

Panel 18: Congressional Interest in Benefit-Cost Analysis

- *Congressional Interest in Benefit-Cost Analysis*
 - Heidi R. King, Chief Economist, Energy and Commerce Committee, U.S. House of Representatives
- *BCA in Financial Regulation: An Idea That's Not Too Big to Fail*
 - Raymond Squitieri, Office of the Comptroller of the Currency, U.S. Treasury Department
- *Alternative Ways to Organize an Effective Congressional Regulatory Review and Analysis Function*
 - Richard B. Belzer, President, Regulatory Checkbook and Managing Editor, Neutral Source
- *Is there a Role for the Judiciary to Improve Regulatory Analysis?*
 - Patrick J. McCormick III, Republican Special Counsel, Energy and Commerce Committee, U.S. Senate



Alternative Ways to Organize an Effective Congressional Regulatory Review and Analysis Function

Richard B. Belzer

Regulatory Checkbook

Mount Vernon, VA

Belzer@RegulatoryCheckbook.Org

Problem Definition

- Process
 - Opacity
 - Excess agency deference
 - OMB 'ineffectiveness'
- Analysis
 - Absence of BCA
 - Doubts about trustworthiness
 - OMB 'ineffectiveness'
- Outcomes
 - High net social costs
 - Straying from statutory intent
 - OMB 'ineffectiveness'

Presumptive Solution

- Process
 - Transparency, reproducibility
 - Broader judicial review
 - Codify EO procedures
- Analysis
 - Codify positive BCA mandate
 - Better validation
 - Establish Congressional review
- Outcomes
 - Codify normative BCA mandate
 - Clearer statutory justification
 - Require congressional approval

Problems? Solutions!

Congressional Office of Regulatory Analysis ('CORA') as Archetype

- Alternative intensities
 - Enhanced GAO model
 - Enhanced CRS model
 - CBO models
- Margins of interest
 - What?
 - When?
 - Quality standards?
 - Then what?
- Unaddressed limitations

What Would Be Produced?

Enhanced GAO	Enhanced CRS	CBO 1	CBO 2
<u>Report</u> agency estimates plus alternative estimates included in IQA petitions....			
<u>Review</u> selected BCAs			
<u>Prepare</u> alternative BCAs for <u>some</u> major rules			
<div style="display: flex; justify-content: space-between;"> <div data-bbox="394 764 785 1237"></div> <div data-bbox="785 764 1176 1237"></div> <div data-bbox="1176 764 1566 1237"></div> <div data-bbox="1566 764 1959 1237"> <p><u>Prepare</u> alternative BCAs for <u>many</u> major rules</p> <p><u>Prepare</u> BCAs for <u>some</u> proposed legislation</p> </div> </div>			

What Value Would It Have?

Enhanced GAO	Enhanced CRS	CBO 1	CBO 2
<u>Better inform</u> Congressional Review Act debates			
	Provide QA/QC of <u>some</u> BCAs		
		<u>Compete</u> with <u>some</u> agency BCAs	
			<u>Compete</u> with <u>many</u> agency BCAs <u>Provide sole BCA</u> for <u>some</u> legislation

Quality/Analytic Standards?

Enhanced GAO	Enhanced CRS	CBO 1	CBO 2
<u>Must rely on</u> Information Quality Act principles (transparency, reproducibility, objectivity, integrity, utility)			
		<u>Must rely on</u> external BCA authorities (e.g., SBCA); or <u>Risk conflicts with</u> OMB Circular A-4 and/or agency BCA guidelines	
		<u>Significant dependence on</u> external BCA authorities (e.g., SBCA); or <u>Risk significant conflicts with</u> OMB Circular A-4 and/or agency BCA guidelines	
		<u>Requires new</u> methods (SBCA?)	

What Happens Then?

Enhanced GAO	Enhanced CRS	CBO 1	CBO 2
<ul style="list-style-type: none"> • <u>Improves</u> existing CRA only <u>marginally</u> • <u>May improve</u> REINS-enhanced CRA <u>significantly</u> • <u>Reinvigorates</u> IQA 			
<p><u>Problematic utility</u>; reviews are likely to be untimely</p>			
<p><u>Competes with agencies</u> for political authority</p>			
<ul style="list-style-type: none"> • <u>De facto political authority</u> for regulatory budgeting • CBO = best case scenario 			

Plausible Costs?

	Enhanced GAO	Enhanced CRS	CBO 1	CBO 2
FTEs	~ 3	~ 10	~ 30	100 +
\$	~ \$1 m	~ \$ 3 m	~ 10 m	~ \$30 m +
New Institutions needed	No	No	Yes	Yes
Early access to agency information required	No	Helpful	Essential	Essential

Predictable Implementation Problems

Enhanced GAO	Enhanced CRS	CBO 1	CBO 2
<u>Minor</u> ; additional GAO training required			
	<u>Severe</u> ; review would be untimely		
		<ul style="list-style-type: none"> • <u>Subject to political interference</u> with respect to BCA methods • <u>Highlights value</u> of external authorities (e.g., SBCA) 	
			<u>Subject to extreme political interference</u> with respect to BCA methods

Supply Side

- Agency as monopolist
 - Supply depends on agenda
 - Low output, high prices
 - Politicized quality
 - Insuperable barriers to entry
- CORA as competitor
 - Supply depends on agenda
 - Low output, high prices
 - Politicized quality
 - Insuperable barriers to entry

Demand Side

- Agency as monopsonist
 - Demand depends on agenda
 - Agency chooses price & quality
 - Controlled peer review
 - Total information control
- Congress as competitor
 - Demand depends on agenda
 - Low output, high prices
 - Politicized quality
 - Total information control

Monopoly/Monopsony as Alternative Problem Definition

What Will Go Wrong?

Enhanced GAO	Enhanced CRS	CBO 1	CBO 2
<u>Not much</u> ; additional GAO training is required			
	<u>Failure virtually certain</u> ; reviews would be untimely		
		<ul style="list-style-type: none"> • <u>Subject to political interference</u> with respect to BCA methods • <u>Highlights need</u> of external authorities (e.g., SBCA) 	
			<u>Subject to extreme political interference</u> with respect to BCA methods

A Better Path forward

- Competition in BCA demand
 - Congress as new customer
 - Enforceable quality standards
- Competition in BCA supply
 - Resist desire for single authoritative BCA
 - Unleash nongovernmental expertise
 - Separate BCA production from decision-making

Current Regime Yields Substantially Incomplete BCAs

Producer of the Analysis	Cost 1	Cost 2	Cost 3	Cost 4	Cost 5	Ben 1	Ben 2	Ben 3	Ben 4	Ben 5
Agency	✓		✓			✓			✓	
# Analyses	1	0	1	0	0	1	0	0	1	0
All Analyses Combined	✓		✓			✓			✓	

Competitive Supply Yields More Comprehensive BCAs

Producer of the Analysis	Cost 1	Cost 2	Cost 3	Cost 4	Cost 5	Ben 1	Ben 2	Ben 3	Ben 4	Ben 5
Agency	✓		✓			✓			✓	✓
Industry A	✓	✓	✓	✓		✓				
Industry B	✓	✓	✓			✓			✓	
Nonprofit C	✓	✓	✓	✓		✓	✓	✓		
Nonprofit D	✓					✓		✓	✓	
Professor E	✓	✓				✓		✓	✓	
Consultant F	✓		✓	✓		✓	✓			
Agency G					✓					
# Analyses	6	4	5	3	1	6	2	3	4	1
All Analyses Combined	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Competitive Supply Yields More Accurate Overall BCA

Producer of the Analysis	Cost 1	Cost 2	Cost 3	Cost 4	Cost 5	Ben 1	Ben 2	Ben 3	Ben 4	Ben 5
Agency	✓		✓			✓			✓	☑
Industry A	✓	☑	✓	✓		✓				
Industry B	✓	✓	☑			✓			✓	
Nonprofit C	✓	✓	✓	☑		✓	☑	✓		
Nonprofit D	✓					✓		✓	☑	
Professor E	☑	✓				✓		☑	✓	
Consultant F	✓		✓	✓		☑	✓			
Agency G					☑					
# Analyses	6	4	5	3	1	6	2	3	4	1
All Analyses Combined	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

☑ = 'best' analysis determined by final offer arbitration