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# Regulatory Freeze

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## OVERVIEW

Following the January 20<sup>th</sup> inauguration, we expect the Biden-Harris Administration to immediately issue a memo to the heads and acting heads of all Cabinet departments halting actions on all outstanding regulations and regulatory guidance not yet published in the Federal Register, or a “regulatory freeze.” This is standard procedure for incoming administrations (Trump, Obama, Bush and Clinton issued similar orders) but will allow the incoming Biden Administration to review and likely block implementation of a slew of outstanding Trump Administration regulations. Jen Psaki, who will be Biden’s press secretary, recently confirmed Biden’s plan for the memo and said it will “halt or delay midnight regulations taken by the Trump administration that will not have taken effect by Inauguration Day.” “Midnight regulations” are rules created by an outgoing administration during the lame duck period, and the Biden team has singled out as an example a recent Department of Labor regulation regarding independent contractors. Psaki also emphasized that regulatory guidance will be included and considered in the freeze. Note: the regulatory freeze applies only to rules and guidance that have yet to take effect – the Congressional Review Act (CRA) may be used by Congressional Democrats to assess and potentially rollback already effective Trump era regulations promulgated after the CRA deadline for the rollback period, which we estimate to be August 21, 2020.

Previous regulatory freezes have remained consistent in nature but have lacked clarity around the applicability to independent agencies (such as the SEC, FTC, CFPB, Federal Reserve, FDIC, OCC, FHFA, etc.). While it is observed that this type of executive order cannot legally bind independent agencies, these agencies have historically participated voluntarily. For background, President Clinton issued an [Executive Order](#) following his regulatory freeze memo recognizing it as applicable to independent regulatory agencies, while the [Bush](#) and [Obama](#) Administrations’ memos did not specifically seek to bind independent agencies, but rather encouraged them to participate voluntarily. [President Trump’s order](#) in 2017 was more expansive in scope as it did not identify applicable departments or agencies by name, and some independent agencies including the FCC continued to publish rules despite the order.

The order will likely go into effect on the afternoon of January 20<sup>th</sup> and allow for Biden Administration officials to begin assessing all pending actions on a case-by-case basis to determine whether the final rule should be implemented, modified or rescinded. However, the scope of the Biden memo is unclear at this point (including whether rules already published but not yet effective by January 20<sup>th</sup> will freeze), and it is still unclear whether independent agencies will follow precedent and cooperate with the order on a voluntary basis. We expect an aggressive regulatory agenda focused on reviewing and potentially modifying or undoing many of the regulatory actions undertaken by the Trump Administration. In addition to the regulatory freeze, Biden has already announced plans to sign a series of executive orders on day one, including to rejoin the Paris Accord and the World Health Organization.