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Public Policy Update

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Regulatory Reform in the Trump Administration

Gibson Dunn is available to help clients understand what these and other expected regulatory reforms will mean for them and how to navigate the shifting regulatory environment.

Gibson Dunn [previously highlighted](#) the executive and congressional tools that President Trump may use to halt or reverse Biden administration policies and implement his own agenda. During his first four weeks in office, Trump has employed several of these tools to advance his agenda. Here, we discuss three of them: (1) a regulatory moratorium and postponement; (2) rescission of Biden Administration executive orders; and (3) new procedures for regulatory and funding review.

For additional insights, please visit our resource center, [Presidential Transition: Legal Perspectives and Industry Trends](#).

1. Regulatory Moratorium and Postponement

On January 20, 2025, consistent with the start of prior administrations,^[1] Trump [issued a memorandum](#) directing executive branch agencies to (1) refrain from proposing, issuing, or publishing any rules, regulations, or guidance documents until a department or agency head appointed by Trump reviews and approves it; (2) immediately withdraw any rules that have been sent to the Office of the Federal Register but not yet published pending review and approval; and (3) consider postponing for 60 days from January 20 the effective date for rules that have been published in the Federal Register or rules that have been issued but not taken effect.

Similar to the directive Trump and other presidents previously issued at the beginning of their terms, this memorandum authorizes the director or acting director of the Office of Management and Budget (OMB) to oversee the implementation of the memorandum and to exempt any rules the director deems necessary to address “emergency situations or other urgent circumstances,” including statutory and judicial deadlines.

The memorandum does not expressly address whether independent agencies are expected to comply with the freeze pending Trump’s designation of a new chair or appointment of new members, but independent agencies generally appear to be complying thus far and in the past have complied with similar memoranda. The President’s recent decisions to fire agency officials at three independent agencies—the Equal Employment Opportunity Commission, National Labor Relations Board, and the Merit Systems Protection Board—and Acting Solicitor General Harris’s [statements](#) that the Department of Justice will not defend the constitutionality of for-cause removal protections at certain independent agencies, strongly suggest that the Trump administration is prepared to take aggressive action to bring independent agencies under White House control.

2. Initial Rescissions of Executive Orders

It is standard practice for new administrations to rapidly rescind a number of the prior administration’s executive orders. Consistent with prior administrations, on January 20, 2025, Trump issued an executive order titled [Initial Rescissions of Harmful Executive Orders and Actions](#), which rescinded dozens of Biden administration executive orders and memoranda regarding a variety of topics.^[2] On Biden’s first day in office, he similarly issued executive orders rescinding multiple of Trump’s first-term executive orders.^[3] Trump’s initial rescissions cover a variety of topics such as climate, clean energy, and the environment; gender; diversity, equity, and inclusion (DEI); worker health and safety; immigration; and healthcare. A list of noteworthy rescissions by category is below:

- **Climate, Energy, and Environment**
 - Executive Order 13990 of January 20, 2021 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis)
 - Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad)
 - Executive Order 14030 of May 20, 2021 (Climate-Related Financial Risk)
 - Executive Order 14037 of August 5, 2021 (Strengthening American Leadership in Clean Cars and Trucks)
 - Executive Order 14057 of December 8, 2021 (Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability)
- **Gender**
 - Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation)

- Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council)
- Executive Order 14021 of March 8, 2021 (Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity)
- **Diversity, Equity & Inclusion**
 - Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce)
 - Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)
- **Federal Contracting**
 - Executive Order 14069 of March 15, 2022 (Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency)
- **Labor and Employment**
 - Executive Order 13999 of January 21, 2021 (Protecting Worker Health and Safety)

3. Regulatory Reviews and Funding Freezes

In addition to freezing new regulations and rescinding dozens of executive orders, Trump has taken steps to ensure that agencies follow his new policies.

A. Regulatory Reviews

Trump's initial rescissions include a rescission of Biden's [Executive Order 14094](#), which modified the way agencies analyze regulatory actions. Under [Executive Order 12866](#)—which was not rescinded—administrations of both parties have sent significant regulatory actions to the Office of Information and Regulatory Affairs (OIRA), a division of OMB, for pre-issuance review and cost-benefit analysis. Executive Order 14094 required OIRA review for those rules with an economic impact of \$200 million, adjusted for GDP. It appears that Trump's revocation will revert the threshold for OIRA review to economic impacts of \$100 million not pegged to GDP, which will result in greater centralization of regulatory review. Executive Order 14094 also imposed equity-related obligations on agencies, such as requiring agencies to affirmatively seek input from affected and underserved communities and to “recognize distributive impacts and equity” in all rulemakings. Now, agencies will be required only to engage in such practices to the extent required by law.

Trump [also expanded](#) a deregulatory [executive order from his first administration](#). The new order imposes two key requirements. First, agencies must identify at least ten existing regulations to repeal for every new regulation they promulgate. Trump's first administration required agencies to identify two existing regulations to repeal for every new regulation (although agencies [ultimately eliminated](#) over five regulations for every new one). The order counts “rules, regulations, or guidance documents” similarly, meaning that agencies might promulgate

expansive rules while rescinding several smaller rules and guidance documents. Second, the total incremental cost of new regulations in fiscal year 2025 must “be significantly less than zero”—which is less than the net zero requirement during Trump’s first administration. The order also directs the OMB director to revoke a 2023 version of OMB Circular A-4 and associated regulations and reinstate the prior 2003 version. The 2023 version had lowered the discount rates for calculating the value of a regulation’s future benefit, [making it easier](#) to justify new regulations under cost-benefit analyses. The 2023 version also encouraged agencies to weigh regulations’ benefits to lower income individuals more heavily and sometimes consider effects on noncitizens living outside the United States. To satisfy a cost-benefit analysis under the 2003 guidance document, regulations must provide more near-term benefits across a narrower geographic scope and with less weighting for distributional benefits.

In addition, several of Trump’s executive orders require agency heads to review and rescind all regulations, guidelines, and policy documents that are inconsistent with new policies relating to energy, national security, immigration, gender identity, and other topics. Those executive orders require that:

- The Directors of the Domestic Policy Council and National Economic Council “[submit to the President](#) an additional list of orders, memoranda, and proclamations issued by the prior administration that should be rescinded, as well as a list of replacement orders, memoranda, or proclamations, to increase American prosperity.” The National Security Advisor must also review National Security Memoranda issued during the Biden Administration “for harm to national security, domestic resilience, and American values.”
- Agency heads identify and take steps toward rescinding any agency actions “that impose an undue burden on the identification, development, or use of domestic energy resources” or are [inconsistent with Trump’s energy policies](#).
- All agencies identify and rescind or revise actions [inconsistent with an executive order](#) to promote energy projects in Alaska.
- The Attorney General “investigate the activities of the Federal Government over the last 4 years that are inconsistent with the purposes and policies” of [an executive order regarding free speech](#).
- Agencies update their documents to reflect [an executive order on biological sex](#).
- The Secretary of Homeland Security “[a]lign all policies and operations at the southern border of the United States to be consistent with” [executive order policies of securing the border](#).
- Agencies “[identify all regulations](#), guidance documents, orders, or other items that affect the digital asset sector” and recommend whether they should be rescinded or modified.
- The Assistant to the President for Science and Technology, the Special Advisor for AI and Crypto, and the Assistant to the President for National Security Affairs, and relevant agencies review any policies inconsistent with [an executive order on artificial intelligence](#).

B. Freezing Federal Grants and Funds

President Trump also issued executive orders pausing various disbursements of funds and requiring reviews of federal grants and funds for [foreign aid](#), [certain sustainability-related](#)

[infrastructure projects](#), and [NGOs providing services to removable or illegal aliens](#), among others. Several days later, OMB [issued](#), [clarified](#), and two days later, [rescinded](#), a memorandum that many had read as ordering a freeze on a broad swath or even all federal grants and funds.

In OMB's [memorandum](#) regarding a potential freeze of federal funds, Acting OMB Director Matthew Vaeth instructed agencies to "complete a comprehensive analysis of all of their Federal financial assistance programs to identify programs, projects, and activities that may be implicated by any of the President's executive orders." The memorandum also provided that "to the extent permissible under applicable law, [f]ederal agencies must temporarily pause all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities that may be implicated by the executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal." The memorandum clarified that "[n]othing in this memo should be construed to impact Medicare or Social Security benefits."

The memorandum quickly sparked responses from federal fund recipients and lawmakers who struggled to determine its breadth and to identify affected programs. [Nonprofit groups](#) sued to enjoin the measure in the U.S. District Court for the District of Columbia, arguing that it was arbitrary and capricious, violated the First Amendment, and exceeded OMB's statutory authority. A group of 22 States and the District of Columbia [also challenged the freeze](#) in the U.S. District Court for the District of Rhode Island, arguing that it violated the Spending and Appropriations Clauses and other separation of powers principles. The administration clarified that the pause did not apply across the board, but only to the programs "implicated by the President's Executive Orders, such as ending DEI, the green new deal, and funding nongovernmental organizations that undermine the national interest."[\[4\]](#)

The District of Columbia district court temporarily stayed the freeze shortly before it went into effect. The next day, OMB withdrew the memorandum, but the White House reiterated Trump's commitment to "end the egregious waste of federal funding" and the White House Press Secretary asserted that "[t]he President's EO's on federal funding remain in full force and effect, and will be rigorously implemented." This appears to include the pauses required directly by the executive orders. Referencing "the Press Secretary's unequivocal statement and the continued actions of Executive agencies," the Rhode Island district court [granted](#) and later extended a temporary restraining order blocking the freeze. The order does not appear to apply to separate freezes that the [General Services Administration](#) and other agencies have imposed on federal contracting. The nonprofit groups also received a temporary restraining order on February 3. The District of Columbia district court [further instructed](#) OMB to notify affected agencies that "they may not take any steps to implement, give effect to, or reinstate under a different name the directives in OMB Memorandum M-25-13 with respect to the disbursement of Federal Funds under all open awards."

On February 10, 2025, the Rhode Island district court [granted the States' emergency motion to enforce](#) their temporary restraining order after they "presented evidence . . . that the Trump Administration continued to improperly freeze federal funds and refused to resume disbursement of appropriated federal funds." Trump has appealed that decision and the prior order extending

the temporary restraining order, but the First Circuit [declined an immediate stay](#) pending the district court's further clarification of its orders.

The challenging States and the nonprofit groups have moved for preliminary injunctions in their respective lawsuits.

A handful of suits, motions, and orders are also being made on an agency-by-agency basis, such as a [suit seeking broad relief for employees and contractors at the Consumer Financial Protection Bureau](#) and a recent [order requiring the resumption of payments to USAID contractors and grant recipients](#). Notably, the USAID order ruled that the administration's "blanket suspension of foreign aid funding" is unlawful, but the court allowed the administration to "enforce the terms of particular contracts [or grants], including with respect to expirations, modifications, or terminations pursuant to contractual provisions." For over a century, courts have read into government contracts an implicit provision allowing the government to cancel a contract for "convenience" when the government concludes it is no longer in the public's best interest.^[5] It is unclear whether the order allows for such terminations on a case-by-case basis.

4. Conclusion

Gibson Dunn is monitoring regulatory developments and executive orders closely. Our attorneys are available to assist clients as they navigate the challenges and opportunities posed by the current, evolving legal landscape.

[1] See, e.g., [Memorandum from Ronald A. Klain to the Heads and Acting Heads of Executive Departments and Agencies](#), 86 Fed. Reg. 7424 (Jan. 20, 2021, published Jan. 28, 2021); [Memorandum from Reince Preibus to the Heads and Acting Heads of Executive Departments and Agencies](#), 82 Fed. Reg. 8346 (Jan. 20, 2017, published Jan. 24, 2017).

[2] A number of President Trump's other executive orders also revoked prior orders on a topic-by-topic basis. These revocations partially overlap with the revocations in the Initial Rescissions order. *E.g.*, Executive Order 14154, 90 Fed. Reg. 8353 (Jan. 20, 2025) (entitled "Unleashing American Energy" and revoking 12 Biden-era Executive Orders related to climate change, air pollution, and environmental justice, 11 of which were also revoked by the Initial Rescissions order).

[3] *E.g.*, Executive Order No. 13992, 86 Fed. Reg. 7049 (Jan. 25, 2021) (Revocation of Certain Executive Order Concerning Federal Regulation); Executive Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021) (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government); Executive Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021) (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis).

[4] Fact Sheet, OMB Q&A Regarding Memorandum M-25-13 (Jan. 28, 2025), available at <https://www.presidency.ucsb.edu/documents/white-house-fact-sheet-omb-qa-regarding-memorandum-m-25-13>.

[5] *United States v. Corliss Steam Engine Co.*, 91 U.S. 321 (1876); *White Buffalo Constr., Inc. v. United States*, 2013 WL 5859688 (Fed. Cir. Nov. 1, 2023).

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