



Insight

The Past, Present, and Future of Congress on Regulatory Reform

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Since 2011, when Republicans won a majority in the U.S. House, regulatory reform has been a key plank of the legislative agenda. From every conceivable angle, legislators have devised solutions to regulatory accumulation, abusive lawsuits, and the regulatory process. The broad goals have been to increase transparency for the public and to reassert Congress's constitutional role as a lawmaking body.

Although no regulatory reform bill has made it to President Obama's desk (save a measure repealing ambush union elections), there are nevertheless benefits of comprehensive reform. For example, earlier this year the American Action Forum (AAF) found **\$48.5 billion** in cost savings and 1.5 billion fewer hours of paperwork if the SCRUB Act and "sue and settle" reform were signed into law. Furthermore, the REINS Act **could save** \$27 billion in costs and 11.5 million paperwork burden hours.

With plenty of legislation moving through the House and Senate, AAF has recapped seven of the comprehensive reform bills in Congress. This list is hardly exhaustive, but it does represent the bulk of comprehensive legislation to date.

- **SCRUB Act: Summary:** Bill would establish a "Retrospective Regulatory Review Commission" designed to reduce the costs of past regulation. The Commission would generate a pool of regulations for agencies to rescind. If an agency chooses to implement a new rule, it must first cut a rule from the Commission's pool of regulations. **Bottom Line:** SCRUB would create a Blue Ribbon Commission that would not only review past outdated or duplicative rules, but also ensure that new rules have a plan for future review. **Status:** reported out of the House Judiciary Committee on a 17-12 vote.
- **Regulatory Accountability Act (RAA): Summary:** Creates category of "high-impact" rule, or a measure that would impose annual costs on the economy of \$1 billion or more; requires an advanced notice of proposed rulemaking for a high-impact rule, in addition to a public hearing before adoption. Requires agencies to adopt rules on the basis of the best evidence and the least cost to the economy. Raises the level of judicial scrutiny from "arbitrary and capricious" to "substantial evidence." **Bottom Line:** The RAA would fundamentally transform how agencies implement major rules and give the public more time to scrutinize expensive regulations. **Status:** passed the House by a 250-175 vote and received in the Senate Homeland Security and Government Affairs Committee.
- **Unfunded Mandates Transparency Act: Summary:** Revises current law analyzing unfunded mandates to include "direct costs," including foregone business profits, costs passed to consumers, and behavioral changes. The bill eliminates the current exemption for independent agencies. The bill also grants the courts powers to force agencies to comply with unfunded mandate reporting requirements. **Bottom Line:** The Unfunded Mandates Transparency Act is designed to increase transparency and the ability of Congress to scrutinize federal mandates contained in legislation. **Status:** passed the House by a 250-173 vote and received in Senate Homeland Security and Government Affairs Committee.
- **REINS Act: Summary:** The REINS Act requires Congress to approve all major rules before they can take effect. If Congress does not approve of a rule in 70 session or legislative days, it will not take effect. **Bottom Line**

: REINS (Regulations from the Executive in Need of Scrutiny) Act is essentially the inverse of the Congressional Review Act. Instead of resolutions of disapproval once a rule is final, REINS authorizes Congress to approve of every major rule through resolutions of approval. **Status:** reported out of the House Judiciary Committee on a 15-10 vote.

- **RAPID Act. Summary:** The legislation is designed to ease the process for federally-funded and federally permitted construction projects. It allows lead agencies conducting reviews more power to conclude lengthy inter-agency reviews and requires that lawsuits challenging projects to be filed not less than 180 days from the agency's decision. **Bottom Line:** the goal of the legislation is to streamline the federal permitting process for construction and infrastructure projects. **Status:** reported out of the Judiciary Committee on a 15-11 vote.
- **Sunshine for Regulatory Settlements Act. Summary:** The Sunshine for Regulatory Settlements Act requires a federal agency against which a civil action is brought to publish a notice to sue in at least 15 days; it requires an agency to publish, once the lawsuit is final, the settlement in the Federal Register 60 days before it's filed with the court; and the bill requires the Attorney General to approve the settlement. **Bottom Line:** The goal of the legislation is to increase transparency for third-party lawsuits, where an interest group sues a federal agency to bring about a swift regulatory action. **Status:** reported out of the House Judiciary Committee on a 20-11 vote.
- **ALERT Act. Summary:** The ALERT Act would require each federal agency to submit a monthly report to the Office of Information and Regulatory Affairs (OIRA) on pending regulations for the following year. It requires OIRA to publish an annual report on the number of rules and the total costs of all proposed or final rules; and it prohibits a rule from taking effect unless posted on the Internet for at least six months, subject to a few exceptions. **Bottom Line:** This bill is designed to heighten transparency of the regulatory state. Routinely, schedules of federal regulation are submitted late, **if at all**, and this bill would put teeth in previously passed transparency bills. **Status:** reported out of the House Judiciary Committee on a 14-9 vote.

Conclusion

The Senate is doubtless going to take up several bills outlined here. Some of this legislation contains bipartisan support and it will be interesting to see the president's response if any bill earns strong majorities in both houses.