



THE FREE STATE FOUNDATION

A Free Market Think Tank for Maryland.....Because Ideas Matter

Perspectives from FSF Scholars
August 22, 2017
Vol. 12, No. 28

Real Progress in Regulatory Reform

by

Randolph J. May *

[The Washington Times](#)

August 16, 2017

It's true. A full seven months after President Trump's inauguration and the convening of a new Congress, there is a sense of frustration that not enough has been accomplished. Hopefully, when Congress and the president get back to Washington in September, we'll see solid progress on measures to cut taxes and reform the tax code, and to replace Obamacare with a more market-oriented system. Not to mention passage of a budget and action on the debt ceiling.

But it's not true that nothing significant has been achieved. In the area of regulatory reform, both Mr. Trump and Congress have taken meaningful actions that serve to increase the accountability of the federal bureaucracy to the popularly elected branches of government. And these actions, by curtailing regulatory excesses, will help spur economic growth and job creation.

According to the 2016 edition of the Competitive Enterprise Institute's annual "Ten Thousand Commandments" compilation, at an estimated \$1.88 trillion a year, regulatory compliance costs are equal to about half of all federal spending. On a per-household basis, these regulatory costs add up to more than \$14,000 a year.

The Free State Foundation
P.O. Box 60680, Potomac, MD 20859
info@freestatefoundation.org
www.freestatefoundation.org

In light of the overall regulatory burden's size, it is not surprising that just the announcement of regulatory reform initiatives by the president and Congress — even aside from their full implementation — has unleashed entrepreneurial “animal spirits” that lead to increased economic activity. This is especially true among small businesses that play a major role in powering the economy. The latest jobs report that puts the unemployment rate at 4.3 percent — the lowest rate in 16 years — is an encouraging indicator.

Let's first review some of the Trump administration's regulatory reform initiatives.

Ten days after his inauguration, President Trump issued Executive Order 13771, “Reducing Regulation and Controlling Costs,” which declares that “it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.” To accomplish this, the order establishes two requirements: First, each agency shall identify two regulations to be repealed for each new regulation proposed; and second, any new incremental costs associated with new regulations must be offset, to the extent permitted by law, by the elimination of the costs associated with repealed regulations.

Even if we assume that the “two-for-one” and “no incremental costs” requirements may not be achievable with mathematical precision, the message sent to agency heads by these requirements is nevertheless clear: The goal is to reduce regulatory burdens and overall regulatory costs.

To help ensure Executive Order 13771's effectiveness, Mr. Trump followed up on Feb. 24 with Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” This order contains two key requirements: First, each agency must designate a regulatory reform officer to oversee the implementation of the agency's regulatory initiatives and policies; and second, each agency must designate a regulatory reform task force to evaluate existing regulations and make recommendations regarding their repeal, replacement or modification.

Significantly, the Feb. 24 executive order directs each task force to identify regulations that: eliminate jobs; are outdated, unnecessary or ineffective; impose costs that exceed benefits; or create a serious inconsistency or otherwise interfere with regulatory reform initiatives. These are certainly proper guideposts for evaluating regulations.

Consistent with the executive orders, individual agencies are in the process of conducting rule making proceedings to repeal or modify some of the most notorious Obama administration regulatory overreaches. For example, the Environmental Protection Agency has proposed to rescind the 2015 Water of the United States rule, which redefined “navigable waters” in a way that vastly expanded federal power to impose environmental regulations. And the Department of Labor has proposed rescinding the so-called Persuader Rule, which makes it more difficult for employers to seek legal advice in connection with labor-organizing activities.

Despite its failures in other respects, Congress deserves credit for employing the Congressional Review Act (CRA) — which had been used only once previously — to nullify more than a dozen Obama-era “midnight regulations.” The CRA allows Congress, with a simple majority vote and the president's signature, to overturn agency rules if it acts within 60 “legislative” days

after notification that the rule is final. Using the CRA, Congress has repealed some of the most controversial and costly regulations from the Securities and Exchange Commission, Federal Communications Commission, and the departments of Education, Interior and Labor.

The regulatory reform actions taken by Mr. Trump and Congress have a beneficial impact on the economy. More fundamentally, they also are important because, consistent with the Founders' constitutional vision, they are steps in the direction of restoring more political control over the bureaucracy. The executive orders issued by Mr. Trump put in place measures that help his political appointees at the federal agencies carry out the chief executive's regulatory policies. And Congress' use of the long-neglected Congressional Review Act to overturn regulations with which it disagrees reinvigorates the legislature's lawmaking function.

Depending on your perspective, there may be much to criticize when it comes to the actions — or inactions — of President Trump and Congress. But with regard to regulatory reform, there have been noteworthy accomplishments.

* Randolph J. May is President of the Free State Foundation, an independent, nonpartisan free market-oriented think tank located in Rockville, Maryland. *Real Progress in Regulatory Reform: Trump's Washington Is Releasing Pent-Up Entrepreneurship* was published in *The Washington Times* on August 16, 2017.