

Unified Agenda Released without FY 2019 Regulatory Reform Report

By: Daniel R. Pérez | November 20, 2019

This morning, the Office of Information and Regulatory Affairs (OIRA) released its annual [Regulatory Plan](#) and semiannual [Unified Agenda of Regulatory and Deregulatory Actions](#). The Regulatory Plan contains official statements of agencies' regulatory priorities while the Agenda catalogues all regulatory actions currently being developed at federal agencies.

Notably absent is the Regulatory Reform Status Report, which tracks executive agency performance in complying with the deregulatory [requirements](#) of [Executive Order \(EO\) 13771](#). OIRA bundled those annual reports with the Fall Agenda in the prior two years, but the report was not included this year. The public will have to wait for an assessment of how agencies performed in Fiscal Year 2019. Some [projections](#) estimate that agencies might have achieved less than half of their [goal](#) to generate \$18 billion in cost savings—which would mark the first time in the Trump administration that executive regulatory agencies failed to meet their targets.

Administration Priorities Detailed in the Regulatory Plan

In its [introduction](#) to the Fall 2019 Regulatory Plan, OIRA notes that under the Trump administration agencies remain focused on reducing new regulatory burdens they impose on the public. The document also states that the 2019 Plan “sets a new direction in regulatory policy.” It mentions the administration's efforts to [increase oversight](#) of agency guidance documents and the Office of Management and Budget's [guidance](#) on implementing the Foundations for Evidence-Based Policymaking Act of 2018 in agency rulemaking.

Importance of the Unified Agenda

The Unified Agenda provides the most comprehensive list available of planned regulatory actions underway at U.S. federal agencies, making it [valuable](#) to a broad array of stakeholders. For instance, the Agenda serves as advance notice to the public of future opportunities to provide input to regulatory agencies throughout the rulemaking process. It also provides insight into what kind of actions are planned. For example, beginning with the Trump administration, the Agenda

In brief...

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classifies actions using executive regulatory agencies’ initial assessments of whether they expect their actions to be “deregulatory” (i.e., generate cost savings), “regulatory” (i.e., impose additional costs), or “exempt” from designation under EO 13771. A subset of actions are also designated as “other,” which [OIRA’s guidance](#) states should only be used when insufficient information prevents an agency from making an informed designation for the planned action.

The Agenda is also useful for government stakeholders (e.g., Congress) responsible for regulatory agency oversight. For instance, the list of planned actions contained in the Fall 2019 Agenda might be of particular use to members of Congress interested in disapproving agency rules under the [Congressional Review Act \(CRA\)](#).

What’s in the Fall 2019 Agenda?

The Fall 2019 Unified Agenda contains a total of 3,752 regulatory actions, 324 of which are classified as regulatory, 689 as deregulatory, with the remainder exempt or classified as “other.” Of the total number of actions, 192 are economically significant.¹

The Unified Agenda also classifies actions based on their stage of development as either: 1) active (those expected to hit milestones within a year), 2) long-term (outside this year-long window), or 3) completed (rulemakings that were either finalized or withdrawn by an agency). Of the 2,602 actions listed as active, approximately 17% were published for the first time in this Fall Agenda.

Table 1: Contents of the Fall 2019 Unified Agenda

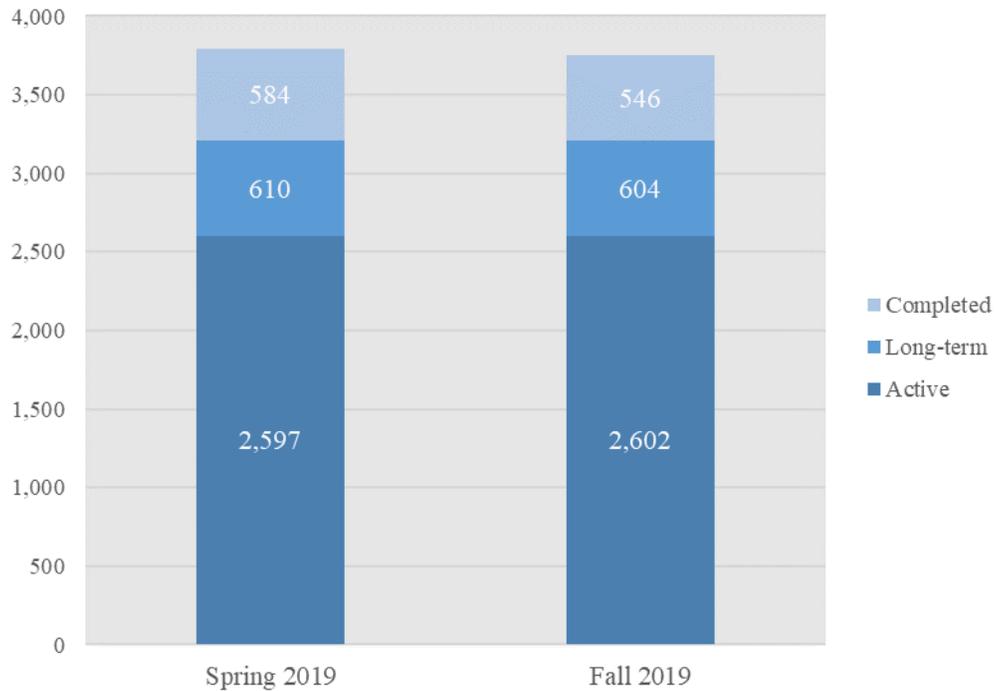
Stage	Regulatory Actions	Economically Significant Actions	First time published	Designation		
				Regulatory	Deregulatory	Exempt
Active	2,602	119	446	211	522	221
Long-term	604	29	56	79	61	33
Completed	546	44	34	34	106	40
Total	3,752	192	536	324	689	294

Compared to the Spring 2019 Agenda, the total number of actions decreased slightly from 3,791 to 3,752. However, the number of active rulemakings increased (2,602 compared to 2,597 last spring). Of those, the number of planned economically significant actions decreased slightly from

¹ According to Executive Order 12866, an “economically significant” regulatory action is one which has “an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”

124 in the Spring 2019 Agenda to 119 in the current Agenda. For these economically significant actions, the Agenda currently flags 20 as deregulatory, 39 as regulatory, 12 as exempt, with those remaining classified as either “other” or as actions underway at independent regulatory agencies.

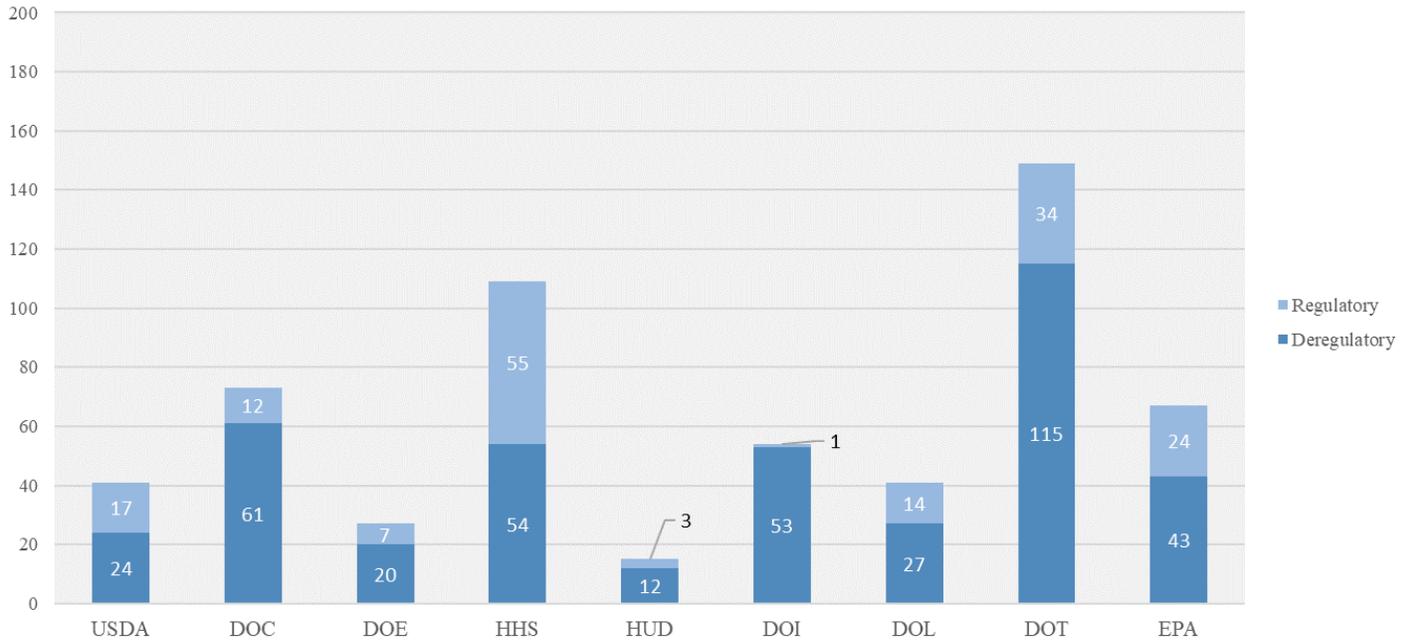
Spring 2019 and Fall 2019 Unified Agendas



Regulatory and Deregulatory Actions by Agency

With regards to actions listed as active in the Agenda, agencies plan to issue an average of approximately 2.5 significant deregulatory actions for every 1 regulatory action (down from 3 to 1 in the previous Agenda). The Department of Education (ED) plans to issue zero regulatory actions; the agencies with the most deregulatory actions planned are the Department of Transportation (DOT) with 115 actions and the Department of Commerce (DOC) with 61 actions. DOT remains the agency with the most deregulatory actions planned since the Fall 2017 Agenda.

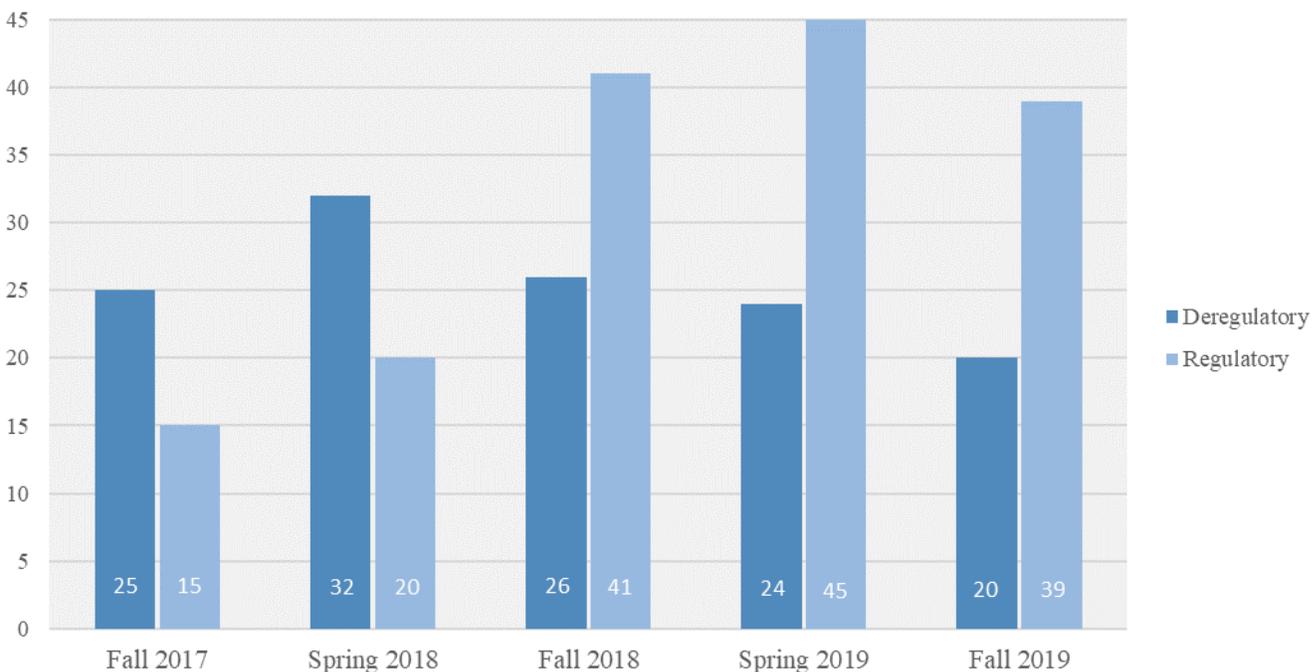
Active Regulatory and Deregulatory Actions by Agency in the Fall 2019 Unified Agenda



Continued Shift in Active Economically Significant Actions

Comparing all active regulatory and deregulatory actions suggests that agencies plan to deregulate more than regulate. However, a breakdown of economically significant rules provides a different way of looking at planned regulatory output. In the Fall 2019 Agenda, of the 119 active, economically significant actions listed, more actions are flagged as regulatory (39) than deregulatory (20). As I previously [observed](#), earlier agendas in the Trump administration listed more active economically significant deregulatory actions than regulatory actions. The current Agenda continues a shift that occurred in the Fall 2018 Agenda—where agencies began planning a greater number of regulatory, economically significant actions.

Economically Significant Active Actions Listed in the Unified Agenda during the Trump Administration

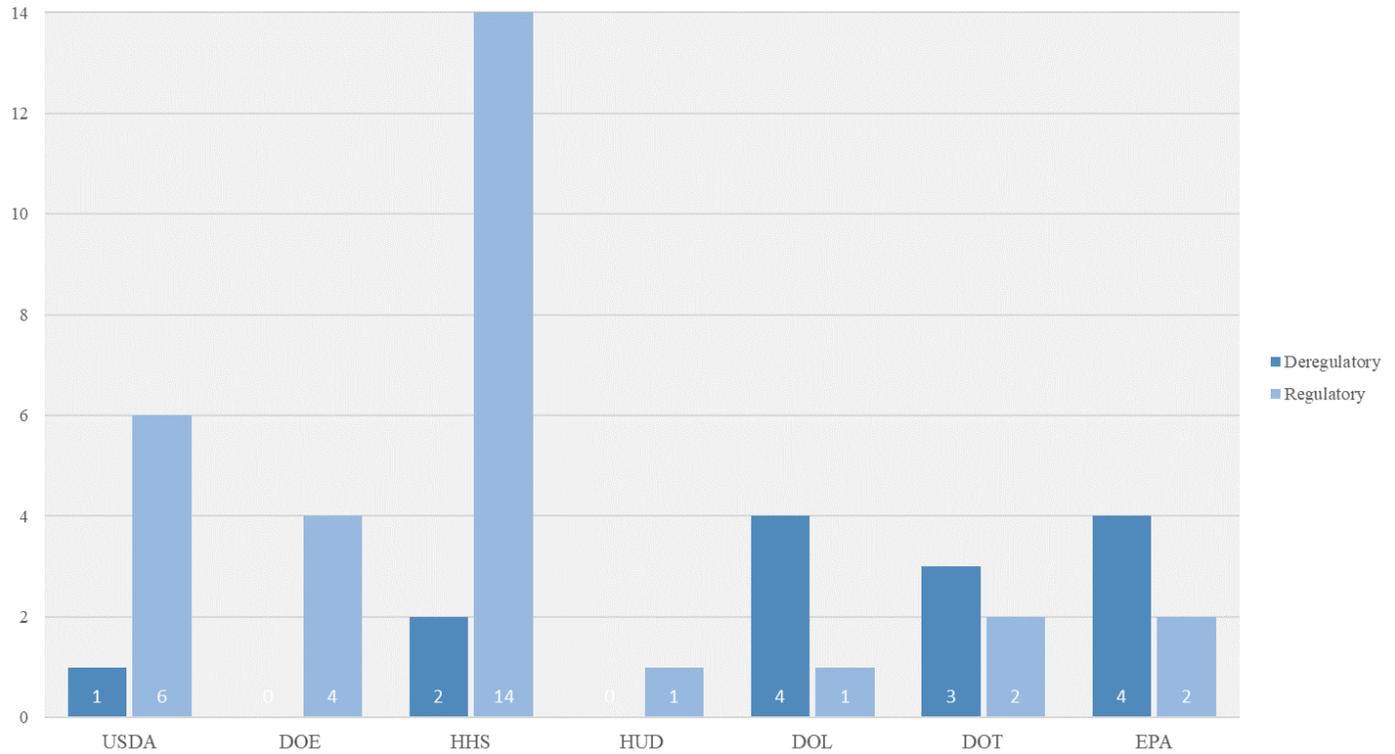


The Agenda does not provide estimates of costs or benefits for planned actions (making it difficult to estimate the magnitude of this continued shift). However, analyzing economically significant rules does provide a [useful measure](#) of regulatory output, since this subset of rules are expected to have the largest economic impact on society. By this measure, the results tell a different story about agency performance under EO 13771.

For example, only two agencies—the Environmental Protection Agency (EPA) and the Department of Labor (DOL) plan to issue at least 2 economically significant deregulatory actions for every economically significant regulatory action. The Department of Health and Human Services (HHS) lists 14 regulatory actions and only 2 deregulatory actions. That Department, though, also lists 18 economically significant actions as “other,” which means that the final ratio will depend on the extent to which this subset of rules change classification as they move further along in the rulemaking process.

Other agencies have zero economically significant deregulatory actions listed but plan to issue several economically significant regulatory actions.

Active Economically Significant Regulatory and Deregulatory Actions by Agency in the Fall 2019 Unified Agenda



As noted above, when looking at all regulatory actions, it appears that agencies plan to deregulate more than regulate. However, the expected economically significant actions are arguably the most important because those rules are likely to have the largest economic impact on society. When looking at these actions, the case that agencies plan to deregulate more than regulate becomes much less clear. In other words, agencies may be departing from the deregulatory rhetoric of the administration for regulations with the largest impact.