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## The Obama Administration's Regulatory Policy: A One Year Retrospective

*Regulatory Policy Commentary*

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One of President Obama's first acts after he took the oath of office one year ago was to assert his authority over the federal regulatory system. On January 20, 2009, White House Chief of Staff Rahm Emmanuel issued a [memo](#) to federal agencies directing them not to send regulations to the [Federal Register](#) until they were approved by presidentially-appointed policy officials, and to retrieve from the *Federal Register* all regulations not yet published. [Similar to memos](#) issued by previous administrations on their first days in office, this action recognized that regulation is one of the most important ways the federal government sets policy and one of the few areas of domestic policy that an incoming president can immediately control.

The President raised expectations for rapid changes in the regulatory development process when, just 10 days after taking office, he issued a [memorandum on regulatory review](#). While expressing support for centralized oversight of regulations through the [Office of Information and Regulatory Affairs in the Office of Management and Budget](#) (as provided by President Clinton's [Executive Order 12866](#)), the memo called on the Director of OMB to work with agencies to develop, [within 100 days](#),<sup>1</sup> a set of recommendations for a revised Executive Order designed to improve regulatory review and the principles governing regulation generally.

One year later, we have not seen a revised Executive Order, but those early actions as well as regulatory activity over the last year provide some indications of the Obama Administration's approach to regulation.

The President's January 2009 memo reinforced the importance of transparency, of considering "distributional considerations, fairness, and concern for the interests of future generations," and of identifying the "best tools for achieving public goals through the regulatory process." It also hinted the Administration may place a greater emphasis on "the role of the behavioral sciences in formulating regulatory policy," which may indicate a willingness to undertake regulatory action on the presumption that individuals are irrational, and a departure from the

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<sup>1</sup> While OMB took the unusual step of [seeking comment](#) on the President's request for recommendations, it did not commit to respond to those comments. [Executive Orders](#) are presidential prerogatives, and are not subject to notice and comment.

Clinton order's philosophy that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people."

Does regulatory activity over the last year bear out this increased willingness to regulate Americans' behavior? President Obama issued 226 significant final regulations in his first year, slightly more than the average annual regulatory output during the previous two administrations (211 during the Bush Administration and 220 during the Clinton Administration). However, the number of economically significant regulations – those expected to cost more than \$100 million per year – is noticeably higher than in previous years. The Obama administration has issued 55 economically significant final regulations<sup>2</sup> over the last year, compared to an average of 40 economically significant final rules annually in the Bush administration and 38 in the Clinton administration. Despite (or perhaps because of) this increase in economically significant regulations, the average time allotted for interagency review declined from an average of 43 – 45 days in the Bush and Clinton administrations to only 33 days over the last year.

Regulatory agencies, spurred by interest groups, typically will see many new opportunities to regulate, just as spending agencies see innumerable reasons to expand their budgets. Previous presidents have, through the OMB and Executive Orders that define when regulatory solutions are and are not appropriate, acted as a check on agencies' natural tendencies. While President Obama's early memo recognized the importance of this "dispassionate and analytical 'second opinion' on agency actions," it remains to be seen how it will be implemented in practice.

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<sup>2</sup> Some of these biggest rules are "budget regulations," which set forth procedures for allocating on-budget resources through such programs as Medicare and education loans. Others are considered economically significant because of their estimated social (off-budget) costs. Of these, the Departments of Transportation and Agriculture issued eight economically significant final regulations, the Department of Energy issued six, and the Department of the Interior and the Environmental Protection Agency each issued four. EPA was the most active agency in proposing new regulations, with 20 new economically significant proposals in the President's first year.