

# Regulatory Reform in the Trump Era—The First 100 Days

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## Introduction

Within the first 100 days of his administration, President Donald J. Trump initiated a bold regulatory reform agenda intended to downsize the imprint and reduce the influence of the federal government. Through a series of executive orders, supported by guidance from the Office of Management and Budget (OMB), and his proposed budget to Congress, the President has attempted to change the calculus and methodology underlying the federal regulatory process. To enforce his far-reaching agenda, the President is establishing a new administrative framework that challenges conventions on government oversight and rulemaking within the Executive Branch.

Even as other actions and controversies monopolize public attention, the President’s governing legacy may hinge on the scope and effectiveness of his

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effort to radically change the federal regulatory system. This Essay reviews this nascent program of administrative regime change. Part I analyzes the foundational tools underlying President Trump's regulatory reform agenda; Part II explains how the President's plans to enforce his deregulatory policies within the federal bureaucracy; Part III examines and compares the results of regulatory reform during President Trump's first 100 days; and Part IV concludes by identifying implications and questions arising from the administration's plan.

## I. Establishing Regulatory Reform: The 2-for-1 Rule

### A. Executive Order 13,771

Similar to preceding administrations, on the day of President Trump's inauguration, the new White House initiated a review of all pending rulemaking at the federal agencies.<sup>1</sup> Almost immediately following this "regulatory freeze," the Trump administration embarked on a novel reform effort aimed at the federal rulemaking process writ large. On January 30, 2017, President Trump issued Executive Order 13,771, which required that "for every one new regulation issued, at least two prior regulations be identified for elimination," and that the costs of the new regulation be, "prudently managed and controlled through a budgeting process."<sup>2</sup> Under the so-called "2-for-1 Rule," the incremental costs of all new regulations for Fiscal Year 2017 must be no greater than zero, unless the regulation is required by law or consistent with advice provided in writing by the Director of the OMB.<sup>3</sup> Agencies are expected to meet this new requirement by offsetting any incremental costs from new regulations with the supposed savings gained from eliminating two existing regulations.<sup>4</sup>

EO 13,771 applies to any "regulation" that serves as "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency."<sup>5</sup> Excluded are regulations with a military, national security, or foreign affairs function, and regulations related to an agency's organization, management, or personnel.<sup>6</sup>

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1. Office of Mgmt. & Budget, Exec. Office of the President, Regulatory Freeze Pending Review, 82 Fed. Reg. 8346 (Jan. 20, 2017) [hereinafter Priebus Memo]; *see also Trump Administration Delayed Rules*, N.Y. TIMES (Mar. 3, 2017), <http://www.documentcloud.org/documents/3480502-Trump-Administration-Delayed-Rules.html> [<http://perma.cc/L7VD-KNDN>] (providing copies of similar memoranda from the administrations of President Barack Obama and President George W. Bush).

2. Exec. Order No. 13,771, 82 Fed. Reg. 9339 (Jan. 30, 2017).

3. *Id.*

4. "Agencies" do not include "independent regulatory agencies," as defined in 44 U.S.C. § 3502(5) (2012), such as the National Transportation Safety Board.

5. 82 Fed. Reg. 9339.

6. *Id.*

## Regulatory Reform in the Trump Era

The OMB plays an important role under the 2-for-1 Rule. For instance, the Director of the OMB can exempt any category of regulations from the rule.<sup>7</sup> Executive Order 13,771 also modifies the requirements for the Annual Regulatory Cost Submissions that agencies must submit to OMB. Beginning in FY 2018 and in each fiscal year thereafter, agencies must identify offsetting regulations for each new regulation that increases incremental costs and provide the best approximation of the total cost savings for each new or repealed regulations.<sup>8</sup> Regulations approved by the Director of the OMB will be included in the Unified Regulatory Agenda and, unless otherwise required by law, no regulation will be issued unless it was included on the most recent version of the Unified Regulatory Agenda.<sup>9</sup>

Executive Order 13,771 also makes the OMB Director responsible for “identify[ing] to agencies a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year.”<sup>10</sup> Any new or repealed regulation that exceeds this cost limit set by OMB will not be allowed, unless required by law or approved in writing by the Director.<sup>11</sup>

Additionally, the OMB Director is directed to provide federal agencies with guidance on how to measure and estimate the incremental costs of new regulations, determine what constitutes new or offsetting regulations, and how to calculate the savings gained from the elimination of existing regulations.<sup>12</sup> Within the OMB, responsibility for issuing guidance on such matters falls to the Office of Information and Regulatory Affairs (OIRA), a federal office that Congress established in the 1980 Paperwork Reduction Act.<sup>13</sup>

### B. OIRA’s Interim Guidance

Consistent with Executive Order 13,771, OIRA issued its *Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled “Reducing Regulation and Controlling Regulatory Costs”* (the Interim Guidance).<sup>14</sup> Through this guidance, OIRA clarified the scope of the 2-for-1 Rule and expanded on methods for its implementation.

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7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. See Pub. L. No. 96-511, 94 Stat. 2812 (Dec. 11, 1980) (codified as amended in scattered sections of 44 U.S.C.).

14. Office of Mgmt. & Budget, Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled “Reducing Regulation and Controlling Regulatory Costs,” EXEC. OFF. PRESIDENT (Feb. 2, 2017), [http://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/EO\\_interim\\_guidance\\_reducing\\_regulations\\_controlling\\_regulatory\\_costs.pdf](http://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/EO_interim_guidance_reducing_regulations_controlling_regulatory_costs.pdf) [<http://perma.cc/Z6EG-GM7J2>] [hereinafter OIRA Interim Guidance].

## 1. Defining the Applicability of Executive Order 13,771

Under the Interim Guidance, Executive Order 13,771 only applies to “significant regulatory action,” as defined by Executive Order 12,866,<sup>15</sup> and only to those agencies that are required to submit their significant regulatory actions to OIRA for review under Executive Order 12,866.<sup>16</sup>

Executive Order 12,866, signed by President Bill Clinton, is the primary governing executive order regarding regulatory planning and review.<sup>17</sup> Under Executive Order 12,866, significant regulatory actions are defined as those actions that:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12,866.<sup>18</sup>

OIRA’s also notes that new “significant guidance” or “interpretive documents” may also be covered by the 2-for-1 Rule. The Interim Guidance cites the OMB’s *2007 Bulletin for Good Guidance Practices*.<sup>19</sup> According to the OMB’s 2007 bulletin, the definition of “significant guidance” must have a “substantial impact on regulated entities, the public or other federal agencies,” which is similar to the language used to refer to “significant regulatory action.”<sup>20</sup> The Interim Guidance instructs agencies to consult their OIRA desk officer, on a case-by-case basis, concerning whether agency actions constitute “significant guidance,” as may be the case with interpretive documents like letters of interpretation.<sup>21</sup>

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15. 3 C.F.R. 638 (1993).

16. OIRA Interim Guidance, *supra* note 14.

17. See Anthony Vitarelli, *Happiness Metrics in Federal Rulemaking*, 27 YALE J. ON REG. 115, 120 (2010) (noting that Executive Order 12,866 is “the primary vehicle of regulatory approval through the current day”).

18. 3 C.F.R. 638.

19. OIRA Interim Guidance, *supra* note 14.

20. OFFICE OF MGMT. & BUDGET, EXEC OFFICE OF THE PRESIDENT, OMB BULL. NO. 07-02, AGENCY GOOD GUIDANCE PRACTICES (2017).

21. OIRA Interim Guidance, *supra* note 14.

## 2. Estimating Incremental Cost

OIRA's Interim Guidance provides instruction on the proper method for agencies to estimate the incremental costs of new regulations and the savings that can be obtained by eliminating regulations. All costs are measured as an "opportunity cost to society," as defined in OMB Circular A-4.<sup>22</sup> Opportunity cost is determined through a "willingness-to-pay" model, which considers what an individual would be willing to pay to forgo to enjoy a particular benefit, or the "willingness-to-accept" model, which considers whether an individual would be willing to accept compensation for not receiving an improvement.<sup>23</sup> Pursuant to this calculation, agencies are required to consider market prices, costs of forgone benefits, and any cost savings.

Agencies are further expected to annualize the costs in accordance with OMB Circular A-4, and ensure that the start and end point for the annualization allow for the cost of new regulation to be easily compared to that of the repealed regulation. In calculating cost savings, agencies are expected to consider all cost savings after the effective date of repeal. This would not include sunk costs, for example. Additionally, agencies may not consider future energy cost savings gained from requiring energy efficient technologies as an offset against the compliance costs.

## 3. Waivers and Implementing Measures

Executive Order 13,771 allows for individual waivers, for example, in the event of emergencies.<sup>24</sup> In the Interim Guidance, OIRA noted that the circumstances supporting waivers include emergencies addressing critical health, safety, or financial matters, or other compelling reasons.<sup>25</sup> Agencies are directed to facilitate the requests through their respective OIRA desk officer.

OIRA also provided guidance on methods for implementing the 2-for-1 Rule. For instance, agencies can bundle their new regulatory actions and their deregulatory actions in the same package, as long as the agency clearly identifies which provisions contain new regulations and which provisions eliminate old rules, and demonstrates how the bundled rules are logically connected.<sup>26</sup> OIRA recommended that agencies identify the regulation to be eliminated and do so no later than by the date the new regulations are issued.

One of the more novel aspects of the 2-for-1 Rule is that cost savings may be transferred both within an agency and from one agency to another.<sup>27</sup> According to OIRA, regulatory savings by a component in one agency can be

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22. OMB Circular A-4, Regulatory Analysis, 68 Fed. Reg. 58,366 (Oct. 9, 2003).

23. *Id.*

24. Exec. Order No. 13,771, 82 Fed. Reg. 9339 (Jan. 30, 2017).

25. *See* OIRA Interim Guidance, *supra* note 14.

26. *Id.*

27. *Id.*

used to offset a regulatory burden by a different component in that same agency. Moreover, if agencies are not able to generate sufficient savings to account for new regulatory actions under Executive Order 13,771, then they must submit a written request to the OMB Director to transfer savings from another agency before they submit a regulatory action for review that does not contain the needed offset. However, if the Director does not concur with this request, the agency must identify adequate offsets absent a waiver.

### C. OIRA's Memorandum

On April 5, 2017, OIRA issued a Memorandum titled *Guidance Implementing Executive Order 13,771, Titled "Reducing Regulation and Controlling Regulatory Costs"* (the OIRA Memorandum).<sup>28</sup> The OIRA Memorandum builds upon the Interim Guidance, particularly in relation to the definitional scope of the 2-for-1 Rule.<sup>29</sup>

For instance, the OIRA Memorandum more clearly defines the regulatory and deregulatory actions subject to the offsetting regime of Executive Order 13,771. An "EO 13771 regulatory action" means a "significant regulatory action" as defined in Section 3(f) of Executive Order 12,866 that has been finalized and that imposes total costs greater than zero; or a "significant guidance document" reviewed by OIRA under the procedures of Executive Order 12,866 that has been finalized and that imposes total costs greater than zero."<sup>30</sup>

In comparison, "EO 13,771 deregulatory action" is defined as an action that has been finalized and has total costs less than zero.<sup>31</sup> An Executive Order 13,771 deregulatory action qualifies as both (1) one of the actions used to satisfy the provision to repeal or revise at least two existing regulations for each regulation issued and (2) a cost savings for purposes of the total incremental cost allowance. These deregulatory actions can be used as offsets and involve a wide variety of actions from rulemaking to official interpretations to information collection activities.<sup>32</sup>

With regard to the category of "significant guidance documents," these do not include legal advisory opinions, briefs, and other positions taken by agencies in investigations, pre-litigation, and other enforcement proceedings, as well as speeches, editorials, media reviews, press materials, congressional correspondence, grant solicitations, warning letters, and case investigatory

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28. Office of Mgmt. & Budget, Exec. Office of the President, *Guidance Implementing Executive Order 13371, Titled "Reducing Regulation and Controlling Regulatory Costs"* (Apr. 5, 2017), <http://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf> [<http://perma.cc/9JQN-RUTU>] [hereinafter OIRA Memorandum].

29. *Id.*

30. *Id.*

31. *Id.*

32. According to OIRA, Executive Order 13,771 deregulatory actions are not limited to those defined as significant under Executive Order 12,866 or OMB's 2007 bulletin on good guidance practices. *Id.*

letters responding to complaints involving fact-specific determinations.<sup>33</sup> Likewise, purely “internal” agency policies pertaining to facility operations and guidance materials directed solely to other federal agencies are not included in the definition.<sup>34</sup>

However, Executive Order 13,771 does apply to “internal” policies and guidance documents that “materially affect an agency’s interactions with non-federal entities, even if nominally directed only to agency personnel.”<sup>35</sup> For example, an internal directive to field staff on how to implement a regulatory requirement (e.g., an agency enforcement manual) could be a “significant guidance document” subject to the 2-for-1 Rule.<sup>36</sup> Likewise, modifications to existing guidance and interpretive documents would be considered “significant guidance documents” if they satisfy the definition provided in Executive Order 12,866 and the OMB’s 2007 bulletin on good guidance practices.<sup>37</sup>

Furthermore, OIRA notes that regulatory activities associated with regulatory cooperation with foreign governments and international bodies are also affected by Executive Order 13,771. Thus, if the regulatory activities involving international harmonization reduce costs to entities or individuals within the United States, or otherwise lower the regulatory costs to the U.S. economy, such activities may qualify as Executive Order 13,771 deregulatory actions. However, international harmonization actions that increase costs to U.S. entities or individuals may need to be offset.

If, by the end of a fiscal year, an agency does not finalize at least twice as many deregulatory actions as regulatory actions issued during the same fiscal year, or it has not met its total incremental cost allowance for that fiscal year, the agency must submit a plan for coming into full compliance with Executive Order 13,771 for the OMB Director’s approval within 30 days of the end of the fiscal year that addresses each of the following: (1) the reasons for, and magnitude of, non-compliance; (2) how and when the agency will come into full compliance; and; (3) other relevant information requested by the Director.<sup>38</sup>

When considering which federal requirements to repeal or revise, in order to serve as Executive Order 13,771 deregulatory actions, the OIRA Memorandum directs agencies to follow the priorities set forth in Executive Order 13,777 *Enforcing the Regulatory Reform Agenda*.<sup>39</sup> As explained below, Executive Order 13,777 also establishes a new set of positions and administrative oversight bodies within the Executive Branch for enforcing the President’ regulatory reform agenda.

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33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. Exec. Order 13,777, 82 Fed. Reg. 12,285 (Feb. 24, 2017).

## II. Enforcing the Regulatory Reform Agenda: A New Administrative Framework

### A. Executive Order 13,777

Through Executive Order 13,777, President Trump has established a new administrative framework to ensure implementation of his regulatory reform agenda within the federal agencies.

First, Executive Order 13,777 creates the new position of “Regulatory Reform Officer” (RRO).<sup>40</sup> RROs are empowered to oversee the implementation of regulatory reform initiatives and policies to ensure that agencies carry out regulatory reforms. RROs are specifically authorized to oversee: (1) Executive Order 13,771; (2) Executive Order 12,866; (3) Section 6 of Executive Order 13,563 of January 18, 2011 (*Improving Regulation and Regulatory Review*), regarding retrospective review; and (4) terminating programs and activities that derive from or implement executive orders, guidance, and interpretations that have been rescinded. Agency heads, except those whose agencies that receive a waiver from the OMB Director, are expected to designate an RRO within sixty days of the Executive Order 13,777’s issuance.

Second, President Trump mandated that agencies establish a new internal watchdog, the “Regulatory Reform Task Force” (RRTF), consisting of the agency’s RRO, the Regulatory Policy Officer (as designated pursuant to Executive Order 12,866), a representative of the agency’s central policy office, and for agencies listed in 31 U.S.C. § 901(b)(1), three additional senior agency officials.<sup>41</sup> Executive Order 13,777 empowers the RRTF to evaluate existing regulations and make recommendations to the agency head to identify regulations that need to be repealed, replaced, or modified. The RRTF is also expected to target regulations that eliminate or inhibit jobs, are ineffective or outdated, impose costs that exceed benefits, create inconsistencies or otherwise interfere with regulatory reform initiatives, are inconsistent with the requirements of § 515 of the Treasury and General Government Appropriations Act,<sup>42</sup> or are derived from subsequently rescinded executive orders or Presidential directives. Demonstrating the new authority of the RRTF, agency heads are expected to take instruction from the RRTF by prioritizing the elimination of regulations identified by the RRTF.<sup>43</sup>

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40. *Id.*

41. *Id.*

42. *See* Pub. L. No. 106-554, 114 Stat. 2763 (Dec. 21, 2000).

43. *Id.*

*B. Executive Order 13,781*

To further enforce his regulatory reform agenda, President Trump issued Executive Order 13,781, *Comprehensive Plan for Reorganizing the Executive Branch*. The purpose of Executive Order 13,781 is to improve the “efficiency, effectiveness, and accountability” of the Executive Branch by ordering the OMB Director to propose a plan to reorganize governmental functions and eliminate unnecessary agencies.<sup>44</sup>

The OMB Director will create the government reorganization plan based on the submission from each agency head of a proposed plan to reorganize their own agencies to improve efficiency and effectiveness. In turn, the agencies must submit their respective plans with 180 days of the date of Executive Order 13,781. In addition, the public can provide recommendations for government reorganization to the OMB through a mandatory notice and comment period in the *Federal Register*.

Within 180 days of the closing date for public submissions, the OMB Director must submit his plan to President Trump, which will include plans to reorganize, eliminate, or merge agencies or their functions, and provide the legislative or administrative steps necessary to implement each part of the plan. In developing the plan, the OMB Director must consider factors designed to downsize or even eliminate federal agencies. These factors include: (1) transfer of “all of the functions of any agency” to state or local governments or to “free enterprise” via the private sector; (2) reduction of inter-agency functional and administrative redundancies at the agency, component, and program level; (3) the costs or benefits of the continuing operation of an agency; and (4) the costs of shutting down or merging agencies, components, or programs, including the costs of addressing the equities of affected agency staff.<sup>45</sup>

*C. President Trump’s Budget*

In addition to executive orders targeting regulatory reform, President Trump is seeking to reduce the federal government through his proposed budget to Congress, *America First: A Budget Blueprint to Make America Great Again*.<sup>46</sup> For example, if enacted, President Trump’s budget will impact the U.S. Department of Transportation (DOT). The White House is asking for a thirteen percent reduction in funding for DOT as a whole.<sup>47</sup> More broadly, the President’s budget calls for the complete elimination of nineteen federal agencies. Terminating these agencies will result in about \$3 billion in savings, offsetting

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44. Exec. Order 13,781, 82 Fed. Reg. 13,959 (Mar. 13, 2017).

45. *Id.*

46. OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, AMERICA FIRST: A BUDGET BLUEPRINT TO MAKE AMERICA GREAT AGAIN, FISCAL YEAR 2018 (2017).

47. *Id.*

about six percent of President Trump's proposed increase of \$54 billion in military spending.<sup>48</sup>

### III. Measuring Regulatory Reform in President Trump's First 100 Days

Following the first 100 days of President Trump's term, it is possible to measure initial implementation of his regulatory reform agenda. According to our analysis of rulemaking in the *Federal Register* during this period, only nineteen rules and sixteen proposed rules have referenced Executive Order 13,771 (which includes the 2-for-1 Rule) as part of the regulatory impact analysis.

As Table 1 below indicates, approximately sixty-eight percent of both the rules and proposed rules were issued solely by the U.S. Coast Guard under the U.S. Department of Homeland Security. The purpose of these rules and proposed rules was to secure water ways for sporting or cultural events (e.g. a water race). Because the U.S. Coast Guard determined that there was not a "significant regulatory action" under Executive Order 12,866, the 2-for-1 Rule was inapplicable.<sup>49</sup> Other agencies offered the same justification for some of the remaining rules and proposed rules.<sup>50</sup>

Even when the regulatory actions were considered to be "significant" (mainly because their impact was determined to be greater than \$100 million), there were two other justifications for why the requirements of Executive Order 13,771 were inapplicable. For instance, the U.S. Army Corps of Engineers explained that the 2-for-1 Rule did not apply to their rulemaking because the regulatory action involved exempted military and national security functions.<sup>51</sup> In contrast, in five other significant regulatory actions, the acting agency determined that the rules and proposed rules do "not impose costs" that trigger the requirements of Executive Order 13,771 due to the "net impact of zero"<sup>52</sup> or the "cost savings."<sup>53</sup>

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48. Aaron Blake, *The 19 Agencies that Trump's Budget Would Kill, Explained*, WASH. POST: THE FIX (Mar. 16, 2017), [http://www.washingtonpost.com/news/the-fix/wp/2017/03/16/the-19-agencies-that-trumps-budget-would-kill-explained/?utm\\_term=.b712c79751f8](http://www.washingtonpost.com/news/the-fix/wp/2017/03/16/the-19-agencies-that-trumps-budget-would-kill-explained/?utm_term=.b712c79751f8) [<http://perma.cc/XYM6-4T5R>].

49. See, e.g., Ohio River MM 598-602.7, Louisville, KY, 82 Fed. Reg. 18,393 (Apr. 19, 2017) (to be codified at 33 C.F.R. pt. 100).

50. Adjustment of Civil Monetary Penalties for Inflation, 82 Fed. Reg. 18,559 (Apr. 20, 2017) (to be codified at 34 C.F.R. pt. 36); Clarification of When Products Made or Derived from Tobacco are Regulated as Drugs, Devices, or Combination Products, 82 Fed. Reg. 14,319 (Mar. 20, 2017) (to be codified at 21 C.F.R. pts. 1100, 201, 801).

51. Restricted Areas, 82 Fed. Reg. 15,637 (Mar. 27, 2017) (to be codified at 33 C.F.R. pt. 334).

52. Market Stabilization, 82 Fed. Reg. 18,346 (Apr. 18, 2017) (to be codified at 45 C.F.R. pts. 147, 155, 156); Telephone interview with the Centers for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services (Apr. 27, 2017).

53. See, e.g., Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02), 82 Fed. Reg. 16,902 (April 10, 2017) (to be codified at 29 C.F.R. pt. 2510).

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Only a single proposed rule even acknowledged that Executive Order 13,771 may apply, stating that the, “implications of this rule’s costs and costs savings will be further considered in the context of our compliance with Executive Order 13,771.”<sup>54</sup> In this instance, the U.S. Department of Health and Human Services (HHS) interpreted the rulemaking to involve Medicare spending—a so-called “transfer rule” that is not covered by Executive Order 13,771, according to the OIRA Memorandum.<sup>55</sup> Nonetheless, HHS determined that the rulemaking could involve requirements apart from transfers and that those regulatory actions would need to be offset to the extent that they impose more than de minimis costs. Notably, however, within the first 100 days of the Trump administration, no federal agency had actually applied the offset required by the 2-for-1 Rule.

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54. Agreement Termination Notices, 82 Fed. Reg. 19,796, 20,228 (Apr. 28, 2017).

55. In general, federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries (e.g., regulations associated with Pell grants and Medicare spending) are considered “transfer rules” and are not covered by Executive Order 13,771. *See* OIRA Memorandum, *supra* note 28.

TABLE 1: FIRST 100 DAYS – IMPACT OF “2 FOR 1” RULE Referral to Executive Order 13,771 <sup>56</sup>		
	RULES ISSUED	PROPOSED RULES
Total Number:	19	16
Agency, Department:	13 or 68.4% Coast Guard/DHS	11 or 68.75% Coast Guard/DHS
Justification: Not a significant regulatory action under Executive Order 12,866, thus Executive Order 13,771 is not applicable.	16	13
Justification: Even if significant regulatory action, the rule does not impose costs that trigger requirements of Executive Order 13,771.	2	2
Justification: Military or defense function and, therefore, Executive Order 13,771 is not applicable.	1	0
Potential application: Implications of the rule’s costs and cost savings will be further considered in the context of compliance with Executive Order 13,771.	0	1

On their face, these results suggest that the 2-for-1 Rule has yet to have a large impact on federal rulemaking. Based on our experience and interactions with federal regulators, agencies have reacted cautiously with respect to implementation of Executive Order 13,771. The Trump Administration’s need to issue interim guidance from OMB and then supplemental guidance from OIRA demonstrates a tacit recognition that a transition period is required for interpretation and implementation of the 2-for-1 Rule. To assist agencies, the OMB has even recommended that agencies request ideas from the public on deregulatory actions to pursue under Executive Order 13,771.<sup>57</sup> For instance, the

56. These search results were obtained on July 7, 2017 by using the advanced search function on the Federal Register website. The search term was “13,771”, and the results were filtered for a publication date range starting on January 30, 2017 and ending on April 29, 2017.

57. OIRA Memorandum, *supra* note 28.

DOT has solicited similar public input in identifying existing regulations that are “unnecessary obstacles to transportation infrastructure projects” and acknowledged the related role of Executive Order 13,771.<sup>58</sup> On an informal level, we are aware of outreach efforts by Trump’s political appointees at the agencies to identify potential deregulatory actions—to the extent such appointments have been made. In the first 100 days, the Trump Administration lagged far behind its predecessors, particularly Democratic Presidents Obama and Clinton, in terms of nominations and Senate confirmation of key officials responsible for setting agency policies, such as adherence to executive orders.<sup>59</sup>

In addition, the record in the *Federal Register* supports the conclusion that agencies have yet to determine a consistent approach for applying Executive Order 13,771. For example, as noted in Table 2, there are variations in agency identifications of rulemaking that involves “significant regulatory action” (generally, an annual effect on the economy of \$100 million or more) with respect to Executive Order 13,771 versus Executive Order 12,866. A review of the *Federal Register* in Trump’s first 100 days indicates that only 383 rules (of the total 682) and 191 proposed rules (of the total 349) reference Executive Order 12,866—suggesting that an agency determination was made as to whether the rulemaking involved “significant regulatory action.” In comparison, the total rulemaking that referenced Executive Order 13,771—nineteen rules and sixteen proposed rules—is less than five percent of the rules and ten percent of the proposed rules that reference Executive Order 12,866. This disparity exists even though Executive Order 13,771 applies the same “significant regulatory action” threshold as set forth in Executive Order 12,866. Put differently, if agencies are invoking Executive Order 12,866, then they should also be considering Executive Order 13,771.

Further evidence of inconsistency in federal agency application of Executive Order 13,771 is found in the different number of rules identified in the *Federal Register* as being “significant regulatory actions.” Specifically, the *Federal Register* provides an advanced search filter for “Significant Regulatory Actions” that are “Deemed Significant Under Executive Order 12,866.” Under this advanced search, within the first 100 days of the Trump administration, the *Federal Register* only identifies seventy-one out of 1,031 total rulemaking actions—rules and proposed rules—as being “Deemed Significant Under Executive Order 12,866.” Moreover, of those seventy-one results, only eleven reference Executive Order 12,866 in comparison to only three references to Executive Order 13,771. There is not a clear explanation as to why agencies would undertake rulemaking deemed a “significant regulatory action” in the

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58. Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 26,734 (June 8, 2017).

59. Joe Davidson, *Trump Drags Feet on Political Appointees, Lags Behind Predecessors*, WASH. POST: POWERPOST (Apr. 26, 2017), [http://www.washingtonpost.com/news/powerpost/wp/2017/04/26/trump-drags-feet-on-political-appointees-and-lags-far-behind-predecessors/?utm\\_term=.8734490952e8](http://www.washingtonpost.com/news/powerpost/wp/2017/04/26/trump-drags-feet-on-political-appointees-and-lags-far-behind-predecessors/?utm_term=.8734490952e8) [<http://perma.cc/2Q3K-NBU4>].

*Federal Register* database without referencing the presidential orders mandating this type of regulatory review—Executive Order 12,866 and Executive Order 13,771.

TABLE 2: FIRST 100 DAYS – “SIGNIFICANT REGULATORY ACTION” Continued Disparity in References to Executive Order 12,866 versus Executive Order 13,771			
	Rules	Proposed Rules	Rules and Proposed Rules “Deemed Significant Under Executive Order 12,866”
Rules Referencing E.O. 12,866 <sup>60</sup>	383	191	11
Rules Referencing E.O. 13,771 <sup>61</sup>	19	16	3
Total <sup>62</sup>	682	349	71

In the end, the small number of references to Executive Order 13,771 within the first 100 days does not mean that President Trump’s regulatory reform agenda has not materially changed regulatory activity within the federal bureaucracy. The “regulatory freeze” at the start of the Trump-era resulted in the delay of dozens of regulations by one count.<sup>63</sup> There have also been numerous federal regulations that have been revoked or delayed or subject to suspended

60. These results are based on the use of the advanced search function on the *Federal Register* website, <http://www.federalregister.gov/documents/search>. The search term was “12,866”, and the results were filtered for a publication date range starting on January 30, 2017 and ending on April 29, 2017. Please note that the front end of the search range begins on the publication date of Executive Order 13,771, ten days following the first day of the Trump administration.

61. These search results are based on the use of the advanced search function on the *Federal Register* website, <http://www.federalregister.gov/documents/search>. The search term was “13,771”, and the results were filtered for a publication date range starting on January 30, 2017 and ending on April 29, 2017. Please note that the front end of the search range begins on the publication date of Executive Order 13,771, ten days following the first day of the Trump administration.

62. These search results are based on the use of the advanced search function on the *Federal Register* website, <http://www.federalregister.gov/documents/search>. The search field was left blank and the results were filtered for a publication date range starting on January 30, 2017 and ending on April 29, 2017. Please note that the front end of the search range begins on the publication date of Executive Order 13,771, ten days following the first day of the Trump administration.

63. Eric Lipton & Binyamin Applebaum, *Leashes Come Off Wall Street, Gun Sellers, Polluters and More*, N.Y. TIMES (Mar. 5, 2017), <http://www.nytimes.com/2017/03/05/us/politics/trump-deregulation-guns-wall-st-climate.html> [<http://perma.cc/UXG5-3K4E>].

## Regulatory Reform in the Trump Era

enforcement.<sup>64</sup> When compared to President Obama’s first 100 days, President Trump’s administration has engaged in twenty-five percent less rulemaking, as noted in Table 3 below. At least by this measure, covering a brief 100-day timeframe, President Trump has made progress toward reducing the government’s regulatory activity.

TABLE 3: FIRST 100 DAYS – FEDERAL RULEMAKING Comparing Presidents Obama to Trump			
	OBAMA ADMINISTRATION <sup>65</sup>	TRUMP ADMINISTRATION <sup>66</sup>	% DIFF. <sup>67</sup>
# of Rules Issued	900	732	19%
# of Proposed Rules Issued	473	370	22%
Rulemaking Total	1,373	1,102	20%

More generally, Executive Order 13,771 may be understood as presenting a set of deregulatory principles based on nine elements: (1) content; (2) objective; (3) scope; (4) cost measurement; (5) exceptions; (6) concentration of authority; (7) interagency transfer; (8) agency oversight; and (9) enforcement.<sup>68</sup>

We can use these elements to compare Trump’s attempts to substantially reform the federal regulatory process against those of prior presidents, such as President Ronald Reagan’s Executive Order 12291<sup>69</sup> and President Clinton’s Executive Order 12,866.<sup>70</sup> In relation to content and objective, the 2-for-1 Rule of Executive Order 13,771 provides a new formula for federal rulemaking. This prescription may also be interpreted as furthering Reagan’s offsetting principle established under Executive Order 12291 where regulatory action will not be

64. *Id.*

65. These search results are based on the use of the advanced search function on the *Federal Register* website, <http://www.federalregister.gov/documents/search>. The search field was left blank and the results were filtered for a publication date range starting on January 20, 2009 and ending on April 29, 2009.

66. These search results are based on the use of the advanced search function on the *Federal Register* website, <http://www.federalregister.gov/documents/search>. The search field was left blank and the results were filtered for a publication date range starting on January 20, 2017 and ending on April 29, 2017.

67. The “Percent Difference” is calculated as the percent decrease in regulatory action between the Obama and Trump administrations rounded to the nearest whole number.

68. These elements are borrowed from Professor Nicholas R. Parillo.

69. Exec. Order No. 12,291, 46 Fed. Reg. 13,193 (Feb. 17, 1981).

70. Exec. Order No. 12,866, 3 C.F.R. 638 (1993).

undertaken unless the regulation's potential benefits to society outweigh the potential costs to society.<sup>71</sup> In turn, Clinton's Executive Order 12,866 provided a more permissive cost-benefit and cost-effectiveness approach where an agency's reasoned determination can support the conclusion that the benefits of the intended regulation justify its costs.<sup>72</sup>

In terms of scope, Executive Order 13,771 carries forward the "significant regulatory action" definition of Executive Order 12,866 with a threshold of "\$100 million or more" for applicability.<sup>73</sup> Executive Order 12,866 built upon the "major rule" definition of Executive Order 12291, which applied to regulations with "an annual effect on the economy of \$100 million or more."<sup>74</sup> Executive Order 13,771 also retains the standard regulatory impact analysis set forth in Executive Order 12,866 for measuring costs.<sup>75</sup> Similarly, Executive Order 12291, Executive Order 12,866, and Executive Order 13,771 all excluded rules issued by independent regulatory agencies even as these agencies—like the Federal Trade Commission, Securities and Exchange Commission, and Federal Communications Commission—have a significant impact on the U.S. economy.<sup>76</sup> Executive Order 13,771, like Executive Order 12,866 and Executive Order 12291, exempt rules that pertain to a military or foreign affairs function, or that involve agency organization, management, or personnel matters.<sup>77</sup>

A key characteristic of Executive Order 13,771 is the centralization of rulemaking authority at the cost of the agencies' discretion. Through Executive Order 12291, President Reagan concentrated authority in OIRA for overseeing rulemaking over "major" regulations (an annual effect on the economy of \$100 million or more)<sup>78</sup>; President Clinton, via Executive Order 12,866, reversed this course and reaffirmed the "primacy" of agencies in the regulatory decision-making process;<sup>79</sup> and, now, through Executive Order 13,771, the pendulum has swung again as President Trump has concentrated on enhancing regulatory power with OIRA.<sup>80</sup> In addition, the President has delegated new power to the Director of the OMB to determine each agency's total amount of incremental costs associated with rulemaking for each fiscal year and approve interagency transfers of savings in the event that an agency cannot identify the needed offset.<sup>81</sup>

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71. Exec. Order No. 12,291, at § 2(b).

72. Exec. Order No. 12,866, at § 1(b)(6).

73. *Id.* § 3(f).

74. Exec. Order No. 12,291 § 1(b).

75. Exec. Order No. 12,866 § 6(a)(C)(ii).

76. Exec. Order No. 12,291 § 1(d); Exec. Order 12,866 § 3(b); Exec. Order 13,771 § 2(a), 82 Fed. Reg. 12,285 (Feb. 24, 2017).

77. Exec. Order No. 13,771, § 4(a).

78. Exec. Order No. 12,291 § 1(b).

79. Exec. Order No. 12,866.

80. Exec. Order No. 13,771 § 3.

81. Exec. Order No. 13,771 § 2(d).

## Regulatory Reform in the Trump Era

President Trump has established a new oversight and enforcement framework. Executive Order 13,777 establishes the position of RRO and the RRTF, the individual and task force embedded at the agencies to enforce Executive Order 13,771.<sup>82</sup> Notably, this agency oversight structure differs from President Reagan’s “Presidential Task Force on Regulatory Relief” under Executive Order 12291, which played more of an oversight role with respect to the Director of the OMB. In the event of non-compliance with the off-setting rule of Executive Order 13,771, offending agencies must submit to the Director of the OMB, within thirty days of the end of the fiscal year, a plan detailing how the agency will come into full compliance with Executive Order 13,771.<sup>83</sup>

TABLE 4: TRUMP’S DEREGULATORY PRINCIPLES Elements of Executive Order 13,771	
Content	For each regulatory action there must be two deregulatory actions
Objective	The incremental costs associated with regulatory actions must be fully offset by the savings of deregulatory action
Scope	Regulatory actions must be “significant” (\$100M or more) but extend beyond rulemaking to include regulatory activities such as agency guidance material and interpretive documents
Cost Measurement	Standard regulatory impact analysis (under Executive Order 12,866 and OMB Circular A-4)
Exceptions	Independent regulatory agencies; statutory and judicial mandates; military, national security, and foreign policy functions; related to agency organization, management, or personnel; emergencies; <i>de minimis</i> actions; otherwise approved exemption (e.g., transfer rules)
Concentration of Authority	Interpretation, approval and total incremental cost allowance determinations centralized with OMB and OIRA
Interagency Transfer	Ability to transfer deregulatory action credits, subject to approval by Director of OMB
Agency Oversight	Agency Regulatory Reform Task Force and Regulatory Reform Officer
Enforcement	Within 30 days of the end of the fiscal year, submit compliance plan to Director of OMB for approval

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82. Exec. Order No. 13,777.

83. OIRA Memorandum, *supra* note 28.

## IV. Implications and Questions

Although further analysis is required to determine the long-term impact and effectiveness of President Trump's regulatory reform agenda, we can identify key implications and questions arising from the President's plan to reform the administrative state.<sup>84</sup>

First, President Trump's actions—executive orders, implementing measures and proposed budget—demonstrate a clear policy to radically reduce the size and impact of the federal government. The 2-for-1 Rule provides a broad, but basic baseline for controlling regulatory actions by agencies. The Interim Guidance and the OIRA Memorandum create wide latitude and ample means for the White House to strike down proposed regulatory actions that are inconsistent with the policy priorities of President Trump. For instance, under Executive Order 13,771, any new or repealed regulation that exceeds the agency's "total incremental cost allowance" set by OMB will not be allowed, unless required by law or approved in writing by the Director of the OMB.<sup>85</sup> Through this measure, the administration is in effect an attempt to institutionalize a "regulatory budget" for agencies as a means of controlling the size of the administrative state, an approach that has been promoted by reform advocates in Washington and adopted by other countries.<sup>86</sup>

In addition, the fact that agency heads will need to provide reorganization plans justifying their respective agency's continued existence may also dictate what if any agency rulemaking priorities move forward. Indeed, a number of recently appointed agency heads have been vocally hostile to the agencies they now control.<sup>87</sup> The President's budget calls for wholesale elimination of certain programs.<sup>88</sup> Aside from the chilling effect on new regulatory actions, the culmination of these factors could create tension between longstanding career civil servants and new political appointees. In other words, beyond a quantitative analysis, we must also discern how measures like the 2-for-1 Rule and Trump's new political controls impact the role, authority, and mission of federal agencies, which have traditionally been afforded a degree of autonomy and deference based on their technical expertise, meritocratic norms, and professional

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84. See Roncever Almond et al., *Administering the Administrative State: Regulatory Reform in the Trump Era*, J. HAZMAT TRANSP., Mar./Apr. 2017.

85. Exec. Order 13,771 § 3(d).

86. C. Jarrett Dieterle, *Lessons from the Godfather of Regulatory Budgeting*, HILL (Feb. 23, 2017, 11:00 AM), <http://thehill.com/blogs/pundits-blog/economy-budget/320800-lessons-from-the-godfather-of-regulatory-budgeting> [<http://perma.cc/SKE3-UZSJ>]; Jim Tizzo, *The Coming of the Regulatory Budget*, REG. REV. (Jan. 8, 2016), <http://www.theregreview.org/2016/01/08/tozzi-regulatory-budget> [<http://perma.cc/X3H3-CH5V>].

87. Meg Jacobs, *Trump is Appointing People Who Hate the Agencies They Will Lead*, CNN, (Dec. 12, 2016, 10:40 AM), <http://www.cnn.com/2016/12/10/opinions/government-is-the-problem-jacobs/index.html> [<http://perma.cc/DQK2-Q8GV>].

88. Niv Elis, *Here Are the 66 Programs Eliminated in Trump's Budget*, THE HILL (May 23, 2017, 2:03 PM), <http://www.thehill.com/policy/finance/334768-here-are-the-66-programs-eliminated-in-trumps-budget> [<http://perma.cc/8WG8-SACV>].

standards. As the President's regulatory reform agenda unfurls, we may see internal agency appeals to Congress, particular relevant committees of jurisdiction, for support. One key question to be answered is whether President Trump has the political capital to effect the bold change he seeks.

Second, in order to achieve his goal, it is obvious that President Trump intends to consolidate regulatory and rulemaking power within the Executive Branch. The OMB and OIRA sit near the top of his program to reform regulations and reduce the footprint of the federal government. The OMB Director has broad discretion to set the incremental costs allowed for each agency under the 2-for-1 Rule. The Director is also charged with overseeing a new governmental deregulatory transfer scheme. Agencies with mandates or functions that are in disfavor with the President for policy or political reasons may be subject to stricter control by the OMB, particularly in relation to any reorganization efforts or new regulatory activity.

Within OMB, OIRA will also play a prominent role in weighing the impact of almost all new regulatory actions. For instance, OIRA desk offices, assigned to each agency, will review, on a case-by-case basis, any significant guidance or interpretive documents as well as proposed deregulatory actions that save costs but do not outright eliminate a regulation.<sup>89</sup> OIRA has discretion over measuring the timing or annualization of costs, whether costs are duplicated in other regulatory actions, and whether certain costs are even quantifiable. Agencies have a clear incentive to establish a line of communication with their respective OIRA desk officer in order to avoid confusion or confrontation on potential regulatory actions subject to President Trump's reform agenda.

President Trump nominated Neomi Rao, a conservative lawyer and law professor to head OIRA.<sup>90</sup> Professor Rao's views regarding the power of the presidency and independent agencies have been controversial. She has articulated the belief that federal agencies should have less independence and be subject to stricter White House control.<sup>91</sup> Given her strong political views and the President's stated deregulatory goals, Professor Rao may alter OIRA's traditional role of serving as an analytic counterweight to agencies and regulatory arbiter during the regulatory process.

At the agencies, the new RROs will serve as deregulatory watchdogs, working in tandem with OIRA and OMB to control any new regulatory actions.<sup>92</sup> The RRTF provides an additional layer and forum to ensure that the agencies are actually following President Trump's regulatory reform agenda.<sup>93</sup> Whether the

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89. See OIRA Interim Guidance, *supra* note 14.

90. Steven Mufson, *Trump's Pick for Rules Czar Would Hand More Power to Trump*, WASH. POST (Apr. 20, 2017), [http://www.washingtonpost.com/business/economy/trumps-pick-for-rules-czar-is-expected-to-hand-over-more-power-to-trump/2017/04/19/8b33b176-206f-11e7-a0a7-8b2a45e3dc84\\_story.html](http://www.washingtonpost.com/business/economy/trumps-pick-for-rules-czar-is-expected-to-hand-over-more-power-to-trump/2017/04/19/8b33b176-206f-11e7-a0a7-8b2a45e3dc84_story.html) [<http://perma.cc/H9PM-ES9Q>].

91. *Id.*

92. Exec. Order 13,777 § 2.

93. Exec. Order 13,777 § 3.

RRO and task force serve to enhance or inhibit the authority of the agency remains to be seen and may vary on a case-by-case basis depending on the policy priorities of the agency leadership. The new RROs and RRTFs spreading across the federal government could have a chilling effect on agency actions, from rulemaking to interpretations to enforcement. This may be the intention of increased administration over the administrative state.

Recent press reports suggest that political appointees embedded at cabinet agencies as policy advisors are there to ensure agency officials are maintaining loyalty to President Trump.<sup>94</sup> These aides reportedly will answer to the Office of Cabinet Affairs at the White House, not to their respective department secretaries.<sup>95</sup> The centralization of regulatory authority within the Executive Branch will likely create uncertainty in terms of what discretion is left at the agency-level for carrying out typical regulatory and administrative functions. The effect of this ambiguity will extend beyond governmental turf battles to impact industry, which relies on a predictable framework for government regulation and oversight. A fundamental question arising from this reform process is how industry will respond to what could become an extremely static or unpredictably fluid regulatory environment.

Third, a review of rulemaking in the first 100 days indicates an extremely limited and inconsistent approach to implementation of Executive Order 13,771 and its deregulatory principles. In this period, no federal agency actually implemented the 2-for-1 Rule by eliminating two existing federal regulations in order to initiate a new significant regulatory action, generally a rule with an annual effect on the economy of \$100 million or more.<sup>96</sup> Moreover, the rulemaking within the first 100 days of the new White House demonstrates significant variations on how agencies are applying Executive Order 12,866 as compared to Executive Order 13,771 even though these two presidential orders are interrelated and share the same threshold for application. The fact that agencies are more likely to invoke the Clinton-era Executive Order 12,866 as part of the regulatory impact analysis, without necessarily referencing Trump's Executive Order 13,771, may evidence a cautious approach by the federal bureaucracy to implementing Executive Order 13,771. Indeed, within the first 100 days, the Trump administration has incrementally rolled out interpretative

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94. Lisa Rein & Juliet Eilperin, *White House Installs Political Aides at Cabinet Agencies To Be Trump's Eyes and Ears*, Wash. Post (Mar. 19, 2017), [http://www.washingtonpost.com/powerpost/white-house-installs-political-aides-at-cabinet-agencies-to-be-trumps-eyes-and-ears/2017/03/19/68419f0e-08da-11e7-93dc-00f9bdd74ed1\\_story.html](http://www.washingtonpost.com/powerpost/white-house-installs-political-aides-at-cabinet-agencies-to-be-trumps-eyes-and-ears/2017/03/19/68419f0e-08da-11e7-93dc-00f9bdd74ed1_story.html) [http://perma.cc/JF53-G97M].

95. *Id.*

96. The authors found no rules or proposed rules containing references to Executive Order 12,866 or Executive Order 13,771, published on the Federal Register during Trump's first 100 days, which indicated an agency was implementing the 2-for 1 rule by elimination of two existing federal regulations. These search results are based on the use of the advanced search function on the *Federal Register* website, <http://www.federalregister.gov/documents/search>. The search terms were "12,866" and "13,771", and the results were filtered for a publication date range starting on January 20, 2009 and ending on April 29, 2009.

documents from OMB and OIRA concerning Executive Order 13,771, implicitly demonstrating that a transition period for clarification is required.<sup>97</sup> Even at the stroke of a pen, presidential orders cannot simply change the course of the administrative state.

Fourth, President Trump's executive orders should be understood within a tradition of presidential initiatives that have attempted to reform the federal regulatory process. Executive Order 13,771 may be analyzed according to deregulatory principles that derive from predecessor Republican administrations and respond to changes made under Democratic ones. These presidential regulatory review procedures follow an established structure and terminology, even if they diverge within this framework. What is unique about President Trump's addition to this tradition is the use of a strict offset rulemaking formula, the layering of new political and bureaucratic controls, and the employment of ungarnished rhetoric, all of which seek to disempower the agencies' regulatory authority.

It should be noted that President Trump's regulatory reform agenda has not gone without legal challenge. On February 8, 2017, Public Citizen, Natural Resources Defense Council, and Communications Workers of America, filed a lawsuit in federal court claiming that Executive Order 13,771 and the accompanying Interim Guidance implementing the 2-for-1 Rule are unconstitutional because these actions direct federal agencies to engage in unlawful actions that will harm Americans, including plaintiff's members, in violation of the Take Care Clause.<sup>98</sup>

According to plaintiffs' claim, Executive Order 13,771 would make federal agencies violate governing statutes like the Administrative Procedure Act, which establishes the process and methodology for agencies' regulatory action.<sup>99</sup> By forcing federal agencies to focus on costs rather than benefits, these groups argue that Executive Order 13,771 harms the public by forcing agencies to repeal beneficial regulations and arbitrarily preventing new regulations from being passed. As a result, the lawsuit contends that the President's executive order endangers public health, safety, and the environment and compels federal agencies to violate current governing statutes by ignoring the non-financial public benefits of current and potential regulations. The federal government filed a motion to dismiss citing the lack of standing and ripeness in the case.<sup>100</sup> However, following plaintiffs' amendment of its complaint to address the standing allegations, the court subsequently dismissed the government's request as moot.<sup>101</sup> At this moment, there are two pending motions before the court: the

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97. See OIRA Memorandum, *supra* note 28; OIRA Interim Guidance, *supra* note 14.

98. Complaint, *Pub. Citizen, Inc. v. Trump*, No. 1:17-cv-00253 (D.D.C. Feb. 8, 2017).

99. See Administrative Procedure Act, Pub. L. No. 79-404, 60 Stat. 237 (June 11, 1946) (codified as amended in scattered sections of 5 U.S.C.).

100. Memorandum of Points & Authorities in Support of Defendants' Motion to Dismiss, *Pub. Citizen, Inc.*, No. 1:17-cv-00253.

101. Order, *Pub. Citizen, Inc.*, No. 1:17-cv-00253.

government's motion to dismiss plaintiffs' first amended complaint,<sup>102</sup> which the plaintiff opposed, and plaintiffs' motion for summary judgment.<sup>103</sup> After a motion hearing on August 10, 2017, the court took these matters under advisement before issuing a ruling.<sup>104</sup>

The final outcome of this lawsuit, like the consequence of President Trump's agenda, remains to be seen. What we can clearly conclude at this time is that the President is attempting to deliver on his promise to change the status quo in Washington. Within the first 100 days, the new administration has taken a number of concrete steps towards achieving fundamental regulatory reform. Whether President Trump is able to deliver on his ambitious government reorganization plan will determine the weight of his White House legacy.

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102. Motion to Dismiss First Amended Complaint, *Pub. Citizen, Inc.*, No. 1:17-cv-00253.

103. Motion for Summary Judgement, *Pub. Citizen, Inc.*, No. 1:17-cv-00253.

104. Motion Hearing Minute Entry, *Pub. Citizen, Inc.*, No. 1:17-cv-00253.