



Insight

How the New Congress Can Address Regulation

SAM BATKINS | DECEMBER 3, 2014

As the election results fade into distant memories, it's now time for Congress to switch gears and focus on the policy ramifications of the new political reality. With strong majorities in the U.S. House and Senate, there is [little doubt](#) Republicans will heighten their focus on executive overreach and regulatory reform. Below are a few achievable policy prescriptions for regulatory reform in the next Congress.

- **Codify Executive Orders (EOs) [13563](#), [13579](#), and [13610](#)**

The above EOs are actually from President Obama's own pen. Their goal was to further cement cost-benefit analysis and add "a culture of retrospective review" for federal rules. However, independent agencies largely ignored these orders and retrospective review has had more [failure than success](#). Codifying these EOs would ensure independent agencies follow the same guidelines as cabinet-level agencies and guarantee that retrospective review is here to stay. In 2017, there is nothing to stop the next president from rescinding these EOs, abolishing the White House's role in regulatory oversight, and ending retrospective review. Codifying these orders would be a small, but historic step for the next Congress.

- **Integrate Piecemeal Reform in New Legislation: Upstream Approach**

In 2011, [we developed](#) a regulatory reform proposal that wouldn't have to operate as a stand-alone piece of legislation. Dubbed the "upstream approach," Congress would insert specific guidelines for agencies in all relevant legislation. For example, if a specific bill contained federal mandates, Congress would require agencies to conduct a review of regulations once implemented, demand that agencies repeal duplicative rules, and place a limit on the number of new rules an agency could implement from the new legislation.

Majority Leader Kevin McCarthy might have hinted at such an approach in October's memo on the House [outlook for 2015](#). In it he wrote, "I would like to work with the committees to include basic regulatory reforms in any legislation that authorizes or requires new regulations." The upstream approach alone won't be a game-changer on regulatory reform, but it will help Congress reassert its position in the federal rulemaking apparatus.

- **Address Specific Regulation through CRA and Appropriations Bills**

The Congressional Review Act (CRA) and appropriations bills should also be another tool for Congress to enact regulatory reform. Any measure to repeal a specific regulation under the Congressional Review Act (CRA) will surely be vetoed by President Obama. The CRA has successfully rescinded one regulation: an [ergonomics rule](#) in 2001 when President Bush first took office.

Regardless of possible veto threats, here are a few candidates for CRA votes in the next Congress:

1. [Gainful Employment](#): Finalized in October, Congress could still vote to repeal the regulation, which costs more than [\\$433 million annually](#) and could kick more than 500,000 students out of higher education. Courts have already [struck down](#) a previous iteration of the rule.
2. [Greenhouse Gas Standards \(GHG\) for New Sources](#): EPA's rule is scheduled to be final in January, giving Congress plenty of time to review a measure that ostensibly bans new [coal-fired power plants](#).
3. [GHG for Existing Sources](#): The [\\$8.8 billion](#) annual price tag will surely pique the interest of Republicans, not to mention the breadth of regulation. EPA seeks the power to not only control existing sources of GHG, but also demands that states fundamentally alter their electricity markets, dispatch rates at natural gas plants, and energy efficiency at every conceivable level.
4. [Coal Ash](#): EPA is scheduled to finalize the rule this December, which would require another major round of modifications at power plants. EPA estimates total costs will approach [\\$20 billion](#).
5. [Calorie Labeling for Vending Machines](#): The completely redundant regulation will cost roughly [\\$531 million](#) and impose more than [1.5 million](#) paperwork burden hours.
6. [Ozone](#): Although only recently proposed, this \$15 billion rule affecting every state has a chance to be final in 2015, giving Congress an opportunity to scrutinize the measure. Cost and economic implications will be profound, regardless of the final rule's language.

As for so-called appropriations riders, they too have a short history of success. According to the [Congressional Research Service](#) (CRS), "such provisions are generally applicable only for the period of time and the agencies covered by the relevant appropriations bill." CRS noted that there were just 12 successful attempts to prevent a proposed rule from becoming a final rule, from fiscal year 1999 through 2008. However, Congress was able to pass 22 provisions that withheld funds implementing certain regulations during that same period. Likewise, appropriators were successful in ushering through 15 restrictions of enforcement from 1999 through 2008. With several dozen appropriations riders during this period, this method for restricting regulators is rare, but it can prove effective in short durations.

CONCLUSION

The historic election ushered in a new Senate and a larger House Republican majority and it's clear that regulatory reform will be a [top priority](#) in Congress. President Obama has shown his willingness to reform the regulatory state, albeit with limited success. The next two years will determine whether President Obama wants a legacy of reform and if Republicans are willing to offer him a bill he can sign.