

Introduction to the Fall 2020 Regulatory Plan

Regulatory reform marks one of the central and abiding successes of President Trump's Administration. From the beginning, the President has focused on regulatory reform as a principal means both to promote economic growth and to secure the liberty of Americans. That effort has borne tremendous fruit, as agency after agency has finalized deregulatory actions that create American jobs and pull back the long arm of Washington. Many of the most important deregulatory actions have issued in the past fiscal year, leading to the greatest reduction in regulatory burden in decades. As significant, the President has reformed the way regulation happens in the United States, thereby promoting the rule of law.

Reducing Regulatory Burden

At the beginning of his Administration, President Trump made the reduction of regulatory burden a major priority for all Executive agencies. Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs* (Jan. 30, 2017), directs a two-fold approach to reform: It requires that agencies, consistent with legal obligations, eliminate two regulations for each new significant regulation and achieve yearly burden reduction goals.

Fiscal Year 2020 witnessed record success under EO 13771, as agencies achieved *regulatory cost savings of more than a hundred billion dollars*. Agencies also continued to exceed EO 13771's two-for-one directive in Fiscal Year 2020, issuing more than three deregulatory actions for every regulatory action. Adding these accomplishments to the successes of previous fiscal years, agencies have achieved the following:

- Eliminated \$198.6 billion in overall regulatory costs across the federal government; and
- Eliminated 5.5 regulations for every new significant one added (538 deregulatory actions overall).

These hundreds of deregulatory actions have diminished the influence of Washington, allowing Americans to make decisions for themselves and as members of their States and various communities, with their actions directed by their own judgment and initiative rather than by federal mandates. Farmers are now free to farm their land as they see fit and protect their livestock from predators, subject to the laws they themselves enact through their State and local officials. Small businesses can expand and create jobs. Truckers can safely move vital goods more quickly to the Americans who need them most. Automakers can build the safer and more affordable cars that American families desire. Major infrastructure projects can move forward more quickly. And organizations of religious believers are free to provide health insurance in a way that comports with their deeply-held moral convictions.

Many deregulatory actions have prepared America for the economy of the future. Reforms of environmental and energy regulations have propelled America to a position of energy dominance while maintaining and advancing the cleanliness of our air, water, and land. Pathbreaking regulatory reforms have eased the way for American space-launch companies to

continue to explore and develop the last frontier. And the recently-released federal regulatory strategy for artificial intelligence, which relies on deregulatory principles while protecting national security and other important priorities, will ensure that America retains the lead in this burgeoning field.

The past year saw the emergence of a devastating new virus, known as COVID-19, that has affected every aspect of American life. Millions of Americans have been attacked by this virus, and millions more have experienced its economic effects. Under the President's direction to focus all available resources on the fight against COVID-19, agencies rapidly identified and streamlined, suspended, or eliminated regulations that stood in the way of the most effective response to the virus. Agencies enabled innovative medical strategies, such as widespread deployment of telemedicine; removed restrictions on scope of practice to increase the supply of qualified medical staff; allowed swifter transportation of critical goods such as food and medicine; and moved many in-person agency services to electronic platforms. The success of these temporary flexibilities called into question the need for some of the waived regulations in the first place; pursuant to President Trump's Executive Order 13924 and in order to support America's economic recovery, agencies are pursuing or considering approximately one hundred deregulatory actions to make many of these flexibilities permanent.

Systemic Regulatory Reform: Promoting the Rule of Law

The American system of government is built on the rule of law. That concept includes certain basic requirements, for instance, that legal mandates will be imposed only in accordance with valid procedures; that those subject to the law must be able to understand and comply with it; that penalties may be imposed only for violations of the law; and that violations must be determined through a fair process. One of President Trump's principal goals in pursuing regulatory reform has been to promote the rule of law in the administrative process.

In furtherance of that goal, in October 2019 the President signed Executive Orders 13891 and 13892, which reform federal guidance practice. While guidance documents, which by law are not required to undergo the notice-and-comment process that provides for public input on regulations, may provide needed clarification of existing legal obligations, they have sometimes been stretched to impose new obligations. Moreover, members of the regulated public (especially if unrepresented by counsel) have sometimes struggled to find relevant guidance documents. The President's Executive Orders directed agencies to review their guidance documents; upload those they wish to retain in effect to easily-searchable centralized web portals; and seek public comment on the most important guidance documents going forward. The Orders also made clear that guidance, standing alone, can never serve as the basis for liability. Over the last year, agencies have incorporated many of the requirements of these Executive Orders into their own regulations.

Further to promote the rule of law, the President in Executive Order 13924 set forth ten principles to reform administrative enforcement and adjudication. This "Regulatory Bill of Rights" is based on one of the great insights of our system of government: that enforcement may be both effective and fair, that we may safeguard our citizens while respecting their rights. The

list includes the principle that the agency, not the citizen, bears the burden of proof; that enforcement actions must be prompt; that agency adjudicators must be independent of enforcement staff; that the government must provide favorable evidence in its possession to the subject of enforcement; and others equally important. These principles are at the very heart of American notions of the rule of law. Since issuance of the Executive Order, agencies have worked with OIRA to review their existing procedures and conform them to these principles.

Conclusion

Four years of regulatory reform has promoted the prosperity and liberty of Americans and advanced the rule of law. This Regulatory Plan continues that tradition.