

Regulatory Activity on the Rise Under the Obama Administration

During its first year, the administration effected many changes.

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By [John Cooney](#)

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With its political appointees finally in place, the Obama Administration is implementing an unprecedented flurry of regulatory activity. In addition to its efforts to obtain passage of laws regulating the health care and financial services industries, the Administration will heighten enforcement in the labor, environmental, and food and drug safety areas. Corporations should be prepared for a sharp uptick in the enforcement of existing laws, issuance of new regulations and passage of additional laws that will result in hundreds of new rulemakings over the next few years.

During its first year in office, the Administration secured major increases in the enforcement budgets of the major regulatory agencies to permit more aggressive policing of compliance with existing laws. The Securities and Exchange Commission's fraud action against Goldman Sachs and the Federal Trade Commission's lawsuit against Intel are the hallmarks of this initiative.

A substantial wave of new rulemakings is now following the expanded enforcement effort. The recently passed health care reform legislation and the forthcoming financial regulatory reform bill will be major drivers of this regulatory surge, which will have substantial implications for virtually all companies, whether large or small. For example, by September the Department of Health and Human Services (HHS) must issue several major rules that will affect the costs of every company that offers health insurance to its employees. These rules will require that children under age 26 may be covered under their parents' policies; that children may not be denied coverage due to pre-existing conditions; that insurers may not limit an individual's lifetime benefits; and that insurers may not require individuals to pay for designated preventive services. In January, HHS must issue a rule that requires health plans to spend more than 80 percent of their premiums on health services and make rebates to customers if administrative costs exceed the applicable cap.

On the environmental front, the Environmental Protection Agency (EPA) has proposed a series of very expensive rules that will affect the energy costs and air pollution control obligations of all parts of the manufacturing sector. EPA hopes to persuade Congress to adopt climate change legislation by keeping pressure on industry to develop sector-specific solutions for their carbon dioxide emission, rather than bearing the consequences of the agency's exercise of the inadequate authorities it now possesses.

By this summer, the White House will be swamped by critical HHS and EPA rules that must compete with one another and other regulatory priorities to obtain policy clearance from the President.

[John F. Cooney](#) is a partner in the Washington, D.C., office of Venable.