for up to 26 weeks.

Take Virginia for example. The state pays UI benefits equal to half of the worker's prior wages up to a maximum of $378 per week. The 50% replacement of prior wages holds for employees earning up to $39,312 annually, and a smaller and declining percentage for earnings above that amount. For instance, an unemployed worker who earned $100,000 annually receives a 19.6% replacement rate.

During nationwide downturns, the federal government usually provides supplemental funding to increase the UI replacement rate, or to lift the upper limit on benefits, or both. Also available for expansion is the number of weeks unemployed workers are eligible for UI. For instance, during the Great Recession, the federal government allowed UI recipients to receive up to 99 weeks of benefits.

The CARES Act expanded eligibility to many people who would not otherwise qualify for state UI but who nevertheless cannot work because of the ongoing pandemic. This group includes self-employed workers, independent contractors, part-time employees, and those who quit their jobs for coronavirus-related reasons (for example, people who are sick or taking care of a dependent if they do not have paid-leave benefits). In addition, the expansion offered workers an additional $600 a week for four months on top of what state unemployment programs pay. The projected cost to taxpayers for all this relief was $260 billion.

With the CARES Act expansion, Congress meant to address the sudden increase in unemployment—millions of workers lost their jobs almost overnight—because of the virus. Unfortunately, this policy was both a benefit and a harm. The benefit is easy to see. Paying people who have lost their job during the pandemic alleviates a lot of pain. But paying generous benefits made some people better off from not working rather than from returning to work; economists at the University of Chicago found that roughly two-thirds of the UI beneficiaries received 134% of their past wages under the CARES expansion.

The harm from this policy was predictable and is now well documented: the UI expansion created disincentives to work, prompting many people to drop out of the workforce. While this result might have been the one desired by state officials when they shut down their economies in the hope of keeping people from spreading the virus, it has been terrible for employers that have continued to operate. It became an even bigger problem when the economy started reopening and employers began calling employees back to work.

Examining the effect of expanding this provision of the CARES Act, the Congressional Budget Office noted that the "extension would also weaken incentives to work as people compared the benefits available during unemployment to their potential earnings, and those weakened incentives would in turn tend to decrease output and employment." The CBO report also put to rest the idea that UI expansion offers much of a boost to the economy from a benefit-fueled increase in aggregate demand; the CBO found that the bonus and UI expansion under the CARES Act had a multiplier of just 0.67.

Generous unemployment benefits create a disincentive for workers to look for jobs and for families to work at other income sources like secondary earners' jobs.

This result is neither surprising nor new. The unintended consequences and moral hazards of UI during normal times and normal recessions are well-documented. Generous UI benefits create a disincentive for workers to look for jobs. Families respond to unemployment benefits by working less at other income sources, like secondary earners' jobs. UI benefits also create disincentives to save by crowding out as much as half of private savings for the typical unemployment spell.

In addition, UI creates financial trou-

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bles for the states. During times of high unemployment—and, hence, of higher benefit payments—UI funds get depleted in most states while states' tax bases are shrinking. As a result, once the economy begins to recover, states are tempted to increase their payroll taxes in order to replenish their trust funds. Depending on the trajectory of the recovery, these raised UI taxes dampen business hiring at a time when unemployment remains high.

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This is exactly what happened during the last recession. According to the Federal Reserve Bank of Boston, during the Great Recession states had higher unemployment claims, lower ratios of taxable to total wages, and they faced insolvency of their trust funds. The report notes that "at least 35 states borrowed at some point to maintain fund solvency." To replenish their reserves, states facing insolvency increased their UI taxes on businesses, thus creating further distortions and delaying the economic recovery.

The time has come for a different approach to unemployment protection.

PISAs / Personal Unemployment Insurance Accounts (PISAs) were pioneered by Chile in 2002. The accounts are financed through a payroll-tax contribution from both the employer and employee and are individually owned by workers. During spells of unemployment, idled workers can make withdrawals to compensate for the loss to their incomes, but when employed they continue to build their balances. At retirement, workers can use the balances in these accounts to bolster their retirement income or transfer the funds to their heirs. The program includes a solidarity fund—a public safety net—financed by employers and the government. Unemployed workers can receive payment from the solidarity fund when their own savings are insufficient to cover their period of employment.

These accounts provide insurance while keeping strong incentives for people to return to work. Several studies have confirmed that under this system, workers are motivated by a desire to keep their own savings for retirement, so they are careful about tapping into this money during their working years. On net, workers seem as well off with PISAs as they were under the old UI system.

Similar plans have been adopted in other Latin American countries as well as in Austria and Jordan. Scholars have recommended similar programs for developing countries, in part for PISAs' minimal burden on governments' budgets.

One drawback of the Chilean model is that the solidarity fund creates the same kind of disincentives to work as a traditional UI system. For instance, some workers wait until the solidarity funds are exhausted before looking for a job, just as some workers on traditional UI wait until their benefits are about to end before getting serious about their job hunt. A U.S. PISA program should not include this feature. With this revision, Chile's program provides a good template for a U.S. program that would replace the current unemployment insurance program.

In a perfect libertarian world, the accounts would be funded solely on a voluntary basis. Realistically, they would probably be funded by mandatory contributions from employers and employees. The contributions would be made to the account of each employee until it reaches a certain level of benefits (for instance, 80% wage replacement for six months).

A U.S. PISA program should also allow employees to voluntarily contribute additional funds to their accounts, thus giving them a chance to build a larger UI benefit and more savings. Ideally, the extra savings, including the interest paid to the account based on the additional contributions, should be available to the employee for withdrawal for any need at any time. Also, withdrawals would be allowed after a separation from an employer regardless of the reason.

Under such a system, there would be no need for state UI trust funds and hence states' outlays would not be affected by UI during recessions. The program would also free the states from federal pressure to permanently expand their benefits and create future spending, as occurred in the last recession. By eliminating the current system's complexity, PISAs would also reduce the scale of improper payments.

Finally, once the federal and state governments get out of the UI business, it is likely that innovative private options would emerge. As Chris Edwards and George Leef have documented, before the federal government stepped in to provide unemployment insurance in 1935, labor unions, employers, and private insurance companies offered UI benefits. Traditional UI finances its benefits through implicit taxes on savings. Under a PISA system, we can expect total personal savings to increase as workers prepare for unemployment episodes.

Conclusion / Incentives matter. UI benefits provided by the government are well

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known for creating disincentives to work, at great cost to taxpayers. During a recession, these effects are compounded by benefit expansions. As a result, economic recoveries take longer than they should and the economic costs are unnecessarily heavy. The current system also is a serious drain on states' trust funds.

Now is the time to replace America's traditional UI with a system that better fits our modern economy. PISAs would provide a far superior way to respond to unemployment with fewer of the moral hazards that are endemic to the current system. *R*

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Trump's Raucous 'Midnight'

BY DAN GOLDBECK AND SAM BATKINS

Given all the attention from supporters and critics alike of President Donald Trump's deregulatory agenda, including his "one-in, two-out" executive order that acted as a de facto regulatory budget, one might assume his "midnight regulations" would double-down on that agenda. Midnight regulations are generally defined as rules issued between election day and inauguration day when the sitting administration is leaving office. These regulations usually are priority items that the outgoing administration wants implemented before they can be blocked by the incoming administration.

It is reasonable to think that Trump's midnight would have been devoted to last-minute deregulation, but that was not the case. These Trump rules will impose billions of dollars in new compliance costs and tens of millions of hours in paperwork burdens on Americans. The new Biden administration will likely undo many of these midnight regulations, in some instances lessening burdens on individuals and business.

2020 in perspective / Before last fall's election, the Trump administration's rulemaking record was not dissimilar to other presidents' final year in office. The Office of Information and Regulatory Affairs (OIRA), which is charged with reviewing and approving executive agency actions, typically discharges 40–50 regulations a month. For perspective, from January to May of 2020, OIRA averaged 43 concluded reviews per month. That number jumped to 58 from June to October.

One might speculate that the increase was a push to publish rules before the start of the "lookback period" under the Congressional Review Act, the timeframe in which a new Congress can use a simple resolution to undo rulemaking from the final months of the last administration. The lookback period for 2020 began August 21, 2020, so anything after that date is fair game for Democrats to repeal in early 2021.

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And there will be plenty of regulatory targets for the new Congress and President Joe Biden. From November 2020 to January 19, 2021, the Trump administration's pace of rulemaking picked up considerably. From 56 rules in November, to 84 in December, and finally 71 in less than three weeks in January, the Trump administration nearly equaled the record midnight output of 99 rules in a month during President Barack Obama's midnight period. The Trump team also pushed out 216 OIRA regulatory reviews in the midnight period, compared to 217 for the Obama administration. For a Republican comparative, President George W. Bush's OIRA approved 181 rules during his midnight. More noteworthy, Trump's OIRA reviewed 62 "economically significant" rules (those with an economic impact of $100 million or greater) compared to just 45 for Obama and 40 for Bush. By virtually every metric, Trump's midnight period advanced regulations at a breakneck pace.

In terms of compliance costs, data compiled by the American Action Forum indicate the Trump midnight rules will impose a truly staggering burden for what amounts to a few weeks of regulating. On a net-present-value basis, the Trump administration approved more than $37 billion in total regulatory costs, which on an annualized basis works out to about $4 billion. Equally startling is the figure for new paperwork: 64 million burden hours. This translates to more than 32,000 employees working full-time for a year filling out new forms—hardly the work of a deregulatory champion.

The new costs are primarily driven by

a $34 billion Health and Human Services rule intended to control "surprise" medical billing. (See "The Potential Pitfalls of Combating Surprise Billing," Fall 2019.) It imposes $2.4 billion in annual costs and more than 57 million paperwork burden hours. This mammoth rule was under OIRA review for less than two months. Given bipartisan support for the rule, it has a decent chance of staying in place for the next four years, although some modifications are possible.

Another noteworthy midnight rule came from the Environmental Protection Agency, which published a measure to amend lead and copper drinking water standards. According to the regulatory impact analysis, the measure imposes $3.8 billion in net present value costs and $270 million in annual costs, though supposedly it has zero new paperwork burden hours. Although the fate of this rule is currently unknown, many expect the Biden administration to undo or significantly revise as many of Trump's climate and environmental rules as possible in the next four years.

Any deregulation? / With the strong slate of rules imposing new burdens, one might assume they would be balanced out by rules that dramatically decrease compliance costs. But Trump's midnight offered only a few such rules. The biggest cost-cutter is a Department of Labor rule on who qualifies as an independent contractor as opposed to an employee. The rule would produce a regulatory savings of about $315 million a year. None of the other Trump midnight deregulations create so much as $100 million in annual savings. All told, these deregulatory rules total just shy of $900 million in savings per year, while the new regulatory rules create a total of $5 billion in annual costs. And the Labor Department rule may not survive the early stages of the Biden administration; many expect a quick reversion to the Obama administration's standards. If that happens, the net annualized cost of rules issued during Trump's midnight will be higher than Obama's.

The lack of deregulation during Trump's midnight period should be put in context with his broader posture toward deregulation. OIRA's final "Unified Agenda" of regulatory and deregulatory actions listed 101 rulemakings as "completed actions" and 496 as active. The administration certainly had a busy agenda planned for the second term that never arrived. Given the fruits of Trump's midnight period and the lack of wholesale deregulation during his four years in office (only 2018 saw a net reduction in cumulative, government-wide burdens), one cannot help but consider Trump's posturing as a deregulator to be showmanship rather than statesmanship.

Rushed regulations / Much of the debate over midnight regulation centers around whether these rules are "rushed," potentially reducing their quality and leading to more (and often successful) legal challenges. The data strongly suggest that several Trump midnight rules went through the process in an unusually short period of time. During the last days of the Trump administration, OIRA and regulators managed to approve 22 rules in seven days or less; six were approved in technically "zero" days. For fans of rigorous inter-agency review and a thorough vetting of benefit–cost analyses, this must be upsetting. On the other hand, there were eight measures that spent more than 300 days at OIRA and were discharged during the midnight period—but of those, four were withdrawn by agencies for unknown reasons.

At the macro level, the *average* OIRA review time for measures discharged during Trump's midnight period is 61 days. Excluding the withdrawn measures yields an average of just 54 days. The *median* review time is a mere 29 days (both including and excluding the withdrawn measures). By contrast, the average review time for midnight rulemakings during the Obama era was 82 days, a period typical of other administrations. Trump's 61-day average is shocking because typically many midnight rules have been lingering in regulatory purgatory. Sometimes the delay owes to political machinations or an agency prioritizing other efforts elsewhere, or to waiting for new data or trying to figure out how to address an obvious deficiency. The confluence of these factors, combined with political exigencies, can often drive up the average review time for midnight rules—but not for the Trump administration.

One last surprise from the Trump midnight era is that January 2021 saw an incredible flurry of review activity. President Obama's final January in office produced 61 reviews. Trump's OIRA managed to review 73 measures from January 1 to January 19. In fact, there were 13 rules agencies pushed to OIRA in January that OIRA discharged (including one subsequently withdrawn rule) that same month. Mathematically, the review times for these rules were short: an average of just three days. Those are quick turnaround times. And as discussed above, many of them could be on the chopping block now that

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the Biden administration is in place.

Out with a whimper / More than four years ago, candidate Trump claimed he would cut federal regulations by 70%. That came nowhere close to happening; at best, only the *flow* of *new* regulations fell significantly in his administration's early years, and even that dampened as time went on. (See "Trump's Regulatory Legacy: A First Draft," Winter 2020–2021.) Trump's critics may have had reason to decry specific deregulatory moves, but ultimately there was much less substantive deregulation than either his supporters or critics claim.

In the end, when his administration was headed for the door, it acted as previous administrations act: it pushed through as many regulations as possible, as fast as possible, with little regard for rigorous review or policy durability. Despite all the deregulatory rhetoric of years past, Trump's midnight was a typical midnight, filled with huge new regulatory burdens, rushed rules, and new compliance nightmares for some industries. The regulatory beat goes on. R

The Social Value of Business

BY KENNETH W. COSTELLO

What are the purposes of private firms, and what are their roles in society? Those questions relate to a current, trendy topic: corporate social responsibility (CSR), also known as "stakeholder capitalism."

The latter term is redundant. In free markets, successful companies must accommodate the interests of those who have some stake in them: customers, investors, and employees. That, in fact, is one of capitalism's most admirable aspects, which many politicians, nongovernmental organizations, and the general public seem to overlook.

The principle that companies achieve social welfare objectives when they pursue profit-maximizing objectives has been recognized for two-and-a-half centuries. Adam Smith connected the two by way of his invisible hand: "It is not from the benevolence of the butcher, the brewer, or the baker that we can expect our dinner, but from their regard to their self-interest." That insight is now under attack from different quarters.

Various interests are pressuring firm managers to pay more attention to the so-called "social consequences" of firm actions. They allege that companies' decisions should address social problems like below-poverty-line wages, exploitation of consumers, the condition of local communities, excessive profits, unfounded compensation for CEOs, damaging pollution and other negative externalities, and lack of diversity and inclusion in the workplace. Over the past several years, the idea has gained traction that companies have responsibilities to the broader society beyond their duties to shareholders.

In reading the *Wall Street Journal* and other publications over the past several months, one readily sees how investors and consumers in particular are pressuring firms to lighten their carbon footprints. Some companies have committed to spending hundreds of millions, and even billions, of dollars to address climate change. One company, Amazon, expects to spend $10 billion on an initiative called the Bezos Earth Fund.

Why be responsible? / As a critical milestone, in 2019 the Business Roundtable (an association of chief executives of the country's largest companies) took a dramatic left turn by supporting the view that companies primarily should serve myriad stakeholders rather than just their shareholders. Subsequently, the CEOs and other managers of a growing number of companies have announced plans to spend shareholders' money to address broader social problems, thereby demoting shareholder interests to being just one of many sets of interests the firms must address. This is CSR in practice.

While CSR may seem appealing, it has both latent and transparent costs. The major ones are a short-term focus on politically related matters, less CEO accountability, and more inefficient resource use as a result of a weakened profit motive. The oddity is that while companies spend substantial sums of money to block legislation and regulations that would force them to expand their missions to address social problems, why should we expect them to voluntarily mitigate those problems under a CSR regime?

It makes more sense to believe that companies will have *dis*incentives to address social problems on their own if they lobby government against a social welfare agenda—for example, by opposing higher taxes to support the poor, pro-labor legislation, or stricter environmental regulations. By agreeing to adopt a social agenda but executing it unenergetically, managers may feel that they can forestall injurious (from their perspective) governmental actions and improve their public images.

There are numerous problems with CSR. They include:

- Firms have weak incentives to promote CSR objectives.
- Management would be less accountable for weak financial performance.
- Firms are ill-qualified to make decisions on how to advance social goals.
- Conflicting objectives will force management to prioritize and weigh different social objectives.
- Regulations and contracts already protect non-shareholder stakeholders.

It would be hard for companies to balance the conflicting interests of myriad stakeholders. Another problem is that while multiple "stakeholder" groups have

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been identified, no one person is representative of any of them. Individual investors, for instance, are heterogenous, meaning that some may favor CSR actions, or some subset of those actions, while others would oppose them.

The same is true of employees. Some are childless and would consider a CSR initiative like family leave to be worthless. Others would rather earn higher wages than have access to on-site daycare. CSR's advocates seem to presume that individual "stakeholder" groups are monolithic. Assigning weights, therefore, can be so overwhelming, convoluted, and counterproductive that companies are distracted from their core purpose of profiting from selling goods and services that society wants.

Managers and politics / Instructive here is the phrase "accountability to everyone means accountability to no one." CSR can insulate management from accountability and managerial slack, like inflating costs. CSR obscures poor financial performance: a firm can claim to be "socially responsible" even when losing money and continuing to raise funds from socially conscious investors. Under a CSR regime, management can do almost anything and claim to be creating some "social" value. Imposing multiple objectives and performance criteria on a company weakens managerial accountability, thereby aggravating the principal–agent problem that presently exists between shareholders and managers.

Should society not separate the actors who undertake money-making activities from broad-based social activities? One must ask: What expertise or capabilities do company managers have in addressing social problems that should fall under the auspices of government? Wouldn't it be better for individual shareholders to dispose of dividends in the ways they see fit rather than requiring them to cede responsibility to others who might prefer to support the local opera over the local foodbank?

A real-world challenge for CSR, then, is how managers and boards of directors would balance the interests of different stakeholders, which essentially boils down to politics. One must ask: How is management made accountable for their decisions? How is a firm making those decisions superior to the government making them? Are a firm's actual CSR actions superior to other options for addressing social problems?

When politics drive CSR actions, the outcome is less likely to improve society's welfare than to appease those in charge politically. Numerous examples exist where governmental actions in all areas of society deviate far from the theoretical ideal. The public choice literature confirms the divergence between the "blackboard" and actual outcomes. Such divergence typically results from information deficiencies, institutional realities, and the government's incentive to serve its self-interest and appease special interests rather than the public good. Government-driven CSR falls into a space where welfare-reducing consequences are highly likely.

Markets and welfare / My main argument here is that the best source of achieving CSR objectives is market driven. Market participants already reveal their preferences for environmentally friendly products by buying them, investing in companies that supply them, and offering their labor services—sometimes for wages that are less than they could earn elsewhere. We have seen investors choose firms that best mimic their social values; investors can vote by buying or selling company stock rather than letting managers and boards impose their own preferences on them.

In a competitive marketplace, consumers, workers, and firms acting in their own self-interests advance society's interests. If consumers are willing to pay premiums for cleaner air or "fair-trade" coffee, profit-seeking businesses will deliver those goods—and they have.

If market participants value non-economic goals, companies that combine the profit motive with environmental and other concerns can thrive even in a competitive environment; they could even become *more* financially sustainable. For this reason, shareholders should retain primacy, but they also should have the right to advocate for different objectives if they so prefer, rather than have management impose those objectives upon them.

Voluntary market participation really epitomizes Coasian bargaining, where sellers and buyers cooperate in consummating mutually beneficial transactions. How could one dispute that that isn't in society's interest?

One is left asking whether voluntary actions such as those by the Business Roundtable are nothing more than a public relations ploy with minimal or negative value to society. Voluntarism driven by management whims or political pressure, rather than by market forces, may merely be window dressing, representing token efforts ("greenwash") to avoid regulation or other governmental actions.

In summary, firms should continue to maximize shareholder value as long as they abide by the rules and respond to market demands. As George Stigler remarked aptly 50 years ago:

> Let our businessmen return to making shoes and locomotives and toothpaste. Let us not seek to transform the greatest economy in all history into a third-class welfare agency. Let the reformers address their schemes, whether noble or ignoble, to the real source of power, the public [sector], and to the real administrators of that power in our society, the leaders of the political system. *R*

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