Economic Policy Institute

Understanding the anti-regulation agenda

The basics

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One of President Trump's first actions after taking office was to issue an executive order requiring federal agencies to identify at least two existing regulations to "repeal" when proposing a new regulation. Republicans in Congress also moved quickly to make it more difficult to regulate. Within the first 90 days of the session, the House and Senate have considered a number of bills limiting regulation and more than a dozen resolutions that would repeal existing regulations.

One way to understand this agenda is to consider who benefits from rolling back existing regulations and limiting agencies' ability to regulate.

Regulations help implement laws

While much has been said about the value and burden of regulations, they are merely an **administrative tool aimed at achieving a policy goal that was legislated by Congress**—such as safe workplaces, or secure retirement. Congress passes a law and, often, directs an agency to issue a regulation to implement the law. Think of it this way: Congress says bake a cake and it is up to the agency charged with the baking to determine how much sugar, how many eggs, and the temperature. Regulations (sometimes referred to as "rules") are the details that implement the laws.

Regulations adapt laws to changing times

Laws aren't static. Take the Occupational Safety and Health Act of 1970. It established the Occupational Safety and Health Administration, an agency within the Department of Labor (DOL) charged by Congress with ensuring "safe and healthful working conditions." Through the Act, Congress requires that OSHA periodically review new threats, including workplace exposure to harmful chemicals. ***In recent years, research showed that roughly 2.3 million workers in construction, fracking, and other industries were***

being exposed to cancer-causing silica dust in their workplaces.[1] So DOL experts and scientists studied the threat and, in June 2016, issued a final rule to limit workers' exposure to silica dust. The rule defines how much exposure is safe and how to prevent exposure to unsafe levels.

Winners and losers under the current attack on regulations

In reviewing the attacks on regulation, it is helpful to consider which interests are served by rolling back specific rules. The following text boxes summarize the three main regulation-related actions by the administration and Congress. A review of the targeted regulations and proposed limits on rulemaking reveals ***a policy agenda that favors corporate profits ahead of worker protections and public health***.

More details on the rules and measures and their impact can be found in EPI's Worker Rights and Wages Policy Watch.[2]

The box below examines Department of Labor regulations that Congress has blocked or is attempting to block under a rarely used procedure, the Congressional Review Act (CRA), which provides for a quick process to overrule recent regulations. It is being used to block regulations that were issued in the last several months of the Obama administration.

Labor regulations targeted by Congress using the Congressional Review Act

Fair Pay and Safe Workplaces rule

Helps ensure that taxpayer dollars are not awarded to contractors who violate basic labor and employment laws.

Who benefits from the regulation? Workers, taxpayers, law-abiding contractors.

Who benefits from repeal? Contractors that have violated health and safety protections or failed to pay workers. For example, more than 300,000 workers have been the victims of wage-related labor violations while working under federal contracts in the last decade.[3]

Occupational Safety and Health (OSHA) record-keeping rule

Ensures that employers maintain accurate records of injury or illness of workers for five years.

Who benefits from the regulation? Workers, law-abiding employers.

Who benefits from repeal? Employers who violate health and safety laws. Without this rule, unscrupulous employers were able to cheat the record-keeping requirements and avoid liability for health and safety violations.

State and local retirement savings initiatives for workers

Clarifies the legal status of specific savings arrangements, enabling states and localities to establish retirement savings arrangements for private-sector workers who would not otherwise have access to retirement accounts.

Who benefits from the regulation? The estimated 55 million private-sector workers age 18 to 64 who do not have access to a retirement savings plan through their employers.[4]

Who benefits from repeal? The financial industry, by keeping out competition for their services. When state and local governments provide mechanisms for workers to save for retirement, those workers do not have to purchase services from the financial industry.

Rule establishing occupations for drug testing

Narrows circumstances under which individuals filing for unemployment benefits may be subjected to drug testing by clarifying when drug testing may be imposed.

Who benefits from the regulation? Workers who have lost their jobs and seek the unemployment benefits they are entitled to without barriers or stigma.

Who benefits from repeal? Opponents of unemployment benefits who seek to reduce benefit take-up by attaching requirements and employers seeking to reduce payroll taxes (which help finance unemployment benefits).

The box below examines a proposed set of laws targeting regulations in general.

Legislation limiting the ability to modernize regulation to respond to new challenges and threats

Regulations from the Executive in Need of Scrutiny (REINS) Act

Requires congressional approval for a major rule to take effect.

Who benefits and who loses? Corporate interests and their lobbyists stand to gain. Groups that lack the financial resources to lobby Congress stand to lose.

The bill shifts regulatory power from agency officials with subject-matter expertise to members of Congress, enabling regulated entities to lobby against proposals that would benefit the public but impose burdens on businesses.

Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act

Targets regulations for elimination based on only the costs associated with the rule, not on benefits, which would be part of a true cost-benefit analysis.

Who benefits and who loses? Corporate interests benefit and workers, consumers, and the environment lose.

By focusing on costs, SCRUB Act makes policies that benefit the public—including environmental, health and safety, and consumer protections—vulnerable to repeal.

Regulatory Accountability Act

Fundamentally alters the regulatory process by requiring agencies to place cost considerations ahead of all other considerations. The act also gives regulated entities the opportunity to control the rulemaking process by requiring that agencies analyze "any substantial alternatives" submitted by "interested persons."

Who benefits and who loses? Corporate interests benefit and workers, consumers, and the environment lose.

The bill provides corporate interests with unprecedented power to interfere with and delay the regulatory process, and prioritizes industry profits over health, safety, and other public goods. Opponents of the bill include numerous public health groups, including the American Heart Association, American Lung Association, American Public Health Association, Asthma and Allergy Foundation of America, and Trust for America's Health.[5]

OIRA Insight, Reform, and Accountability Act

(OIRA stands for the Office of Information and Regulatory Affairs; it is part of the Office of Management and Budget in the Executive Office of the President)

Imposes additional, burdensome requirements on the rulemaking process and undermines the role of independent agencies by giving the Executive Office of the President oversight of their regulatory actions.

Who benefits and who loses? Corporate interests benefit and workers, consumers, and the environment lose.

Requiring independent agencies (for example, the Consumer Financial Protection Bureau, Consumer Product Safety Commission, and the Federal Trade Commission) responsible for monitoring Wall Street and protecting consumers to report to the president when issuing regulations exposes the process to political influence. This goes against congressional intent in designating these agencies as independent. It is more likely that corporate interests will be able to exert control over the process when it is politicized.

Regulatory Integrity Act of 2017

Prohibits agencies from issuing communications that directly advocate for a pending regulatory action and requires agencies to produce a list of public communications on regulations.

Who benefits and who loses? The public loses. The benefits go to those who have the resources to get the information they need regardless of public communications, like corporate interests, when the broader public is kept in the dark regarding regulation.

Agencies are likely to limit communications on regulations to avoid violating the act, depriving the public of information on proposed rules and depriving agencies of the opportunity to get feedback from public engagement.

For example, a 2015 report from the White House Council of Economic Advisers estimated that investment advice that steers retirement savers into high-cost products that generate fees and commissions for financial advisers costs savers $17 billion each year.[6] This is the kind of fact that the DOL communicated when explaining the need for the "fiduciary rule" (see case study below).

The box below examines President Trump's actions limiting regulation.

Executive actions limiting the ability to modernize regulation to respond to new challenges and threats

Executive Order on Enforcing the Regulatory Reform Agenda

Requires that agencies designate a "regulatory reform officer" and establish a regulatory reform task force to identify existing regulations for replacement or repeal.

Who loses? Workers, consumers, and the environment—all of which benefit from workplace health and safety requirements, and consumer protections.

Executive Order on Reducing Regulation and Controlling Regulatory Costs

Mandates that for every new regulation issued at least two prior regulations be identified for elimination.

Who loses? Workers, consumers, and the environment—all of which benefit from workplace health and safety requirements, and consumer protections.

By focusing on costs in targeting regulations for repeal, the executive order makes policies that benefit the public—including environmental, health and safety, and consumer protections—vulnerable to repeal.

Presidential Memorandum on Fiduciary Duty Rule

Delays the fiduciary rule by directing the DOL to examine the rule and prepare an updated economic and legal analysis on the rule, and directs the labor secretary to rescind or revise the rule if he determines that it would, among other things, result in "dislocations or disruptions within the retirement services."

Who loses? Middle-class families who stand to lose tens of thousands of dollars in foregone retirement savings.

The fiduciary rule requires that financial professionals act in their clients' best interests when giving retirement investment advice. Each affected family loses tens of thousands of dollars over a lifetime from getting "conflicted advice" that leads to lower investment returns. However, delaying the rule benefits the financial services industry, by enabling predatory practices by financial professionals to continue.

Case study: The fiduciary rule

The "fiduciary rule" (issued by the Department of Labor in April 2016 and originally set to go into effect April 10, 2017) requires that financial professionals act in their clients' best interests when giving retirement investment advice. The rule updates the Employee Retirement Income Security Act of 1974 (ERISA). ERISA, which set minimum standards for retirement plans in private industry, was enacted a time when employer-managed pensions that provided a guaranteed income were still the norm. This rule acknowledges the new workplace reality that the vast majority of workers with any retirement plan at all now have defined contribution plans—like 401(k)s and individual retirement accounts—instead of the defined benefit plans that were more common in past decades. Unlike defined benefit plans, defined contribution plans depend on individual savers making investment decisions to ensure a secure retirement.

Without the fiduciary rule, financial advisers can, for example, legally steer clients to investments that provide the adviser with a commission but offer a lower rate of return to the client. "Conflicted" advice is estimated to cost retirement savers $17 billion a year. This rule will benefit middle-class families by saving them tens of thousands of dollars per affected family for their retirement over a lifetime of savings. However, it will be costly to the financial services industry, which benefits from loopholes that allow predatory practices by financial professionals.

Under direction from President Trump—in a thinly veiled attempt to ultimately weaken or rescind the rule—the Department of Labor has delayed implementation of the rule by 60 days. Even the delay itself will be expensive for retirement savers. Every seven days that the fiduciary rule's applicability is delayed costs retirement savers an estimated $431 million over the next 30 years. Thus, the costs of a 60-day delay to retirement savers is $3.7 billion over 30 years.[7]

Case study: The silica rule

The Trump administration announced that it would delay enforcement of an Occupational Safety and Health Administration rule limiting workers' exposure to silica dust, which has been linked to lung cancer. Roughly 2.3 million workers are exposed to silica dust in their workplaces. The rule, which was to be enforced on June 23, was projected to provide net benefits of $7.7 billion annually. It would have saved over 600 lives and prevented more than 900 new cases of silicosis each year.[8]

Why regulations come under attack

When a particular constituency is unhappy with a law, they can then attack the regulation that implements that law. Highlighting only the burdens of the regulation while ignoring its benefits in order to weaken the law's effect has been a dismayingly effective strategy; the word "regulations" is routinely paired reflexively with "burdensome."

Let's examine the most frequent attacks on regulation.

Myth: Government regulations cost net jobs

Research on the relationship between employment and regulations generally find that **regulations have a modestly positive or neutral effect on employment**.[9]

How could regulations create jobs? Though regulations sometimes reduce jobs in one area, they create jobs in another. For example, factories making lead paint shut down after regulations banning lead paint were issued in the late 1970s, but enterprises manufacturing lead-free alternatives arose in their place. And some of the older factories hired people to retool their machinery to begin manufacturing lead-free paint.

Mass layoffs are not caused by regulations. "Mass layoff events" are incidents in which at least 50 unemployment insurance claims are filed against an employer during a 5-week period. According to the latest data available (2011 and 2012), **employers cite regulations as the reason for mass layoffs in just a tiny share of mass layoff events—*one-quarter of one percent***.[10]

Importantly, **the *lack* of sensible regulations can lead to economic catastrophe and the loss of millions of jobs**. The belief that financial markets can "self-regulate" led to a wave of deregulation and lax enforcement beginning in the late 1970s and persisting right up to the financial crisis in 2007–2009. **Deregulation and lax enforcement played a major role in the housing bubble and the financial and economic crisis that ensued when the bubble burst**.[11] Nearly nine million jobs were lost in the Great Recession in 2008 and

2009. In the wake of this crisis, officials in charge of the nation's two main financial regulatory agencies stated that self-regulation had failed. As Christopher Cox, then-chairman of the Securities and Exchange Commission, stated, "We have learned that voluntary regulation does not work. … The lessons of the credit crisis all point to the need for strong and effective regulation."[12]

Myth: Costs of regulation outweigh the benefits

To assess whether a regulation should be undertaken, agencies consider a comprehensive set of benefits and costs over a broad time horizon. Of course, the effects can be difficult to monetize and compare with one another. For example, regulations establishing workplace safety standards save lives and environmental protection regulations result in conservation of natural resources and improved public health which may provide benefits for generations. The "silica rule" described earlier may have substantial up-front costs as businesses invest in safety equipment to reduce workers' exposure to harmful silica dust. But the benefits pay off in terms of reduced illness and saved lives over decades. And the need for the safety equipment creates jobs for the people producing the equipment.

Federal regulations are providing a net benefit to society of over $100 billion per year

Despite the challenges in rigorously assessing costs and benefits, federal agencies typically undertake a cost-benefit analysis when promulgating a major rule. Each year the Office of Management and Budget (OMB) reports to Congress on the costs and benefits of federal regulations, with a focus on regulations for which agencies are able to estimate and monetize both costs and benefits. In its most recent report, OMB found that during the last administration, **from January 21, 2009, to September 20, 2015, the estimated annual net benefits (benefits minus costs) of major federal regulations was between $103 and $393 billion**.[13] In other words, federal regulations are providing a net benefit to society of over $100 billion per year. And these numbers are consistent with prior OMB reports.

Consider regulations to combat climate change. Without regulation, firms that emit greenhouse gases—such as coal-fired power plants—face zero costs for their emissions. But these emissions lead to global climate change that threatens to impose truly enormous economic costs in the future. Climate change is forecast to cause enormous damage to global gross domestic product (GDP) in coming decades. In the long run, this damage is forecast to be 5 to 20 percent of global GDP each year. To give a sense of how much damage this is, 5 percent of U.S. GDP alone in 2017 is just under one trillion dollars.[14]

In 2007, the Supreme Court ruled that greenhouse gases were air pollutants that were a danger to public health. Because of this ruling, when the Clean Air Act of 2015 was enacted and Congress failed to pass legislation curbing greenhouse gas emissions, the Environmental Protection Agency became obligated to regulate coal industry emissions under the Clean Air Act. So, in 2015, the EPA issued the Clean Power Plan, which set limits on emissions in the generation of electricity at power plants. The EPA estimates that when the rule is fully in place in 2030, the reduction in pollutants as a result of the rule will lead to net climate and health benefits of $26 to $45 billion dollars per year. These benefits include preventing hundreds of thousands of missed school days and work days, tens of thousands of asthma attacks, and thousands of premature deaths each year.[15]

The ratio of benefits to costs is about 7-to-1

OMB reviewed major regulations from 2000 to 2010 and estimated that **the average annual benefit of major regulations is about seven times the cost**.[16] OMB's findings are even more significant when you consider studies showing that the cost estimates used by government regulators generally are too large.[17] Also, lots of benefits are never monetized but almost all costs are. In the mercury rule, for example, the benefits of higher IQ for infants due to less heavy-metal exposure was never monetized, even though it was the primary reason the rule was adopted. But because it was a clear endangerment to public health the rule didn't need to pass a cost-benefit test.

Conclusion

The administration and congressional Republicans are advancing an anti-regulatory agenda, with little consideration for the importance of these regulations to workers, consumers, and the environment. Considering that many of the rules targeted for repeal provide broad benefits in terms of public health, environmental protections, and worker protections that vastly outweigh the compliance costs for businesses, this agenda reveals a willingness to place corporate concerns ahead of the American people.

Endnotes

1. Occupational Safety and Health Administration. "OSHA's Final Rule to Protect Workers from Exposure to Respirable Crystalline Silica," accessed April 7, 2017.
2. Economic Policy Institute, Worker Rights and Wages Policy Watch, last updated March 30, 2017.
3. Office of Senator Elizabeth Warren, *Breach of Contract: How Federal Contractors Fail American Workers on the Taxpayer's Dime*, March 2017.
4. David John and Gary Koenig, "Workplace Retirement Plans Will Help Workers Build Economic Security." AARP Public Policy Institute fact sheet 317, October 2014.
5. American Public Health Association, "Health Organization Letter Opposing H.R. 5, the Regulatory Accountability Act of 2017," January 10, 2017.
6. White House Council of Economic Advisers, *The Effects of Conflicted Advice on Retirement Savings*, February 2015.
7. Heidi Shierholz, "EPI Comment on the Proposal to Extend the Applicability Date to the Fiduciary Rule," Letter to the U.S. Department of Labor Office of Regulations and Interpretations, March 17,

2017.

8. Occupational Safety and Health Administration. "OSHA's Final Rule to Protect Workers from Exposure to Respirable Crystalline Silica," accessed April 7, 2017.

9. Josh Bivens, "Testimony before the Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law," February 24, 2016; John Irons and Isaac Shapiro, *Regulation, Employment, and the Economy: Fears of Job Loss Are Overblown*, Economic Policy Institute, April 12, 2011.

10. U.S. Bureau of Labor Statistics, "Extended Mass Layoffs in 2012," *BLS Reports*, September 2013.

11. See, for example, Joseph Stiglitz, "Regulation and Failure," in *New Perspectives on Regulation*, David Moss and John Cisternino, eds. (Cambridge, Mass.: The Tobin Project, 2009), p. 21; *Financial Crisis Inquiry Report*, (Washington, D.C.: Financial Crisis Inquiry Commission), January 2011, p. xviii; Alan Greenspan, testimony before the House Committee on Oversight and Government Reform, October 23, 2008; Christopher Cox, testimony before the House Committee on Oversight and Government Reform, October 23, 2008; Ben S. Bernanke, "Monetary Policy and the Housing Bubble," speech presented at the Annual Meeting of the American Economic Association, Atlanta, Ga., January 3, 2010.

12. Christopher Cox, testimony before the House Committee on Oversight and Government Reform, October 23, 2008.

13. Office of Management and Budget. *2016 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*, 2016.

14. The Forum on Religion and Ecology at Yale, "The Stern Review on the Economics of Climate Change," accessed April 7, 2017.

15. U.S. Environmental Protection Agency. "Fact Sheet: Overview of the Clean Power Plan." Accessed April 7, 2017.

16. John Irons and Isaac Shapiro, *Regulation, Employment, and the Economy: Fears of Job Loss Are Overblown*, Economic Policy Institute, April 12, 2011.

17. John Irons and Isaac Shapiro, *Regulation, Employment, and the Economy: Fears of Job Loss are Overblown*, Economic Policy Institute, April 12, 2011.