Insight

Trump On Regulation: A 70 Percent Cut?

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In recent remarks regarding his economic agenda, Donald Trump proclaimed, “We are cutting the regulation at a tremendous clip. I would say 70 percent of regulations can go.” This week, he went one step further, suggesting perhaps 80 percent of regulations could go. Although a spokesman for the campaign said his full economic plan set the target at 10 percent, it is still worth noting both the scale of such potential cuts and their particular implications for the regulatory process. According to American Action Forum (AAF) data on Regrodeo.com, government agencies have enacted more than $972 billion in total regulatory costs since 2006 (unadjusted for inflation). These proposed cuts would – at a minimum – range from $97 to $777 billion in cost reductions, but will likely require far more time, legal battles, and political capital than Trump’s policy advisers may expect.

Getting to the Target Number

Although the 70 percent target is massive in scale, the 10 percent goal is actually pretty much baked into some of the campaign’s already-stated policy preferences. There are $51.6 billion in regulatory costs to states and private entities so far under the Affordable Care Act and $36.3 billion from Dodd-Frank rulemakings. A Trump Administration would (assuming there’s a cooperative Congress) largely repeal both of those pieces of legislation. That gets the tally to within $10 billion of that $97 billion target, assuming his replacements for those laws don’t include new regulatory burdens. There would be a range of sunk costs from the past six years that his administration could not undo; that doesn’t appear to be a factor in Trump’s regulatory reform proposal. Finally, cutting EPA’s Clean Power Plan and Waters of the United States rules yields reductions of $11.9 billion and $462.9 million respectively – more than enough to cover the balance, but again, there are already some sunk costs from both rules.

Getting to the 70 percent target is far more ambitious and likely impossible, as one would need to target some of the most expensive rules across all agencies and affected industries. If one examines the universe of “major regulations,” those with an economic impact of more than $100 million annually, they will find roughly $842 billion in cumulative regulatory costs. Simply cutting those from the books alone would yield more than the target rate. In fact, even if one omits the most expensive rule, fuel efficiency standards for 2017 and beyond, they could still yield roughly $686 billion in reductions. Despite the ambitious level of these reduction goals and their economic impact, the regulatory state would be much more difficult to deconstruct than Mr. Trump presumes.

Implementation Challenges

The main issue with the above approach is that it would involve a great deal of time, court fights, and political capital to be remotely possible. Many of the regulations are directly implementing statutes passed by Congress and that could require the legislative branch to produce legislation repealing the authorizing statute. Obviously, Democrats gaining control of either chamber of Congress (with a Trump Administration) would seriously impede such actions. Even in the case of a unified Republican government, unless the Republicans somehow achieved 60 seats in the Senate, the Democrats would likely filibuster any major deregulatory action based the political profile of many of these issues.

Several rules took years (and sometimes decades) of notice, comment, and legal wrestling to promulgate. Thus even if repealed via executive fiat, they would generally require a new rulemaking. Striking them from the Code of Federal Regulations could take a commensurate amount of time and political controversy to finalize. For example, repealing the Department of Labor's recent Silica rule could yield $9 billion in long-term savings, but that rule took 19 years to complete, from initial publication in the Unified Agenda to final publication in the Federal Register. Repealing the rule won't take a generation, but with interest groups bringing lawsuits, the legal battle will outlast the first term of a hypothetical Trump Administration.

Broadly, take the five largest rules since 2008: they represent $322 billion of the regulatory costs Trump would need to cut in order to meet his 70 percent target. On average, those rules have taken 956 days to make their way through the regulatory process, or 2.6 years on average (the high was 6.3 years). Bet on that time, at minimum, plus additional delays for litigation that will result from attempting to repeal controversial regulation.

Even for "mid-level" rules on a more typical timeline, this process would take some time. For instance, according to the Office of Information and Regulatory Affairs (OIRA), the average rulemaking from the beginning of 2006 until September 2016 had an OIRA review time of 72 days. That's presumably for either the proposed or final stage, so assuming that average for both stages, that's 144 days of potential delay. There's also the notice and comment period for a proposed rule that often lasts from 30 to 90 days. Then an agency must "consider" those comments in their drafting of the final rule – or else risk significant legal challenges – a process that often takes months. This adds up to most rulemakings taking at least a year to finalize.

Furthermore, there are a number of categories of rules that present their own unique challenges. For instance, if one wanted to target the presumably more "low-hanging fruit" of non-major rules, there would only be $128 billion of possible reductions. Although one could perhaps find the 10 percent goal there, it would take much more to get to the 70 percent target. In addition, roughly $32 billion in costs are from independent agencies that would largely be immune from direct executive actions. Reductions there would require a greater political – and likely legislative – effort. Although, given the paucity of current cost-benefit analyses from such agencies, there could be greater savings after a closer examination.

Finally, it should be noted that this analysis is limited to the data AAF has compiled since 2006. There is likely much more regulatory deadwood from the past. Indeed, it's likely some of the most egregious and inherently outdated regulations have collected dust for far too long. However, there is limited cost-benefit data attached to these older rules. In the process of rescinding such requirements, an administration would have to essentially conduct a de novo cost-benefit analysis to justify the deregulatory rulemaking – yet another factor that takes time and resources.

Conclusion

Cutting red tape is a laudable goal. Unfortunately, it would likely take a generation, not an administration, to find $600 billion to $800 billion in regulatory cost savings. Trying to achieve that goal would require using the tedious process outlined in the Administrative Procedure Act, congressional action, blessings from the judicial branch, or likely all three just to achieve the more modest ten percent goal. Cutting regulatory costs is far from impossible. Indeed, the Obama Administration has rescinded past rules, but it is difficult to see how one administration could achieve a $600 billion reduction alone. It took all three branches to create the modern administrative state and it will require all three to amend it as well. Furthermore, those fundamental changes take longer than four years.