

President Trump's First-Day Regulatory Moratorium Has Little Impact for Financial Regulation

January 21, 2017 | Client Update | 3-minute read

Early press accounts of President Trump's regulatory moratorium are highly misleading for financial sector regulations. On Friday, White House Chief of Staff Reince Priebus issued a [memorandum](#) (the "Priebus Memo") to the heads of executive departments and agencies instructing them to, among other things, stop submitting regulations for publication in the Federal Register until those regulations have been approved by a Trump-appointed principal, withdraw regulations that have been submitted to the Federal Register but not yet published, and, where possible, postpone the effective date of published but not yet effective regulations by 60 days. Several points about the Priebus Memo are worth mentioning:

First, the issuance of such a memorandum is a routine part of Presidential transitions. Each recent President has temporarily suspended executive-branch rulemaking upon taking office, giving newly appointed agency principals time to review new regulations to ensure that they conform to the new President's agenda.[1] The only exception has been President George H.W. Bush, who succeeded President Ronald Reagan, a fellow Republican, and thus had little reason to block the publication of regulations developed under principals appointed by his predecessor. Please see for a comparison of the Priebus Memo to a similar memorandum issued by White House Chief of Staff Rahm Emanuel following the inauguration of President Barack Obama in 2009.

Second, the Priebus Memo only applies to executive departments and agencies and therefore does not apply to most financial regulatory agencies. Like past memoranda, the Priebus Memo does not attempt to freeze rulemaking by independent agencies, nor does it request that independent agencies voluntarily comply with a regulatory moratorium, as did a similar memorandum issued shortly after the inauguration of President George W. Bush. Accordingly, the Priebus Memo means little for the financial sector, because most financial regulatory agencies—including the CFTC, FDIC, Federal Reserve, OCC, SEC and, at least for the meantime, the CFPB—are treated as independent agencies.[2] The Priebus Memo thus does not affect, for example, the Federal Reserve's as-yet unpublished [final rule on total loss-absorbing capacity](#), or the [CFTC's](#) or [banking regulators'](#) final rules on uncleared swap margin (which, in addition to having been issued by independent agencies, are also already effective, even though the compliance dates for certain provisions have not yet been reached).

Third, in a departure from precedent, the Priebus Memo freezes not only executive-agency rulemaking, but also the issuance of any "guidance document[s]" by an executive agency. Republicans have chafed at the Obama Administration's use of agency guidance and have [taken steps](#) to impose new procedural requirements on the issuance of guidance.

Associate Kelley L. O'Mara and law clerk Conrad Scott contributed to this post.

[1] See Exec. Office of the President, Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4435 (Jan. 26, 2009) (President Obama); Exec. Office of the President, Memorandum for the Heads and Acting Heads of Executive Departments and Agencies, 66 Fed. Reg. 7702 (Jan. 24, 2001) (President George W. Bush); U.S. Office of Mgmt. and Budget, Regulatory Review, 58 Fed. Reg. 6074 (Jan. 22, 1993) (President Clinton); Exec. Order 12291, Federal Regulation, 46 Fed. Reg. 13193 (Feb. 17, 1981) (President Reagan); President Ronald Reagan, Memorandum Postponing Pending Federal Regulations, 1981 Pub. Papers 63 (Jan. 29, 1981).

[2] 44 U.S.C. § 3502(5) lists those agencies that are treated as “independent regulatory agenc[ies]” for the purpose of federal information policy. Presidential regulatory memoranda have typically excluded these independent regulatory agencies.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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