

## Tax & Financial Services Policy Group

### Regulatory Roundup: A Look at the Regulatory Reform Efforts in Washington

Since taking office, President Trump has issued a series of executive orders and presidential memoranda to advance his deregulatory agenda, which aims to put an end to “job-crushing regulations” that have cost the U.S. economy \$2 trillion per year. Republicans on Capitol Hill have been eager to help the president roll back a number of Obama-era regulations through the use of the *Congressional Review Act* (“CRA”) — a procedure that allows Congress to nullify most major rulemakings with an annual economic impact of \$100 million or more.

Before the Trump Administration, the CRA was rarely used — it had only been successful in overturning the Department of Labor’s ergonomic rule issued by the Clinton Administration. However, with a unified Republican government in 2017, Congress was able to send 14 CRA resolutions to President Trump for signature. The resolutions overturned regulations covering a wide-range of industries, including energy, education, labor, telecommunications, and financial services.

In this special edition of the *Tax Policy Update*, McGuireWoods’ tax policy team provides a quick review of the administration’s major deregulatory achievements to date as well as an update on what Congress has been doing to reform and modernize the federal rulemaking process.

#### Presidential Actions on Regulatory Reform

In the first week of the Trump Administration, the White House issued a memorandum calling for a regulatory freeze across all agencies. The regulatory freeze was followed by a series of orders directing agencies to conduct a comprehensive review of existing rules. The administration has specifically targeted regulations in the energy, financial, and tax policy sectors.

## **List of Executive Actions on Regulatory Reform**

**April 21, 2017**

### **Identifying and Reducing Tax Regulatory Burdens**

#### **Executive Order 13789**

- Treasury Secretary Steven Mnuchin is ordered to review all significant tax regulations issued in 2016 and identify those that are burdensome, overly complex, and exceed statutory authority.

### **Presidential Memo: Financial Stability Oversight Council**

- Treasury Secretary Steven Mnuchin is ordered to review the Financial Stability Oversight Council's determination and designation process for identifying systemically important nonbank financial institutions.

### **Presidential Memo: Orderly Liquidation Authority**

- Treasury Secretary Mnuchin is directed to review the orderly liquidation authority.

**March 27, 2017**

### **Presidential Memo: White House Office of American Innovation**

- Aims to reform and reshape government bureaucracy and gridlock through private sector solutions. Office to be led by the president's advisor Jared Kushner as well as business leaders from around the country.

**Feb. 24, 2017**

### **Enforcing the Regulatory Reform Agenda**

#### **Executive Order 13777**

- Directs federal agencies to appoint a Regulatory Reform Officers (RRO) to oversee the Administration's various regulatory reform initiatives. Calls for the creation of Regulatory Reform Task Forces at federal agencies. Task forces will evaluate existing regulations and identify regulations that inhibit economic growth and job creation.
- Directs the task forces to produce reports identifying regulations for repeal, replace, or modification.

**Feb. 3, 2017**

### **Presidential Memo: Fiduciary Rule**

- Directs the Labor Department to conduct a full economic and legal analysis on the impact of the Fiduciary Rule.
- After such an analysis, the department should rescind the rule if it is not consistent with the Trump administration's priorities.

Feb. 3, 2017

**Core Principles for Regulating the U.S. Financial System**  
**Executive Order 13772**

- Establishes core principles for the regulation of the U.S. financial system. Directs the Treasury Secretary to work with FSOC and identify any existing regulations, guidance, and laws that may inhibit the promotion of the core principles.

Jan. 30, 2017

**Reducing Regulation and Controlling Regulatory Costs**  
**Executive Order 13771**

- For every one new regulation issued, at least two prior regulations must be identified for elimination.

Jan. 20, 2017

**Presidential Memo: Regulatory Freeze**

- To all agencies: Do not send any regulation to the Office of the Federal Register until a department or agency head appointed by the President has reviewed and approved the regulation.
- Withdraw regulations that have not been published in the Federal Register
- For rules that have been published but not taken effect, postpone their effective date for 60 days.

## **Congressional Actions on Regulatory Reform**

By invoking the *Congressional Review Act*, the Republican-controlled Congress passed 14 joint resolutions to nullify rules finalized by the Obama Administration — these include:

- **Stream Buffer Rule** (*Interior Department*)
- **Resource Extraction Disclosure Rule** (*SEC*)
- **Resource Planning Rule** (*Interior Department*)
- **Teacher Preparation Rule** (*Education Department*)
- **Education Accountability Rule** (*Education Department*)
- **Unemployment Insurance Drug Testing Rule** (*Labor Department*)
- **National Wildlife Hunting and Fishing Rule** (*Interior Department*)
- **Implementation of the NICS Improvement Amendments Act of 2007** (*SSA*)
- **Federal Acquisition Rule** (*joint rulemaking by Defense, NASA, and GSA*)
- **Clarification of Employer's Continuing Obligation Rule** (*Labor Department*)
- **Internet Service Provider Rule** (*FCC*)
- **State Retirement Plan Rule** (*Labor Department*)
- **Local Retirement Plan Rule** (*Labor Department*)
- **Title X Compliance Requirements Rule** (*Dept. of Health and Human Services*)

Republican lawmakers have also introduced various bills to update the federal rulemaking process. Of note, the Senate Homeland Security and Governmental Affairs Committee approved six regulatory reform bills on May 17:

- **S. 951** – the *Regulatory Accountability Act* would update the federal regulatory process by requiring agencies to conduct an effective cost-benefit analysis, improve transparency, provide certainty for businesses and consumers, create an automatic review process for major rules, and allow agency hearings on certain significant regulations.
- **S. 21** – the *REINS Act* would require congressional approval before any major regulations of the Executive Branch comes into effect.
- **S. 34** – the *Midnight Rules Relief Act* would allow Congress to repeal regulations *en bloc* under the *Congressional Review Act*.
- **S. 577** – the *Providing Accountability through Transparency Act* would require each agency to provide a 100-word plain language summary of any proposed rule.
- **S. 584** – the *Small Business Regulatory Flexibility Improvements Act* would require federal agencies to analyze the full impact of regulations on small businesses during the rulemaking process.
- **S. 579** – the *Early Participation in Regulations Act* would require agencies to publish an advance notice of proposed rulemaking for major rules.

Of the six bills, the *Regulatory Accountability Act* (“RAA”) has the best chance of passing the Senate if the chamber takes up consideration of the measure. The RAA enjoys some Democratic support – Sens. Heidi Heitkamp (D-ND) and Joe Manchin (D-WV). Republicans will need to persuade six more Democrats to join their effort in order to secure passage of the bill.

House and Senate Democrats have responded to the GOP’s deregulatory frenzy by introducing the [\*Sunset the CRA and Restore American Protections \(SCRAP\) Act\*](#). The measure would eliminate the *Congressional Review Act* and allow rules that have been overturned to be reinstated. The bill is not expected to go anywhere in a Republican-led Congress.

## Next Steps

The executive orders outlined above instruct various federal agencies to submit a comprehensive regulatory report to the president. These reports must identify regulations that are costly and burdensome and include recommendations to rescind or modify such rules. President Trump is expected to receive these reports throughout the summer.

Treasury Secretary Steven Mnuchin is scheduled to submit his first report on the U.S. financial regulatory system on June 5 (Executive Order 13772). Be sure to stay tuned to McGuireWoods' weekly *Tax Policy Update* for timely insights and analysis!

**Author:** Lai King Lam

### Tax & Financial Services Policy Group:

#### [Russell Sullivan](#)

Partner

[rsullivan@mcquirewoods.com](mailto:rsullivan@mcquirewoods.com)

#### [Harold Hancock](#)

Partner

[hhancock@mcquirewoods.com](mailto:hhancock@mcquirewoods.com)

#### [Jessica Monahan](#)

Vice President

[jmonahan@mwcllc.com](mailto:jmonahan@mwcllc.com)

#### [Radha Mohan](#)

Assistant Vice President

[rmohan@mwcllc.com](mailto:rmohan@mwcllc.com)

#### [Daniel Chung](#)

Associate

[dchung@mcquirewoods.com](mailto:dchung@mcquirewoods.com)

#### [Rosemary Becchi](#)

Partner

[rbecchi@mcquirewoods.com](mailto:rbecchi@mcquirewoods.com)

#### [Charlie Iovino](#)

Vice President

[ciovino@mwcllc.com](mailto:ciovino@mwcllc.com)

#### [Danielle Dellerson Hayes](#)

Vice President

[dhayes@mwcllc.com](mailto:dhayes@mwcllc.com)

#### [Lai King Lam](#)

Assistant Vice President

[llam@mwcllc.com](mailto:llam@mwcllc.com)