

POLITICS

Behind Closed Doors, Obama Crafts Executive Actions

By JULIE HIRSCHFELD DAVIS AUG. 18, 2014

WASHINGTON — When President Obama announced in June that he planned to bypass congressional gridlock and overhaul the nation’s immigration system on his own, he did so in a most public way: a speech in the White House Rose Garden.

Since then, the process of drafting what will likely be the only significant immigration changes of his presidency — and his most consequential use of executive power — has been conducted almost entirely behind closed doors, where lobbyists and interest groups invited to the White House are making their case out of public view.

Mr. Obama’s increasingly expansive appetite for the use of unilateral action on issues including immigration, tax policy and gay rights has emboldened activists and businesses to flock to the administration with their policy wish lists. It also has opened the president, already facing charges of executive overreach, to criticism that he is presiding over opaque policy-making, with the potential to reward political backers at the expense of other interests, including some on the losing side who are threatening to sue.

“We look at what they’ve been doing with executive action and are deeply concerned, and have focused a lot of our energies on how we can roll back these things,” said Geoff Burr, the vice president of federal affairs for Associated Builders

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Mr. Burr said an executive order issued by Mr. Obama last month that would block companies with a history of workplace violations from receiving federal contracts had prompted his group to contemplate “the virtues of a litigation strategy.”

White House officials say Mr. Obama has been inclusive as he looks to wield his authority, reaching out to an array of lawmakers, experts and business leaders for a wide range of perspectives to inform his plans for executive actions. Since the president first announced his intention to use his “pen and phone” to advance his agenda during his State of the Union address in January, White House officials have held weekly meetings to compile ideas from inside and outside the administration.

In some cases, the public has gotten a glimpse of the process, such as during a summit meeting on working families in June. More often, though, the talks have occurred behind the scenes. Administration officials have convened more than 20 so-called listening sessions this summer alone on executive options for revising immigration policy, a White House official said, declining to discuss the sessions in detail because the conversations were private.

“The president has been clear that he will use all of the tools at his disposal, working with Congress where they are willing but also taking action on his own where they aren’t, to expand opportunity for all Americans and help more families share in our economy’s continued progress,” said Jennifer Friedman, a White House spokeswoman. “As part of this process, the administration has engaged a wide range of stakeholders and has solicited input from groups and individuals representing a diverse set of views.”

Activists and business groups that stand to gain from the moves are eagerly providing the White House with their side of the case.

“We’ve been talking to them about what we believe they can do while we wait for Congress to act,” said Scott Corley, a lobbyist for Compete America, a coalition of Silicon Valley companies seeking relief for foreign-born technology workers. “We’ve looked at where the legal authority exists, and we’ve found lots of ways in which the administration can move forward.”

On a host of issues, the list of requests is growing. Technology companies would like Mr. Obama to provide more visas for their workers, or at least more flexibility for them and their families as they await green cards for permanent residency. Consumer groups and organized labor want the Treasury Department to act on its own to limit financial incentives for companies that move overseas for tax breaks and stop so-called inversions. Democratic lawmakers are joining in as well, asking the president to act on his own on their pet issues.

“During your State of the Union address, you stated that you want to make 2014 a ‘year of action,’” Senator Dianne Feinstein, a California Democrat, wrote to Mr. Obama in March, in a letter requesting that he issue an executive order banning the import of assault or military weapons.

The go-it-alone approach has left the administration — which claims to be the most transparent in United States history — essentially making policy from the White House, replacing congressional hearings and floor debates with closed meetings for invited constituencies.

“The executive branch is not really set up to be a deliberative body like the Congress is,” said Andrew Rudalevige, a government professor at Bowdoin College who has studied the consequences of executive action. “The process is certainly stacked toward the policy preferences of the administration, and they’re going to listen to the people they think are right, which usually means the ones who agree with them.

“Those who are ‘in’ will engage the White House and the agencies to get their priorities met, and if you’re ‘out,’ you turn to the legal process” to challenge the executive action after it is taken, he said.

When the president vowed in the Rose Garden in June to “fix as much of our immigration system as I can on my own,” immigration activists were ready with their list of potential executive actions. They range from giving certain categories of undocumented immigrants temporary “parole in place” status to stay in the United States, to essentially legalizing millions more by expanding a 2012 directive issued by Mr. Obama that grants work permits and deportation deferments to young immigrants brought illegally to the United States as children.

The requests did not stop there. Cecilia Muñoz, Mr. Obama's top immigration adviser and the domestic policy chief, has led meetings attended by White House political aides and lawyers to hear from interest groups, individual companies and business groups about what executive actions they believe the president should take on immigration.

Senator Jeff Sessions, an Alabama Republican and one of the staunchest opponents of the stalled immigration bill Mr. Obama advocated, criticized the process. "It is chilling to consider now that these groups, frustrated in their aims by our constitutional system of government, are plotting with the Obama administration to collect their spoils through executive fiat," he said.

As recommendations pour in, the most frequent question Mr. Obama's aides are asking, the people involved said, is whether the moves could withstand a legal challenge, which comes as House Republicans voted to sue Mr. Obama for unilateral action in changing elements of his signature health care law.

One group, **Change to Win**, a labor union-backed consumer advocacy organization that has pressed for congressional action to block corporate inversions, sought out a legal expert with Obama administration ties, Stephen E. Shay, to press its case.

Professor Shay, a top Treasury official during Obama's first term who now teaches at Harvard Law School, was asked by the group to craft a legal justification for the administration to act without congressional approval. Professor Shay wrote an article in the trade journal *Tax Notes* in July, asserting that the president's team had broad authority to do so.

"We asked his advice as to how to bring this forward to the administration," said Nell Geiser, the associate director of retail initiatives at Change to Win, who said Professor Shay's connections at the Treasury were vital. "He knew all the personalities and their dynamics."

Within days, Treasury Secretary Jacob J. Lew had announced that he had a "very long list" of ways to remove the economic incentive for inversions that would not require congressional action.

On other issues, the president has been under pressure to act on his own for years. When Mr. Obama announced in June that he would soon sign executive orders to fulfill his 2008 campaign promise to bar discrimination by federal contractors on the basis of sexual orientation and gender identity, gay rights activists pressed for the broadest possible protection. In private White House meetings, they lobbied successfully against including a new exemption being sought by religious groups; the order was signed July 21.

While Mr. Obama has issued fewer executive orders than presidents before him — 183, according to the American Presidency Project at the University of California, Santa Barbara, compared with 291 by George W. Bush and 364 by Bill Clinton — experts say he has been at least as aggressive as his two immediate predecessors in taking unilateral action, often through memorandums or other administrative moves.

“He’s using just a vast array of different means to pursue his various goals,” John T. Woolley, a politics professor at the university who maintains the executive order database and studies presidential use of unilateral action.

Mr. Obama “has been quite aggressive and he’s been creative in looking for every possible avenue to take matters into his own hands,” Mr. Woolley said.

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