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Regulatory/ Administrative Tracker

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President Trump's Initial Executive Orders Signal Significant Regulatory and Policy Changes

Paul, Weiss Launches Initiative to Monitor Key Developments

Introduction

In his first weeks in office, President Trump issued a series of executive orders and presidential memoranda that aim swiftly to effectuate his Administration's key policy and regulatory objectives across a number of areas and industries.

Paul, Weiss is launching an initiative to monitor these key developments. Paul, Weiss attorneys have served in cabinet-level and other senior positions across the last five administrations. This memorandum, which will be continually updated, provides a summary of key developments from this first week relating to cross-border M&A and national security, technology, energy and the environment, healthcare and pharmaceuticals, regulatory administration, DEI programs and employment, and immigration and border security. Paul, Weiss will provide updates to assist boards and management in navigating the rapidly changing regulatory and policy environment.

Cross-Border M&A and National Security

In his first weeks, President Trump issued a series of executive orders and presidential memoranda that affect cross-border M&A, international tax regimes, and the legal exposure of U.S. and non-U.S. companies operating across the globe.

America First Trade Policy

On January 20, 2025, President Trump issued a presidential memorandum entitled *America First Trade Policy* to members of his economic Cabinet, directing them to take a variety of measures "establishing a robust and reinvigorated trade policy."¹ This memorandum outlines a set of policy priorities that are likely to be the focus of President Trump's trade agenda during his second term.

Tariffs: Among other actions, the memorandum directs an investigation "of our country's large and persistent annual trade deficits in goods, as well as the economic and national security implications and risks resulting from such deficits, and recommends appropriate measures, such as a global supplemental tariff or other policies, to remedy such deficits." The memorandum directs agencies to "investigate the feasibility of establishing and recommend the best methods for designing, building, and implementing an External Revenue Service (ERS)" to collect foreign-trade-related revenues.

¹ Presidential Memorandum, *America First Trade Policy* (January 20, 2025), available [here](#).

Unfair Trade Practices: The memorandum has a particular focus on “any unfair trade practices by other countries,” including “the impact of the USMCA [the United States-Mexico-Canada Agreement] on American workers, farmers, ranchers, service providers, and other businesses,” and a directive to “review and assess the policies and practices of major United States trading partners with respect to the rate of exchange between their currencies.” There are currently seven economies on Treasury’s monitoring list for currency manipulation: China, Japan, Korea, Singapore, Taiwan, Vietnam, and Germany.

People’s Republic of China: The memorandum has a particular emphasis on the trade relationship between the United States and China. It directs a number of reviews relating to the U.S.-China relationship, including:

- ***Outbound Investment:*** A review led by the Secretary of the Treasury of the recent outbound-investment final rule, to determine whether it “includes sufficient controls to address national security threats.” The memorandum states that “The Secretary of the Treasury shall make recommendations based upon the findings of this review, including potential modifications to the Outbound Investment Security Program.”
- ***301 Tariff Review:*** A review by the United States Trade Representative of existing Section 301 actions against China and a directive to “consider potential additional tariff modifications” with a focus on “industrial supply chains.”
- ***Trade Review:*** A review by the United States Trade Representative of the Economic and Trade Agreement between the U.S. and China and any “other acts, policies, and practices by the PRC that may be unreasonable or discriminatory and that may burden or restrict United States commerce.”
- ***Export Controls:*** A review by the Secretary of State and the Secretary of Commerce to “identify and eliminate loopholes in existing export controls.”
- ***Industrial Policy Review:*** A “full economic and security review” by the Secretary of Defense “of the United States’ industrial and manufacturing base to assess whether it is necessary to initiate investigations to adjust imports that threaten the national security of the United States,” including a specific directive to review steel and aluminum tariffs.
- ***Connected Vehicles:*** A directive to the Secretary of Commerce to review the “rulemaking by the Office of Information and Communication Technology and Services (ICTS) on connected vehicles” and “consider whether controls on ICTS transactions should be expanded to account for additional connected products.”

Key Takeaways: The impacts of the memorandum will become clearer as agencies begin to report back on the directives contained within it, but key takeaways for businesses include:

- ***Increased Tariffs:*** This memorandum set forth the prospect of increased tariffs. It remains to be seen whether those tariffs will be levied on regional neighbors (e.g., Canada and Mexico) as a tool for advancing other strategic goals, such as border security or combating the drug trade, on key national security sectors, or against competitors like China.
- ***U.S.-China Economic Relations:*** Companies with greater exposure to China face significant risks from potential new tariffs, effects on the yuan if China is redesignated a currency manipulator, potential new export controls, outbound investment controls, and the downstream effects of any rulemaking on connected products.

Global Tax Deal

On January 20, 2025, President Trump also signed a separate presidential memorandum directing the Secretary of the Treasury and the Permanent Representative of the United States to the Organization for Economic Cooperation and Development (OECD) to “notify the OECD that any commitments made by the prior administration on behalf of the United States with respect to the

Global Tax Deal have no force or effect within the United States absent an act by the Congress adopting the relevant provisions of the Global Tax Deal.”²

The global minimum tax agreement (referred to as “Pillar Two” of the Global Anti-Base Erosion Model Rules) establishes a 15% minimum global corporate tax rate and encourages countries to impose certain tax penalties on businesses that are taxed in jurisdictions that have not complied with Pillar Two. Although the corporate tax rate in the United States exceeds the Pillar Two minimum, the calculation of the tax base in the U.S. is not aligned with the OECD and thus there is the risk foreign countries may subject U.S. companies to higher taxes. To deter those measures, the memorandum directs the Secretary of the Treasury and the United States Trade Representative to “investigate whether any foreign countries are not in compliance with any tax treaty with the United States or have any tax rules in place, or are likely to put tax rules in place, that are extraterritorial or disproportionately affect American companies,” and to report on its findings and potential responses within 60 days.

Key Takeaways: At this juncture, the key takeaways for businesses are uncertain:

- *Potential Tax Consequences:* The tax consequences for businesses are unclear, as it is uncertain what tax measures foreign countries will take in response to this action and whether they will be deterred by the threat of U.S. tax retaliation.
- *Potential Congressional Tax Action:* The memorandum leaves open the possibility that Congress (which has yet to enact the Global Tax Deal) may take some action to comply with the tax deal. Paul, Weiss will continue closely to monitor developments in this space, including any potentially relevant tax provisions in a budget reconciliation bill being developed by Congress.

Designating Cartels as Foreign Terrorist Organizations

President Trump issued an executive order directing members of his cabinet to provide recommendations on “designating cartels and other organizations as foreign terrorist organizations and specially designated global terrorists.”³ The Foreign Terrorist Organization (“FTO”) designation has traditionally been applied to terrorist organizations, like Al-Qaeda, Boko Haram, Hezbollah, and the Islamic State. While the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) has designated certain cartels as FTOs, the FTO designation could carry heightened civil and criminal risks for U.S. and foreign businesses and their executives that operate in areas where the designated cartels operate.

Key Takeaways: At this time, we do not know which cartels may be designated, if any. Key takeaways for businesses to consider are:

- *Refreshing Risk Assessments:* In the event of additional designations, U.S. and non-U.S. companies whose business operations may come into contact with FTOs should consider conducting or refreshing a risk assessment to identify potential areas of interaction with cartels, and associated individuals and businesses.
- *Further Due Diligence:* Companies should consider reviewing their due diligence policies and procedures to ensure that they are well-designed to detect higher risk activities that may involve FTOs. Financial-services firms should consider a risk-based approach to any designations and apply appropriate diligence in business sectors in which the designated cartels operate.

“Iron Dome for America” Missile Defense System

² Presidential Memorandum, *The Organization for Economic Co-operation and Development (OECD) Global Tax Deal (Global Tax Deal)* (January 20, 2025), available [here](#).

³ Executive Order, *Designating Cartels And Other Organizations As Foreign Terrorist Organizations And Specially Designated Global Terrorists* (January 20, 2025), available [here](#).

On January 27, 2025, President Trump issued an executive order titled “The Iron Dome for America,” directing the Secretary of Defense to submit within 60 days an implementation plan for a “next-generation missile defense shield” and a plan, with the Director of the Office of Management and Budget, for funding that shield.⁴ The Secretary of Defense is also directed to review existing “theater missile defense posture and initiatives” and identify ways to, among other things, “improve theater missile defenses of forward-deployed United States troops” and “increase and accelerate the provision of United States missile defense capabilities to allies and partners.”

Key Takeaways: The scope and impact of President Trump’s order will become clear in the coming months as the Secretary of Defense develops a funding plan and proposed implementation plan for the new system.

Technology

In his first week, President Trump took several steps affecting the federal government’s approach to the regulation of technology, including artificial intelligence.

Artificial Intelligence

Rescission of Prior AI Orders: On January 20, 2025, President Trump rescinded Executive Order 14110 on “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence,” in which President Biden had issued a series of agency actions to provide guidance on AI, govern the federal government’s use of AI, and study risks from the technology.⁵ Though many of the reporting obligations in that order are already complete, other measures – such as ongoing guidance, training, and risk-management practices – could be wound down absent a replacement order supporting those efforts.

AI Leadership: On January 23, 2025, President Trump issued an executive order on “Removing Barriers to American Leadership in Artificial Intelligence.”⁶ That order includes a policy objective of “sustain[ing] and enhanc[ing] America’s AI global dominance in order to promote human flourishing, economic competitiveness, and national security.” The order states that the United States should “develop AI systems that are free from ideological bias or engineered social agendas.” The order directs senior White House staff to develop an “action plan” within 180 days.

Key Takeaways: While the full impact of these two orders remains uncertain, key takeaways for businesses include:

- **Shifting AI Risk Priorities:** The rescission of President Biden’s Executive Order 14110 marks a significant shift in AI risk priorities relevant to companies developing AI models. Many elements of the framework set out in the revoked AI Executive Order – including its emphases on risk management, bias prevention, consumer protection, privacy and civil liberties, workforce development, and international coordination – are absent from the AI order issued by President Trump.
- **Evolving Federal Contracting Rules:** In light of shifting federal AI policy, vendors using or offering AI technology in federal contracts should carefully review any changes to federal contracting requirements regarding AI. Likewise, companies developing or commercializing AI technologies should closely monitor the action plans directed by the AI executive order.
- **Focus on AI Infrastructure:** The Trump Administration has signaled its focus on developing domestic AI infrastructure. On January 21, 2025, President Trump introduced the “Stargate” AI infrastructure project at the White House, with leadership from SoftBank, OpenAI, Oracle and MGX.⁷ The Trump Administration has not acted to rescind the Department of

⁴ Executive Order, *The Iron Dome for America* (January 27, 2025), available [here](#).

⁵ Executive Order, *Initial Rescissions of Harmful Executive Orders and Actions* (January 20, 2025), available [here](#).

⁶ Executive Order, *Removing Barriers to American Leadership in Artificial Intelligence* (January 23, 2025), available [here](#).

⁷ Josh Boak & Zeke Miller, *Trump Highlights Partnership Investing \$500 Billion in AI*, Associated Press (January 22, 2025), available [here](#).

Commerce's interim final rule, issued on January 13, 2025, which revised certain export controls on advanced computing integrated circuits and added new export controls on AI model weights for certain dual-use frontier AI models.⁸

Online Platform Moderation

On January 20, 2025 President Trump signed an executive order on *Restoring Freedom of Speech and Ending Federal Censorship*, which announced the policy of the United States to “ensure that no Federal Government officer, employee, or agent engages in or facilitates any conduct that would unconstitutionally abridge the free speech of any American citizen,” ensure that “no taxpayer resources are used” for such activities, and identify and take action to “correct past misconduct by the Federal Government related to censorship of protected speech.”⁹ Federal agencies and officials are prohibited from using resources contrary to those principles. Additionally, the U.S. Attorney General is tasked with investigating “the activities of the Federal Government over the last 4 years that are inconsistent with the purposes and policies of this order” and preparing a report with recommendations for remedial actions.

Cryptocurrency and Blockchain

In his first week, President Trump took significant action affecting the federal government's approach to the regulation of cryptocurrency and blockchain.

Digital Financial Technology Order: On January 23, 2025, President Trump signed an executive order on *Strengthening American Leadership in Digital Financial Technology*.¹⁰ The order declared the Administration's policy “to support the responsible growth and use of digital assets,” including cryptocurrencies, and “blockchain technology, and related technologies across all sectors of the economy,” including by protecting the ability to access and use “for lawful purposes open public blockchain networks without persecution,” and “protecting and promoting fair and open access to banking services.” The executive order established the President's Working Group on Digital Asset Markets, which is tasked with reviewing agencies' regulations, guidance documents, and orders affecting the digital asset sector for potential modification and rescission. The group is directed to prepare a report to recommend “a [f]ederal regulatory framework governing the issuance and operation of digital assets, including stablecoins,” as well as an evaluation of “the potential creation and maintenance of a national digital asset stockpile.”

The executive order also rescinded the Biden Administration's Executive Order 14067 (which directed several studies about potential digital asset regulation), and it directed the rescission of the Department of the Treasury's Framework for International Engagement in Digital Assets (which sought to pursue digital asset governance issues in international forums). The order also specifically prohibits agency action to “establish, issue, or promote” Central Bank Digital Currencies – that is, “a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the central bank” – and terminates any ongoing efforts to do so.

SEC Crypto Task Force: On January 23, 2025, the SEC rescinded Staff Accounting Bulletin No. 121, which required companies to list crypto-assets held on users' behalf as liabilities on their balance sheets.¹¹ On January 21, 2025, Acting SEC Chairman Mark Uyeda also announced a crypto task force, led by SEC Commissioner Hester Peirce, to “help the Commission draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously.”¹²

⁸ Department of Commerce, Bureau of Industry and Security, *Framework for Artificial Intelligence Diffusion* (January 13, 2025), available [here](#).

⁹ Executive Order, *Restoring Freedom of Speech and Ending Federal Censorship* (January 20, 2025), available [here](#).

¹⁰ Executive Order, *Strengthening American Leadership in Digital Financial Technology* (January 23, 2025), available [here](#).

¹¹ U.S. Securities & Exchange Commission, *Release No. SAB 122*, available [here](#).

¹² U.S. Securities & Exchange Commission, *Press Release: SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force, Release 2025-30* (January 21, 2025), available [here](#).

Key Takeaways: The Trump Administration's actions illustrate a focus on expanding the growth of digital financial technology and "eliminating regulatory overreach on digital assets."¹³ Among the key takeaways for businesses:

- The executive order signals an effort to impose a lighter regulatory burden on digital assets, although the regulatory framework likely will not be certain until the Working Group's report has been finalized.
- The executive order marks an end to federal government support for Central Bank Digital Currencies, which had been supported by the Biden Administration.

Energy and the Environment

On January 20, 2025, President Trump issued a number of executive orders effectuating the federal government's policies on energy and the environment, both at home and abroad.

International Environmental Agreements: On January 20, President Trump issued an executive order, entitled *Putting America First in International Environmental Agreements*, announcing "the policy of [the new] Administration to put the interests of the United States and the American people first in the development and negotiation of any international agreements with the potential to damage or stifle the American economy."¹⁴ The order directs the U.S. Ambassador to the United Nations to "immediately submit formal written notification" to the Secretary-General "of the United States' withdrawal from the Paris Agreement under the United Nations Framework Convention on Climate Change" ("UNFCCC"). That withdrawal does not become effective until at least one year after the notice of withdrawal is received. In addition, the executive order requires the U.S. Ambassador "immediately [to] submit written formal notification" to the relevant party "of the United States' withdrawal from any agreement, pact, accord, or similar commitment" made under the UNFCCC. Critically, the order does not withdraw the United States from the UNFCCC itself—the underlying framework for global climate cooperation.

Domestic Energy Activities: On January 20, President Trump issued two executive orders to encourage domestic energy production and expand domestic energy infrastructure. The first order, *Declaring a National Energy Emergency*, empowers agencies to "identify and use all relevant lawful emergency and other authorities" to "complet[e] all authorized and appropriated infrastructure, energy, environmental, and natural resources projects" and to "facilitate the supply, refining, and transportation of energy" in the Northeast, West, and Alaska.¹⁵ Although the order draws authority from the National Emergencies Act, it also encourages reliance on federal eminent domain authorities and authorities under the Defense Production Act to achieve this objective. The second order, *Unleashing American Energy*, requires agencies to review all agency action "to identify those . . . that impose an undue burden on the identification, development, or use of domestic energy resources."¹⁶ It establishes a one-month deadline to "develop and begin implementing action plans to suspend, revise, or rescind" "unduly burdensome" agency actions. Simultaneously, the order directs the Council on Environmental Quality to "propose rescinding" its National Environmental Policy Act regulations to expedite the permitting of energy projects.

Electric Vehicles and Renewable Energy: President Trump's executive orders have sweeping implications for the electric vehicle and renewable energy industries. *Unleashing American Energy* eliminates the electric-vehicle mandate and state emissions waivers, and "immediately" halts the disbursement of Inflation Reduction Act and Infrastructure Investment and Jobs Act funding to programs that contravene the domestic energy exploration-and-production policy outlined in the order.¹⁷ A separate memorandum issued on January 20, "withdraw[s] from disposition for [new or renewed] wind energy leasing all areas within the

¹³ The White House, *Fact Sheet: Executive Order to Establish United States Leadership in Digital Financial Technology* (January 23, 2025), available [here](#).

¹⁴ Executive Order, *Putting America First in International Environmental Agreements* (January 20, 2025), available [here](#).

¹⁵ Executive Order, *Declaring a National Energy Emergency* (January 20, 2025), available [here](#).

¹⁶ Executive Order, *Unleashing American Energy* (January 20, 2025), available [here](#).

¹⁷ Office of Management and Budget Memorandum, *Memorandum to the Heads of Departments and Agencies*, (January 21, 2025), available [here](#).

Offshore Continental Shelf” and imposes a moratorium on permitting for “onshore or offshore wind projects,” at least until the completion of a “comprehensive assessment and review of [f]ederal wind leasing and permitting practices.”¹⁸

State-Specific Directives: On January 20, 2025, President Trump issued an executive order, entitled *Unleashing Alaska's Extraordinary Resource Potential*, that announces “the policy of the United States” to “efficiently and effectively” develop and produce natural resources in Alaska; “expedite the permitting and leasing” of energy projects in Alaska; and “prioritize the development of Alaska’s liquified natural gas (LNG) potential.”¹⁹ Pursuant to that policy, the order directs all agency heads to revise or rescind all agency actions limiting the development and production of natural resources in Alaska. It also restores canceled oil and gas leases within the Arctic National Wildlife Refuge.

Key Takeaways: The impacts of President Trump’s executive actions will become clear in the coming weeks and months as agencies take up the mantle of implementing the new Administration’s energy policies. At this stage, the key takeaways for businesses include:

- **Fossil-Fuel Industry:** Together, the executive actions reduce regulation restricting domestic energy production and reduce environmental permitting requirements for that production.
- **Renewable Energy:** The executive actions terminate federal government support for the development of electric vehicles and other green energy, such as wind. But the executive actions do not affect the rights of existing wind energy leases or eliminate investment tax credits and production tax credits for eligible projects (including the credits available under Sections 45Y and 48E for wind and solar projects).

Healthcare and Pharmaceuticals

In his first weeks in office, President Trump issued a series of executive orders impacting the healthcare and pharmaceutical sector, as well as public health.

Healthcare: On January 20, 2025, President Trump rescinded several executive orders issued by the Biden Administration related to healthcare pricing and spending.²⁰ The rescinded orders include one directing the Center for Medicare and Medicaid Innovation to test new models to reduce drug costs, under which the agency had developed plans to cap prescription drug prices, expand access to cell and gene therapies, and promote accelerated FDA approval of certain new therapies.^{21, 22} Other rescinded orders included those establishing certain responses to the COVID-19 pandemic,²³ and expanding eligibility and enrollment periods for health insurance under the Affordable Care Act.²⁴ On January 29, 2025, President Trump issued an executive order stating that the federal government will not “fund, sponsor, promote, assist, or support” gender-affirming care for individuals under 19 years of age.²⁵

¹⁸ Presidential Memorandum, *Temporary Withdrawal Of All Areas On The Outer Continental Shelf From Offshore Wind Leasing And Review Of The Federal Government's Leasing And Permitting Practices For Wind Projects* (January 20, 2025), available [here](#).

¹⁹ Executive Order, *Unleashing Alaska's Extraordinary Resource Potential* (January 20, 2025), available [here](#).

²⁰ Executive Order, *Initial Rescissions of Harmful Executive Orders and Actions* (January 20, 2025), available [here](#).

²¹ Executive Order, *Lowering Prescription Drug Costs for Americans* (October 19, 2022), available [here](#).

²² Centers for Medicare and Medicaid, *A Report in Response to the Executive Order on Lowering Prescription Drug Costs for Americans* (2023), available [here](#).

²³ Executive Order, *Establishing the COVID-19 Pandemic Testing Board and Ensuring a Sustainable Public Health Workforce* (January 26, 2021), available [here](#).

²⁴ Executive Order, *Strengthening Medicaid and the Affordable Care Act* (February 2, 2021), available [here](#).

²⁵ Executive Order, *Protecting Children from Chemical and Surgical Mutilation*, (January 29, 2025), available [here](#).

Public Health: On January 20, 2025, President Trump issued an executive order withdrawing the United States from the World Health Organization (“WHO”).²⁶ Per the WHO’s governing rules, that notice of withdrawal will take effect twelve months later, in January 2026. However, President Trump has subsequently indicated openness to rejoining WHO if the organization makes certain operational changes.²⁷ The administration also directed the Department of Health and Human Services to pause all public communications regarding public health issues, including regular publications and advisories issued by agencies such as the Centers for Disease Control and Prevention.²⁸ Media reporting suggests that pause will end on February 1, 2025, and the President’s nominee for HHS Secretary has said “[t]here are exceptions for announcements” deemed “mission critical.”²⁹

Key Takeaways: These actions suggest that the Trump Administration is moving quickly to set new priorities for healthcare spending, pharmaceuticals, and public health policy. While those new priorities take shape, near-term impacts may include:

- Delays in funding for recipients of grants from the National Institutes of Health, Food & Drug Administration, and other agencies within HHS.
- Limited updates to federal health databases and incident alerts.
- Changes to health insurance coverage for patient populations enrolled under the Affordable Care Act.
- Changes to procedures covered under Medicare, Medicaid, and federal employee insurance programs.

Regulatory Administration

In his first weeks, President Trump issued multiple executive orders focused on regulatory administration, including an Order freezing the promulgation of all new regulations. President Trump also rescinded multiple Executive Orders that could affect how agencies promulgate rules during his Administration.

Regulatory Freeze: On January 20, 2025, President Trump issued an executive order directing “all executive departments and agencies” to take multiple steps to temporarily stop the issuance of all new regulations and possibly extend effective dates for issued – but not yet effective – rules.³⁰ This order is consistent with action taken by prior Presidents, including President Biden.³¹

This order directs all agencies and departments to refrain from “propos[ing] or issu[ing] any rule in any manner . . . until a department or agency head appointed or designated by [President Trump] reviews and approves the rule,” and further directs all agencies and departments to “[i]mmediately withdraw any rules that have been sent to the [Office of the Federal Register] so that they can be reviewed and approved” as provided above. Furthermore, the order further provides that all agencies and departments should “consider postponing for 60 days . . . the effective date for any rules that have been published in the Federal Register, or any rules that have been issued in any manner but have not taken effect, for the purpose of reviewing any questions of fact, law, and policy that the rules may raise.” During this 60-day time period, these agencies and departments should “consider opening a comment period to allow interested parties to provide comments about issues of fact, law, and policy raised by the rules postponed under this memorandum, and consider reevaluating pending petitions involving such rules.”

²⁶ Executive Order, *Withdrawing the United States from the World Health Organization* (January 20, 2025), available [here](#).

²⁷ Reuters, *Trump Says He May Consider Rejoining World Health Organization* (January 25, 2025), available [here](#).

²⁸ Washington Post, *Trump Officials Pause Health Agencies’ Communications, Citing Review* (January 21, 2025), available [here](#).

²⁹ Washington Post, *Health Researchers Alarmed As Trump Administration Pauses Travel, Communications* (January 23, 2025), available [here](#).

³⁰ Executive Order, *Regulatory Freeze Pending Review* (January 20, 2025), available [here](#).

³¹ Memorandum, *Memorandum for The Heads of Executive Departments and Agencies* (January 20, 2021), available [here](#).

Rescission of Regulatory Executive Orders: On January 20, President Trump rescinded a number of executive orders issued by President Biden related to regulatory administration.³²

As relevant here, President Trump rescinded:

- Executive Order 13992, which itself had rescinded various regulatory reforms from the first Trump Administration.³³ Most notably, President Trump reinstated an executive order which had required that “whenever an executive department or agency [] publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed,” and further obligated that each agency shall “identify, for each regulation that increases incremental cost . . . the agency’s best approximation of the total costs or savings associated with each new regulation or repealed regulation.”³⁴ The rescission of Executive Order 13992 also reinstated executive orders on: 1) implementing regulatory reforms, 2) limiting the number of federal advisory committees, 3) limiting the use or legal effect of agency guidance documents, 4) instituting a policy that “[n]o person should be subjected to a civil administrative enforcement action or adjudication absent prior public notice,” and 5) offsetting budgetary costs of discretionary agency actions.
- Executive Order 14094, which had implemented various changes to “modernize the regulatory process.”³⁵ These changes included increasing the monetary threshold for “significant regulatory action,” specifying ways that “regulatory actions should be informed by input from interested or affected communities,” and providing that regulations “shall recognize distributive impacts and equity.”

Congressional Review Act: In addition to the regulatory changes directed by executive order, President Trump and the 119th Congress may nullify regulations that were promulgated by federal agencies at the end of the Biden Administration under the Congressional Review Act (“CRA”). Under the CRA, federal agencies must submit new regulations to Congress before those rules can take effect. Congress then has 60 days to rescind those rules by enacting a joint resolution of disapproval via simple majority in each chamber. A rule that has been rejected through this process “shall have no force or effect” and “may not be reissued in substantially the same form” nor may “a new rule that is substantially the same as such a rule . . . be issued.”³⁶ With Republicans in control of both the House and Senate, President Trump has the ability to nullify many of the previous Administration’s regulations.

DOGE: On January 20, 2025, President Trump issued an executive order entitled *Establishing and Implementing the President’s “Department of Government Efficiency,”* commonly referred to as “DOGE.”³⁷ The order creates DOGE by “renam[ing]” the United States Digital Service as the “United States DOGE Service” and declaring it “established in the Executive Office of the President.” The USDS Administrator “shall report to the White House Chief of Staff” and “within USDS,” there will be established “a temporary organization known as ‘the U.S. DOGE Service Temporary Organization,’” which will be terminated on July 4, 2026. The order states that the mission of DOGE is “modernizing [f]ederal technology and software to maximize efficiency and productivity” and stated that it shall undertake an initiative to “improve the quality and efficiency of government-wide software, network infrastructure, and information technology (IT) systems.”

³² Executive Order, *Initial Rescissions Of Harmful Executive Orders And Actions* (January 20, 2025), available [here](#).

³³ Executive Order, *Revocation Of Certain Executive Orders Concerning Federal Regulation* (January 20, 2021), available [here](#).

³⁴ Executive Order, *Reducing Regulation and Controlling Regulatory Costs* (January 30, 2017), available [here](#).

³⁵ Executive Order, *Modernizing Regulatory Review* (April 6, 2023), available [here](#).

³⁶ 5 U.S.C. §§ 801(a)(5)(b)(2), 802(a).

³⁷ Executive Order, *Establishing And Implementing The President’s “Department Of Government Efficiency”* (January 20, 2025), available [here](#).

Federal Hiring Freeze: On January 20, 2025, President Trump issued an executive order instituting a “freeze on the hiring of Federal civilian employees, to be applied throughout the executive branch.”³⁸ Specifically, the order provides that the Office of Management and Budget (OMB), in consultation with the Office of Personnel Management and DOGE, “shall,” within 90 days, “submit a plan to reduce the size of the Federal Government’s workforce through efficiency improvements and attrition.” With the exception of the IRS, the hiring freeze will end “upon issuance of the OMB plan.” Regarding the IRS, the freeze will remain until the Treasury Department, in consultation with OMB and DOGE, determines “that it is in the national interest to lift the freeze.” The freeze does not apply to “military personnel of the armed forces or to positions related to immigration enforcement, national security, or public safety.”

In-Person Work: On January 20, 2025, President Trump issued a memorandum directing the “[h]eads of all departments and agencies” to “take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis,” subject to “necessary” exemptions.³⁹

Federal Funding Freeze: On January 27, 2025, the Office of Management and Budget issued a memorandum temporarily pausing federal grants, loans, and other financial assistance programs.⁴⁰ Impacted programs included NIH research grants and some clean energy grants, but other programs including Social Security, Medicare, and federal student loans and Pell grants were not frozen. A federal court enjoined the order on January 28, 2025, before the memorandum was due to take effect, and on January 29, 2025, OMB rescinded the order.⁴¹

Key Takeaways: The series of government-wide actions demonstrates the new administration’s willingness to leverage funding and administrative tools to pursue its policy goals.

DEI Programs and Employment

As we noted in greater detail in a recent client memorandum, in his first week, President Trump issued a number of executive orders to eliminate diversity, equity and inclusion programs and policies and to protect “single-sex spaces and activities designed for women.”⁴²

DEI: On January 21, 2025, President Trump issued an executive order entitled *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*.⁴³ This order states that it is the “policy of the United States . . . to promote individual initiative, excellence, and hard work,” and orders all executive departments and agencies “to terminate all discriminatory and illegal” DEI policies and practices in the federal government.

In addition to revoking several prior executive orders regarding federal DEI policies, the order impacts federal contractors, the private sector, and educational institutions:

- **Federal contractors:** The order revokes Executive Order 11246, which required equal opportunity and nondiscrimination in government contracting, and directs the Office of Federal Contract Compliance Programs to stop “promoting diversity.” The

³⁸ Executive Order, *Hiring Freeze* (January 20, 2025), available [here](#).

³⁹ Presidential Memorandum, *Return To In-Person Work* (January 20, 2025), available [here](#).

⁴⁰ *Memorandum for Heads of Executive Departments and Agencies*, Office of Management and Budget (January 27, 2025), available [here](#).

⁴¹ Washington Post, *Trump White House Reverses Course, Rescinds Freeze on Federal Grants* (January 29, 2025), available [here](#).

⁴² *President Trump Issues Executive Orders Targeting DEI Programs and Gender Identity-Based Legal Protections*, Paul, Weiss (January 24, 2025), available [here](#).

⁴³ Executive Order, *Ending Illegal Discrimination And Restoring Merit-Based Opportunity* (January 21, 2025), available [here](#).

order requires every recipient of a government contract or grant award to “certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws,” and gives federal contractors 90 days (by April 21, 2025) to become compliant.

- *Private sector:* The order directs the Attorney General to “encourage the private sector to end illegal discrimination and preferences.” To that end, the order directs the Attorney General to submit a report within 120 days with a list of the “most egregious and discriminatory DEI practitioners in each sector of concern” and a “proposed strategic enforcement plan,” including identifying potential investigations, litigation and regulatory action.
- *Educational institutions and agencies:* The order directs the Attorney General and Secretary of Education to issue guidance within 120 days to educational entities that receive federal funds or grants or participate in the federal student loan assistance programs regarding measures to end race-based affirmative action programs in university admissions.

Executive Order on Gender: On January 20, 2025, President Trump issued an executive order specifically addressing gender, titled *Defending Women From Gender Ideology Extremism And Restoring Biological Truth To the Federal Government*.⁴⁴ The Order states that it is now “the policy of the United States to recognize two sexes, male and female” and directs the Executive Branch to enforce “sex-protective” laws to promote this policy. The order directs the Secretary of Health and Human Services to provide “public clear guidance expanding on the sex-based definitions” and directs the Attorney General and federal agencies to: (1) immediately issue guidance effectuating this new federal policy eliminating legal recognition and protections on the basis of transgender, nonbinary and intersex status; and (2) “prioritize investigations and litigation” to enforce the new policy.

Key Takeaways: These orders suggest that private-sector enforcement will be a priority in the near term. While these orders do not require immediate action from the private sector (with the exception for federal contractors), businesses and private employers can expect increased scrutiny of DEI policies and programs and should carefully review their policies and programs to mitigate risks, including:

- For federal government contractors, immediate review of programs and policies to ensure that they “[do] not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws,” with compliance required by April 21, 2025;
- Review of DEI policies and programs, particularly those that provide any benefit or priority on the basis of race or another protected category, to address the risk of impending investigations and litigation;
- Review of hiring, promotion, and compensation policies to ensure equal opportunity; and
- Review of gender identity-based policies and practices to ensure compliance with the executive order on gender and any subsequent guidance.

Immigration and Border Security

In his first week, President Trump issued a series of Executive Orders that affect immigration policy and border security.

Immigration and Citizenship: The Trump Administration has taken several steps to limit immigration and increase enforcement of existing laws.⁴⁵ These measures include increased vetting requirements for visa applicants; identifying “any actions necessary”

⁴⁴ Executive Order, *Defending Women From Gender Ideology Extremism And Restoring Biological Truth To the Federal Government* (January 21, 2025), available [here](#).

⁴⁵ Executive Order, *Protecting The American People Against Invasion* (January 20, 2025), available [here](#).

to be taken against foreign nationals “who provide aid, advocacy, or support for foreign terrorists,”⁴⁶ restricting entries at the southern border,⁴⁷ and resuming certain migration policies from the first Trump Administration.⁴⁸ President Trump also issued an executive order restricting the scope of birthright citizenship, including by denying citizenship to children born in the United States to parents with temporary work visas.⁴⁹ That order was temporarily enjoined by a federal district court on January 23, 2025, and is subject to ongoing litigation in other venues.

Border Security: On January 20, 2025, President Trump declared a “national emergency . . . along the southern border of the United States”⁵⁰ and issued an executive order directing the Armed Forces to “prioritize the protection of the sovereignty and territorial integrity of the United States along our national borders.”⁵¹ Together, these two actions direct the Secretaries of Defense and Homeland Security to deploy additional troops to the southern border, build additional physical barriers, and use other means to secure the border.

Key Takeaways: At this stage, the key takeaways for businesses, though uncertain, include:

- **Impacts on Global Business:** Businesses may experience delays in visas for foreign workers, as well as increased wait times and heightened scrutiny at ports of entry.
- **Impacts on Higher Education:** Universities will need to address the immigration status of foreign students, researchers, and faculty, including immigration enforcement efforts on campuses.

Paul, Weiss Will Continue to Monitor Developments

In this period of significant and accelerated regulatory change, Paul, Weiss is closely monitoring new executive actions to help our clients navigate the rapidly changing regulatory environment. This overview will be continually updated by Paul, Weiss to inform the business community about key executive actions carried out by the Trump Administration and discuss their commercial and other implications.

* * *

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⁴⁶ Executive Order, *Protecting The United States From Foreign Terrorists And Other National Security And Public Safety Threats* (January 20, 2025), available [here](#).

⁴⁷ Presidential Proclamation, *Guaranteeing The States Protection Against Invasion* (January 20, 2025), available [here](#).

⁴⁸ Executive Order, *Securing Our Borders* (January 20, 2025), available [here](#).

⁴⁹ Executive Order, *Protecting The Meaning And Value Of American Citizenship* (January 20, 2025), available [here](#).

⁵⁰ Presidential Proclamation, *Declaring A National Emergency At The Southern Border Of The United States* (January 20, 2025), available [here](#).

⁵¹ Executive Order, *Clarifying The Military's Role In Protecting The Territorial Integrity Of The United States* (January 20, 2025), available [here](#).

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January 28, 2025

Executive Orders Rolling Back DEI May Increase Activism Risk

Last week, the Trump administration issued two [executive orders](#) ending diversity, equity and inclusion (“DEI”) policies within the federal government and mobilizing federal agencies to “combat illegal private-sector DEI preferences, mandates, policies, programs and activities.” The orders intensify the ongoing pushback against DEI initiatives within the private sector and may create new opportunities for activists (and not only those who oppose DEI) to leverage missteps to drive a wedge between management, the board, investors, employees, customers and other stakeholders.

Executive order “Ending Radical and Wasteful Government DEI Programs and Preferencing” terminates all DEI programs within the federal government. Specifically, the order requires the Director of the Office of Personnel Management and the Attorney General to review and revise all federal employment practices, union contracts and training policies to eliminate the consideration of DEI factors, goals, policies, mandates or requirements.

Executive order “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” directs all federal agencies to dismantle private-sector DEI preferences, mandates, policies, programs and activities. The order mobilizes federal agencies to, among other things, develop an action plan that identifies the “most egregious and discriminatory DEI practitioners in each sector of concern,” “strategies to encourage the private sector to end illegal DEI discrimination and preferences” and avenues for litigation and regulatory intervention.

The past year has seen growing pushback against DEI initiatives at companies. With federal resources now being directed to support such efforts, companies—particularly government contractors and those operating in closely regulated industries—should expect heightened scrutiny of their employment practices and DEI-related programs. Risks that are not adequately addressed could result in material legal, reputational and financial repercussions and open the door to economic- and governance-driven activism. Companies would be well advised to consider immediate steps to mitigate the reputational, regulatory and enforcement risks arising from the latest executive orders. Such steps may encompass an evaluation of existing policies, commitments, disclosures and board oversight processes as well as assessing feedback from key stakeholders, including investors and employees.

* * *

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JANUARY 24, 2025

President Trump Issues Executive Orders Targeting DEI Programs and Gender Identity-Based Legal Protections

Through the use of Executive Orders, the Trump administration has taken swift and significant actions to eradicate the use of “illegal” diversity, equity and inclusion (“DEI”) policies and practices by the federal government and to direct that federal agency enforcement authority be used to encourage the private sector to follow suit. Since his inauguration on January 20, 2025, President Trump has issued four executive orders related to the protection of “single-sex spaces and activities designed for women” and ending the use of “illegal DEI and DEIA policies” (the “Anti-DEI and Gender Orders”): (1) **Initial Rescissions of Harmful Executive Orders and Actions**;¹ (2) **Ending Radical and Wasteful Government DEI Programs and Preferencing**;² (3) **Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government**;³ and (4) **Ending Illegal Discrimination and Restoring Merit-Based Opportunity**.⁴ While the first two orders target, among other things, DEI efforts within the federal government, the other two orders have immediate implications for private companies and organizations. With respect to the private sector specifically, the Anti-DEI and Gender Orders:

- direct the Attorney General to “encourage the private sector to end illegal discrimination and preferences” by preparing a “proposed strategic enforcement plan,” including identifying potential investigations, litigation and regulatory action;
- establish a federal policy promoting enforcement of “sex-protective” laws; and

¹ On January 20, 2025, President Trump issued an executive order rescinding a number of previous executive orders described as “deeply unpopular, inflationary, illegal, and radical.” This Order includes the rescission of Executive Order 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) and Executive Order 13988 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation). See Exec. Off. of the President, Executive Order on Initial Rescissions of Harmful Executive Orders and Actions (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/>.

² Exec. Off. of the President, Executive Order on Ending Radical and Wasteful Government DEI Programs and Preferencing (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/>.

³ Exec. Off. of the President, Executive Order on Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

⁴ Exec. Off. of the President, Executive Order on Ending Illegal Discrimination and Restoring Merit-Based Opportunity (Jan. 21, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>.

- direct the termination of “equity-related” grants or contracts in the federal government and abolish affirmative action requirements for federal contractors.

New Executive Orders Relating to Sex Identification and DEI Measures

Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

The Gender Order states that it is now “the policy of the United States to recognize two sexes, male and female” and directs the Executive Branch to enforce “sex-protective” laws to promote this policy. The Order defines the term “sex” as an individual’s “immutable biological classification” and directs the Secretary of Health and Human Services to provide “public clear guidance expanding on the sex-based definitions” in the Order. Looking ahead, the Gender Order directs the Attorney General and federal agencies to: (1) immediately issue guidance effectuating this new federal policy eliminating legal recognition and protections on the basis of transgender, nonbinary and intersex status; and (2) “prioritize investigations and litigation” to enforce the new policy.

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

On January 20 and 21, 2025, President Trump signed a series of Executive Orders aimed at “enforcing civil-rights laws” and “ending illegal preferences and discrimination.” Collectively, these Anti-DEI Orders require the termination of all DEI mandates, policies, programs, preferences, and activities in the Federal Government/federal contracting and direct the Attorney General to develop a plan for the use of regulatory investigations and litigation against private sector companies and organizations engaged in “illegal discrimination and preferences.”

With respect to federal contractors, the Jan. 21 Order revokes Executive Order 11246, which required equal opportunity and nondiscrimination in government contracting, and directs the Office of Federal Contract Compliance Programs to stop “promoting diversity.”⁵ The Jan. 21 Order requires every government contract or grant award to “certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws,” and gives Federal contractors 90 days to come into compliance.

With respect to the private sector, the Jan. 21 Order directs the Attorney General to submit a report, within 120 days, containing recommendations to “encourage the private sector to end illegal discrimination and preferences, including DEI.” The report must include a list of the “most egregious and discriminatory DEI practitioners in each sector of concern” and a plan to deter DEI programs or preferences, including identifying “up to nine potential civil compliance investigations” of “publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars.” The Attorney General is encouraged to also consider “other strategies” directed at eradicating DEI in the private sector, including litigation and “regulatory action and sub-regulatory guidance.” The Jan. 21 Order includes a carve-out for “contracting preferences for veterans of the U.S. armed forces.”

Related Developments

On January 21, 2025, President Trump appointed Commissioner Andrea R. Lucas as Acting Chair of the EEOC. Appointed by President Trump during his first term, Commissioner Lucas has served on the EEOC since 2020.

In a press release, Commissioner Lucas stated that her priorities include:

rooting out unlawful DEI-motivated race and sex discrimination; protecting American workers from anti-American national origin discrimination; defending the biological and binary reality of sex and related rights,

⁵ Exec. Order No. 11,246, 3 C.F.R. 1964-1965.

including women's rights to single-sex spaces at work; protecting workers from religious bias and harassment, including antisemitism; and remedying other areas of recent under-enforcement.⁶

Following the Executive Orders, the three Democratic members of the EEOC, Charlotte Burrows, Jocelyn Samuels and Kalpana Kotagal, issued a [joint statement](#) defending DEI practices, stating

Common sense practices, such as monitoring hiring and promotions decisions, skills-based hiring, standardized interview practices, and robust recruitment, remain lawful and important ways to promote the goals of our nation's laws and founding principles. These and other diversity, equity, inclusion and accessibility practices seek to include all workers according to their talents and abilities. ... Barring adoption of these practices can only result in legal risk to employers and lost opportunities for vulnerable communities.⁷

The developments at the EEOC underscore the growing uncertainty employers face in ensuring compliance with anti-discrimination laws amidst a shifting legal landscape.

Potential Implications & Key Takeaways for Businesses

Although the Anti-DEI and Gender Orders do not require immediate action on the part of the private sector (other than federal contractors), businesses should expect increased scrutiny in the near term, including government-initiated investigations and litigation, of their DEI policies and practices. To mitigate against these growing risks, businesses and other private employers may wish to:

- Review their DEI policies and programs as soon as practicable to ensure they are effectively addressing the risk of impending investigations and litigation directed at the private sector. Programs which provide a tangible employment or other benefit on the basis of race or another protected category should be highest priority for review. Programs which promote equal opportunity for all with respect to hiring, promotion and compensation, such as robust recruitment, standardized interview practices, addressing implicit bias, and monitoring hiring, promotion and compensation decisions remain essential to ensuring compliance with anti-discrimination laws.
- Federal government contractors with affirmative action programs related to race or sex should review their programs forthwith to ensure that they "[do] not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws." Compliance is required by April 21, 2025.
- Review their gender identity-based policies and practices to ensure compliance as new guidance from federal agencies and the courts effectuating and interpreting the Gender Order is issued. Employers with policies and practices prohibiting discrimination and harassment and encouraging an inclusive workplace, including on the basis of gender identity, transgender status and/or nonbinary status, may continue to remind employees of those protections and measures, as well as their commitment to a safe, respectful and inclusive workplace.
- Consider whether and how they may wish to address these developments with employees, board members, investors, clients, vendors and other stakeholders.
- Seek legal guidance to ensure that corporate disclosures that reference company DEI programs do so in a manner that indicates compliance with applicable laws.

⁶ Press Release, U.S. Equal Emp. Opportunity Comm'n, President Appoints Andrea R. Lucas EEOC Acting Chair (Jan. 21, 2025), <https://www.eeoc.gov/newsroom/president-appoints-andrea-r-lucas-eeoc-acting-chair>.

⁷ @JSamuelsEEOC, Twitter (Jan. 21, 2025, 4:33 PM), <https://x.com/JSamuelsEEOC/status/1881817519188795700>.

- Closely monitor regulatory and legislative developments, conduct regular audits of their anti-discrimination policies and seek guidance on mitigating legal risks.

* * *

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January 24, 2025

Update on Transition at the U.S. Antitrust Agencies

- In the last few weeks, the Antitrust Division of the U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC) engaged in what is likely an unprecedented level of end-of-term activity.
- On Monday afternoon, the Trump administration began governing with a series of executive actions that have started to shape antitrust enforcement going forward.

Antitrust Enforcement at the Beginning of the Trump Administration

As of January 20, 2025, both the FTC and DOJ are under new leadership.

Department of Justice

The President [directed](#) that James McHenry, a career DOJ immigration lawyer, “perform the functions and duties of the [Attorney General] in an acting capacity until the position is filled by appointment.”

Last week a Senate committee held a hearing on the nomination of Pam Bondi to be Attorney General. A committee vote is expected next week, with a floor vote in the Senate likely soon after. Asked at her hearing about whether she would continue to prosecute the DOJ’s pending monopolization cases, Ms. Bondi testified that she has not “looked at those [cases] on a case-by-case basis, but [is] committed to that type of case and [to] protecting consumers.” She added that she “will look at” those cases along with Antitrust Division officials “right away” and at several points praised Abigail Slater, the nominee to head the Division.

The President formally [nominated](#) Ms. Slater to lead the Antitrust Division on Monday. Over the last 20 years, the time from nomination to confirmation for the Assistant Attorney General for Antitrust has ranged from less than two months to nearly 11 months. A reasonable estimate based on the central tendency of historical data from the last 20 years is that Ms. Slater’s confirmation process could take approximately five months. However, we expect that given Ms. Slater’s apparent widespread support, the time from her nomination to confirmation will likely be shorter.

In the meantime, Omeed Assefi, who joined the Antitrust Division as a criminal prosecutor sometime last year, has [reportedly](#) been named to serve as acting assistant attorney general. Mr. Assefi was previously an assistant United States attorney in the District of Columbia and served in the White House and at the DOJ Civil Rights Division during the first Trump administration.

Federal Trade Commission

President Trump [designated](#) Commissioner Andrew Ferguson to be Chairman of the FTC on January 20. It is the Chairman’s prerogative, subject to the approval of the Commission, to appoint bureau directors and he has appointed Susan Musser to be Acting Director of the Bureau of Competition. Ms. Musser is Chief Trial Counsel in the bureau and has been at the FTC since 2020. Prior to that, she was in private practice and was a Trial Attorney at the DOJ.

According to a January 24 [report](#) by Leah Nysten and Josh Sisco for Bloomberg Law, Chairman Ferguson has chosen Daniel Guarnera to be Director of the FTC Bureau of Competition. Mr. Guarnera currently is the Section Chief of the Civil Conduct Task Force in the Antitrust Division of the DOJ. In this role his focus is on civil non-merger matters, including the DOJ's tech monopolization matters. (Coincidentally Chairman Ferguson was also involved in one of these cases in his prior role as Solicitor General of the Commonwealth of Virginia, which joined with the DOJ and other state attorneys general in bringing the lawsuit.) Prior to the civil task force, Mr. Guarnera was counsel to former Assistant Attorney General Makan Delrahim, who led the Antitrust Division in the first Trump administration.

The President formally [nominated](#) Mark Meador to be a commissioner of the FTC. Over the past 20 years, the time from nomination to confirmation of an FTC commissioner has ranged from several weeks to over a year. A reasonable estimate based on the central tendency of historical data is that Mr. Meador's confirmation process will take approximately three and a half to four months.

Commissioner Khan announced that she will leave the FTC "by January 31." Until then, the Democrats will maintain a voting majority. After her departure, there will be a period of time when the Commission has the potential to deadlock, with two Republican commissioners and two Democratic commissioners. This could, in certain instances, prevent the FTC from accepting a consent order settlement, for example—at least for as long as the deadlock persists.

A [press release](#) issued by the FTC on January 22 stated that "Chairman Ferguson has taken [several] actions to protect the FTC's employees and the American people from DEI," including closing the FTC's Office of Workplace Inclusivity and Opportunity and placing "all employees within that office on administrative leave." According to another [press release](#): "The Federal Trade Commission approved a motion to give Chairman Andrew N. Ferguson authority needed to comply with President Trump's executive orders ending DEI across the federal government." The vote to approve was 2-1-2, with Commissioner Bedoya voting no and Commissioners Slaughter and Khan not participating.

Executive Actions

Executive Order on Ending the Weaponization of the Federal Government. The President has [directed](#) that insofar as it is consistent with applicable law and "subject to the availability of appropriations," the "Attorney General, in consultation with the" Chairman of the FTC, "shall take appropriate action to review the activities of . . . the Federal Trade Commission, over the last 4 years and identify any instances where [the FTC's] conduct appears to have been contrary to the purposes and policies of this order, and prepare a report to be submitted to the President . . . with recommendations for appropriate remedial actions to be taken to fulfill the purposes and policies of this order."

The "purposes and policies" of the order relate to ending the alleged "weaponization of government," i.e., actions that "appear oriented more toward inflicting political pain than toward pursuing actual justice or legitimate governmental objectives."

Memorandum on Regulatory Freeze Pending Review. The President has also [ordered](#) all executive departments and agencies to, among other things, "consider postponing for 60 days from the date of this memorandum the effective date for any rules that have been published in the *Federal Register* . . . for the purpose of reviewing any questions of fact, law, and policy that the rules may raise" insofar as this is "consistent with applicable law." It remains to be seen whether this directive will have any effect on the pending HSR rules, which have been published and are set to become effective on February 10, 2025, unless postponed. It also remains to be seen whether the FTC under Chairman Ferguson will postpone the effective date of the new HSR rules under section 705 of the Administrative Procedure Act while a [legal challenge](#) seeking to set aside the rules is pending.

Executive Order on Initial Rescissions of Harmful Executive Orders and Actions. The President also issued an executive [order](#) rescinding a lengthy list of prior executive orders. President Biden's Executive [Order](#) on Promoting Competition in the American Economy was *not* included.

Actions Taken at the End of the Biden Administration

The antitrust agencies engaged in a flurry of activity at the end of the Biden administration. Some of these actions, such as concluding open enforcement matters, are fairly characterized as routine law enforcement activity. However, the agencies also commenced several enforcement actions in court and issued policy guidance within days of the transfer of responsibility for antitrust enforcement.

Resolution of Matters on Consent

- *Gun Jumping Complaint.* On January 7, 2025, the DOJ [obtained](#) a record \$5.6 million civil penalty from oil companies accused of violating pre-merger “gun-jumping” prohibitions. The DOJ alleged that interim operating covenants in the purchase agreement giving the buyer approval rights on expenditures over \$250,000 had the effect of giving the buyer control over certain ordinary course business decisions. According to the DOJ, this and other instances of pre-merger coordination between the buyer and target allowed the buyer to obtain beneficial ownership of the target company’s business before the expiration waiting period required by the HSR Act.
- *Merger Challenge.* On January 17, 2025, the FTC alleged that a private equity firm was involved in “anticompetitive acquisitions to suppress competition and drive up prices for anesthesiology services across Texas.” In a [settlement](#) announced at the same time, the firm agreed to limit its ownership of the portfolio company, reduce its board representation to one seat and to notify the FTC of and obtain prior approval for certain future transactions. The FTC characterized this as an “antitrust roll-up scheme case” in line with the 2023 Merger Guidelines. Then-Commissioner (now Chairman) Andrew Ferguson took issue with this characterization, explaining in a concurring [statement](#) joined by Commissioner Holyoak that the Clayton Act does not prohibit roll-ups, it prohibits anticompetitive “acqui[sitions]’ . . . which is what the complaint here alleged.”
- *Criminal Matters.* In addition, the DOJ in recent days announced several guilty pleas in connection with [information technology](#), [commercial roofing](#) and [asphalt](#) bid rigging conspiracies.

New enforcement actions in active litigation

In the weeks leading up to January 20, the DOJ initiated three new enforcement actions:

- *Section 1 Conduct Complaint.* On January 7, 2025, DOJ [sued](#) six landlords for violating section 1 of Sherman Act by allegedly participating in an “algorithmic pricing scheme” involving the sharing of competitively sensitive information. The new defendants were added in an amended complaint filed in a civil enforcement action that has been pending in the Middle District of North Carolina since August 23, 2024.
- *Merger Challenge.* On January 10, 2025, DOJ sued to enjoin the acquisition of CWT Holdings by Amex Global Business Travel Group.
- *HSR Enforcement Action.* On January 14, 2025, the DOJ sued a private equity firm for alleged HSR Act violations.

The FTC initiated two new enforcement actions:

- *FTC Section 2 Conduct Action.* On January 15, 2025, the FTC [sued](#) Deere & Company in federal court for violating section 2 of the Sherman Act by illegally monopolizing an alleged market for “restricted repairs for Deere Large Tractors and Combines” and violating section 5 of the FTC Act by illegally leveraging its alleged monopoly power in a market for “Fully Functional Repair Tools to harm competitive conditions in the market for restricted repairs for Deere Large Tractors and Combines.” According to the dissenting commissioners’ statement, the defendant and FTC staff were in “active negotiations over a fix” to resolve the matter on consent.

- *Another Robinson-Patman Act Enforcement Action.* On January 17, 2025, the FTC sued PepsiCo for violating the Robinson Patman Act. The vote was 3-2. [According](#) to the FTC, PepsiCo “has engaged in illegal price discrimination by providing one customer—a large, big box retailer—with unfair pricing advantages, while raising prices for competing retailers and customers.” The two Republican dissenting commissioners argued that the complaint is unsupported by facts and questioned the timing. Commissioner Holyoak [wrote](#) that this is “the worst case I have seen in my time at the Commission.” The complaint, she said, is “wholly deficient,” “fail[s] to state a claim” and was “rushed . . . out the door” without “evidence to support the allegations.” Chairman Ferguson’s [statement](#) was similarly critical.

Under the Federal Rules of Civil Procedure, a plaintiff may voluntarily dismiss an action by filing a notice of dismissal at any time before the answer or a motion for summary judgment is filed by the defendant or at any time by filing “a stipulation of dismissal signed by all parties who have appeared.” This raises the possibility that the new agency leadership could direct agency lawyers to dismiss any of these complaints or to reach a settlement with defendants. We know nothing of incoming DOJ officials’ views on the strength of any of the DOJ complaints. However, the strong dissenting statements of Chairman Ferguson and Commissioner Holyoak in the FTC’s PepsiCo matter suggest that, if there were a third vote, the Commission might agree to dismiss the action or perhaps agree to a settlement. As a general matter, while settlement of antitrust matters was disfavored—especially at the DOJ—during the prior administration, it may be that new majority will be more amenable to compromise.

Issuance of Guidance Documents on Labor Antitrust Issues

Throughout the Biden administration, the DOJ and FTC withdrew antitrust guidance documents and policy statements that, in many cases, antitrust counsellors had referenced for years, on topics such as: unfair methods of competition enforcement (later replaced), vertical mergers (later replaced), bank mergers, standards-essential patents, collaboration with competitors and information sharing. It was somewhat surprising, then, to see the agencies issue three guidance and policy documents. All three relate to labor issues.

FTC Enforcement Policy Statement on Exemption of Protected Labor Activity by Workers from Antitrust Liability. On January 14, 2025, the FTC also issued a rather lengthy enforcement policy [statement](#) on gig workers and the antitrust labor exemption. The statement concludes that “the Commission [at the time the statement was issued] believes that workers who provide labor services are not subject to antitrust liability when engaging in protected collective action—such as seeking better compensation and job conditions—even if the firm whose labor practices the workers seek to improve classifies (or misclassifies) them as independent contractors.” The FTC vote to approve the guidance was 3-2, with the Republican commissioners voting no.

DOJ and OSHA Statement on Non-Disclosure Agreements That Deter Reporting of Antitrust Crimes. In a January 14, 2025 [press release](#), the DOJ along with OSHA “jointly affirmed that corporate non-disclosure agreements (NDAs) that deter individuals from reporting antitrust crimes undermine the goals of whistleblower protection laws, including the Criminal Antitrust Anti-Retaliation Act of 2019 (CAARA).” The DOJ noted that “NDAs that undermine CAARA or otherwise interfere with employees’ freedom to report potential crime will cost the employer when the Antitrust Division makes its charging decisions and sentencing recommendations,” and could also have consequences for a company’s ability to qualify for leniency from the Antitrust Division.

DOJ and FTC Antitrust Guidelines for Business Practices Affecting Workers. These [guidelines](#), issued on January 16, 2025, replace 2016 Antitrust Guidelines for Human Resource Professionals issued in October 2016 at the end of the Obama administration. They cover topics such as wage-fixing and no-poach agreements, franchise no-poach agreements, exchange of compensation information, non-competes, provisions in training-repayment agreements, non-solicitation agreements and exit fee/liquidated damages provisions.

The guidelines are “intended to promote clarity and transparency for the public about how the Agencies identify and assess business practices affecting workers that may violate the antitrust laws.” The timing of the release of these guidelines casts some doubt on their utility going forward (will the new administration use the same approach to analyzing these practices?). Nevertheless, they, like the 2023 Merger Guidelines, cite case law and are therefore at least useful as a starting point for

research into questions related to the topics they cover. The FTC vote to approve the guidance was 3-2, with the Republican commissioners voting no.

* * *

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Potential Merger Enforcement Changes in the Trump Administration

With the change of administrations in January 2025, antitrust enforcement priorities are likely to shift next year. We expect the Antitrust Division of the Department of Justice (DOJ) and Federal Trade Commission (FTC) in the Trump Administration to continue to enforce the antitrust laws aggressively, while de-emphasizing some of the more novel antitrust theories pursued by the Biden DOJ and FTC, marking a return to a more traditional antitrust analysis. We anticipate that the DOJ and FTC will continue to closely investigate horizontal consolidations, but will be more likely to approve vertical transactions and less likely to focus on theories such as potential harm to labor markets.

We expect the following changes in the incoming Trump Administration:

- Curtailment or revision of the 2023 Merger Guidelines, which represented a significant departure from previous agency guidelines and set forth an expansive framework for merger enforcement
- Less burdensome and more focused Second Requests, likely resulting in shorter investigations
- Greater willingness to accept structural remedies (i.e., divestitures) in lieu of litigating merger challenges
- A return to only limited use of “prior approval” provisions in FTC consent decrees, meaning that parties that become subject to decrees would normally only need to notify the FTC of certain future transactions rather than receive the FTC’s permission to engage in such transactions
- Less emphasis on proactively investigating interlocking directorates

Agency Leadership

The next Assistant Attorney General (AAG) of the Antitrust Division of the DOJ and the next Chairman of the FTC have not yet been publicly announced. Regardless of who takes over leadership of the agencies, we expect continued aggressive enforcement of the antitrust laws.

The Antitrust Division is run by an AAG who is nominated by the President and confirmed by the Senate, a process that historically has taken between two to 10 months following the inauguration. Given Republican control of the Senate, we expect new leadership could be in place by the Spring of 2025. In the interim, an Acting AAG will be appointed by the incoming administration at some point after Inauguration Day to run the Antitrust Division until the Senate confirms the President’s nominee.

The FTC has five Commissioners who are nominated by the President and confirmed by the Senate for staggered seven-year terms. A maximum of three can be from the same political party. The President designates one Commissioner as Chairman. The Chairman sets the strategic policy and enforcement goals of the FTC and is responsible for running the agency on a day-to-day basis. Chair Lina M. Khan’s term expired in September but she can remain as a Commissioner until a successor receives Senate

confirmation, which we expect will happen by around April 2025. After Inauguration Day, we expect one of the sitting Republican Commissioners would be designated as Acting Chair pending confirmation of a third Republican Commissioner. The upshot is that until a new Republican Commissioner is confirmed or one of the Democratic Commissioners resigns, for the foreseeable future, we expect continued aggressive enforcement by the FTC as the three sitting Democratic Commissioners will continue to have the ability to vote to clear or block transactions.

Substantive and Procedural Aspects of Merger Enforcement

Biden-Era Merger Guidelines May be Withdrawn or Curtailed

In line with Republican Commissioners' statements, we expect the FTC and DOJ to withdraw or curtail the 2023 Merger Guidelines. The [guidelines](#) are intended to set forth the framework that the agencies follow when reviewing transactions. The current guidelines represent a stark departure from prior enforcement principles and reflect the Biden Administration's aggressive antitrust enforcement agenda by significantly lowering the thresholds at which the agencies presume a merger to be illegal and by introducing novel and untested legal theories they might use as a basis to challenge a merger.

We expect the new administration to modify the guidelines with regard to several issues:

- **Structural emphasis.** According to the 2023 Guidelines, the agencies presume that mergers that result in a combined share of 30% or more in a relevant market are illegal. Prior administrations considered such concentration statistics relevant, but not dispositive. We believe that the agencies in the new administration will deemphasize the structural presumptions set forth in the 2023 Guidelines and return to a mode of analysis that requires the agencies to conduct a fact-based assessment to determine whether the effect of a merger "may be substantially to lessen competition." Additionally, we expect the new administration will rely more on economic analysis in considering whether a transaction raises competitive concerns. The 2023 Guidelines minimized the importance of economic analysis in merger review.
- **Vertical mergers.** The 2023 Merger Guidelines, in another significant departure from prior agency guidance, do not credit vertical mergers as presumptively pro-competitive and discount the importance of efficiencies stemming from vertical mergers, such as the elimination of double marginalization. We expect the new administration will restore the presumption that vertical mergers are pro-competitive.
- **Labor issues.** The 2023 Guidelines emphasize that the agencies consider potential harm to labor markets when analyzing whether transactions raise competitive concerns. We expect the next administration will deemphasize this issue, and focus on potential labor market harm when a merger combines two entities that employ a significant percentage of uniquely-skilled workers who are not otherwise available on the market to competitors.

New and Expansive HSR Form Rules Have Staying Power

Last month, the FTC issued [changes](#) to rules under the Hart-Scott-Rodino (HSR) Act that will overhaul premerger notification filing requirements. The new requirements are set to become effective on February 10, 2025, and are expected to substantially increase the burden, time and expense required to complete HSR notifications for all filers—and in particular private equity buyers. The Commission vote to issue the rules was 5-0 and we expect the rules will remain in place even with a change of administration, although FTC informal guidance interpreting their application might take a more pragmatic approach than under the Biden Administration. The new rules might face legal challenges that could delay their implementation; though as far as we are aware, no challenge has been filed to date.

In exchange for agreeing to vote for the new rules, the Republican Commissioners required the HSR waiting period early termination regime (which had been "[temporarily](#)" suspended in February 2021) to be reinstated. We expect that the FTC will reinstitute early termination in February 2025 when the new HSR rules are set to go into effect and we believe that the agencies will begin regularly granting early termination again for transactions that clearly raise no competitive concerns. It remains to be seen whether the FTC will grant early terminations at the frequency it did prior to the 2021 suspension.

Less Burdensome Second Request Compliance Obligations

Second Requests themselves may become less onerous. Under the Biden Administration, the agencies added nonstandard specifications and [implemented process changes](#) to an already burdensome process. By contrast, a goal of the prior Trump-era Antitrust Division was to reduce the burden on parties receiving Second Requests by implementing several reforms to presumptively limit the volume of documents and number of depositions, with an aim to complete Second Request investigations within six months. This was driven by an observation by the then-head of the Antitrust Division that “[d]elay is a form of uncertainty and risk, [which the agency] should seek to remove . . . from the merger-review process whenever possible.”

Fewer Litigation Challenges to Mergers and More Merger Settlements Expected

The number of merger challenges litigated in federal courts or in administrative proceedings at the FTC will likely drop, in part as a result of a greater willingness to resolve cases with divestitures.

Traditionally—and during the prior Trump Administration—the agencies have accepted structural remedies (i.e., divestitures of assets or business units) to address competition concerns. Under the Biden Administration, however, ideology and resources were focused on litigating rather than settling cases and there are scant examples of the DOJ or FTC agreeing to any consent decrees in the past four years. This approach also led to more signed deals being abandoned in the face of protracted review and potential litigation: 20 deals were abandoned under Biden versus six under the prior Trump Administration.

The next administration will likely be more amenable to settling complex merger investigations than the current one, and is less likely to cultivate an enforcement regime that will compel parties to abandon transactions at the pace we observed during the Biden Administration. In addition, the next administration may reinstate the [DOJ Merger Remedies Manual](#) that was revised under the prior Trump Administration.

More Favorable View of Vertical Mergers

While the DOJ in the Trump Administration brought the first vertical merger [challenge](#) in federal district court in roughly 40 years, ultimately losing at the District Court and Court of Appeals, overall the Trump Administration viewed vertical mergers more favorably than the Biden Administration has. Under Biden, the FTC aggressively pursued challenges to vertical transactions, including suing to block Illumina’s acquisition of Grail, and Microsoft’s acquisition of Activision. This approach to vertical transactions—and the wider policy of pursuing expansive theories of harm—have been met with mixed reception by federal courts, who ultimately adjudicate merger challenges. (The FTC lost the Microsoft case and has appealed.) We expect the new Trump Administration to have a greater willingness to recognize the economic efficiencies that a vertical merger can bring.

Private Equity Likely to be Viewed Less Skeptically

The Biden Administration has approached private equity with skepticism, increasing scrutiny of so-called serial acquisitions and expressing skepticism about the fitness of private equity-funded divestiture buyers. The next administration is likely to take a less suspicious approach towards private equity and focus enforcement only on transactions that potentially raise issues under traditional theories of harm, whether or not they are conducted by financial or strategic buyers. Indeed, the [DOJ Merger Remedies Manual](#) under the prior Trump Administration generally treated strategic and financial buyers neutrally, and in some cases even indicated a preference for private equity buyers, stating that “in some cases funding from private equity and other investment firms [is] important to the success of the remedy because the purchaser [has] flexibility in investment strategy, [is] committed to the divestiture, and [is] willing to invest more when necessary.”

Return to Limited Use of Prior Approval Provisions in FTC Consent Orders

Prior approval provisions in FTC orders require parties to obtain FTC permission before entering into transactions covered by the provision. For decades, the FTC limited the use of these provisions to narrow situations where it believed that parties to mergers the FTC found to be anticompetitive would “attempt the same or approximately the same merger” with “essentially the same relevant assets.” In 2021, the FTC [announced](#) that it would expand the use of prior approval provisions to include any future transactions involving the same relevant market; any re-sale of assets acquired by a divestiture purchaser as part of a merger remedy; and, in certain circumstances, future transactions involving different relevant markets. This prior approval regime is

separate from the requirement to notify a transaction under the HSR Act and is not subject to the same statutory controls over timeline or process. In practice, merging parties operating under consent decrees could face indefinite, lengthy reviews and uncertainty. We expect the FTC in the Trump Administration to return to only limited use of prior approval provisions and instead require only prior notice for covered transactions.

Active Enforcement of Interlocking Directorates Likely to be Deprioritized

The DOJ and FTC under the Biden Administration have dedicated significant resources to enforcement of Section 8 of the Clayton Act, which prohibits interlocking directorates. The agencies under the Biden Administration have taken a more aggressive stance toward Section 8 enforcement by actively looking for potential interlocks and requiring resignations to cure purported violations. We anticipate that the incoming administration may dedicate fewer resources to investigations broadly searching for potential Section 8 violations, though we note that the new HSR rules require significant disclosures from directors and officers meant to identify potential Section 8 concerns.

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