



Insight

Key Regulatory Provisions of the Omnibus

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EXECUTIVE SUMMARY

- The massive spending and relief bill passed by Congress contains several provisions impacting the regulatory work of federal agencies.
- The legislation requires the Small Business Administration and Department of Treasury to issue regulations implementing new provisions of the Paycheck Protection Program within 10 days.
- The bill also includes provisions affecting energy and environmental policy and prohibitions against agencies enforcing certain rules already on the books.

INTRODUCTION

The “Consolidated Appropriations Act, 2021,” the formal name of the legislation passed by Congress to fund the government through the end of fiscal year (FY) 2021 and provide another round of COVID-19 response, contains several provisions that will affect regulatory agencies over the coming years.

This analysis includes highlights of the major, and not so major, regulatory provisions contained in the nearly 5,600-page bill.

PAYCHECK PROTECTION PROGRAM

A primary feature of the COVID-19 relief portion of the legislation is an expansion of the Paycheck Protection Program (PPP) to allow small businesses that suffered a loss of at least 25 percent of gross revenue in any quarter in 2020 compared to the same quarter in 2019 to get a second round of funds through the program. The initial version of the PPP allowed qualified businesses to access the program once.

The legislation requires the Small Business Administration (SBA) and the Department of the Treasury to issue regulations implementing the new rules within just 10 days. While such fast turnaround is necessary to get the funds to those who need it, it is likely that SBA and Treasury will have to issue additional rules in the weeks and months following the initial set of regulations due by early January. The original PPP required more than 20 separate regulatory actions as the program evolved over the course of 2020.

ENVIRONMENT AND ENERGY

One notable provision in the legislation requires the Environmental Protection Agency (EPA) to issue regulations prescribing a 30 percent reduction in the production and consumption of hydrofluorocarbons (HFCs), which are a potent greenhouse gas. The bill gives EPA the explicit authority to reduce HFCs, and which would be one of the most significant authorities granted to EPA to limit a greenhouse gas. The authority to regulate carbon dioxide emissions, in contrast, is derived from a Supreme Court decision ruling that EPA had the authority under the Clean Air Act to consider carbon dioxide a major pollutant. EPA's forthcoming regulations under the legislation will need to achieve the 30 percent reduction by 2033.

Two other notable provisions concern energy production. The first is the inclusion of the "Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020," which contains language requiring the Department of Transportation (DOT) to update its regulations on large-scale liquefied natural gas (LNG) facilities within three years. DOT would need to review its current regulations and update them as appropriate to ensure LNG facilities identify possible safety risks. These written programs would have to be approved by the Secretary of Transportation. It would also give DOT the authority to develop a program to evaluate new safety technologies, as long as they achieve standards of safety currently in place.

The second would create new programs within the Department of Energy to improve the viability of renewable energy and carbon reduction efforts, including advanced nuclear energy technologies. Analysis on this and other energy provisions can be found [here](#).

PREVENTING ENFORCEMENT OF CERTAIN REGULATIONS

The bill would require that none of the appropriations included in the bill is used to enforce some recent regulations, effectively putting those regulations on hold. Regulations affected included a 2016 Department of Agriculture rule on the Supplemental Nutrition Assistance Program that reduced the number of acceptable varieties of "staple foods" allowed under the program. Funds can be used for the rule if the Secretary of Agriculture increases the

number of staple foods in each category.

Two Food and Drug Administration rules were also placed on hold. The rules deal with hazard analysis in food manufacturing and standards for growing, harvesting, packing, and holding of produce. Both rules were issued in 2015.

The bill includes language that prevents the Department of Housing and Urban Development (HUD) from using appropriated money to direct grantees under its 2015 “Affirmatively Furthering Fair Housing” rule to change existing zoning laws to comply with the text of that rule. The language is similar to prohibitive language included in previous bills funding the federal government. HUD, however, recently narrowed that policy under its Preserving Neighborhood and Community Choice [rule](#) published in August 2020. The provision’s inclusion in the omnibus likely reflects a belief that the policy will be broadened once again under the Biden Administration.

NOT SO MAJOR REGULATORY PROVISIONS

Like most large omnibus spending measures, the legislation includes some more obscure sections affecting regulatory policy. The bill contains the “Clean Up the Code Act of 2019,” which removes “outdated and unenforced federal criminal provisions.” Such provisions include the fraudulent use of the 4-H club emblem, the unauthorized use of the characters or names of Smokey Bear and Woodsy Owl, and the interstate transportation of dentures.

Regulatory reform enthusiasts were likely enticed by the final section of the bill, titled the COVID-19 Regulatory Relief and Work from Home Safety Act. Rather than including, perhaps, measures permanently removing regulatory requirements that were eased during the pandemic, the section instead requires the Consumer Product Safety Commission to adopt California’s flammability standards for upholstered furniture.