

Analysis of “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions”

“The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (the Unified Agenda) is the document in which agencies have outlined regulatory priorities since the 1980s. Along with the *Federal Register*, the Unified Agenda is one of the few limited and imperfect tools available for regulatory disclosure. Much could be done to improve the quality of the information compiled within it.

The Unified Agenda traditionally appeared each fall and, minus the “Regulatory Plan” component, spring. However, the publication of the Unified Agenda has become erratic in recent years. Its traditional April and October schedule is now often delayed into summer and winter. The annual *Report to Congress* on regulatory costs and benefits has also been chronically late, with Biden’s fall 2022 edition appearing on January 4, 2023, marking the longest delay since Obama skipped the 2012 spring edition entirely.³¹³

The Unified Agenda appears with little public fanfare, but election-minded administrations can still prompt agencies to either accelerate or slow down rulemaking priorities, thereby affecting The Unified Agenda’s content and bulk.

The year 2017 saw the beginning of Trump’s one-in, two-out directive for federal agency rulemaking by way of Trump’s Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” The normally staid Agenda release was accompanied during the Trump years by White House Office of Management and Budget statements touting progress on meeting goals for regulatory streamlining and by media events com-

plete with red-tape props³¹⁴ and a *Wall Street Journal* op-ed by then administrator of the Office of Information and Regulatory Affairs (OIRA) Neomi Rao.³¹⁵ The differences are night and day with the Biden-era reversal at OMB, with both the semiannual 2021 and 2022 editions accompanied by proclamations of claimed net benefits, rather than calls for regulatory oversight.

The Unified Agenda operates like a cross-sectional snapshot of federal actions moving through the regulatory pipeline. It breaks down many rules from over 60 federal departments, agencies, and commissions primarily along three categories:

- Active actions: prerule measures and proposed and final rules, which are rules in the production process
- Completed actions: actions completed during the previous (roughly) six months, since the prior Agenda edition, but not all-inclusive
- Long-term actions: anticipated longer-term rulemakings beyond 12 months

Many rules in the Unified Agenda directly or indirectly affect state and local governments. The rules in the Unified Agenda often carry over at the same stage from one year to the next, or reappear in subsequent editions at different stages. In the fall 2022 edition, 386 of the active actions appeared for the first time, compared with 495 the year before and 444 in Trump’s last full calendar year.

Observers have long recognized the inconsistent and subjective nature of the Unified Agenda’s contents, recognizing that it “provides only a semi-filtered view of each

agency's intentions," and that it "reflect[s] what the agency wants to make public, not necessarily all that they are actually considering, and some highly controversial issues may be withheld."³¹⁶

Although agencies are not required to limit their regulatory activity to what they publish in the Unified Agenda, that temporarily changed under the Trump administration, which instructed as follows:

Agencies must make every effort to include actions they plan to pursue, because if an item is not on the Unified Agenda, under Executive Order 13771, an agency cannot move forward unless it obtains a waiver or the action is required by law. A clear and accurate Agenda helps avoid unfair surprise and achieves greater predictability of upcoming actions.³¹⁷

So, numbers of rules and their content fluctuate given administration priorities, and sometimes top-down reversals in reporting emphasis occur. Another example occurred during the Obama administration, when spring and fall 2012 guidelines from the then OIRA administrator Cass Sunstein called on agencies to "please consider terminating" the listing of stalled long-term entries until action appears more likely.³¹⁸ That request became the more emphatic "please remove" in 2013.³¹⁹

Reincorporation of long-term time lines with those less definite resumed in 2017 during the Trump administration, with OIRA leadership instructing agency heads that the administration sees "merit in their continued inclusion" where "listing of such entries still benefits readers."³²⁰ In the Biden whole-of-government regime, functioning disclosure ought to reveal a considerable number of long-term rules related to equity, climate, and the like, but instead one sees an implausible lack of rules from the likes of the Consumer Financial Protection Bureau and the Securities and Exchange Commission on long-term undertakings in these primary areas.

3,690 Rules in the Fall 2022 Unified Agenda Pipeline

The fall 2022 "Regulatory Plan and Unified Agenda of Regulatory and Deregulatory Actions," released on January 4, 2023, found 69 federal agencies, departments, and commissions listing 3,690 regulations in the active (prerule, proposed, and final), recently completed, and long-term stages, many of which had been in the pipeline for some time (see Figure 19).³²¹ That compares with 3,777 in the fall 2021 edition.

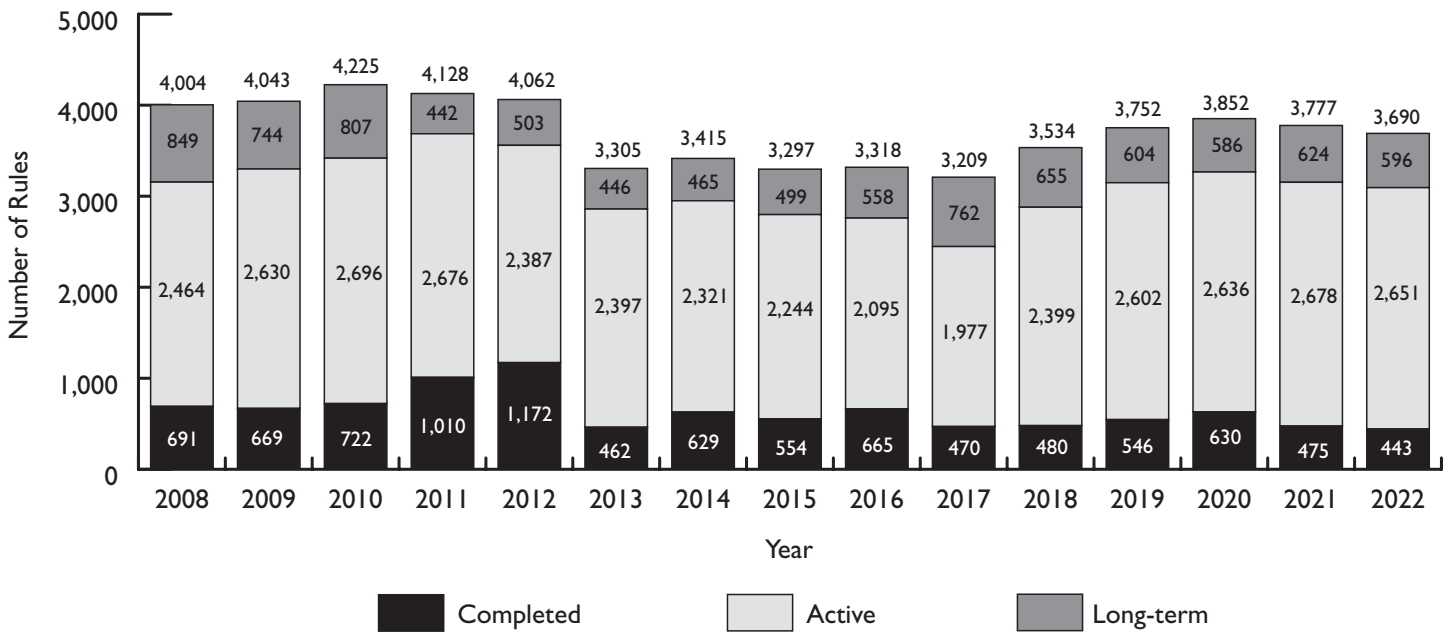
The tally of 3,852 two years ago under Trump was his highest, and the highest since 2012 under Obama; however, 653 rules in Trump's fall 2020 pipeline had been deemed deregulatory for a net of 3,199. The Trump-era fall 2017 Agenda pipeline of 3,209 contained the fewest rules since 1983, even without counting that edition's 540 deregulatory entries. (For a history of the numbers of rules in the Unified Agenda since 1983, see Appendix: Historical Tables, Part E.)

As Figure 19 shows, the Unified Agenda pipeline prior to 2013 was prone to exceeding 4,000 rules (active, completed, and long-term) each fall. Counts were even higher in the 1990s, when the all-time high count of 5,119 rules occurred in the fall 1994 Agenda. The 19 percent drop under Obama—from 4,062 rules in 2012 to 3,305 in 2013—appears to reflect, at least in part, election year considerations.³²²

Table 5 breaks out in detail all 3,690 rules in the pipeline depicted in Figure 19 by issuing agency, commission, or department. It shows numbers of rules at the active, completed, and long-term stages. (For the total numbers of rules by department and agency from previous year-end editions of the Unified Agenda since 2003, see Appendix: Historical Tables, Part F.)

Active rules. The number of active rules in the fall Agendas remains well above 2,000, with the exception being a dip to 1,977 in

Figure 19. Total Agency Rules in the Fall Unified Agenda Pipeline, 2008–2022



Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, consecutive years, and database at <http://reginfo.gov>.

“Active” rules consist of rules at the prerule, proposed, and final stages.

2017 under Trump, with 448 deemed deregulatory. The gross number of active rules rose subsequently to 2,636 in 2020 (see Figure 19), of which 496 were deregulatory. In the fall 2022 edition, the active rule count was back up to 2,651. That is slightly less than 2021, with deregulatory offsets out of the picture in both Biden years. The active rule count in the Unified Agenda of federal regulations under Biden is the highest it has been since 2011.

Long-term rules. In Trump’s first fall Agenda at the end of 2017, long-term rules in the pipeline stood at 762 (30 of them deregulatory), a jump from 558 in 2016. That may have reflected in part the OMB directives to resume disclosure of this category of rules. By Trump’s final year, the Unified Agenda’s long-term rule count fell to 586, with 56 deemed deregulatory. With Biden, long-term rules in fall 2022 stood at 596, compared with 624 in fall 2021.

Completed rules. Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last Agenda.” The number of rules in the completed category in fall Agendas (spring editions are not shown in Figure 19) rose steadily and rapidly under Obama, from 669 in 2009 to 1,172 in 2012, a 75.2 percent increase. The number then dropped sharply in 2013 to 462. This category stood at 470 and 480 in Trump’s 2017 and 2018 fall Agendas, respectively, and then rose to 546 in 2019 and to 630 in 2020. A significant proportion of Trump’s completed rules were again deregulatory (62 in 2017, 94 in 2018, 106 in 2019, and 101 in 2020), for considerably lower nets.

These compare with 475 and 443 completed rules in Biden’s 2021 and 2022 fall Agendas, respectively. For a better comparison of final rules to the *Federal Register*, this report will shortly turn to the completed subcategory of economically significant rules.

The active rule count in the Unified Agenda of federal regulations under Biden is the highest it has been since 2011.

Table 5. Unified Agenda Entries by Department and Agency, Fall 2022

Department and Agency	Number of Rules	Active	Completed	Long Term
Department of Agriculture	168	111	24	33
Department of Commerce	272	172	59	41
Department of Defense	186	136	30	20
Department of Education	47	35	10	2
Department of Energy	133	100	22	11
Department of Health and Human Services	236	182	31	23
Department of Homeland Security	143	87	12	44
Department of Housing and Urban Development	59	52	5	2
Department of the Interior	350	288	45	17
Department of Justice	127	99	6	22
Department of Labor	103	77	7	19
Department of State	54	40	9	5
Department of Transportation	306	218	25	63
Department of Treasury	337	247	24	66
Department of Veterans Affairs	93	76	16	1
Environmental Protection Agency	212	151	14	47
Agency for International Development	15	14		1
Architectural and Transportation Barriers Compliance Board	5	5		
CPBSD*	4	3	1	
Commodity Futures Trading Commission	24	21	3	
Consumer Financial Protection Bureau	11	10	1	
Consumer Product Safety Commission	25	19	2	4
Corporation for National and Community Service	14	11	3	
Council of the Inspectors General on Integrity and Efficiency	0			
Council on Environmental Quality	3	3		
Court Services/Offender Supervision, DC	7	1	2	4
Federal Acquisition Regulation	57	48	6	3
Farm Credit Administration	18	12	2	4
Federal Communications Commission	92		4	88
Federal Deposit Insurance Corporation	22	11	5	6
Federal Energy Regulatory Commission	23	21	2	
Federal Housing Finance Agency	15	11	1	3
Federal Maritime Commission	5	5		
Federal Mediation and Conciliation Service	6	4	2	
Federal Mine Safety and Health Review Commission	1	1		
Federal Permitting Improvement Steering Council	2	1		1
Federal Reserve System	32	12	12	8
Federal Trade Commission	25	24		1
General Services Administration	38	31	6	1
Institute of Museum and Library Services	1	1		
Inter-American Foundation	2	2		
National Aeronautics and Space Administration	5	5		

Department and Agency	Number of Rules	Active	Completed	Long Term
National Archives and Records Administration	12	9	2	1
National Credit Union Administration	30	20	4	6
National Endowment for the Arts	5	5		
National Endowment for the Humanities	3	2	1	
National Indian Gaming Commission	16	3	7	6
National Labor Relations Board	4	2		2
National Mediation Board	1	1		
National Science Foundation	5	4	1	
National Transportation Safety Board	10	9	1	
Nuclear Regulatory Commission	58	30	10	18
Office of Government Ethics	11	11		
Office of Management and Budget	8	8		
Office of National Drug Control Policy	1		1	
Office of Personnel Management	40	32	6	2
Office of the Intellectual Property Enforcement Coordinator	1	1		
Peace Corps	4	2		2
Postal Regulatory Commission	8		2	6
Pension Benefit Guaranty Corporation	11	9	2	
Railroad Retirement Board	4	4		
Securities and Exchange Commission	65	52	5	8
Small Business Administration	75	69	6	
Social Security Administration	25	23	2	
Surface Transportation Board	11	5	1	5
Tennessee Valley Authority	0			
U.S. Agency for Global Media	3	3		
U.S. Commission on Civil Rights	1		1	
TOTAL	3,690	2,651	443	596

* Committee for Purchase from People Who Are Blind or Severely Disabled.

Top Rulemaking Departments and Agencies

A relative handful of executive branch agencies each year account for the greatest number of the rules in the Unified Agenda pipeline. In the Biden fall 2022 Agenda, the departments of the Interior, the Treasury, Transportation, Commerce, and Health and Human Services are the most active (see Table 6). These top five, with 1,501 rules among them, account for 41 percent of the 3,690 rules in the Unified Agenda pipeline at the moment. The En-

vironmental Protection Agency, with 212 rules, comes in sixth.

The top-five independent agencies in the Unified Agenda pipeline by rule count (excluding the multiagency Federal Acquisition Regulation System³²³) are the Federal Communications Commission, Small Business Administration, Securities and Exchange Commission, Nuclear Regulatory Commission, and the Federal Reserve System (see Table 6). Their combined total of 322 rules accounts for 9 percent of the 3,690 rules in the fall Agenda. Combined, the top executive and independent agency components,

Table 6. Top Rule-Producing Executive and Independent Agencies
(From Fall 2021 Unified Agenda, total of active, completed, and long-term rules)

Executive Agency	Number of Rules
1. Department of the Interior	350
2. Department of the Treasury	337
3. Department of Transportation	306
4. Department of Commerce	272
5. Department of Health and Human Services	236
TOTAL	1,501
% of Total Agenda Pipeline of 3,690	41

Independent Agency	Number of Rules
1. Federal Communications Commission	92
2. Small Business Administration	75
3. Securities and Exchange Commission	65
4. Nuclear Regulatory Commission	58
5. Federal Reserve System	32
TOTAL	322
% of Total Agenda Pipeline of 3,690	9

Top 5 Executives plus Top 5 Independents	1,823
% of Total Agenda Pipeline	49

Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, and database, <http://www.reginfo.gov>.

“Active” rules consist of rules at the prerule, proposed, and final stages.

numbering 1,823, make up 49 percent of the total. The percentage was similar during the Trump years, with the difference that some entries then were explicitly deemed deregulatory at that time.³²⁴

Biden’s Economically Significant Rules in the Unified Agenda

A subset of the Unified Agenda’s 3,690 rules is classified as economically significant, which means that agencies estimate their yearly economic effects at \$100 million or more. That generally reflects increased costs, although sometimes an economically significant rule can be intended to reduce costs, which had been the case following Trump’s Executive Order 13771.

Active and completed components of this costly subset are on the rise under Biden. As Table 7 shows, 332 economically significant rules from 25 departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages of the pipeline.

Figure 20 depicts 2022’s 332 economically significant rules alongside those of the previous decade and a half. The number of economically significant rules in the annual fall pipeline rose under Obama, topped out twice at 224, and finished out 2016 with 193.³²⁵ In Trump’s first fall Unified Agenda in 2017, the administration brought the count down by 27 percent, an effect magnified by the fact that 30 of the 140 rules at that time were deemed deregulatory.

Table 7. 332 Economically Significant Rules in the Fall Unified Agenda Pipeline Expected to Have \$100 Million or More in Annual Economic Impact, Fall 2022

	Rules	Unified Agenda Active			Completed	Long Term
		Prerule	Proposed	Final		
Department of Agriculture	16		4	6	3	3
Department of Commerce	2			2		
Department of Defense	5		3	2		
Department of Education	23	7	7		9	
Department of Energy	16	2	7	6		1
Department of Health and Human Services	69		35	13	16	5
Department of Homeland Security	20		6	5	2	7
Department of Housing and Urban Development	3		1	1		1
Department of the Interior	9		6	1	1	1
Department of Justice	5		2	3		
Department of Labor	26	1	12	4	4	5
Department of State	2			1	1	
Department of Transportation	18	2	11	1	3	1
Department of Treasury	24		5	12	5	2
Department of Veterans Affairs	13		5	6	2	
Environmental Protection Agency	21		12	7	2	
Consumer Product Safety Commission	3			3		
Federal Acquisition Regulation	5		3	2		
Federal Communications Commission	7				1	6
Federal Energy Regulatory Commission	1				1	
Federal Housing Finance Agency	3		1	1		1
Nuclear Regulatory Commission	3		1		1	1
Office of Personnel Management	5			2	2	1
Pension Benefit Guaranty Corporation	2		1	1		
Small Business Administration	31			31		
TOTAL	332	12	122	110	53	35

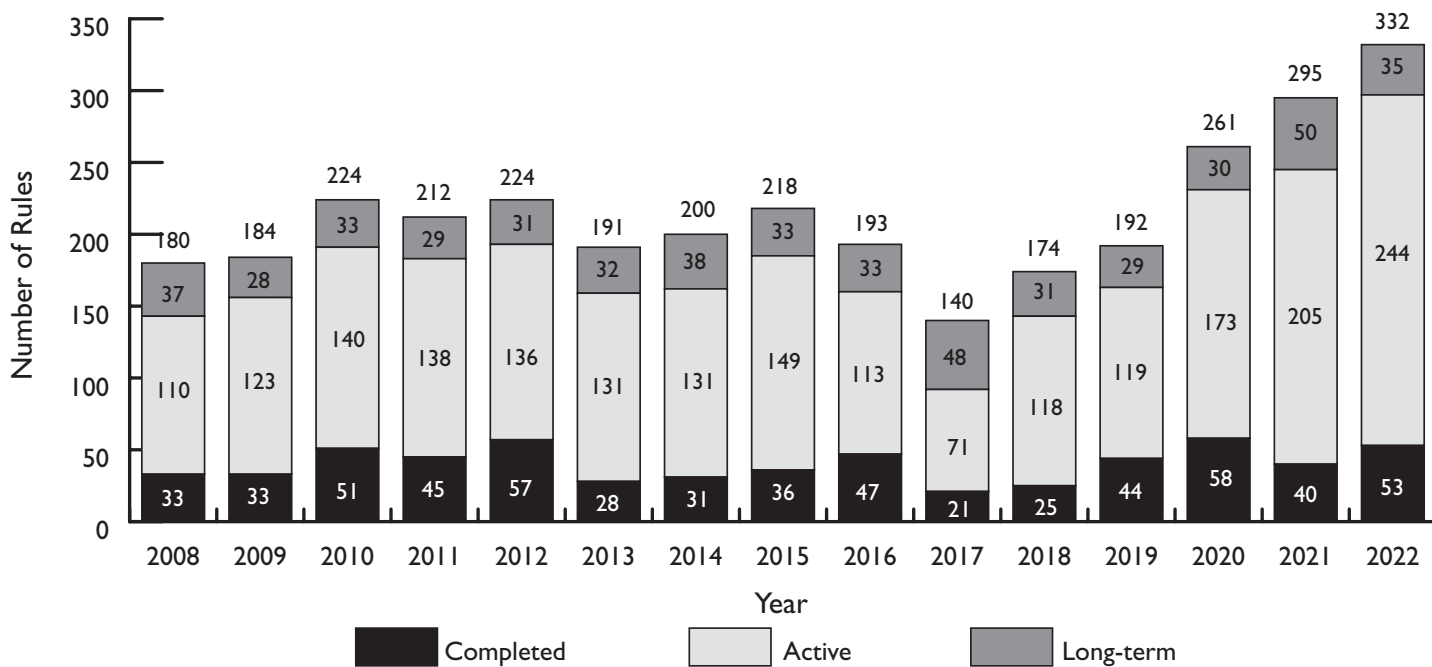
Source: Compiled from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, and from the online edition at <http://www.reginfo.gov>.

For comparison, Biden’s overall tally of 332 economically significant rules in the pipeline represents a 12 percent increase over his own first year and far exceeds the Obama years. Thirty-six of these rules in the active category relate to the pandemic-spawned Paycheck Protection Program (PPP), accounting for a share of economically significant rulemaking that did not exist before COVID-19. Despite the boldness of the Biden regulatory agenda, the Securities and Exchange Com-

mission and other financial entities are absent from long-term economically significant rulemakings, a thoroughly implausible omission given the climate, equity, justice, and inclusive recovery agendas in play.

Biden’s count exceeds by 27 percent Trump’s final year (2020) gross count of 261 economically significant rules. Trump’s final count was his own highest, as shown in Figure 20, albeit with a subset of rules that

Figure 20. 332 Economically Significant Rules in the Unified Agenda Pipeline, 2008–2022



Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, various years.

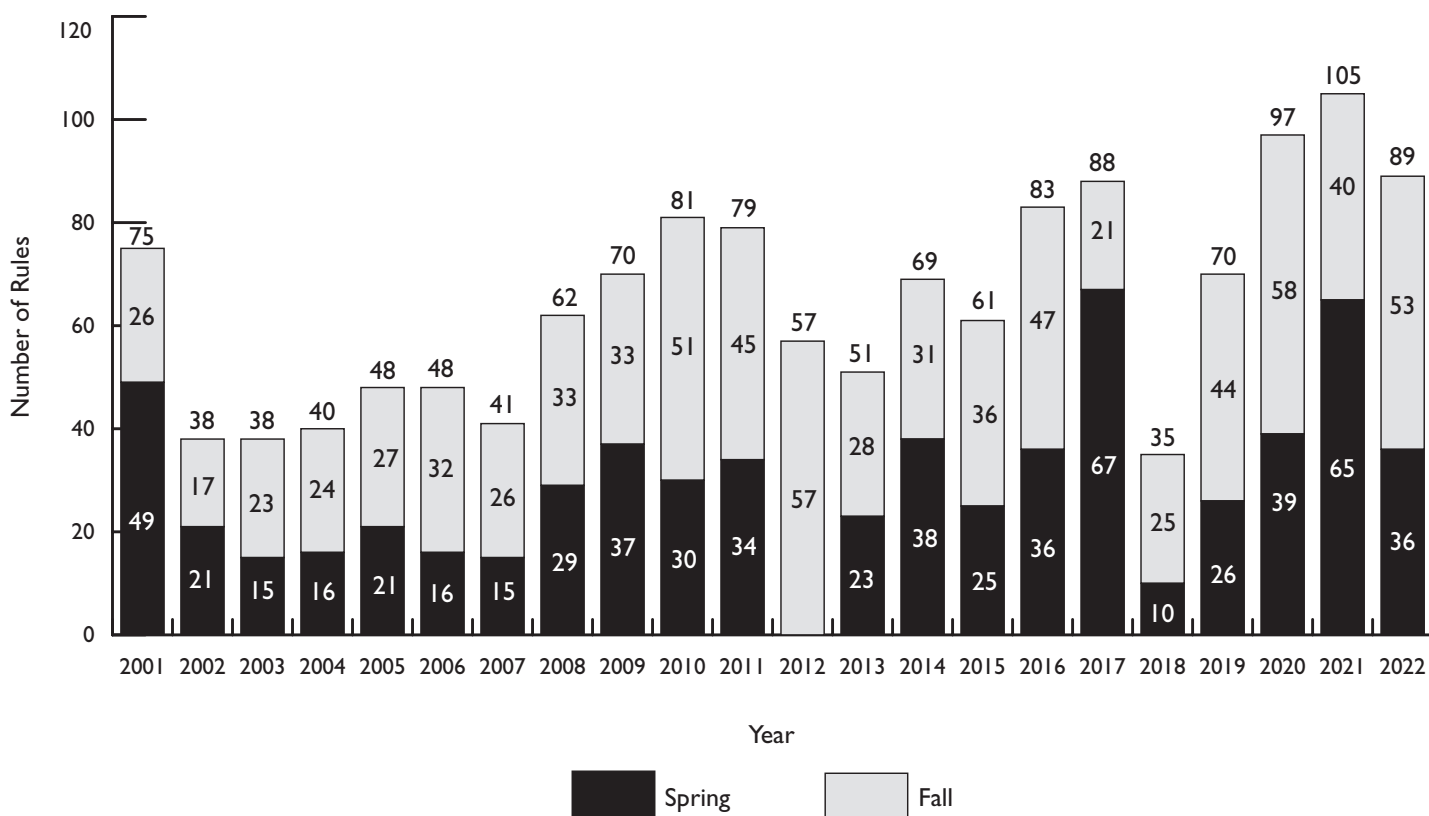
were deregulatory. Thirty-six of the Trump economically significant rules in 2020 were deemed deregulatory for a net of 225, which Biden tops by 47 percent, a nontrivial difference. (The full list of the 332 economically significant rules in the 2022 Agenda pipeline is available in Appendix: Historical Tables, Part G.)

Figure 20 also breaks down economically significant rules into completed, active, and long-term categories. Among the 332 economically significant rules in the fall 2022 edition, 244 stand at the active phase, compared with Biden’s 205 in fall 2021 and Trump’s 173 in 2020. The Trump administration’s fall 2017 Agenda had only 71 economically significant rules in the pipeline. Note that Biden’s level of active economically significant rules greatly exceeds levels seen in the Obama-era Agendas. Obama’s eight-year average of active rules across the fall Agendas was 133; George W. Bush’s eight-year average was 87. Trump’s average across the active category for his four years in office was 120, including deregulatory measures.

As for economically significant rules at the completed stage in the fall Agendas, Obama’s counts were consistently higher than George W. Bush’s had been in earlier years. Figure 20 shows completed rules in the fall Agenda, apart from Trump’s 58 in 2020, peaking at 57 in 2012, and hitting their low of 21 under Trump in 2017. Of the 58 Trump rules completed in the fall 2020 Agenda, 14 were deemed deregulatory, leaving a net of 44 that did still exceed some historical levels. Biden’s 2022 count stands at 53.

One must note that the Trump administration did not classify as regulatory some of its rules with substantial impact. For example, the 2020 PPP was part of COVID-19 relief legislation, along with the rules for implementing it. Among the 261 economically significant rules in Trump’s fall Agenda, there were 28 Small Business Administration rules at the finalization (not completed) stage related to PPP that were not designated as either regulatory or deregulatory.³²⁶ The federal reaction to the COVID-19 crisis was a major variable

Figure 21. Annual Completed Economically Significant Rules in the Unified Agenda, 2001–2022



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, spring and fall editions, various years.

affecting the flow of rules. Agencies were instructed to use emergency powers, some of which affected federal programs and rarely with deregulatory effect.

The completed rules in Figure 20 represent only those of the fall Agendas. A fuller picture of completed rules in any given year requires incorporating completed rules from the spring Agendas as well. Figure 21 isolates the totals of completed economically significant rules since 2001 from both the spring and fall Agendas. Here Biden tops his predecessors.

As Figure 21 shows, completed economically significant rules fell to 35 in the combined fall and spring 2018 Agendas under Trump but rose subsequently under him to 97 in 2020. Completed rules, however, are where the deregulatory counts really mattered for

the one-in, two-out directive. In both 2017 and 2020, Trump issued more completed economically significant rules than either Bush or Obama, but that may be partly due to the Administrative Procedure Act’s requirement for issuing a new rule to get rid of an old one. The deregulatory counts for Executive Order 13771 purposes were 16 in 2018, 18 in 2019, and 21 in 2020, and comprised significant proportions of the Trump totals. Subtracting the deregulatory rules from Trump’s tallies makes evident a substantial rollback in economically significant rulemaking.

Under the Biden administration, there were a combined 89 completed economically significant rules reported in 2022’s spring and fall Unified Agendas, as Figure 21 shows, compared with 105 in 2021. Despite the drop, partly explained perhaps by

self-imposed delays in key rules,³²⁷ Biden's 89 completed economically significant rules in 2022 exceed all other years depicted, including Trump's final year when deregulatory rules are subtracted.

Trump is not the only president to have deregulatory measures in the Unified Agenda, but predecessors never made the reduction agenda so explicit, nor did they ease the tracking of the relevant metrics as the Trump administration did with the Executive Order 13771 deregulatory designations in the OIRA database. Biden's count is 38 percent above Trump's final-year count, and exceeds anything seen under George W. Bush or Obama.

The spike in 2001 is an exception visible in Figure 21, but the level of completed economically significant rules was notably lower during the late 1990s and early 2000s than today. George W. Bush's total number of completed economically significant rules during his two terms was 390, for an average of 49 per year. Obama's total for his eight years was 551, an average of 69 per year. Granted, some agency midnight regulations from a prior administration get reflected in the totals for any first-year president, but this report emphasizes calendar-year comparisons. Trump's four-year average was 72.5 (given his total of 290), but again, OMB deemed over 50 of these rules as deregulatory.

Of the 3,690 rules in the Unified Agenda pipeline, each of the 332 deemed economically significant is estimated to have annual impacts of at least \$100 million. Those rules might be expected to eventually have combined annual effects of at least \$33 billion, particularly with the Trump offsets out of the picture.

New regulatory effects accumulate on top of previous years' costs. Attention to the economically significant rule subset should not distract policymakers and analysts from the remaining bulk of rules in the annual pipeline, which can have substantial costs or effects in their own right. One recent example is a 2021 Federal Highway Administration final rule amending regulations governing the accommodation of utilities on federal highway projects implausibly not deemed economically significant, nor even merely significant.³²⁸

Even when rules fall below a reported significance threshold, those unquantified accumulations can still impose substantial burdens on the regulated entities,³²⁹ and they need to be tracked and tabulated as the Article I Regulatory Budget Act introduced in the 118th Congress would do.³³⁰ Additionally, the regulatory effects of oft-ignored budget and transfer rules administering federal programs as well as guidance documents with regulatory impact increasingly matter.³³¹