Anti-regulatory malarkey

by ROSS EISENBREY - October 23, 2012

Every once in a while, someone will write a column so densely packed with deception and misinformation that it truly astonishes me. Last week, *U.S. News and World Report* published such a column about government regulation of business by John Allison of the Cato Institute. I feel compelled to respond.
Let's start with Allison's use of a thoroughly discredited study that estimated the annual cost of regulation to be $1.75 trillion in 2008. This report, by Nicole and Mark Crain of Lafayette College, has been shown to be based on flimsy data, a flawed methodology based on a misuse of polling data, and an equally discredited estimate of the costs of OSHA regulation whose original data are untraceable. The Small Business Administration funded the research, but the Chairman of the Council of Economic Advisers has condemned it:

"The Council of Economic Advisers has looked at those claims and the $1.75 trillion figure is utterly erroneous. In fact, their [Crain and Crain's] own data (which come from the World Bank) show that countries with smarter regulations have higher standards of living, and the United States has one of the best regulatory systems in the world."

The Crains' cost estimate is several orders of magnitude larger than the estimate generated by the Office of Management and Budget (OMB)—the official estimate of the aggregate costs and benefits of federal regulations prepared annually for Congress. As the Center for Progressive Reform (CPR) points out, "the 2009 OMB report found that in 2008 annual regulatory costs ranged from $62 billion to $73 billion."

Moreover, those are the gross costs and do not include accounting for any benefits; indeed, OMB's data show that these costs are far outweighed by the benefits. More than 70 percent of the costs estimated by the Crains are attributed to financial regulation, an area where it is perhaps most obvious that one bank's burden may be another's benefit, that the burden of SEC disclosures on one company with an IPO, for example, is probably a benefit to thousands of investors, not to mention the company's competitors. OMB estimates that the annual benefits of regulation in 2008 were two times to 10 times greater than the costs.

Is it possible that Allison does not know that Cass Sunstein, the pro-business former head of the Office of Information and Regulatory Affairs, said the Crains' report is "deeply flawed and should not be relied on" and called the $1.75 trillion figure "an urban legend?" At this point, anyone who relies on the Crain and Crain report is either ignorant or dishonest. Hopefully, the Cato Institute and others will avoid any future references to it.

Another problem with Allison's column is this patently untrue statement: "A good way to measure the extent and complexity of the regulatory environment is how many pages it takes to explain what all the regulations mean." In fact, that's a ludicrous measure, since most of the thousands of extra pages in the Federal Register are there at the request of businesses, trade associations, and conservative think tanks like Cato. Every major regulation must now be accompanied by dozens of extraneous analyses exploring alternative methods of meeting the statutory goal, calculating the costs and benefits, assessing the impact on small business, answering every comment from—sometimes—thousands of regulated entities, and considering other economic impacts, paperwork and information collecting impacts, the effects on state and local governments, etc., etc., etc.

Having been a regulator at one time in my life, I can assure the public that the regulatory agencies did not ask for the multitude of statutes, executive orders, and OMB guidance documents that have lengthened the regulatory process and expanded its documentation. To claim, as Allison does, that, "Today, the Federal Register spans 54 percent more pages than it did in the 1980s," is meaningless. It is pure misdirection that tells us nothing about whether regulation is helping businesses (not to mention the public) more than it is burdening them, let alone whether the balance has changed in any way over the last two decades.

Finally, Allison's claim that, "Over the last three years the average number of economically significant rules completed annually has risen by 75 percent," is somewhat belied by his own chart, which shows that such rules increased from about 32 in 2008 to about 45 in 2011. That's about a 40 percent increase, not 75 percent.

More troubling than Allison's bad math are his figures for the number of economically significant rules issued since 2008 and his statement that the number increased. In fact, according to the Congressional Research Service, the number of major rules in 2008 was 95; three years later, the government issued only 54 major rules, a 43 percent decline.

The American public is constantly bombarded with this kind of anti-regulatory misinformation. It's a wonder that people are able to sort out the truth as well as they do. On the other hand, the need for more and better regulation is brought home with special clarity by recent scandals like the fungal meningitis epidemic, the regular reports of fatal food-borne illness and death, and the persisting economic pain caused by many years of not adequately regulating the financial sector.