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***Regulatory Reform:
Progress and Unfinished Business***

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A Statement to a Hearing
of the Joint Economic Committee,
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REGULATORY REFORM: PROGRESS AND UNFINISHED BUSINESS

by Murray Weidenbaum

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A sea change has occurred in public attitudes toward government regulation since 1980. Like the state, the regulatory apparatus has not withered away. In important dimensions, regulation has expanded substantially. Nevertheless, a fundamental shift has occurred in the public policy process.

“Command and control” is no longer a phrase used in polite company. Its place has been taken by references to “the magic of the marketplace.” Proponents of regulation now feel obliged to talk about costs as well as benefits, private as well as public sector alternatives, incentives and disincentives, and thus to consider the disadvantages as well as the advantages of government intervention.

Despite significant achievements, the regulatory reform effort of the past two decades has run its course. A new strategy is needed, one that focuses on reducing the shortcomings of the basic regulatory statutes. We need to eliminate the statutory barriers to agencies doing regulatory analysis as well as the permissiveness that enables them to go beyond the role envisioned by Congress. Each congressional committee ought to be required to present estimates of the likely benefits and costs of regulatory actions necessary to implement proposed legislation — before that legislation is voted on. To improve the credibility of these estimates, Congress should establish an independent Office of Regulatory Analysis, staffed with experienced apolitical analysts willing to let the chips fall where they may.

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1980: A Watershed Year

The year 1980 was a period of transition. Congress eliminated much of the apparatus of railroad and trucking regulation. Also, the Regulatory Flexibility Act and the Paperwork Reduction Act were enacted.

The regulatory flexibility statute was perfunctory, but the paperwork law turned out to be a sleeper. It established the Office of Information and Regulatory Affairs (OIRA), the part of OMB that carries out the centralized regulatory reviews mandated by President Reagan and continued by his successors.

Not all change on the regulatory front in 1980 represented progress. That year, Congress also created Superfund, a monument to costly litigation that deters environmental cleanup. In late 1980, presidential candidate Ronald Reagan promised to rein in the expansion of regulation, especially by requiring cost-benefit analyses for new regulations.

Expectations and Reality

At the beginning of the 1980s, proponents of regulatory reform were enthusiastic. After years of massive expansion of the regulatory apparatus, at long last the tide would turn. Events in early 1981 seemed to confirm that expectation. Newly-elected President Reagan quickly eliminated energy price and allocation controls and the vestige of general “voluntary” wage and price controls of the past. Fulfilling his campaign pledge, he issued a key executive order requiring federal agencies to demonstrate that the benefits of proposed new regulations exceeded their costs. President Reagan also charged OIRA with the responsibility to enforce this requirement.

In many ways, results were very heartening. The size of the regulatory establishment was curtailed for several years. The regulatory review process had a substantial impact. Although only a small proportion of the regulations reviewed by OMB was returned or withdrawn, the threat of such severe action often motivated substantial changes, including deferring some regulatory initiatives.

The most significant accomplishment was so undramatic that it went unnoticed: during

the Reagan presidency no new regulatory agency was established nor was any major regulatory program substantially expanded. It reminds us of the Sherlock Holmes tale where the most significant clue was the fact that the dog did not bark.

In the early 1980s, however, forecasts of regulatory doom and gloom were prevalent. Critics thought that the green eye-shade people in the Reagan administration were determined to grant business “regulatory relief” and were oblivious to the damage done to the environment, workers’ health, etc.

These dire forecasts did not come to pass. By every important standard, the environment is cleaner, the workplace is safer, and substantial progress has been made toward achieving the other goals at which social regulations are aimed. Moreover, economic deregulation has injected competition into the market economy with strongly positive results. Costs and prices in the deregulated industries have come down while the pace of innovation has accelerated.

However, progress on regulatory reform has not followed a straight line. The restraint on enacting new or expanded regulatory legislation weakened in the mid-1980s. The upward trend in regulation accelerated in the 1990s. Efforts to get Congress to pass a comprehensive regulatory reform law failed.

The Unfinished Business of Regulatory Reform

We must reluctantly conclude that the regulatory reform effort initiated in the late 1970s and early 1980s has run out of steam. We need to shift the basic thrust of regulatory reform. All proposals to date have ignored the compelling fact that the key decisions on new regulations occur much earlier in the process — when Congress passes an OSHA Act or an amendment to the FDA Act or a new Clean Air Act.

Each congressional committee should be required, when writing a regulatory statute, to present estimates of the expected benefits and costs of the regulatory program in the report accompanying the legislation. The committee should affirm that these benefits justify the program in light of its estimated costs. Such a statement, and the benefit-cost analysis supporting it, should be required

before a legislative proposal can be reported to the full House or Senate.

Unfortunately, the way many regulatory statutes are now written both requires the agencies to ignore economic effects and precludes them from even considering the most cost-effective approaches. Despite well-intended presidential directives, it is impossible for regulators to strike a sensible balance between costs and benefits when the basic regulatory laws prohibit costs from being considered at all.

Congress should eliminate provisions in existing regulatory statutes that prevent or limit regulatory agencies from considering costs or comparing expected benefits with costs when designing and promulgating regulations. Regulations that seek to reduce health or safety risks should be based on scientific risk-assessment and should address risks that are real and significant rather than hypothetical or remote.

More fundamentally, all those involved in the government's decisionmaking process should realize that identifying a worthy objective does not necessarily create a need for regulation. Today's large federal establishment has great difficulty carrying out the numerous responsibilities already assigned to it. The burden should be on those who would replace the market with additional regulation to demonstrate with solid information and careful analysis that the public would benefit from a further extension of government into the private sector.

The American people deserve better results from the substantial resources now devoted to regulation. Too many of these regulations have been grossly inefficient, causing us to waste scarce resources in the pursuit of trivial or imaginary improvements in human health protection and environmental quality. Gains in these areas may be possible, but we will obtain them only by chance if we continue present practices.

If we are truly serious about achieving cleaner air and water, safer workplaces and residences, and better living standards, then a vibrant and relentless program of independent regulatory analysis and oversight is necessary along with institutional changes that discourage old, discredited ways of legislating and regulating. The reforms I am proposing are not merely matters of procedure and economic accounting. By enhancing the accountability of our legislators and regulators, they would improve the lives of the American people.