

REGULATORY INTELLIGENCE

INSIGHT: 'Slow-rolling' by agencies could complicate Trump's deregulation

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U.S. President Donald Trump's efforts to deregulate the financial industry may proceed less quickly than his initial flurry of executive orders suggests. Bureaucratic "slow rolling" has presented formidable obstacles to rapid change in the past and could well do so again, say legal and regulatory experts.

The use of executive powers often meets resistance when actions are viewed as partisan, and often face legal or political challenges, they said.

Regulatory agencies have shown they can push back in subtle ways when controversy arises. Agencies have wide latitude on how and when to implement regulations. Even when there is widespread support for new rules – the Republican Congress generally supports deregulation and Trump got to pick the heads of major independent regulators -- the process is lengthy. Furthermore, recent court decisions on the Labor Department's fiduciary rule and on Trump's travel ban have thrown up early legal obstacles to executive branch goals.

The potential obstacles were on display as federal courts held hearings on the president's travel ban. The failure to gain support from the Department of Homeland Security prior to issuing the rule became an issue in the court cases challenging it. So did prior public statements by Trump and his administration.

There are signs Wall Street is aware. Bets by traders on financial stocks seen sensitive to deregulation have fluctuated when even unrelated Trump initiatives such as the travel ban meet setbacks.

"Slow-rolling" vs fast-tracking

"The rhetoric coming out of this administration – when you hear that 75 percent of regulation should be repealed – is going to be a lot to overcome," said Rachel Augustine Potter, assistant professor of politics at University of Virginia, who has studied the impact of political controversy on regulation. "It is ... really different for a president to come at it that way, and you have to get a lot of people on board to make those things happen," Potter said in an interview.

Potter recently completed a study 11,000 regulations implemented by 150 U.S. agencies from 1995 to 2014 and found that the process of regulation stalls when agencies are at odds with other branches of government or other stakeholders.

In her study, Potter applied a term for the tendency of regulators to take more time dealing with policies they find objectionable: "slow rolling." The evidence shows it has a significant impact on how long it takes to add or change rules.

Taming bureaucracy: More than words

"In a bureaucracy there are a lot of different ways people can slow down presidential initiatives they don't agree with," said Andrew Kent a law professor and constitutional expert at Fordham University and one-time corporate lawyer. "And given the things this administration has been saying about agencies' work, it's pretty likely that will happen."

The administration fired a Justice Department official who refused to defend Trump's travel ban in court, and officials have criticized staff dissent over administration policies at agencies including the State Department.

The proposed rollback of financial regulations must go through an administrative review at agencies, as well as a public-comment period. Potter's study shows that it normally takes 15 months for a regulation to be completed, not including the time it took to pass enabling legislation. The preliminary study does not specify how much delay to expect when agencies slow roll. But it suggests that contentious issues can easily take two to three times as long.

Repealing: More challenging than passing?

Reversing regulations that strike at the heart of an agency's prior work may be even more difficult than passing new ones, Potter said.

Republican legislators who had voted 60 times under President Barack Obama to repeal the Affordable Care Act have shifted to a "repeal and replace" strategy, reflecting the reality that simply removing a law is insufficient. Some are now talking about a less-ambitious "repair" to the measure.

"The president cannot simply issue an executive order rescinding regulations he does not like," said Potter. The process requires research, stakeholder meetings, publishing of proposals, comment periods and final publication. Delays can occur at any of those stages.



"Agencies are more likely to 'slow-roll,' or move a regulation slowly through 'notice-and-comment,' at points when the political environment is not favorable to the agency's interests," Potter's [study](#) concludes. The study is set for publication in The Journal of Politics.

Politically charged environment

Unlike the atmosphere that led to the passage of the Dodd-Frank regulatory overhaul, there is no financial crisis now spurring an immediate call to action. Even if Republicans broadly support deregulation, there are differences over key issues, differences between the House and Senate, and differences in interpretation of Trump's policy statements.

"Given the fissures we have already seen, the White House's relationships on the Hill are volatile and regulatory cooperation is not a sure bet," Potter said in a [Brookings article](#) post.

Democrats have been largely supportive of Dodd-Frank, and opponents to deregulation have only started to dig in.

Banks and brokers, who have just implemented much of Dodd-Frank at huge costs, have been mixed in their comments.

"There were winners and losers with Dodd-Frank having to deal with entrenched interests in the business community. Some of those who ended up winning (after its passage) will fight to keep what they have," said Potter.

In a politically charged environment, disagreements between the president and Congress can fuel more "slow-rolling," since it complicates the necessary task of determining legislative intent.

The intent of legislation comes into play whenever regulations are implemented by the bureaucracy.

"There are a lot of goals and language about regulatory goals and not a lot of clarity coming on what people should do," said Kent, "Once specific policies are formulated you will see a lot of conflict."

Even in the best of times, the work of agencies is slow and grinding. "It does not mean that they are being disobedient when things slow down," said Kent.

"Disruptive tactics" vs bureaucratic dynamics

Within the regulators, bureaucratic dynamics can dominate even as agency leadership and new legislation changes the direction.

"In any agency meeting when group decisions are being made, and you are framing decisions based on possible outcomes, you look at what is possible and what kind of control you have over the outcome," said Kent. "Folks within agencies will have reasons to go slower — resource constraints and judgment calls about what to do next. Those things happen in any organization."

Trump's administration has defended the president's use of "disruptive" tactics and tough language to shake up the bureaucracy. Former U.S. President Ronald Reagan had success in taking on air traffic controllers to further his budget cuts. Other leaders like Britain's Margaret Thatcher aggressively challenged entrenched interests.

But financial rule making could pose special problems. There is a fundamental need to build consensus, or at least clarity, due to the complexity of the financial system, the need to keep markets stable and functioning and the normal tensions that go with the regulator's role as an industry referee.

Trump's orders on deregulation require a period to study rule rollbacks, a nod to the difficulty of the task ahead, and perhaps mindful of the missteps made on the travel ban.

The Trump advantages include a supportive Congress as well as a White House staffed with Wall Street insiders, a number from Goldman Sachs, bringing the firm's reputation for financial innovations. In that scenario, the fierce rhetoric and industry knowledge could be an effective tool in taming the bureaucracy, especially if fast tracking rules are passed by Congress.

With their ability to control budgets and influence enforcement policies, there are ways for Congress and the White House to tame the bureaucracy. But agencies so far remain largely understaffed at senior levels as the Trump administration gets up to speed.

"Maybe it will work with a more unorthodox style that breaks the old rules," Potter said. "I wonder about that. It remains to be seen."

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