



Research

ObamaCare Failures Rooted in Shoddy Regulation

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Dozens of Regulations Approved with No Review

The rollout of the Affordable Care Act (ACA) has had many well-documented failures. From a broken website, to broken [regulations](#), to higher [premiums](#), and [cancelled plans](#), many are wondering how these mistakes could pile up concurrently. Examining the data on regulatory review, it is clear the White House fast-tracked many ACA regulations, rushing 27 rules without any review.

In the American Action Forum's examination of ACA regulations, the average review time was three to five times faster than that of the average rule at the Office of Information and Regulatory Affairs (OIRA), the White House office that reviews proposed and final rules. During the last two years, the average OIRA review time for a typical rule is 110 days; the average ACA final rule is reviewed for just 29 days, with significant ACA rules (those with an annual impact of \$100 million or more) actually getting less scrutiny, just 20 days.

No cabinet agency has review times that brief. For example, the average significant EPA rule is under review for 100 days and the average Department of Education rule is reviewed for 34 days. In other words, the administration gave less scrutiny to ACA regulations than any other cabinet agency.

Average Review Time for ACA Regulations

Type	Average Review Time	Average Time for Significant Rules
All Rules	110	97

<u>Type</u>	<u>Average Review Time</u>	<u>Average Time for Significant Rules</u>
EPA Rules	162	100
ACA Proposed Rules	33	30
ACA Final Rules	29	20
ACA Corrected Proposals	8	N/A
ACA Corrected Rules	4	N/A



The ACA has resulted in countless mistakes and missteps. AAF detailed how [one-third](#) of all ACA regulations contained errors, forcing the administration to issue corrective documents. There are more than 254 errors in original ACA regulations.

It's easy to see how the errors accumulated; the White House gave virtually no oversight to many of these error-filled [regulations](#). The average review time for an erroneous proposed health care rule was just eight days; the median time was zero days. The average review time for final erroneous ACA rules was four days, again with a median time of zero days. To learn why there are so many error-filled regulations, 18 of these erroneous proposed rules received no review; the White House didn't review 16 of the erroneous final rules.

There have been more than 100 ACA regulations, so perhaps the White House simply passed over the trivial and technical regulations, instead focusing on the significant rulemakings. However, the data reveal the administration failed to review seven significant ACA proposals, including measures to amend Medicare Advantage and to implement Medical Loss Ratios. The administration also failed to review six significant ACA final rules, including amendments to the Medicare Prescription Drug Benefit Program.

What about the troubled health care exchange rollout? There were four significant HHS exchange proposals before OIRA and the average review time was just 16 days (average of 36 days for final exchange rules). For comparison, the administration reviewed a veteran's benefits rule for more than two months.

The White House has also failed to release any documents suggesting changes or material alterations to exchange regulations. Under Executive Orders 12,866 and 13,563, the latter issued by President Obama, agencies must "Identify for the public those changes in the

regulatory action that were made at the suggestion or recommendation of OIRA.” In all instances, OIRA listed exchange regulations as “Consistent with Change,” indicating that OIRA did make suggestions or recommendations. Yet, the White House and HHS have failed to release redline documents of any amendments to exchange regulations.

CONCLUSION

Current ACA implementation was constructed by regulations often hurried through OIRA with little review. After leaving the White House three to five times faster than the average regulations, it’s no wonder the administration has issued more than 250 corrections and mea culpa after mea culpa for the Affordable Care Act.