

Executive Briefing:

Latest Updates on Trump Executive Actions

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Overview of Trump's Executive Actions and Considerations for Potential Litigation

The Trump administration has taken, and continues to take, executive actions that have the potential to significantly affect the public and private sectors alike. The result is an ever-changing legal environment presenting unique business and legal questions for the private sector, particularly in connection with technological innovation, energy production and the environment, trade and national security, the administrative state and certain social initiatives.

Some legal challenges to the Trump administration's actions have already been filed, and there likely will be many more. The private sector may turn to litigation to eliminate or mitigate any perceived harm to businesses.

Executive Actions and Implications

The new administration has moved rapidly, taking dozens of executive actions designed to deliver President Donald Trump's campaign promises. These actions include declaring a national emergency at the southern border; categorizing certain cartels as foreign terrorist organizations; seeking to invigorate domestic energy production through regulatory rollbacks; withdrawing from the Paris Agreement; imposing tariffs on Canada, Mexico and China; and encouraging private sector innovation in critical technology industries, including artificial intelligence (AI).

The speed with which the Trump administration has taken these actions, coupled with the significant departure from Biden-era policies, shows that the regulatory landscape is changing rapidly and radically. But some announced changes are likely temporary given questions over their legality and potential harm.

Indeed, legal battles over certain executive actions have already begun. In one case, in response to judicial action, the administration rescinded a broad directive to pause the disbursement of certain federal funds (the "funding freeze" directive), indicating a heightened sensitivity to judicial action and public perception even in the midst of its flurry of actions.

This reversal suggests that companies and individuals have opportunities to engage and communicate with the administration on various issues and policies, particularly through legal challenges. Given how quickly the landscape is changing, companies and individuals must be able to adapt quickly while, at the same time, staying committed to their goals and objectives.

Key Areas of Interest

Some of the Trump administration's executive actions are uniquely relevant to businesses. Those actions relate to technology and AI, energy and the environment, trade and national security, the administrative state generally, and diversity, equity and inclusion (DEI) initiatives.

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Technology and AI. The administration has signaled its commitment to ensuring that U.S. companies are leading technological innovation. For example, the administration has established the President's Council of Advisors on Science and Technology, which will advise on matters involving science, technology, education and innovation policy. It has also created the Presidential Working Group on Digital Asset Markets, which will promote U.S. leadership in digital assets and financial technology while protecting economic liberty. The administration has assigned certain individuals, including the special adviser for AI and crypto, to help develop an action plan to sustain and enhance the United States' global AI dominance. Given those executive actions, businesses should expect to see several regulatory changes and developments, which could result in legal challenges, including on technology hot topics like cryptocurrencies. (See our [AI analysis](#).)

Energy and the environment. The administration has emphasized and will continue to prioritize U.S. energy development. It declared a national energy emergency, announced various regulatory rollbacks and reviews, targeted for elimination programs associated with the promotion of electric vehicles, withdrew from the Paris Agreement and established a 10% tariff on Canadian energy resource imports, among other early moves. These actions shift the focus toward domestic oil, gas, nuclear and mineral energy resources, and away from other energy sources like wind and potentially solar. (See our [energy and environment analysis](#).)

Trade and national security. The "America First" agenda, particularly in the areas of trade and national security, will likely have a significant effect on international businesses. President Trump's announced tariffs on Canada, Mexico and China are likely to impact companies and consumers alike, if they remain in place. Certain national security issues will likely have both immediate and downstream effects on businesses, especially when a foreign state owns, operates or is significantly entangled with companies doing business in the United States. (See our [tariffs](#) and [national security](#) analyses.)

The administrative state. Following tradition, the Trump administration froze the administrative state for 60 days. The freeze broadly encompasses all executive agency rules, regulations and guidance documents that were not published in the Federal Register by noon on January 20, 2025. The purpose of such a freeze is to afford the incoming department and agency heads sufficient time to review the proposed regulatory actions and consider whether to continue with them. Given the size of the administrative state, these regulatory decisions are likely to result in significant legal challenges across many industries.

Litigation may also ensue over the Trump administration's efforts to roll back existing rules, regulations and guidance documents. Unlike with executive orders, which the president generally can rescind with the stroke of a pen, there are certain procedural

and legal hurdles an administration must clear to lawfully rescind agency regulations. For example, an agency must provide a reasoned explanation for the withdrawal, and it must consider how the action would affect the public's reliance interests. Congress can also rescind regulations issued by the Biden administration on an expedited basis under the Congressional Review Act if a majority in both chambers agrees and the president signs off. Under the law's so-called "lookback period," Congress may be able to rescind agency actions that the Biden administration took as far back as August 2024.

DEI. The Trump administration ended DEI programs and certain long-standing initiatives in the federal workforce. Additionally, federal contractors must now certify that they do not (i) operate any program promoting DEI or (ii) consider race, color, sex, sexual preference, religion or national origin in ways that violate the nation's civil rights laws. The administration has also directed agencies to identify discriminatory DEI practices in various sectors and propose plans to deter such programs, including potentially through litigation. (See our [DEI analysis](#).)

Gender identity. On President Trump's first day in office, the administration declared that the U.S. government will recognize only two sexes: male and female. The administration also directed agencies to remove the term "gender" from all documents and communications and use the term "sex" instead, and to cancel or disband any employee resource groups "that inculcate or promote gender ideology or have done so in the past." In addition, the administration directed State Department staff to stop processing passport applications seeking to change the applicant's sex marker or requesting an "X" sex marker. President Trump also has signed executive orders seeking to ban transgender troops from serving openly in the military and to end gender-affirming medical treatment for children and teenagers under the age of 19.

Legal Challenges and Constitutional Questions

Executive actions can be challenged in court. Legal battles over certain Trump administration actions that have already had an impact confirm that litigation is an important potential response to actions that could adversely affect businesses and individuals.

Parties have challenged a January 20, 2025, executive order prohibiting the government from granting citizenship to certain individuals born in the United States, on the grounds that the order is unconstitutional and plainly contradicts the binding U.S. Supreme Court precedent more than a century old interpreting the plain text of the Fourteenth Amendment to the Constitution, that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

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Within days, a federal judge temporarily blocked the executive order for 14 days. The judge halted the order in all its applications, meaning it applies nationwide. If the administration continues to pursue this policy, the question may ultimately return to the Supreme Court, along with the increasingly important question of whether a single district judge can order nationwide injunctive relief.

A potential lawsuit involves the administration's firing of two commissioners of the Equal Employment Opportunity Commission (EEOC), one of whom was the chair. The EEOC is an independent commission, meaning its commissioners have historically been protected from being fired only "for cause."

Because the president fired the EEOC commissioners presumably without any "cause," it is possible that the firings run afoul of the Supreme Court's 1935 decision in *Humphrey's Executor v. United States*. But that may not be determinative, because the Court in *Seila Law v. Consumer Financial Protection Bureau* (2020) invalidated similar "for cause" removal restrictions protecting the director of the CFPB. On February 1, 2025, President Trump wielded *Seila Law* to fire Rohit Chopra, the CFPB director.

This shift in precedent signals that the Supreme Court may be willing to overrule *Humphrey's Executor*, a decision that would significantly affect several independent agencies in the federal government.

While each executive action is distinct, implicating various laws and policies, several raise constitutional questions. For example, the birthright citizenship executive order turns on the meaning of Section 1 of the Fourteenth Amendment. And the "funding freeze" directive implicated several separation-of-powers issues, including whether Congress may categorically circumscribe presidential impoundment of appropriated funds.

Understanding the constitutional issues at stake is critical to navigating the legal landscape under the Trump administration.

Business and Legal Considerations

The executive actions are likely to have immediate effects on businesses and to create opportunities for legal challenges.

- As with past administrations, the temporary freeze and mandatory review of all proposed agency actions will likely trigger several questions under the Administrative Procedure Act. And given the major developments in Supreme Court precedent governing administrative law, there likely will continue to be an uptick in litigation in this area.
- The rollback of environmental regulations intended to promote domestic energy production could prompt state and local governments, environmental groups or private plaintiffs to jump-start a new wave of environmental litigation, thus exposing businesses to novel lawsuits under various federal, state and local environmental laws.
- The administration (or whistleblower *qui tam* plaintiffs) could use the False Claims Act to target federal contractors that continue DEI programs. Relatedly, shareholders could bring lawsuits based on a company's withdrawal of DEI initiatives (claiming financial or reputational harm) or continuance of DEI initiatives (claiming noncompliance with federal law).
- The administration's commitment to technological innovation, including through regulatory rollbacks, will likely also raise serious questions about data privacy and protection, antitrust and competition, and compliance with developing state and local laws.
- The Trump executive orders, as well as actions taken in response to them by Canada, Mexico and China and their citizens, have direct implications for contractual obligations and commercial relationships involving trade among these countries. Questions that arise include which party bears the legal consequences of the executive orders (*e.g.*, which party has responsibility for the payment of the tariffs) and what is the legal impact of any retaliatory measures in relation to contracts (*e.g.*, whether performance is excused by a retaliatory measure). The answers will depend on the specific language of the contract and the scope of its provisions with respect to the allocation of responsibilities among the parties regarding the payment of tariffs and other relevant obligations. Additional relevant provisions pertain to compliance with applicable law, changes in law, *force majeure* and conditions precedent to performance. The applicable law governing the agreements also matters on the application and impact of the tariffs and any responsive measures.