

January 24, 2025

# White House “Regulatory Freeze” Memorandum

---

## SUMMARY

On Jan. 20, 2025, President Trump issued a [memorandum](#) (the “Freeze Memo”) “order[ing] all executive departments and agencies” to:

- refrain from proposing or issuing any “rule” in any manner, including by sending a rule to the Office of the *Federal Register*, until it is reviewed and approved by a department or agency head appointed or designated by President Trump;
- “immediately” withdraw rules sent for publication, but not yet published, in the *Federal Register* to ensure they can be reviewed and approved by a Trump Administration official; and
- “consider” postponing for 60 days from the date of the Freeze Memo the effective dates of rules published in the *Federal Register* or that have been otherwise issued but have not taken effect, and opening a comment period to allow the public to provide comment on “issues of fact, law, and policy” raised by such rules.<sup>1</sup>

The [Biden](#), first [Trump](#), [Obama](#), [George W. Bush](#), and [Clinton](#) Administrations each issued a regulatory freeze memorandum upon inauguration; however, unlike the Freeze Memo, those memoranda were issued by the President’s Chief of Staff, not the President himself. Substantively, the Freeze Memo is very similar to the memoranda issued by the Biden Administration and the first Trump Administration, except that both the Biden memorandum and the Freeze Memo employ a more expansive definition of “rule.”

---

## WHICH “RULES” ARE SUBJECT TO THE FREEZE MEMO?

The Freeze Memo applies to “rules,” as defined in the Administrative Procedure Act (“APA”),<sup>2</sup> as well as any “regulatory action” as defined in Executive Order (“EO”) [12,866](#)<sup>3</sup> and any “guidance document” as defined in EO [13,891](#)<sup>4</sup> (when that order was in effect). Accordingly, the Freeze Memo applies to binding rules of general and particular applicability, certain internal agency rules, various non-binding documents,

## SULLIVAN & CROMWELL LLP

such as informal guidance, interpretations and policy statements, and notices of proposed rulemaking and similar statements expected to lead to a binding rule.<sup>5</sup>

The Freeze Memo directs “all executive departments and agencies” to “consider” (1) postponing, for 60 days from the date of the Freeze Memo, the effective dates of rules published in the *Federal Register* (or otherwise issued) that “have not taken effect” and (2) opening a public comment period on such rules. As a practical matter, this provision would appear to be relevant only to rules with an “effective date” that falls between Jan. 20, 2025 and March 21, 2025.

Importantly, it is unclear whether the Freeze Memo applies to a rule that was finalized and published in the *Federal Register* but subsequently stayed by a court or agency prior to its “effective date.”<sup>6</sup> For example, the Securities and Exchange Commission’s (“SEC”) final climate disclosure [rule](#) included a May 28, 2024 “effective date.” However, the SEC indefinitely stayed the rule<sup>7</sup> pending the resolution of consolidated challenges in the Eighth Circuit.<sup>8</sup> It is unclear whether, based on the SEC’s stay, this rule is one that “has not taken effect” for purposes of the Freeze Memo.<sup>9</sup> Notably, none of the prior White House freeze memoranda mentioned above explicitly addressed their applicability to rules that had not “taken effect” by virtue of a court order staying a rule’s effective date.

With respect to rules that did take effect prior to the issuance of the Freeze Memo, incoming acting or confirmed agency officials appointed by President Trump could nonetheless: (1) initiate a new notice-and-comment rulemaking process to formally rescind any final rule published in the *Federal Register*; (2) decline to enforce a rule finalized and in effect prior to the issuance of the Freeze Memo; and/or (3) issue guidance regarding the interpretation or manner of enforcement of a such a rule.

---

### WHICH AGENCIES ARE SUBJECT TO THE FREEZE MEMO?

Consistent with previous regulatory freeze memoranda, the Freeze Memo applies to “all executive departments and agencies,” but does not identify those agencies by name. It therefore may be unclear whether it is intended to apply to “independent regulatory agencies.”<sup>10</sup> In the past, some independent agencies have taken the position that previous White House regulatory freeze memoranda did not apply to them, although some have chosen to comply voluntarily.

\* \* \*

---

### ENDNOTES

<sup>1</sup> Rules addressing emergency situations or other urgent circumstances relating to health, safety, environmental, financial, or national security matters are excluded from the freeze.

ENDNOTES (CONTINUED)

- <sup>2</sup> Pursuant to 5 U.S.C. § 551(4), rules include “agency statement[s] of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.”
- <sup>3</sup> “Regulatory actions” under EO 12,866 include actions expected to lead to a final rule, such as a notice of proposed rulemaking or advance notice of proposed rulemaking.
- <sup>4</sup> “Guidance documents” under EO 13,891 include agency statements of general applicability and future effect that set forth a policy or interpretation of an issue, but do not include rules, internal agency rules or guidance, or adjudications.
- <sup>5</sup> However, the Freeze Memo permits the Director or Acting Director of the Office of Management and Budget to exempt any rule that the Director or Acting Director deems necessary to address “emergency situations or other urgent circumstances, including rules subject to statutory or judicial deadlines that require prompt action.”
- <sup>6</sup> For example, the CFPB’s March 15, 2024 [final rule](#) on credit card late fees included a May 14, 2024 “effective date.” However, on May 10, 2024, U.S. District Court for the Northern District of Texas Judge Mark Pittman granted plaintiffs’ preliminary injunction motion staying the final rule. *S. Chamber of Com. v. CFPB*, No. 4:24-cv-00213 (N.D. Tex. May 10, 2024) (order granting preliminary injunction).
- <sup>7</sup> The Enhancement and Standardization of Climate-Related Disclosures for Investors; Delay of Effective Date, 89 Fed. Reg. 25804 (Apr. 12, 2024).
- <sup>8</sup> *Iowa v. SEC*, No. 24-1522 (8th Cir. filed Apr. 1, 2024).
- <sup>9</sup> The federal banking agencies’ Community Reinvestment Act [final rule](#) has likewise been stayed by a federal district court. The rule has an effective date of April 1, 2024, but was stayed on March 29, 2024. *Texas Bankers Association et al. v. Office of the Comptroller of the Currency et al.*, No. 2:24-cv-00025-Z-BR (N.D. Tex. Mar. 29, 2024) (order granting preliminary injunction).
- <sup>10</sup> See, e.g., 44 U.S.C. § 3502(5) (defining “independent regulatory agency” as “the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the [SEC], the [CFPB], the Office of Financial Research, Office of the Comptroller of the Currency, and any other similar agency designated by statute as a Federal independent regulatory agency or commission”).

# SULLIVAN & CROMWELL LLP

## ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 900 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

## CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to [SCPublications@sullcrom.com](mailto:SCPublications@sullcrom.com).