



EVALUATING REGULATORY REFORMS Lessons for Future Reforms

Critics from widely differing perspectives agree on the need for reforming the regulatory process. Over the decades, reforms have sought to increase agency accountability and improve the quality of regulatory analysis and decision-making, with varying success.

In a study for the Mercatus Center at George Mason University, [Sherzod Abdukadirov](#) identifies four criteria for effective reforms: independent oversight of regulatory agencies, veto power over agency decisions by an independent overseer, broad application of reforms to all regulations, and adequate use of subject-matter experts. Using these criteria, the study evaluates proposals from the 112th Congress to assess their potential effectiveness.

To view the full study, see “[Evaluating Regulatory Reforms: Lessons for Future Reforms.](#)”

BACKGROUND

Despite improvements in the regulatory process that have been brought about by reforms over the years, agencies continue to enjoy a near monopoly on scientific and economic expertise within the federal government. In the absence of effective external oversight, agencies can get away with poor-quality analysis and politically motivated rules that promote their own agendas.

KEY FINDINGS

- The **Regulatory Accountability Act** scored relatively well on all criteria. This act would ensure independent oversight through a combination of formal hearings and greater judicial oversight, which would apply broadly to all major regulations. The courts’ ability to check agencies’ economic and scientific analyses would reduce the bureaucracy’s monopoly on expertise.
- The **Congressional Office of Regulatory Analysis (CORA) Creation and Sunset Review Act** scored high on independence, applicability, and expertise, but low on veto power. CORA would conduct peer review of regulatory analysis for all major regulation. However, the congressional agency would have limited veto powers and rely on Congress and the courts for enforcement.

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- The **Regulations from the Executive in Need of Scrutiny Act** scored well on independence, veto power, and applicability, but poorly on expertise. The reform would limit agency discretion by requiring congressional approval for economically significant rules. However, it would not reduce the bureaucracy’s monopoly on expertise.
- The **Clearing Unnecessary Regulatory Burdens Act** and similar reforms scored well on expertise and applicability, but poorly on independence and veto power. These reforms—which would expand peer review by the Office of Information and Regulatory Affairs to include independent agencies—would likely produce only limited improvement, given the office’s political constraints as an executive-branch agency.
- The **Unfunded Mandates Accountability Act** and similar reforms scored well on independence and veto power, but poorly on applicability and expertise. These reforms would expand the applicability of and strengthen judicial-review standards for the Unfunded Mandates Reform Act. Although the reforms would give the courts sufficient veto powers, the courts could only take up a fraction of major rules due to limited resources. In addition, because the courts generally defer to agency expertise, the reforms would not affect the quality of analysis.
- The **Regulatory Flexibility Improvements Act** and similar reforms scored well on independence but poorly on all other criteria. The reforms would expand the courts’ power to invalidate agency rules, but their very narrow and ambiguous applicability would continue to limit their effectiveness.

RECOMMENDATIONS AND CONCLUSIONS

The experience with previous reforms provides four key criteria for an effective regulatory reform that would increase agency accountability and improve the quality of regulatory analysis and decision-making.

- *Establish independent oversight to provide a robust check on regulatory agencies.* When reforms left compliance with statutory requirements to agencies or when the actors charged with oversight were not fully independent, the reforms were less effective in constraining agency discretion.
- *Give the independent overseer veto power over agency decisions.* The strongest veto powers include the courts’ power to invalidate rules that do not comply with statutory requirements. Less effective reforms either made it very difficult to exercise veto powers or made statutory requirements so vague that they effectively left compliance up to agencies.
- *Apply reforms broadly to all rules.* Reforms were less effective if they either applied to very few rules or provided so many exclusions that they triggered statutory requirements for only a small fraction of rules.
- *Empower subject-matter experts to oversee agencies.* Successful reforms provided for peer review of economic or scientific analysis in order to break down the bureaucracy’s current monopoly on expertise.