

RICH FEUER ANDERSON

# The Biden Administration: Week One

January 26, 2021

<p><b>BIDEN ADMINISTRATION</b></p>	<p>Following his Inauguration, President Biden and his team began working in full force to implement the Administration’s ambitious initial agenda. On day one, President Biden signed a series of executive actions focused on COVID-19 response, immigration, racial equality, climate change, and reversing some Trump era regulations (more below), with more executive orders on tap this week. Additionally, the Biden team has continued to fill out the Administration, announcing additional nominations and acting heads for key departments and agencies. Despite this swift action and calls from President Biden for the Senate to prioritize confirmations, Biden lags his predecessors in terms of Senate nomination hearings and confirmations (just five of Biden’s Cabinet nominees had a hearing prior to his Inauguration, while Trump, Obama, Bush and Clinton each had over eleven). The delays are in part due to the negotiations between Leaders Schumer (D-NY) and McConnell (R-KY) over an organizing resolution for the new 50-50 Senate. Below we provide an overview of key confirmations, appointments, and nominations, the shifting FSOC makeup, as well as noteworthy executive actions from the Biden White House.</p> <p><b>Confirmations and Notable Appointments</b></p> <ul style="list-style-type: none"> <li>• Janet Yellen, Secretary of the Treasury (<i>Senate confirmed on an 84-15 vote</i>) <ul style="list-style-type: none"> <li>○ Didem Nisanci, Chief of Staff (<i>appointed</i>)</li> <li>○ Julie Siegel and Alfred Johnson, Deputy Chiefs of Staff (<i>appointed</i>)</li> <li>○ Nellie Liang, Undersecretary, Office of Domestic Finance (<i>requires Senate confirmation</i>)</li> <li>○ Damian Richardson, Special Assistant, Office of the Secretary (<i>appointed</i>)</li> <li>○ Aruna Kalyanam, Deputy Assistant Secretary, Office of Legislative Affairs (Tax &amp; Budget) (<i>appointed</i>)</li> <li>○ Aditi Hardikar, Senior Advisor to the Deputy Secretary (<i>appointed</i>)</li> <li>○ Mark Mazur, Deputy Assistant Secretary, Office of Tax Policy (Tax Policy) (<i>appointed</i>)</li> <li>○ Angel Nigaglioni, Deputy Assistant Secretary, Office of Legislative Affairs (Budget &amp; Appropriations) (<i>appointed</i>)</li> </ul> </li> <li>• Avril Haines, Director of National Intelligence (<i>Senate confirmed on an 84-10 vote</i>)</li> <li>• Gen. Lloyd Austin, Secretary of Defense (<i>Senate confirmed on a 93-2 vote</i>)</li> <li>• Martha Gimbel, Senior Advisor, Council of Economic Advisors (<i>appointed</i>)</li> <li>• Joe Carlile, Senior Advisor to the Secretary, HUD (<i>appointed</i>)</li> <li>• Sarah Brundage, Deputy Assistant Secretary for Congressional Relations, HUD (<i>appointed</i>)</li> <li>• Ben Winter, Deputy Assistant Secretary for Policy Development, HUD (<i>appointed</i>)</li> </ul> <p><b>Acting Heads of Agencies</b></p> <ul style="list-style-type: none"> <li>• SEC Chair, Allison Lee</li> <li>• CFTC Chair, Rostin Behnam</li> <li>• CFPB Director, Dave Uejio</li> <li>• OCC Comptroller, Blake Paulson</li> <li>• HUD Secretary, Matt Ammon</li> <li>• OMB Director, Rob Fairwether</li> <li>• Labor Secretary, Al Stewart</li> </ul>
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	<p><b>Timing on Senate Confirmations</b></p> <p>Along with those already confirmed, the respective Senate committees have conducted hearings to consider the nominations of Pete Buttigieg for Transportation Secretary and Alejandro Mayorkas for Secretary of Homeland Security. Additional hearings for HUD Secretary, CEA Chair, Commerce Secretary, and Energy Secretary are scheduled for this week and Antony Blinken is slated to be confirmed as Secretary of State as early as today. On the agency front, the Biden team has yet to announce official nominees to head the CFTC and the OCC, although an announcement for Michael Barr as Comptroller is expected soon. The Trump impeachment trial, scheduled to begin the week of February 8<sup>th</sup>, could delay future confirmation hearings and Senate Floor votes.</p> <ul style="list-style-type: none"> <li>• <b>Marcia Fudge, HUD Secretary</b> – The Senate Banking Committee (SBC) will consider the nomination of Rep. Fudge on Thursday, January 28<sup>th</sup> and absent any unforeseen complications, we expect to see confirmation by the full Senate to follow shortly. Once confirmed, Fudge will have to resign from her seat in the House – a date for a special election will be under the discretion of Republican Governor DeWine and has not been scheduled. While the Ohio seat is a relatively safe blue district, the vacancy will create an even slimmer Democratic majority in the House for the near-term. At HUD, we expect Fudge to focus on affordability issues, racial inequalities in the housing market and enforcing fair housing and lending laws, expanding HUD programs like FHA loans, and for her to coordinate with Chairs Waters and Brown on their housing agendas.</li> <li>• <b>Cecilia Rouse, CEA Chair</b> – SBC will also consider Rouse’s nomination to chair the Council of Economic Advisers on the 28<sup>th</sup>. Rouse will oversee nominees Jared Bernstein and Heather Boushey, both with extensive experience as labor economists, so we expect a large focus on unemployment, wage, and economic inequality issues.</li> <li>• <b>Rohit Chopra, CFPB Director</b> and <b>Gary Gensler, SEC Chair</b> – Confirmation hearings have not been scheduled and at this time, paperwork and meetings with Committee members have not been completed. However, we expect both Chopra and Gensler will have nominations hearing in February, and SBC Chair Brown has indicated plans to pair the two nominees on a single panel.</li> </ul>
<p><b>EXECUTIVE ACTIONS</b></p>	<p><b>Regulatory Freeze Memo</b></p> <p>This <a href="#">memorandum</a> from Chief of Staff Ron Klain requests the heads of all Cabinet departments and agencies to halt action on all non-emergency rulemaking and regulatory activity pending review by the new administration – these types of executive actions are typical for new administrations. The freeze does not legally apply to independent agencies, although historically these bodies have complied voluntarily, which we expect to continue.</p> <ul style="list-style-type: none"> <li>• This memo applies broadly to final rules, ANPRs, NPRs, policy statements, and guidance.</li> <li>• Rules that have been sent to the Office of the Federal Register but not yet published are immediately withdrawn for review.</li> <li>• For rules that have been published in the Federal Register but are not effective as of January 20<sup>th</sup>, the memo allows their effective dates to be postponed by 60 days to determine whether to implement, modify, or rescind. These rules are listed at the bottom of this report.* For rules eligible to be reversed by the Congressional Review Act, please see our document “RFA State of Play - Impact of Georgia Runoffs.”</li> <li>• Acting OMB Director Robert Fairweather issued this <a href="#">memo</a> with implementing guidance.</li> </ul> <p><b>Notable Executive Actions To-Date</b></p> <ul style="list-style-type: none"> <li>• <b>Modernizing Regulatory Review (<a href="#">Memorandum</a>)</b> – Directs the OMB Director to develop a set of recommendations for improving the regulatory review process to better promote “public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity and interests of future generations.” This could move away from OIRA’s economic cost-benefit analysis and include the consideration of more qualitative factors like those listed above.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Climate Crisis (Executive Order)</b> – Requires heads of agencies and executive departments to identify and review all Trump-era regulations inconsistent with the Administration’s agenda to tackle climate change. <ul style="list-style-type: none"> <li>○ The Department of Labor’s “<a href="#">Financial Factors in Selecting Plan Investments</a>” is one of the regulations that will be reviewed as part of this Executive Order.</li> <li>○ The order includes the withdrawal from the Keystone XL Pipeline.</li> <li>○ Biden separately rejoined the Paris Climate Agreement (will take 30 days).</li> </ul> </li> <li>• <b>COVID-19 Economic Relief (Executive Order)</b> – Requires all executive departments and agencies to promptly identify actions to promote economic recovery.</li> <li>• <b>Protecting the Federal Workforce (Executive Order)</b> – Restores the right for collective bargaining for federal workers and requires a \$15 minimum wage and emergency paid leave.</li> <li>• <b>Economic Impact Payments (Executive Order)</b> – Requests the Treasury Department take action to ensure more effective delivery of direct payments, including through establishing an online portal.</li> <li>• <b>Ensure Data-Driven COVID-19 Response (Executive Order)</b> – Seeks to enhance federal agencies’ data collection and collaboration capabilities.</li> <li>• <b>COVID-19 Leadership (Executive Order)</b> – Establishes the role of Coordinator of the COVID-19 Response and Counselor to the President, and takes other steps to organize the White House and federal activities related to COVID-19 response.</li> <li>• <b>Advancing Racial Equity (Executive Order)</b> – Directs agencies to review policies and establish best methods to redress racial inequities, and requires the Domestic Policy Council to coordinate these efforts across the federal government.</li> </ul>
<b>FSOC UPDATE</b>	<p>Considering the acting chairs in place at CFPB, SEC, CFTC, and OCC (and confirmations in the pipeline), the FSOC Board is now under Democratic control (Todd Harper was designated NCUA Chair on Monday). An updated chart displaying FSOC membership is included below.</p> <ul style="list-style-type: none"> <li>• Federal Reserve Chair Powell, FDIC Chair McWilliams, and Thomas Workman will remain in their respective roles until the end of their terms. FHFA Director Calabria remains a wild card pending the Supreme Court decision, although he recently indicated that he will likely serve until removed.</li> <li>• While designated to temporarily lead the agency with President Biden’s approval, we expect Acting Comptroller Paulson to remain relatively nonpartisan. Paulsen was appointed prior to Biden’s inauguration and has served at the OCC since 1986.</li> <li>• Leadership changes at the financial regulatory agencies will immediately impact the rulemaking agendas at each agency, including FSOC’s efforts under Treasury Secretary Yellen. We anticipate early FSOC actions to include a review of the activities-based approach guidance promulgated under Mnuchin’s leadership; formation of a climate risk working group to coordinate a financial regulatory response; and review of market functions during the COVID market turmoil.</li> <li>• In her confirmation hearing, Yellen applauded banks for remaining resilient amid the pandemic, linking their success to the reforms put in place by Dodd-Frank, although ensuring assessment of reforms (including capital and liquidity requirements) will continue to remain a focus of FSOC under her leadership. Yellen supports maintaining an activities-based approach in some form alongside an entity-based designation. She also indicated that FSOC will work with Congress to refine the process and implement annual reviews of procedures currently in place. Finally, she specifically cited open-end mutual funds as a current financial stability concern.</li> </ul>

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<p><b>REGULATIONS ELIGIBLE FOR 60-DAY REVIEW* (UNDER THE REG FREEZE MEMO)</b></p>	<p><b>Securities and Exchange Commission (SEC)</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Funds use of derivatives</a> – Effective 2/19/21</li> <li>• <a href="#">Reg S-K amendments</a> – Effective 2/10/21</li> <li>• <a href="#">Exempt offerings</a> – Effective 3/15/21</li> <li>• <a href="#">Resource Extraction</a> – Effective 3/16/21</li> </ul> <p><b>Commodity Futures Trading Commission (CFTC)</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Position limits for derivatives</a> – Effective 3/15/21</li> </ul> <p><b>Office of the Comptroller of the Currency</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Fair access to financial services</a> – <i>Not yet published on Federal Register</i></li> </ul> <p><b>Federal Deposit Insurance Corporation (FDIC)</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Brokered deposit</a> – Effective 4/1/21</li> <li>• <a href="#">ILCs</a> – <i>Not yet published on Federal Register</i></li> </ul> <p><b>Consumer Financial Protection Bureau (CFPB)</b></p> <ul style="list-style-type: none"> <li>• <a href="#">General QM</a> – Effective 3/1/21</li> <li>• <a href="#">QM seasoning</a> – Effective 3/1/21</li> <li>• <a href="#">Debt collection</a> – Effective 11/30/21</li> </ul> <p><b>Federal Housing Finance Agency (FHFA)</b></p> <ul style="list-style-type: none"> <li>• <a href="#">GSE capital framework</a> – Effective 2/16/21</li> </ul> <p><b>Department of Labor (DOL)</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Fiduciary rule exemption</a> – Effective 2/16/21</li> <li>• <a href="#">ESG investing for ERISA plans</a> – <i>This rule is effective before 1/20/21 so it will not be reviewed under the regulatory freeze memo but instead as part of Biden’s <a href="#">Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis</a></i></li> </ul>																				