

*Regulations should be decided by a political process,
not more benefit-cost analyses.*

More Lonely Numbers

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BOB HAHN AND ERIN LAYBURN WOULD have the federal government produce more lonely numbers — numbers whose fate would be like that of wallflowers at a high school dance, waiting by the punchbowl in the hope that someone would notice them. All of this would be for the sake of a good cause: the belief that more numbers would increase the rationality of federal regulation. But the generation of more lonely numbers would not contribute much toward that goal.

The current estimates of the benefits and costs of proposed new federal regulations, according to Hahn and Layburn, are not “either standardized or comprehensive enough to be used in reliably assessing net benefits. . . . The fraction of new rules reporting monetized estimates for both some costs and some benefits is below 50 percent in three of the four years for which the information is provided.”

Even a good estimate of the net benefit of a proposed new regulation is not sufficient to determine whether the regulation should be approved, because an alternative regulation addressing the same problem may have a higher net benefit. For many proposed regulations, it would be important to have some estimate of the marginal benefits and costs to determine whether the regulation is too tight or too loose. In any case, the estimates do not seem to have had much effect on the decisions by the Office of Management and Budget. According to the authors, “So far, it has not identified any regulatory programs for elimination or improvement.”

The solution to those problems, according to Hahn and Layburn, is to generate many more such lonely numbers in the following three ways:

First, they suggest that regulatory agencies submit a standard “scorecard” that describes their analysis of each major regulation subject to OMB review. That is supposed to generate summary statistics that would permit an evaluation of the quality of regulatory analysis “at the level of an individual regula-

tion, a specific program or statute, a specific department, or agency.” Notice that this is supposed to permit a comparative evaluation of the quality of regulatory analysis, not of the quality of regulation. I cannot imagine anyone other than the authors who would use those lonely numbers, maybe to update their current article.

Second, they propose that the reporting requirements of Executive Order 12866 be broadened to include the independent regulatory agencies. There are two problems with that recommendation: It is not self evident that the process created by Executive Order 12866 has significantly improved the quality of regulation by the executive regulatory agencies, and Congress may have established some regulatory agencies as independent for good reason — to avoid any significant administrative oversight of their regulatory decisions.

And third, the authors propose the establishment of a Congressional Office of Regulatory Analysis. The primary case they make for this is that the OMB’s Office of Information and Regulatory Analysis is unduly constrained by the internal politics of the administration. Somehow, Hahn and Layburn seem to assume that a congressional office would be immune to congressional politics. Shocking! The initiative for this proposal would have to come from Congress; if lawmakers want more or better regulatory analysis, then a congressional office would be valuable and the competition would probably also improve the quality of regulatory analysis in the administration. But it is not at all evident that Congress wants better regulatory analysis.

For some years, I have proposed that any member of Congress, on a point of order, could require a floor vote within 60 legislative days on any proposed new regulation. That would restore the non-delegation doctrine of the Constitution, changing the authority of regulatory agencies for both rulemaking and rule enforcement to the restricted roles of rule drafting and rule enforcement. Until Congress is prepared to accept the responsibility to review and approve proposed new regulations, a congressional regulatory analysis office would have little value. Regulations are a form of legislation and should be decided by a political process, not more or better benefit-cost analyses. **R**

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