



MEMORANDUM

January 22, 2021

TO: Tribal Health Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

RE: *White House Releases Executive Order on Executive Orders Concerning Federal Regulations*

On January 20, 2021, President Biden issued an Executive Order (EO) on “Revocation of Certain Executive Orders Concerning Federal Regulation” which reverses several EOs issued by former President Trump. The stated purpose of the EO is to provide executive departments and agencies flexibility to use regulatory action for national priorities such as the COVID-19 pandemic, economic recovery, racial justice, and climate change. The full text of the EO is available [here](#).

Specifically, the order from President Biden revokes the following EOs:

- **Executive Order 13771**, January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs) which required that for any new regulation that was issued, two be identified for elimination.
- **Executive Order 13777**, February 24, 2017 (Enforcing the Regulatory Reform Agenda), which required each agency to establish a “Regulatory Reform Officer” to oversee regulatory reform initiatives and “Regulatory Reform Task Forces” to evaluate existing regulations.
- **Executive Order 13875**, June 14, 2019 (Evaluating and Improving the Utility of Federal Advisory Committees), which required federal agencies to review their federal advisory committees and terminate at least one-third of those committees. This applied to those committees under the Federal Advisory Committee Act (FACA).
- **Executive Order 13891**, October 9, 2019 (Promoting the Rule of Law Through Improved Agency Guidance Documents), which required that federal agencies to gather existing federal guidance documents and make them available online and set standards agencies must follow for certain guidance documents
- **Executive Order 13892**, October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication), which required public notice of the agency’s jurisdiction and applicable legal standards for civil administrative enforcement action. It also encourages “greater private-sector cooperation in enforcement” and information sharing with the private sector.

- **Executive Order 13893**, October 10, 2019 (Increasing Government Accountability for Administrative Actions by Reinvigorating Administrative PAYGO), which requires any new regulation that increases mandatory spending to offset that spending with other administrative actions.

The new EO also directs the Director of the Office of Management and Budget (OMB) “to take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the Executive Orders identified.” At this time, it remains unclear which of the Trump Administration’s recent regulations will be rescinded due to this Executive Order, but that we will continue to monitor and provide updates on this.

Additionally, the White House also released a memorandum titled “Regulatory Freeze Pending Review” on January 20, 2021, to the heads of executive departments and agencies in order to prevent last-minute regulations promulgated by the Trump Administration. This memorandum notes that for rules that have been published in the federal register but not yet taken effect, agency leaders should consider postponing the effective date of those rules for 60 days, and open them up for additional comments from the public. For rules that have that have been sent to the Federal Register but not published, they are to be immediately withdrawn and reviewed by a department or agency head appointed or designated by President Biden. These rules will be reviewed by the OMB director, who then will take actions based on that review.

Of particular interest is the [SUNSET rule](#) which was finalized by the Department of Health and Human Services (HHS) on January 19, 2021. The rule is scheduled to take effect on March 22, 2021, so would appear to be subject the new Regulatory Freeze Pending Review memorandum because it has not yet taken effect. However, it remains to be seen whether HHS will in fact postpone the effective date of the rule and/or open it back up to public comment. We will continue to monitor this closely.

Conclusion

We will continue to monitor any new developments in the implementation of this Executive Order and other executive actions. For further information, please contact Elliott Milhollin (emilhollin@hobbsstrauss.com or 202-822-8282), Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745), or Caitrin Shuy (cshuy@hobbsstrauss.com or 202-822-8282).