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OPINION | COMMENTARY

Deregulators Must Follow the Law, So Regulators Will Too

As the Labor Department acts to revise the Fiduciary Rule and others, the process requires patience.

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President Trump has committed—and rightly so—to roll back unnecessary regulations that eliminate jobs, inhibit job creation, or impose costs that exceed their benefits. American workers and families deserve good, safe jobs, and unnecessary impediments to job creation are a disservice to all working Americans. As the Labor Department approaches this regulatory rollback, we will keep in mind two core principles: respect for the individual and respect for the rule of law. America was founded on the belief that people should be trusted to govern themselves. Citizens sit on juries and decide the fate of their fellow citizens. Voters elect their representatives to Washington. By the same token, Americans should be trusted to exercise individual choice and freedom of contract. At a practical level, this means Washington should regulate only when necessary. Limiting the scope of government protects space for people to make their own judgments about what is best for their families.

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The rule of law is America's other great contribution to the modern world. Engraved above the doors of the Supreme Court are the words "Equal Justice Under Law." Those four words announce that no one is above the law, that everyone is entitled to its protections, and that Washington must, first and foremost, follow its own rules. This means federal agencies can act only as the law allows: The law sets limits on their power and establishes procedures they must follow when they regulate—or deregulate.

The Administrative Procedure Act is one of these laws. Congress had good reason to adopt it: In the modern world, regulations are akin in power to statutes, but agency heads are not elected. Thus, before an agency can regulate or deregulate, it must generally provide notice and seek public comment. The process ensures that all Americans—workers, small businesses, corporations, communities—have an opportunity to express their concerns before a rule is written or changed. Agency heads have a legal duty to consider all the views expressed before adopting a final rule.

Today there are several regulations enacted by the Obama administration that federal courts have declared unlawful. One is the Persuader Rule, which would make it harder for businesses to obtain legal advice. Even the American Bar Association believes the rule goes too far. Last year a federal judge held that "the rule is defective to its core" and blocked its implementation. Now the Labor Department will engage in a new rule-making process, proposing to rescind the rule.
Another example of a controversial regulation is the Fiduciary Rule. Although courts have upheld this rule as consistent with Congress's delegated authority, the Fiduciary Rule as written may not align with President Trump's deregulatory goals. This administration presumes that Americans can be trusted to decide for themselves what is best for them.

The rule's critics say it would limit choice of investment advice, limit freedom of contract, and enforce these limits through new legal remedies that would likely be a boon to trial attorneys at the expense of investors. Certainly, it is important to ensure that savers and retirees receive prudent investment advice, but doing so in a way that limits choice and benefits lawyers is not what this administration envisions.

The Labor Department has concluded that it is necessary to seek additional public input on the entire Fiduciary Rule, and we will do so. We recognize that the rule goes into partial effect on June 9, with full implementation on Jan. 1, 2018. Some have called for a complete delay of the rule.

We have carefully considered the record in this case, and the requirements of the Administrative Procedure Act, and have found no principled legal basis to change the June 9 date while we seek public input. Respect for the rule of law leads us to the conclusion that this date cannot be postponed. Trust in Americans' ability to decide what is best for them and their families leads us to the conclusion that we should seek public comment on how to revise this rule. Under the Obama administration, the Securities and Exchange Commission declined to move forward in rule-making.

Yet the SEC has critical expertise in this area. I hope in this administration the SEC will be a full participant.

America is unique because, for more than 200 years, its institutions and principles have preserved the people's freedoms. From administration to administration, respect for the rule of law has remained, even when Americans have been bitterly divided. Some who call for immediate action on the Obama administration's regulations are frustrated with the slow process of public notice and comment. But this process is not red tape. It is what ensures that agency heads do not act on whims, but rather only after considering the views of all Americans. Admittedly, this means deregulation must find its way through the thicket of law. Casting aside the thicket, however, would leave Americans vulnerable to regulatory whim.
The Labor Department will roll back regulations that harm American workers and families. We will do so while respecting the principles and institutions that make America strong.

Mr. Acosta is secretary of labor.
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