



The Daily Dish

Don't Let the Sun Go Down on the Sunset Rule

DOUGLAS HOLTZ-EAKIN | DECEMBER 23, 2021

Last week, AAF's Daniel Bosch and I submitted [comments](#) to the U.S. Department of Health and Human Services (HHS) on the spiffily named [Securing Updated and Necessary Statutory Evaluations Timely; Proposal To Withdraw or Repeal](#) proposed rule, which would repeal the final rule entitled, [Securing Updated and Necessary Statutory Evaluations Timely](#) (SUNSET rule). Under the SUNSET rule, all HHS rules (with some exceptions) would “expire at the end of (1) five calendar years after the year that the SUNSET final rule first becomes effective, (2) ten calendar years after the year of the regulation’s promulgation, or (3) ten calendar years after the last year in which the Department ‘Assessed’ and, if required, ‘Reviewed’ the regulation, whichever is latest.”

The basic idea behind the SUNSET rule is simple: Every 10 years, each HHS rule should be reviewed and assessed, at which point it could be repealed, revised, or kept in place, as appropriate. Not exactly rocket science; just commonsense good government that HHS is now proposing to drop entirely.

But here is the real catch: Something like SUNSET – minus the expiration provision – is the law. SUNSET ensures that HHS complies with Section 610 of the Regulatory Flexibility Act (RFA). [Section 610](#) requires agencies to establish a plan to review their rules and to complete review of those rules within 10 years to “determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.”

Section 610 review is a congressional mandate and “not optional.” Simply dropping the SUNSET rule with no replacement would put HHS in violation of Section 610. As it turns out, this is nothing new, at HHS or elsewhere. In preparing the SUNSET rule, HHS did an internal artificial intelligence review of the Department’s regulatory code and found that 85 percent of regulations issued prior to 1990 had not been edited (along with other problems). HHS stated in the SUNSET rule preamble, “this suggests that humans performing a comprehensive review of Department regulations would find large numbers of requirements that would benefit from review, and possibly amendment or rescission.”