



Insight

Comparing the Presidential Candidates' Regulatory Policies

DAN BOSCH, DAN GOLDBECK | AUGUST 4, 2020

EXECUTIVE SUMMARY

- Neither presidential candidate has offered many specifics on regulatory policy, but in broad terms their conceptions of the regulatory state are very different.
- President Trump looks to continue the deregulatory agenda that has been a mainstay of his administration and has focused mostly on repealing or revising Obama Administration regulations.
- Former Vice President Biden aims to return to “Obama-Biden” policies, which would mean repealing or revising several of the regulations the Trump Administration has issued, and those efforts could be bolstered by the Congressional Review Act.

INTRODUCTION

The 2020 presidential election is down to a contest between President Donald Trump and former Vice President Joe Biden. Though neither candidate has offered much in the way of specifics on their regulatory policies, broadly speaking the candidates differ immensely. Trump has promised to continue the deregulatory agenda that his [campaign](#) counts among one of the biggest successes of his first term. Biden's [campaign](#), in contrast, has largely promised a return to many of the policies of the Obama Administration.

Since the Trump Administration's deregulatory agenda has focused largely on repealing or revising regulations from the Obama Administration, it is likely that a Biden Administration would focus on repealing or revising those changes and returning back to regulations more aligned with the Obama era. This analysis, therefore, will briefly assess the Trump Administration's first-term performance, its second-term goals, and then identify executive actions and regulations likely to be targeted should Biden assume the presidency.

TRUMP'S DEREGULATORY AGENDA

Early in his term, President Trump enacted policies aimed at fulfilling his campaign promise of cutting regulation. Though not explicitly stated, it became immediately clear that this meant specifically reducing regulations issued during the Obama Administration. With more than [\\$890 billion](#) in regulatory costs issued during the Obama era, there were plenty of targets. From the 2017 inauguration through July 24, federal agencies have published an estimated total savings of \$112.7 billion.

The administration's main policy to drive deregulation is through a regulatory budgeting system for executive agencies that would continue into a second term. The president has also used executive orders (EOs) to direct deregulatory action at specific sectors or regulations (see below).

Though certainly deregulatory, particularly in terms of estimated cost savings when viewed against recent administrations of both parties, the Trump Administration has been consistently regulatory in some areas,

particularly immigration and trade. This dichotomy can be expected to continue in a second term.

BIDEN’S LIKELY REGULATORY POLICY

Throughout his campaign website, Vice President Biden promises a return to many “Obama-Biden” policies. Since many of the Obama Administration’s regulatory policies were repealed or narrowed by the Trump Administration, it should be expected that a primary focus of a Biden Administration would be to re-install, or expand, those regulatory efforts. These efforts could include repealing several EOs that target Obama Administration regulations and administrative actions. Since a president can repeal or amend EOs at the simple stroke of a pen – as opposed to undertaking the full rulemaking process – such actions would likely be among the first that a President Biden would undertake.

Furthermore, as shown during the Trump Administration when the House of Representatives and Senate were in unified Republican control, the [Congressional Review Act](#) (CRA) can be a useful tool to remove regulations issued under a previous administration. The CRA allows Congress to disapprove of regulations issued within the last 60 legislative days of the previous Congress by a simple majority in both chambers, along with the president’s signature. Should the upcoming election result in unified Democratic Party control over both chambers, many recent Trump Administration rules could be in the Biden Administration’s crosshairs.

Below is a list of likely EOs to be repealed, followed by 10 Trump Administration regulatory actions that could be a target for a reversion back to their Obama-era form – including those subject to the expedited procedure of the CRA.

Executive Orders Likely to Be Repealed

Reducing Regulation and Controlling Regulatory Costs – [EO 13,771](#) is the hallmark order establishing the Trump Administration’s one-in, two-out policy and regulatory budget.

Enforcing the Regulatory Reform Agenda – [EO 13,777](#) directs agencies to identify Regulatory Reform Officers and create Regulatory Reform Task Forces to implement EO 13,771.

Promoting Energy Independence and Economic Growth – [EO 13,783](#) calls on agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources.

Promoting the Rule of Law Through Improved Agency Guidance Documents – [EO 13,891](#) requires agencies to list all active guidance in a single location on its website. Guidance not listed is considered void. This second provision makes the EO a likely target for repeal.

Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication – [EO 13,892](#) directs agencies to not use guidance to create new requirements and to exercise enforcement discretion commensurate with the harm of a violation.

Regulatory Relief to Support Economic Recovery – [EO 13,924](#) calls on agencies to identify regulations modified or suspended during the COVID-19 pandemic and take action to make them permanent. It also calls for further enforcement discretion.

Regulatory Actions Likely to be Repealed/Revised

Rules marked with an asterisk (*) are expected to be subject to the expedited process under the CRA.

The Navigable Waters Protection Rule: Definition of “Waters of the United States”

The [rule](#), published in April, was the culmination of a Trump Administration [effort](#) to overturn a controversial 2015 Environmental Protection Agency (EPA) rule.

Potential Economic Impact: The Trump Administration’s rule has estimated total savings of [\\$3.2 billion](#), which could be foregone if reversed by a Biden Administration.

The Affordable Clean Energy Rule

The [rule](#) repealed the Clean Power Plan, the Obama Administration EPA’s rule to regulate greenhouse gas emissions from power plants.

Potential Economic Impact: The Affordable Clean Energy Rule has estimated total costs of [\\$970 million](#). If replaced with a stricter regulation, costs could approach or exceed those of the Clean Power Plan ([\\$11.9 billion](#)).

***Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act**

The Council on Environmental Quality recently finalized a [rule](#) reducing the scope of environmental review on federally approved projects.

There are no estimated costs or savings associated with this rule.

The Overtime Rule

The Department of Labor (DOL) [rule](#) issued in 2019 lowered the minimum salary threshold most employees must earn in order to be eligible for overtime by about \$12,000 from the threshold finalized by the Obama Administration in 2016.

Potential Economic Impact: The Trump Administration’s overtime rule saved [\\$7.6 billion](#) over the Obama Administration’s rule, which could be foregone if revised.

The Safer, Affordable Fuel-Efficient (SAFE) Vehicles Rule

The largest deregulatory measure of the Trump Administration, by total savings, the EPA and Department of Transportation (DOT) [rule](#) rolled back emissions limits on motor vehicles put in place by the Obama Administration.

Potential Economic Impact: The SAFE Vehicles rule has an estimated savings of **\$199.5 billion** over the Obama Administration’s rule, which could be foregone if revised.

***Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority**

The Department of Health and Human Services (HHS) **rule** narrowed the agency’s previous interpretation of Affordable Care Act nondiscrimination provisions, which prohibited discrimination in certain health programs and activities on the basis of race, color, national origin, sex, age, or disability.

Potential Economic Impact: The HHS rule has estimated savings of **\$3.4 billion**, which could be forgone if repealed or revised.

***Preserving Community and Neighborhood Choice**

The Department of Housing and Urban Development (HUD) **rule** repealed the Obama Administration’s “Affirmatively Furthering Fair Housing” rule, which imposed stricter obligations on HUD grantees.

Potential Economic Impact: The HUD rule has estimated savings of up to \$23.7 million annually (will be updated once a total savings figure is available).

***Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance**

The Department of Education **rule** narrows the definition of harassment for the purposes of covered colleges complying with Title IX, among other changes.

Potential Economic Impact: The Department of Education rule has estimated costs of **\$62.2 million**, which could be saved if repealed (though likely replaced with some costs from a replacement).

Inadmissibility Based on Public Charge Grounds

The Department of Homeland Security **rule** broadened the number of potential immigrants that would be considered public charges, or noncitizens receiving certain benefits from the federal government.

Potential Economic Impact: The rule has estimated costs of **\$352 million** that could be saved if repealed or revised.

***Hours of Service of Drivers**

The DOT **rule** scaled back certain provisions of an Obama Administration rule that governs how long commercial truck drivers can be on duty over certain periods.

Potential Economic Impact: The DOT rule includes estimated savings of **\$3.1 billion**, which would be foregone if repealed or revised.

CONCLUSION

There is a clear distinction between the two candidates when it comes to their regulatory approaches. President

Trump has focused primarily on repealing or seriously amending Obama-era regulations and will look to continue this approach in a second term. If elected president, former Vice President Biden would likely seek to reinstate or strengthen those Obama Administration rules rolled back by the Trump Administration. The Congressional Review Act may help Biden reverse Trump Administration rules more expeditiously, depending on the outcome of House and Senate elections.