# CENTER FOR AMERICAN FREEDOM

*How and Why the Trump Administration Deregulated*

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Every American has the potential to live an extraordinary life. Individuals, however, are tempted to pursue their interests at the expense of others. No one is immune from this temptation, including government officials. For this reason, our Nation's Founders knew that any nation that wishes to remain free requires a government with checks and balances (Madison, 1788).

The vision of ensuring every individual can strive to fulfill their potential while also preventing harm to others drove the Trump Administration's regulatory reform initiative. The initiative was designed to redress decades of regulatory power creep by Washington bureaucrats and administrations of both parties. The Trump regulatory reform initiative pursued three overarching goals: slashing red tape to create jobs and grow the economy, recognizing limits on agency power, and creating opportunities for Americans to govern themselves. The initiative successfully achieved these objectives, and these goals provide a roadmap for federal policymakers.

## CREATE JOBS AND GROW THE ECONOMY

The first goal the Trump Administration pursued was *slashing red tape to create jobs and grow the economy* (White House, 2020). The insight here is simple: excessive regulations that fail to pass strict cost-benefit tests foreclose profitable business opportunities, inhibit investment, and divert resources to legal and compliance costs. This burdens employers generally and small businesses in particular (Coffey, McLaughlin, & Peretto, 2016; McLaughlin, Ghei, & Wilt, 2018). Such regulations are a hidden tax on the economy and one that has been repeatedly added to by one administration after another.

### *Controlling Regulation*

By eliminating unnecessary regulations, the Trump Administration sought to reduce business costs and open additional business opportunities (CEA, 2019). Decreasing business costs stimulated job creation as employers made investments in their businesses and seized new opportunities for expansion (CEA, 2021, p. 39-40). Good jobs, in turn, create the material conditions needed to support individual Americans as they engage in a life of purpose and community.

To jumpstart the deregulatory push and create jobs, President Trump signed Executive Order (EO) 13771 shortly after taking office (Exec. Order 13771). This EO required agencies to take two deregulatory actions for every new regulatory action and abide by a yearly regulatory cost budget. EO 13771 was premised on recognizing two clear facts: federal regulations have increased over the years, and agencies have lacked an incentive to identify and rescind regulations that are no longer needed (Coffey, McLaughlin, & Peretto, 2016; CEA, 2020a, pp. 108-112). EO 13771 gave them that incentive.

Year in and year out, agencies beat the 2-for-1 ratio. The Office of Management and Budget's (OMB) official EO 13771 reporting showed agencies reduced regulatory costs by $200 billion during the course of the Trump Administration (Office of Information and Regulatory Affairs, 2020). These are remarkable results.

*Significant Economic Benefits*

Lowering regulatory costs encourages investment and creates new business opportunities that produce additional economic gains. The Council of Economic Advisers (CEA) estimated the Trump Administration regulatory reforms boosted aggregate real incomes by $380 billion over a 5 to 10 year period, amounting to an additional $3,100 per household over this time (CEA, 2020a, p. 134). Furthermore, the CEA estimated that the Trump Administration's regulatory reform efforts had the potential to increase real Gross Domestic Product by 1.0 to 2.2 percent within 10 years (CEA, 2020a, p. 107).

Employment also grew rapidly under EO 13771. In late 2016, the Congressional Budget Office forecast the economy would create 1.9 million net new jobs by the end of 2019. The economy, however, actually created more than 7 million net new jobs during these 3 years (CEA, 2020a, pp. 69-70). This period also saw the lowest sustained unemployment rate in a half-century. The unemployment rate remained at or below 4 percent for 23 consecutive months, the longest such period in roughly 50 years. Furthermore, the unemployment rate fell to 3.5 percent in February 2020, the lowest rate since December 1969 (Federal Reserve Economic Data, 2021a).

During this historically tight labor market, the wages of lower-income and historically marginalized workers grew particularly rapidly. Wage growth for workers outpaced that of managers, growth for those without a bachelor's degree outpaced that for people with a bachelor's degree, and wage growth for earners in the bottom decile was more than double that for earners in the top decile (CEA, 2020a, pp. 15, 79-80). Notably, minority workers experienced perhaps the most remarkable turnaround in economic fortunes of all. Both unemployment and poverty rates reached record lows for Hispanic Americans and Black Americans in 2019. Asian Americans, Native Americans, veterans, individuals with disabilities, and those without a high school diploma also hit record-low unemployment rates (CEA, 2020a, pp. 83-84).

Many blue-collar industries saw a resurgence. After several years of stagnation, manufacturing job growth exploded in 2017 and 2018. Between December 2014 and

December 2016, manufacturing employment rose by an anemic 63,000 jobs. Manufacturing employment increased by a factor of seven— 447,000 net new jobs—between December 2016 to December 2018 (Federal Reserve Economic Data, 2021b).

Beyond providing the resources to make ends meet, jobs are integral to creating a purpose for real human thriving. By reviving languishing industries, the Trump Administration created opportunities for rewarding careers for Americans working in manufacturing and other blue-collar sectors. Far more than just a paycheck, this prosperity bolsters their confidence to undertake the family and community commitments that financial distress or economic uncertainty might otherwise dissuade them from taking on (Fahlen & Olah, 2015; Schneider, 2015).

*Re-Regulating*

The Biden Administration has begun to reverse these deregulatory gains. President Biden rescinded EO 13771 in his first hours in the Oval Office. Agencies can now regulate without regard to the cumulative burden they impose on the American people. Their incentive to find and amend unneeded or outdated regulations has also been removed.

President Biden further declared plans to take "robust regulatory action" in EO 13992 (Exec. Order 13992). He began reversing some of the Trump Administration's most economically significant deregulatory actions immediately upon taking office. This will produce costly regulatory mandates on American families and businesses. This includes rescinding the Safe, Affordable, Fuel-Efficient Vehicles Rule, which relaxed scheduled increases in car fuel efficiency requirements (Exec. Order 13990). Economists estimated this rule would save Americans over $100 billion and reduce quality-adjusted vehicle prices by $2,200 each. Those savings were projected to increase aggregate real income by $53 billion over 10 years (CEA, 2020b). The Biden Administration is also eliminating Association Health Plans, which allow small businesses to jointly offer more affordable health plans than they could offer individually (Exec. Order 14009). The Biden Administration has also begun rolling back many Trump Administration environmental regulations that spurred growth in the vital energy sector while preserving America's clean air, water, and land (Exec. Order 13990).

New agency leadership rapidly responded to President Biden's direction. The Department of Labor (DOL) has already rescinded regulations clarifying the distinction between independent contracting and employment (Independent Contractor Status, 2021) and proposed rescinding a rule that clarified when franchisors could be considered joint employers of their franchisees' workers (Rescission of Joint Employer Status, 2021). These Trump Administration rules protected the gig economy business model that has enabled flexible rideshare jobs to grow rapidly (e.g., driving for Uber or Lyft) and protected the franchise business model. The Environmental Protection Agency (EPA) has also revoked the Trump Administration's requirement to conduct a rigorous cost-benefit analysis before issuing new rules (Newburger, 2021).

The Biden Administration has gone even further, issuing a memorandum that directs OMB to revise how regulatory benefits are assessed (White House, 2021). These revisions are to "fully account for regulatory benefits that are difficult or impossible to quantify." Notably absent is any reference to the costs said regulations impose. While final judgment must be withheld until OMB releases its revisions, President Biden's memorandum raises the specter of widespread imposition of enormous costs on American families, workers, and businesses based on speculative or unmeasurable benefits.

## RECOGNIZING LIMITS ON AGENCY POWER

The second goal the Trump Administration pursued was *recognizing limits on agency power*. Recognizing that unchecked power creates the temptation for abuse, our Founders crafted a set of constitutional checks and balances that limit the power of both Congress and the President. This ensures that no one federal official has unlimited discretion over the lives and property of his or her fellow citizens. Over the last several decades, however, administrative agencies steadily assumed power, with the result that an agency can now bring legislative, executive, and judicial authorities to bear against regular citizens who lack the power to fight back (Cooper, 2015). These consolidated authorities stack the deck in favor of agencies against American citizens.

### *Citizen Input on Guidance Documents*

The Trump Administration redressed this imbalance, instituting the most important reforms to the administrative system in decades. These reforms were designed to constrain the power of Washington in multiple ways. Among these reforms was EO 13891 (Exec. Order 13891), which brought an orderly process to guidance documents for the first time. "Guidance" is the term for informal agency statements on law or policy that are not required to pass through Administrative Procedure Act rulemaking procedures. Therefore—unlike regulations—the public generally does not have an opportunity to comment on guidance documents before they are issued. Although guidance is technically not legally binding, regulated parties typically feel they must comply to avoid trouble with regulatory agencies. Agencies issue hundreds or thousands of guidance documents each year, making it difficult for small businesses and individuals to keep up with rapidly-evolving policy and legal positions.

Guidance had become a cause of widespread concern before President Trump took office. Many Americans worried that the lack of procedure and opportunities for public comment, combined with the vast numbers and obscurity of agency guidance, created a sub-regulatory process that lacked accountability and transparency and hence, presented agencies with opportunities for the unchecked exercise of power (Crews, 2017).

EO 13891 addressed this problem by requiring agencies to review their guidance documents and rescind any that were outdated or otherwise no longer suitable for use. Agencies had to publish the remaining guidance on a central online portal. These searchable websites made guidance much more transparent. Under EO 13891, small businesses and individuals could find and evaluate guidance as easily as large corporations do. The order also directed agencies to let the public comment on proposed guidance before they issued it. Agencies further had to assess the costs and benefits of major guidance documents, just as they do for regulations. EO 13891 finally required agencies to adopt internal regulations codifying these procedures. These changes were consistent with recommendations by the independent Administrative Council of the United States (Administrative Conference, 2019). Even the former top Obama Administration regulator praised these reforms (Sunstein, 2019). Agencies promptly implemented EO 13891. By the end of 2020, almost all major regulatory agencies had complied, including by creating central guidance portals. Moreover, agencies rescinded some 10,000 guidance documents during their required guidance review.

President Biden immediately eliminated these procedural reforms. He rescinded EO 13891 on his first day in office. His EO 13992 directed agencies to "promptly take steps to rescind any orders, rules, regulations, guidelines, or policies … implementing or enforcing" EO 13891. Agencies have rushed to comply, with DOL in the lead. DOL revoked its guidance regulation a mere week after President Biden's rescission of EO 13891, prioritizing rescinding this transparency measure above issuing new workplace COVID-19 safety guidelines. The EPA recently issued a similar rule precluding public input on agency guidance (Frazin, 2021). Agencies are now free to issue major guidance without consulting the people who must live under the new rules.

### *Due Process in Enforcement*

The Trump Administration also reformed the administrative enforcement and adjudication process. Agencies do not just make regulations; they also enforce them and often decide in the first instance whether someone violated them. Strong regulatory enforcement is critical to protect public health and safety, the environment, the integrity of our markets, and many other key national objectives. Under the Trump Administration, agencies vigorously enforced the law against wrongdoers (U.S. Environmental Protection Agency, 2021; U.S. Department of Labor, 2019). Vigorous enforcement, however, is distinct from unfair or inaccurate enforcement that disrespects the rights of American citizens. Fairness and accuracy are at the heart of American notions of due process and confer a sense of predictability and trust that increase enforcement effectiveness.

For this reason, the Trump Administration issued EO 13892 (Exec. Order 13892) as a companion to Order 13891. EO 13892 required agencies to inform individuals and businesses what law or regulation the agency alleges they violated. Agencies could no longer charge individuals for violating the law solely for not following agency guidance. EO 13892 also required agencies only to apply standards of conduct that existed at the time an action occurred. This prevents agencies from changing the rules after the fact and retroactively penalizing non-compliance. Moreover, EO 13892 required agencies to give individuals and businesses subject to enforcement actions a chance to respond before imposing legal liability—forbidding behavior like the EPA's actions against the Sackett family. In that case, the EPA threatened to fine the Sacketts $75,000 a day for building a home on an alleged wetland, which was in fact in a built-out subdivision, without giving the family a chance to contest that finding (Neeley, 2020).

EO 13892 was just the beginning. The Trump Administration also issued EO 13924 (Exec. Order 13924), containing a "Regulatory Bill of Rights" to align the practices of administrative agencies with fundamental norms of fairness and due process. The 10 principles on this list include the presumption that a person complies with the law until the agency proves otherwise; a commitment to public, clear, and effective rules of evidence in agency adjudicatory proceedings; a directive that agencies conduct investigations in a timely manner; and others similar guarantees.

The Regulatory Bill of Rights represented the first time that a president put forth a unified vision of fairness and accuracy in administrative proceedings. It was designed to prevent abuses of authority such as those experienced by the Boucher family. They labored under a Department of Agriculture investigation for nearly 2 decades for cutting down nine trees on their farm (*Boucher v. U.S. Dep't of Agriculture*, 2019).

President Biden rescinded EO 13892 in the same executive order that rescinded EO 13891. A few weeks later, he rescinded EO 13924 (Exec. Order 14018). The message to agencies is unmistakable: their investigative and enforcement powers are privileged over norms of fair process. That subordination of the rights of Americans to the interests of the Executive in enforcement is not the American way. It brings back opportunities for the type of abuse that hurt the American people that the Trump Administration's reforms were designed to prevent.

## CREATING OPPORTUNITY FOR AMERICANS TO GOVERN THEMSELVES

Third and finally, by pulling back the extended reach of Washington, the Trump Administration *created opportunities for the men and women of America to govern themselves*. The logic of this goal is simple: when Washington arrogates power over American citizens, they lose the opportunity to put their wisdom, ingenuity, and initiative to work in directing their own activities and the activities of their communities.

If one aspect of a meaningful life is to be a source of good for ourselves and others, then it is vital to create as much space as possible for the creativity, hard work, and collaboration of individual Americans.

With each unnecessary regulation rescinded or replaced, the Trump Administration made room for American ingenuity and community enterprise. One paradigmatic example is the replacement of the Obama Administration's Waters of the United States (WOTUS) regulation. The Federal Water Pollution Control Act gives the EPA the authority to regulate "navigable waters." The WOTUS rule used this authority to assert federal control over millions of additional acres of land and water, including streams that are dry most of the year, drainage ditches, and isolated ponds (Bakst, Rutzick, and White, 2017). Affected property owners would have to comply with a new federal permitting bureaucracy. Each permit costs an average of $270,000 to obtain (Hopper & Miller, 2015). The WOTUS rule would have made property alterations prohibitively expensive for many Americans.

The Trump Administration replaced the WOTUS rule with one that respected the term "navigable waters" and, consequently, the limits of federal authority over such areas. This left the choice of whether and how to regulate these areas to states and local communities. Contrary to critics' assertions, this rule did not leave America's waters unprotected. It instead recognized both Congressional limitations on federal authority and that the essential work of local land and water conservation better rests with the people who best understand these lands and waters. In addition to respecting authority vested in those best positioned to understand local needs and particularities, the Trump Administration's WOTUS rule change gave Americans the opportunity to undertake one of the most important tasks of living in a community: caring for the environment in which that community lives and works.

The Trump Administration also sought opportunities to partner with state, local, and tribal partners to improve regulatory policies at every level of governance. In just one example, the Trump Administration formed the *Governors' Initiative on Regulatory Innovation* in October of 2019, a nonpartisan initiative that worked to reduce regulatory burdens on the American people. One action that came out of this Initiative was advancing occupational licensing reforms that improve mobility for families moving across state lines, making it easier for them to take the next step in their career or start a new business (White House, 2019).

There is a clear contrast between the Trump Administration and the Biden Administration on this point. The central motif of President Biden's regulatory policy is federal activism. In the words of his memorandum, Modernizing Regulatory Review, he has decided to "mobilize the power of the Federal Government" through regulatory action (White House, 2021). While this activist stance may have good motives, it fails to realize that a true vision of American greatness includes at its heart the opportunity of each and every American to live a life of purpose and community, in which self-government must play a very significant role. In its haste to bring federal power to bear on as many issues as possible, the Biden Administration threatens to curtail opportunities for Americans to engage in self-government.

## CONCLUSION

The Trump Administration followed three overarching regulatory principles: limiting regulatory burdens to create jobs and grow the economy, recognizing the limits of agency power and providing due process protections, and creating opportunities for Americans to govern themselves. These principles were highly successful and provided a roadmap for federal policymakers.

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