

May 20, 2020

PRESIDENT TRUMP ISSUES EXECUTIVE ORDER ON REGULATORY RELIEF TO SUPPORT ECONOMIC RECOVERY

To Our Clients and Friends:

On May 19, 2020, President Trump signed an executive order entitled “Regulatory Relief to Support Economic Recovery.”^[1] The Order seeks “to combat the economic consequences of COVID-19” by giving “businesses, especially small businesses, the confidence they need to re-open.” Order § 1. In particular, the Order instructs agencies to “rescind[], modify[], waiv[e], or provid[e] exemptions from regulations and other requirements that may inhibit economic recovery.” *Id.* § 1.

The Order comprises five specific directives to executive branch departments, executive agencies, and independent agencies. Order § 2(b) (defining a covered “agency” as per 44 U.S.C. § 3502(1)). *First*, the Order mandates that agencies “use, to the fullest extent possible and consistent with applicable law” their emergency authorities “to support the economic response to the COVID-19 outbreak.” Order § 3. Relatedly, the Order “encourage[s]” agencies “to promote economic recovery through non-regulatory actions.” *Id.*

Second, the Order requires agencies to “identify regulatory standards that may inhibit economic recovery.” Order § 4. Once agencies have identified those standards, they must then “consider” a variety of responses “for the purpose of promoting job creation and economic growth.” *Id.* These include: (1) “taking appropriate action . . . to temporarily or permanently rescind, modify, waive, or exempt persons or entities from those requirements”; (2) “exercising appropriate temporary enforcement discretion”; and (3) providing “appropriate temporary extensions of time” for compliance. *Id.*

Third, the Order instructs agencies to provide regulated entities with “[c]ompliance assistance”—namely, guidance regarding what constitutes compliance and relaxed enforcement against those who attempt to comply in good faith. Order § 5. For example, the order requires agencies, other than the Department of Justice, to “accelerate procedures” for issuing “a pre-enforcement ruling” regarding “whether proposed conduct in response to the COVID-19 outbreak . . . is consistent with statutes and regulations administered by the agency.” *Id.* § 5(a). The Order further encourages agencies “to formulate, and make public, policies of enforcement discretion that . . . decline enforcement against persons and entities that have attempted in reasonable good faith to comply with applicable statutory and regulatory standards.” *Id.* § 5(b).

Fourth, the Order mandates that agencies “revise their procedures and practices” to reflect certain “principles of fairness in administrative enforcement.” Order § 6. The principles included largely reflect basic notions of due process, such as the proposition that “[l]iability should be imposed only for violations of statutes or duly issued regulations, after notice and an opportunity to respond,” and “[a]dministrative enforcement should be free of unfair surprise.” *Id.* § 6(h), (i).

Fifth, the Order requires agencies to review any temporary regulatory or enforcement measures they adopted in response to COVID-19 and “determine which, if any, would promote economic recover if made permanent.” Order § 7. Agencies must then report the results of their determination to the Director of the Office of Management and Budget, the Assistant to the President for Domestic Policy, and the Assistant to the President for Economic Policy, *id.*, who will monitor compliance with the Order, Order § 8.

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The President’s Order has the potential to transform the regulatory landscape across a wide array of industries. Going beyond previous executive orders that have placed constraints on agencies’ ability to propose new regulations,[2] the Order imposes an affirmative mandate on agencies to root out unnecessary or unduly cumbersome regulations that inhibit economic growth for both temporary and even permanent repeal, and to improve their enforcement and adjudication procedures. Although it remains to be seen how aggressively agencies will deregulate in response to the Order, it is possible that agencies will look to regulated entities and other interested parties to assist them in identifying regulations that should be rescinded or modified and revising their procedures, perhaps by commencing rulemakings to seek comment on the issues. Regulated entities could also file petitions for rulemaking to initiate the process. The Order thus provides regulated entities with a promising opportunity to work cooperatively with agencies in reducing or eliminating unnecessary regulatory burdens.

In addition, the Order’s provisions for “pre-enforcement rulings” could be extremely useful in a variety of circumstances. For example, companies seeking to restart or alter operations might want to check with federal agencies beforehand in order to ensure that they are complying with workplace safety and other regulations. Similarly, companies and other entities applying for or that have received federal assistance may seek rulings as to eligibility or compliance with the use of federal assistance.

[1] See Executive Order on Regulatory Relief to Support Relief to Support Economic Recovery (“Order”), WhiteHouse.gov (May 19, 2020), <https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery>.

[2] See Gibson Dunn Client Alert, *President Trump Issues Executive Order on Reducing Regulation and Controlling Regulatory Costs* (Jan. 31, 2017), <https://www.gibsondunn.com/president-trump-issues-executive-order-on-reducing-regulation-and-controlling-regulatory-costs>.



Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, or any member of the firm’s Administrative Law and Regulatory Practice Group or Public Policy Practice Group:

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