Week in Regulation

SEC Rules the Week

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Last week was a fairly quiet one in terms of regulatory activity – except for the Securities and Exchange Commission (SEC). There were only two rulemakings that had some measurable economic impact. One of those, from SEC, had roughly half a billion dollars in new costs, however. Furthermore, SEC also established a notable new task force. Across all rulemakings, agencies published $504.4 million in total net costs and added 1.8 million hours of annual paperwork.

REGULATORY TOPLINES

- Proposed Rules: 47
- Final Rules: 60
- 2021 Total Pages: 13,130
- 2021 Final Rule Costs: $1.3 billion
- 2021 Proposed Rule Costs: -$8.4 billion

NOTABLE REGULATORY ACTIONS

The most consequential action of the week was the SEC rule regarding "Investment Adviser Marketing." The rule makes a series of changes in this space in order to "create a merged rule that will replace both the current advertising and cash solicitation rules." These prior rules, which SEC is now merging, date back to 1961 and 1979, respectively. SEC estimates that the new rule will bring $502.4 million in administrative costs due largely to 1,772,746 additional hours of annual paperwork.

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 new administration will seek to broadly restore Obama-esque regulatory actions, there will also be areas where it charts its own course. Since the American Action Forum's 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 MARCH 5

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	21	$847.7M	1.7M
TRUMP 2017	23	$2.4B	194,212
OBAMA 2009	36	$1B	3.7M

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With the sizable amount of costs and paperwork from this one SEC rule, the regulatory tally under the Biden Administration through this point inches closer to the pace set by its predecessors in terms of costs and zooms past the Trump Administration's to-date paperwork total. In comparing, the week-to-week trends of all three administrations, there does still appear to be a noticeable lull in regulatory volume. There was, of course, only the one final rule this past week. For comparable periods for Trump and Obama there were only six and four such actions, respectively.

THIS WEEK'S REGULATORY PICTURE

This week, SEC launches a task force aimed at environmental, social, and governance (ESG) issues.

On March 4, the SEC announced the creation of a task force focused on climate and ESG issues. The Climate and ESG Task Force, as the body will be called, will be housed within SEC's enforcement division. It will be led by SEC's acting deputy director of enforcement and consist of 22 members from various divisions within the independent agency.
According to the press release announcing the task force, its primary focus will be identifying "material gaps or misstatements" in publicly traded companies' climate disclosures. It will also analyze disclosure and compliance issues among investments advisors and funds. The task force's other responsibilities will be to evaluate tips, referrals, and whistleblower complaints, and to "provide expertise" to other areas of the SEC.

The task force's creation comes on the heels of a recent announcement by SEC Acting Chair Allison Herren Lee that the agency would update its current guidance on climate-related disclosures. While the task force will focus on compliance with existing laws, newly introduced legislation in the House of Representatives would set new standards for climate disclosures from publicly traded companies.

Proponents of additional ESG disclosure requirements argue that they are necessary for the public to fully understand companies' financial risks related to climate change. Others, including two current SEC commissioners, caution that the disclosures can lead to companies being unfairly labeled as susceptible to climate change risks without proper context.

TOTAL BURDENS

Since January 1, the federal government has published $7.1 billion in total net cost savings (with $1.3 billion in new costs from finalized rules) and 6.6 million hours of net annual paperwork burden reductions (with 4.4 million hours in increases from final rules).