The Threat to Regulatory Reform

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A new poll shows that a majority of Americans have an optimistic outlook on the U.S. economy under President Trump. According to the poll, which was conducted by Harvard-Harris, 61 percent of those polled believe the U.S. economy is currently strong and 42 percent said they believe the economy is on the right track.

Last week Vice President Mike Pence made his first international trip as vice president traveling to Munich for the Munich Security Conference. On Saturday, he reassured NATO members that the U.S.'s commitment to NATO is "unwavering" while also stressing that all European member countries must commit at least 2 percent of their annual gross domestic product (GDP) to support the alliance.

Eakinomics: The Threat to Regulatory Reform

Most people — at least regular Eakinomics readers — are now aware of the Financial Stability Oversight Council (FSOC), the creation of Dodd-Frank with the power to impose a stringent regulatory regime on banks and non-banks that it deems to be Systemically Important Financial Institutions (SIFIs). There are sound reasons to question whether the FSOC itself is a good idea — there is no consensus on what exactly constitutes a macro risk or how to manage it — but there are even more reasons to be skeptical of the procedure used to designate non-bank financial institutions as SIFIs. A bigger problem arose when FSOC itself failed to follow its procedures when designating MetLife as a non-bank SIFI. MetLife sued to remove its designation.

MetLife won its case against the FSOC arguing that, among other things, FSOC did not conduct a proper cost-benefit analysis when it designated MetLife a SIFI. Judge Collyer wrote that FSOC had acted "arbitrarily and capriciously" by failing to consider the costs of designating MetLife. She ruled that a thorough cost-benefit analysis was required not only by the text of Dodd-Frank and basic principles of administrative law, but also by the Supreme Court's recent decision in Michigan v. EPA.

Therein lies the rub. FSOC appealed Judge Collyer's decision, and a ruling on the appeal is expected any day. But there is a lot more at stake than simply the future of MetLife. If the D.C. Circuit Court rejects this aspect of Judge Collyer's decision, the precedent would be that for any case in the District of Columbia Circuit court — where most suits regarding regulation will be heard — it will be exceedingly difficult to challenge a regulatory action for lack of a proper cost-benefit analysis. This would fundamentally undermine the current efforts to reform the regulatory state to be more cognizant of regulatory burdens and more accountable to the electorate.

Why run such a risk? It is obvious why the Obama Administration's FSOC appealed the decision. But it is far from obvious why the new administration would not simply drop the appeal, provide MetLife with an exit from SIFI status and insulate the reform efforts from this threat.