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Insight

Congress and President Tackling Reform

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Given the regulatory freeze on day one of the Trump Administration and frequent Congressional Review Act (CRA) votes to repeal old rules, one might get the impression that every week is regulatory reform week in Washington, D.C. However, in the next few days, the House of Representatives is poised to pass at least three significant regulatory reform bills and the president is busy enforcing his executive order (EO), toward the goal of achieving $0 in net regulatory costs by the end of the fiscal year.

Technically, "Regulation Week" started on Friday afternoon, with the release of an executive order, "Enforcing the Regulatory Reform Agenda." There were several looming questions after President Trump issued EO 13,771, so the administration followed up with formal guidance. The next step was enforcing the EO.

How were agencies going to be held responsible for identifying and repealing past rules? Who would coordinate these efforts? Many of these questions were answered with the latest EO. Each agency, except for those that, "issue very few or no regulations," will designate a "Regulatory Reform Officer" (RRO) tasked with ensuring agencies carry out EO 13,771. In addition, agencies must also follow two existing EOs, 12,866 and 13,563, the former established most of the benefit-cost state of today and the latter cemented retrospective analysis of existing rules.

With RROs leading enforcement, agencies will need to establish a "Regulatory Reform Task Force," which will be composed of the agency RRO and at least three other senior officials. This task force will identify existing regulations for "repeal, replacement, or modification." Among the criteria for reform: 1) a past rule's impact on employment, 2) whether it's ineffective or outdated, and 3) whether its costs exceed its benefits. In general, the task force will prioritize rules for repeal that are ineffective or outdated.

The second part of the enforcement mechanism comes in the form of reporting. Within 90 days of this EO, task forces must produce a report demonstrating progress toward identifying rules for repeal or modification. To further facilitate the process, agencies should expect additional guidance from the Office of Management and Budget within 60 days of the EO.

The most recent EO was likely a necessary step, given the historic scope of the administration's one-in, two-out regulatory budget. Although scholars and government officials have talked about a regulatory budget for more than a generation, implementation requires more than one EO. Within 90 days, the public should have a good understanding of the direction and possible success of regulatory reform in the Trump Administration.

This Week on Capitol Hill

Congress has taken the lead on regulatory modernization since 2011, and now that the executive branch shares these views, actual legislation has a chance of passage. This week, the House will take up three important bills aimed at cementing the legacy of benefit-cost analysis, establishing a commission to examine past rulemakings, and increasing agency transparency.

- Benefit-Cost Analysis: Since 1981, the role of the Office of Information and Regulatory Affairs (OIRA) as the facilitator of inter-agency review and the office that provided a second-look at benefit-cost analyses has been an informal one. H.R. 1009 would change that and codify the regulatory practices of six presidents. Sponsored by Representative Paul Mitchell, the bill would essentially codify President Clinton's Executive Order 12,866, coordinating White House review of significant actions and provide for a public "Unified Agenda" of federal rules. Without codification, the next president could sign a new executive order largely gutting OIRA's role.
- Retrospective review is now in demand. Agencies will need to find two old rules to amend while issuing a significant new rule. H.R. 998, sponsored by Representative Jason Smith, would establish a bipartisan retrospective review commission with the goal of reducing cumulative regulatory costs by at least 15 percent. American Action Forum (AAF) testimony on this legislation is available here and here. Given the demand for retrospective review, H.R. 998 would provide a vehicle to gather old rules for agencies, rather than allow agencies to find old measures to amend.
- Finally, H.R. 1004, sponsored by Representative Tim Walberg, would provide much needed transparency in the regulatory arena. The bill would require agencies to post: 1) a list of pending regulatory actions, 2) the status of the action and when it will be final, and 3) a list of public communications about the pending regulation. In addition, each agency will need to submit to Congress a report that includes information about the number of pending regulations, the average number of public communications, and the five pending actions with the highest number of public communications.

Conclusion

It's difficult in one post to fully capture the regulatory reform developments in Washington, D.C. In addition to the administration's efforts to implement a regulatory budget, the House is poised to pass three significant regulatory reform bills which will improve benefit-cost analysis, enhance retrospective review, and increase transparency. The foregoing discussion also omits that the House will likely pass another CRA resolution, disapproving a Department of Labor rule. This will mark the 14th successful CRA resolution in the House during this session. Given the historic pace of rulemaking from the previous administration, these actions by Congress and the Trump Administration are the first necessary steps to address the regulatory growth of the past eight years, not to mention decades of previous regulatory accumulation.