

Presidential Transitions: Executive Orders

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In Section 2 of the Presidential Transition Act of 1963 (as amended; 3 U.S.C. 102 note), Congress declared that “[t]he national interest requires that [presidential] transitions ... be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both foreign and domestic.” The crux of such a transition is the transfer of executive power from the incumbent to the President-elect. The executive’s power manifests in a variety of processes with application to a broad range of policy areas and issues. CRS has produced a set of products examining selected processes and policies that may be of particular interest during a presidential transition. This Insight discusses how incoming and outgoing Administrations might use **executive orders** during the transition period, including some potential advantages and limits of these strategies. Other related products examine clemency, government records, presidential appointments (executive branch), rulemaking, and presidential transitions generally.

Concerns about the volume, timing, and content of executive orders may be heightened during presidential transitions. In particular, the **perception exists among some observers** that the outgoing and incoming Administrations can rely on executive orders to establish their own policy preferences within the executive branch. When the incoming and outgoing Presidents are members of different parties, this perception may be especially strong.

Executive orders are a significant vehicle for unilateral action by the President. They have the **force and effect of law**—unless voided or revoked by congressional, presidential, or judicial action—and represent one of the most direct ways a president can set policy. Presidents may find executive orders a particularly appealing option in some situations, because executive orders allow the President to act unilaterally as well as quickly and directly. Capitalizing on these features enables Presidents to seize the initiative on an issue and shape the national agenda and may encourage other actors, including Congress, to respond. All of these factors may be particularly salient during the transition period between Administrations.

While executive orders may offer some advantages for presidential policymaking, they arguably have at least two distinct disadvantages. First, the authority of Congress to legislate in many areas limits the range of options available and, in many cases, provides the President little or no discretion. While Presidents are sometimes able to take advantage of ambiguity in statutes to justify executive orders, such actions can lead to litigation (as in the well-known *Youngstown Steel* case).

Second, each President is free to amend, repeal, or replace any executive order, including those of his predecessors. Therefore, policies enacted by executive order may be less likely to persist between

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Administrations than policies and laws enacted through other means. For instance, in April 1992, President George H. W. Bush issued [E.O. 12800](#), which required federal contractors to notify employees they were not legally required to join a union. President Bill Clinton reversed that executive order by issuing [E.O. 12836](#) in February 1993. President George W. Bush revoked President Clinton's order with [E.O. 13201](#) in February 2001. President Barack Obama reversed policy again, using [E.O. 13496](#) in January 2009 to revoke President George W. Bush's order.

Executive orders may suit the needs of an outgoing President who wants to establish or change policy or is striving to secure a presidential legacy. This is likely to be particularly true if the incoming President is a member of a different political party or if the outgoing President expects that the incoming President prefers a different policy on a specific issue. For instance, during the transition period at the end of his Administration, President Clinton issued a [number of executive orders and other directives](#) that set aside additional land for national parks and other nature reserves. This may indicate that President Clinton wanted to make this action part of his own legacy or was concerned that President George W. Bush might consider additional development or commercial activity on those lands.

An incoming President, who is likely to be eager to act quickly on his policy agenda, may seek to modify or overturn certain of his predecessor's actions or to distinguish himself from his predecessor in other ways. In many cases, executive orders may be an effective means of accomplishing these objectives. For instance, during the first week of his presidency, Barack Obama issued [E.O. 13492](#), which the Administration presented as the first step in closing the detention facility at Guantánamo Bay Naval Base. As President Obama learned in this case, however, an executive order alone is not always sufficient to achieve a policy objective, even when the President has wide latitude to set policy. Speaking in 2008, a counselor to President George W. Bush provided an [explanation](#) of the possibly temporal nature of executive orders when commenting on a Bush Administration executive order on budget earmarks: "This will be on the books, and will be an executive order that future presidents have to repeal or live with."

For additional information on executive orders, see CRS Report RS20846, *Executive Orders: Issuance, Modification, and Revocation*, by Todd Garvey, and CRS In Focus IF11358, *Presidential Directives: An Introduction*, by Ben Wilhelm.

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