Discussion of White House Office of Management and Budget Guidance on the “Regulatory Freeze Pending Review” Memo

On Jan. 24, the White House Office of Management and Budget (OMB) issued guidance regarding the Regulatory Freeze Pending Review memo from White House Chief of Staff Reince Priebus (Priebus Regulatory Freeze Memo) in the form of a Memorandum for the Heads and Acting Heads of Executive Departments and Agencies. This OMB guidance memo is intended to help agencies understand the three categories into which regulations or other applicable guidance could fall under the freeze: (1) regulations at the Office of the Federal Register (OFR) that were not published in the Federal Register as of Jan. 20, (2) pending regulations not yet sent to the OFR and (3) regulations that were published in the Federal Register but had not taken effect as of Jan. 20.

The guidance memo addresses the following issues:

- **Application to new rules, as well as new agency guidance documents**: The definition of “regulation” for purposes of the Priebus Regulatory Freeze Memo and implementing guidance is broad enough to include not only substantive agency actions that lead to promulgation of a final rule or regulation but also agency guidance documents.

- **New regulations**: The guidance instructs agencies not to send any new regulations to the OFR until an agency or department head appointed or designated by President Trump has reviewed and approved the regulation, subject to certain limited exceptions.

- **Unpublished regulations at OFR**: For regulations that had been sent to the OFR but not yet published as of Jan. 20, the guidance memo instructs agencies to withdraw such regulations. In addition, the guidance states that withdrawn regulations must be reviewed and approved by a department or agency head appointed or designated by President Trump before further action can be taken.

- **Published regulations that have not yet taken effect**: For regulations that were published in the Federal Register but did not take effect before Jan. 20, the guidance states that agencies should
postpone the effective date for 60 days from Jan. 20. Additionally, the guidance memo suggests that an agency can consider delaying a regulation beyond the initial 60-day postponement period, if appropriate. The OMB guidance asks that agencies seeking a longer delay solicit public comment on the proposed extended postponement period and suggests that agencies could at the same time consider taking comment on the substantive aspects of the regulation.

- **Exceptions to the Priebus Regulatory Freeze Memo:** The OMB guidance memo outlines two exceptions: if withdrawal or postponement “would endanger compliance with an operative statutory or judicial deadline” and if the Director or Acting Director of OMB determines that an exception to the regulatory freeze requirements is warranted “for emergency situations or other urgent circumstances relating to health, safety, financial or national security matters, or otherwise.”

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work or

**Stephanie P. Hales**  
Partner  
shales@sidley.com  
+1 202 736 8349

**Dora Hughes, M.D., M.P.H.**  
Senior Policy Advisor  
dhughes@sidley.com  
+1 202 736 8653

**Laura R. Cohen**  
Policy Attorney  
laura.cohen@sidley.com  
+1 202 736 8127

**Meghan F. Weinberg**  
Associate  
mweinberg@sidley.com  
+1 202 736 8129

**Sidley Government Strategies Practice**

Sidley’s Government Strategies group works at the crossroads of law and policy, helping clients develop and implement strategies that protect and further their business interests. Multiple institutions influence the development of federal law and policy – including the legislative, executive and judicial branches of government as well as the private and nonprofit sectors. The professionals in our Government Strategies practice work with our clients to assist them in understanding and managing these multiple influences in a successful manner. Our group features a 28-year veteran of the U.S. House of Representatives who chaired the Energy and Commerce Committee’s Subcommittee on Energy and Air Quality, a former Acting U.S. Attorney General, former General Counsels for the Environmental Protection Agency, the Office of Management and Budget and the Department of Agriculture, and former Counselors to the Secretary of the Department of Health and Human Services, among others who have filled high-profile posts. A number of our lawyers have had major roles in the drafting, enactment and regulatory implementation of landmark laws. This rare mix of leadership translates to an unusual level of value for our clients.

**Sidley Healthcare Practice**

Our Healthcare Practice represents participants in all facets of the healthcare industry, including pharmaceutical, biotech and device companies, durable medical equipment suppliers, hospitals, skilled nursing facilities, physician-owned companies, professional associations and research institutions. Our lawyers combine a strong background in the complexities of healthcare financing and delivery, including coding, reimbursement and coverage issues, privacy and security, trade regulation and competition. We have extensive experience representing clients on enforcement and regulatory matters before federal and state enforcement agencies.

For more information and updates, please visit our [Health Matters: Navigating ACA Reform](#) website.

To receive Sidley Updates, please subscribe at [www.sidley.com/subscribe](http://www.sidley.com/subscribe).