

Insight



House on Regulation: Sunshine for Regulations and Regulatory Decrees and Settlements Act of 2017

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The House of Representatives will soon take up [H.R. 469](#), the “Sunshine for Regulations and Regulatory Decrees and Settlements Act of 2017.” The legislation seeks to reform the so-called “sue and settle” practice wherein agencies and outside interests establish expedited rulemaking schedules under a judicial settlement. This bill is the latest iteration of legislation introduced to multiple sessions of Congress in recent years. Many of the past versions languished for want of either Senate or presidential approval, but – as with the [earlier passage](#) of 14 Congressional Review Act resolutions – there is renewed potential for passage under a unified Republican Congress and administration.

H.R. 469 essentially opens the adjudication of these cases to greater transparency and public input. Agencies must publish the original complaint online within 15 days, and other interested parties can intervene more fully. If an agency does reach a consent decree agreement with the suing party, they must allow for further public input for 60 days before officially signing off on it. Furthermore, the bill allows for greater judicial review of whether or not an agency has followed proper Administrative Procedure Act practices in promulgating the resulting rule.

The American Action Forum (AAF) has previously examined the implications of such legislation. For instance, in 2015 [AAF found](#) that in the first five years of President Obama’s administration there were 21 “sue and settle” rules that brought roughly \$164 billion in total costs and nearly 6 million hours of new paperwork. Looking at similar rules from the end of that earlier sample through the present, AAF found 14 additional rules bringing \$46.5 billion in overall costs and 14.3 million hours of paperwork. This means that since January 21, 2009, there have been roughly \$210.5 billion in regulatory costs and 20 million hours of paperwork burdens attributable to rules instigated by sue and settle actions.

This legislation comes on the heels of Environmental Protection Agency (EPA) Administrator Scott Pruitt issuing a memorandum directing the agency to carry out these very policies on an administrative level. An [AAF analysis](#) of past EPA rules potentially covered by these reforms found that there have been nearly two dozen such rules from EPA alone since 2005, bringing total costs of nearly \$68 billion and more than 8 million hours of new paperwork burdens. While Administrator Pruitt’s actions largely mirror H.R. 469’s policies, codifying such policies into law expands their reach beyond EPA and gives them a deeper permanence than a purely administrative action would.

As with many items in the regulatory process, the practice of “sue and settle” rulemaking does not receive much attention despite its often-significant impacts. However, between EPA’s action last week and this current legislation, this process – and its potential reform – is coming more and more into light. Current efforts may not have much of an impact on the more than \$210 billion in “sue and settle” regulatory costs produced over recent years, but they could bring further accountability to such actions going forward.