

Insight



More Transparency Would Bolster the Trump Administration's Regulatory Budget

DAN BOSCH | DECEMBER 11, 2019

EXECUTIVE SUMMARY

- The Trump Administration's regulatory budget has been successful in driving a decrease in regulatory costs, but a lack of detail in the costs or savings of each action included in the regulatory budget total undermine the short-term and long-term durability of these reforms.
- A few notable examples from fiscal year 2019 demonstrate how questions about the administration's totals can arise.
- A simple fix to this lack of transparency would be to include the value of each action included in the regulatory budget total.

INTRODUCTION

The Trump Administration recently released the final accounting of its fiscal year (FY) 2019 regulatory budget. As detailed [here](#), executive agencies achieved net savings of \$13.5 billion. This marks the third straight time the administration has ended the fiscal year with savings from deregulatory actions outpacing the costs imposed by significant new regulatory actions. According to the Office of Information and Regulatory Affairs (OIRA), agencies subject to the regulatory budget have generated \$50.9 billion in net savings since January 2017.

For an administration focused on reducing regulatory costs, it is a remarkable achievement. The deregulatory efforts driven by the regulatory budget have helped sustain a strong economy, as businesses remain optimistic about their ability to invest and grow rather than comply with overly burdensome rules. This deregulation is also a remarkable shift from previous administrations; the Obama Administration finalized over \$100 billion in new regulatory costs each year.

Despite its considerable success, however, the regulatory budget could be improved with more transparent accounting. Though OIRA releases a [list](#) of actions that make up its final tally each year, it does not include either the savings or cost amount associated with each action. This limitation can undermine confidence in the results and provide detractors with fodder to criticize the regulatory budgeting process. A general lack of confidence in the regulatory budgeting process hurts the chances that a regulatory budget survives beyond the current administration or that Congress eventually legislates its own version of a regulatory budget. While the administration is free to provide as little or as much information as it wants, providing more transparent accounting of its results will bolster the short-term and long-term durability of its reforms.

The recent FY 2019 budget results raise questions about how the administration arrived at both its yearly and cumulative totals, as demonstrated in some specific examples below. These questions could be more easily

addressed if OIRA contained the value of each action included in the calculations.

FISCAL YEAR ACCOUNTING EXAMPLES

In an ideal scenario, one could closely approximate the regulatory budget results by recording each rule clearly identified in its Federal Register notice as being covered by [Executive Order \(EO\) 13,771](#) – the document that created the regulatory budget. The American Action Forum (AAF) attempts to do this with its annual [projection](#) of results. Such projections are never going to be perfect. When an action is published in the Federal Register, the agency is estimating whether the action will be covered and its value for regulatory budgeting purposes.

A few specific examples show that the status of actions can change, with notable effects on the regulatory budget. In February the Internal Revenue Service published a rule implementing the Qualified Business Income Deduction, a major provision of the Tax Cuts and Jobs Act. Under the section of the preamble discussing the agency’s analysis of the rule under EO 13,771, it is clearly marked as being [regulatory](#). Though there is no specific cost of the rule provided in this section, the total cost of the rule calculated from elsewhere in the Federal Register notice was [\\$9.6 billion](#) – an enormous sum. In the final list of regulatory budget actions released by OIRA, however, the rule is not included.

Another unique rule with an effect on the regulatory budget was the Department of Agriculture’s (USDA) National Bioengineered Food Disclosure Standard. In that rule, USDA [acknowledged](#) that it was uncertain of its status under EO 13,771. Against the status quo, the rule imposed an estimated \$5.6 billion in total costs. When measured against a scenario where states imposed a patchwork of bioengineered food disclosure standards, however, it could save up to \$1.1 billion and therefore be deregulatory. In the final accounting, the action was included as deregulatory, but without clarity on how much savings were attributed to it.

There are also several deregulatory actions included in the final accounting that did not include any designation under EO 13,771 or had unquantified savings when published. This is best illustrated by the Department of Commerce. When AAF compiled its projection, it found no Commerce actions subject to the regulatory budget with quantifiable savings or costs. In the results, however, Commerce had 18 actions that combined to result in \$73.2 million in savings.

The examples above have a relatively simple explanation: when rules are published in the Federal Register, their regulatory budget designation is largely up to agency discretion. Clearly, OIRA is doing a separate accounting and making the ultimate decision on how a rule will be designated and accounted. OIRA could help clarify things at the end of each fiscal year by including the value of each item in its list of covered actions.

Increased transparency becomes even more necessary when handling the cumulative totals for the duration of the Trump Administration, as explained below.

CUMULATIVE NUMBERS NEED EXPLANATION

In releasing its FY 2019 regulatory budget results, the Trump Administration also included a new [table](#) showing each agency’s cumulative savings or cost total since January 2017. The total, according to OIRA, is \$50.9 billion in savings. When one adds up the results of each year’s accounting (available [here](#), [here](#), and [here](#)) the total savings is \$45 billion, as shown in the table below.

Dollar values in millions

Agency	OIRA Cumulative	OIRA FY 17	OIRA FY 18	OIRA FY 19	Sum of OIRA FYs	Difference	Percent Difference
Agriculture	-2848.4	-183.6	-397.7	-2152	-2733.3	-115.1	4.04%
Commerce	-1025.3	-15.7	-814.4	-73.2	-903.3	-122	11.90%
Defense	-101.2	0	-69.7	-21.5	-91.2	-10	9.88%
Education	-3123.9	0	-37.2	-3081.5	-3118.7	-5.2	0.17%
Energy	-75.4	514.3	-387.3	-305.9	-178.9	103.5	-137.27%
HHS	-25692.6	-5.3	-12487.3	-11400.7	-23893.3	-1799.3	7.00%
DHS	-1677.3	-540.7	-163.5	-781.1	-1485.3	-192	11.45%
HUD	-945	0	-507	-365	-872	-73	7.72%
Interior	-5841	-1150.3	-2519.4	-1452.8	-5122.5	-718.5	12.30%
Justice	-69	0	-78.5	20.8	-57.7	-11.3	16.38%
Labor	-11859.3	-112.9	-3280.2	-7959.3	-11352.4	-506.9	4.27%
State	0	0	0	0	0	0	0.00%
Transportation	-4142.5	-312	-1237.3	-2319.2	-3868.5	-274	6.61%
Treasury	61.7	0	0	61.7	61.7	0	0.00%
VA	7851.3	-26.7	-212.4	8129.9	7890.8	-39.5	-0.50%
EPA	6585.6	-306.9	-1227.9	8392.4	6857.6	-272	-4.13%
EEOC	0	0	0	0	0	0	0.00%
FAR	-7810.7	-5957.1	0	-8.8	-5965.9	-1844.8	23.62%
GSA	-8.8	0	-7.7	0	-7.7	-1.1	12.50%
NASA	-5.2	0	-4.7	0	-4.7	-0.5	9.62%
OMB	0	0	0	0	0	0	0.00%
OPM	0	0	0	0	0	0	0.00%
SBA	-83.6	-51.4	0	-16.3	-67.7	-15.9	19.02%
SSA	0	0	0	0	0	0	0.00%
USAID	-138.5	0	0	-138.5	-138.5	0	0.00%
Total	-50949.1	-8148.3	-23432.2	-13471	-45051.5	-5897.6	

Because OIRA presents its cumulative totals without any other information aside from the number of deregulatory and regulatory actions, there is no way to understand why the values differ, in some cases substantially, from the sum of the three individual reports.

What appears likely is that over time the accounting on some of the previous years has changed, and either the values changed or more actions were included or removed. This information should be made clear, even if only to avoid claims that OIRA is playing with numbers to get its savings total to some desired level.

RECOMMENDATION

OIRA should, at a minimum, adopt a practice of releasing the value of each action in its list of covered actions at the end of each fiscal year. An ideal solution would be a brief report that includes not only the values of each action but also a sentence or two explanation of why rules that agencies indicated in the Federal Register would likely be subject to the regulatory budget were ultimately left out. Such a report should be a relatively light burden on OIRA since it has the values at hand and likely also has some record of why actions were included or excluded from the final accounting.

CONCLUSION

The regulatory budget has been valuable in substantially lowering the cumulative cost of the rules federal agencies produce each year. OIRA has been mostly transparent in that it requires agencies to publish the expected effects of their rules in the Federal Register. It also makes public the list of actions it determined were subject to the regulatory budget. OIRA should take the additional step of including values with those actions in order to help bolster the regulatory budget process.