



Week in Regulation

Another Week That Was Well Into the Billions

DAN GOLDBECK | SEPTEMBER 18, 2023

While it was a relatively modest week in terms of regulatory volume, the rules that did hit the books brought some substantial impacts. There were 10 rulemakings with some measurable economic effect. The main action of the week came from a Securities and Exchange Commission (SEC) rule for “private fund advisers” that includes reporting requirements that could bring billions of dollars in administrative costs. Across all rulemakings, agencies published \$25.9 billion in total costs and added 4 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 31
- Final Rules: 41
- 2023 Total Pages: 63,731
- 2023 Final Rule Costs: \$101.9 billion
- 2023 Proposed Rule Costs: \$420.5 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week was the SEC [rule](#) concerning “Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews.” According to the agency, the rule’s new requirements for covered advisers are necessary to “protect investors who directly or indirectly invest in private funds by increasing visibility into certain practices involving compensation schemes, sales practices, and conflicts of interest through disclosure; establishing requirements to address such practices that have the potential to lead to investor harm; and restricting practices that are contrary to the public interest and the protection of investors.” The administrative burdens from the rule are significant. Across the various paperwork requirements included, SEC estimates that the rule could result in more than 3.7 million new hours of paperwork each year. The costs associated with all this paperwork add up to nearly \$5.6 billion annually (or \$16.7 billion over the three-year period in which paperwork requirements gain formal approval). The bulk of these costs comes from an auditing requirement that, according to SEC estimates, could result in almost \$4 billion in annual costs.

TRACKING THE ADMINISTRATIONS

As we have already seen from [executive orders and memos](#), the Biden Administration will surely provide plenty of contrasts with the Trump Administration on the regulatory front. And while there is a general expectation that the current administration will seek to broadly restore Obama-esque regulatory actions, there will also be areas where it charts its own course. Since the AAF RegRodeo data extend back to 2005, it is possible to provide

weekly updates on how the top-level trends of President Biden’s regulatory record track with those of his two most recent predecessors. The following table provides the cumulative totals of final rules containing some quantified economic impact from each administration through this point in their respective terms.

TRACKING THE ADMINISTRATIONS

REGULATORY ACTIVITY FROM INAUGURATION DAY TO SEPTEMBER 15th (Year 3)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	662	\$420B	236.5M
TRUMP 2017	746	\$36.7B	55.6M
OBAMA 2009	977	\$263.8B	162M

LAST UPDATED: SEPTEMBER 15th, 2023 AMERICANACTIONFORUM.ORG

The SEC rule discussed above provided virtually all of the movement in the Biden Administration’s final rule tallies this week. With it, Biden-era costs and paperwork burdens rose by \$16.7 billion and 3.7 million hours,

respectively. There was minimal movement in the Trump Administration's totals. The Obama Administration, however, outpaced this Biden week-over-week spike with costs increasing by nearly \$35.7 billion. A Department of Energy [rule](#) on efficiency standards for refrigerators and the [initial round](#) of Obama-era fuel efficiency standards for heavy-duty vehicles were the main drivers of this cost surge.

THIS WEEK'S REGULATORY PICTURE

This week, the Small Business Administration (SBA) makes some adjustments to how it considers the criminal histories of those applying to certain small business loan programs.



Source: Photo by [Mike Petrucci](#) on [Unsplash](#)

Last Friday, the SBA published a [proposed rule](#) entitled “Criminal Justice Reviews for the SBA Business Loan Programs and Surety Bond Guaranty Program.” Specifically, the agency “is proposing to amend regulations governing SBA’s business loan programs (7(a) Loan Program, 504 Loan Program, Microloan Program, Intermediary Lending Pilot Program, Surety Bond Guarantee Program, and the Disaster Loan Program (except for the COVID Economic Injury Disaster Loan Disaster Loan Program)...to improve equitable access based on criminal background review of applicants seeking to participate in one or more of these programs.” The main rationales SBA cites for these adjustments are “changing conditions in how state and local governments and the private sector have broadened access to business capital and employment opportunities coupled with data and empirical research demonstrating the public safety and economic benefits of doing so.”

Most of the specific updates to the relevant regulatory code involve the removal of “restrictions on Associates of an Applicant who are on probation, parole, or who have been indicted but not convicted of a felony or crime of moral turpitude.” SBA notes that such restrictions were originally put in place “to protect the performance of SBA’s capital programs against a presumed higher likelihood of default,” but now – citing “several studies” on the matter – the agency [finds](#) that such restrictions are likely unnecessary and even potentially counter-productive in addressing issues like recidivism.

In terms of clearly quantifiable impacts, the proposed rule is relatively limited. Some minor adjustments to the relevant paperwork requirements will yield merely a [5-minute reduction](#) per application, amounting to 5,723 fewer hours in the aggregate. Perhaps the most notable impact, however, will be in opening up the process to those who currently forgo it due to the expectation of denial. For instance, as SBA [notes](#), while only 93 Disaster Loan applicants were actively denied between 2018 and 2022, 1,026 potential applicants withdrew their files over that span. The agency expects “that reducing or removing barriers will result in additional applications” from such businesses.

Interested parties have until November 14 to submit comments on the matter.

TOTAL BURDENS

Since January 1, the federal government has published \$522.4 billion in total net costs (with \$101.9 billion in new costs from finalized rules) and 180.9 million hours of net annual paperwork burden increases (with 19.1 million hours in increases from final rules).

Year

[Select All]

2023

2022

2021

2020

2019

2018

2017

2016

2015

2014

2013

2012

2011

2010

2009

2008

2007

2006

2005

Total Number of
Regulations
Finalized

153

Total Finalized Cost

\$101.9b

Paperwork Hours

19,095,700