

# Biden’s Midnight Unified Agenda

By: Zhoudan Xie | December 18, 2024

This commentary analyzes the Fall 2024 Unified Agenda, highlighting key “midnight regulations” the Biden administration aims to finalize before the presidential transition. These actions signal policy priorities but may face review and repeal by the incoming Trump administration.

With only one month before the inauguration, the Office of Information and Regulatory Affairs (OIRA) released the [Fall 2024 Unified Agenda](#) last Friday. As the final Unified Agenda of the Biden administration, it outlines regulatory actions that federal agencies are developing or have recently completed. Notably, the Agenda sets out a number of actions that agencies expect to take before President Biden leaves office—potential “[midnight](#)” regulations. This commentary provides an overview of this Unified Agenda, with a focus on the high-impact actions agencies are planning during this midnight period.

## What’s in the Fall 2024 Agenda?

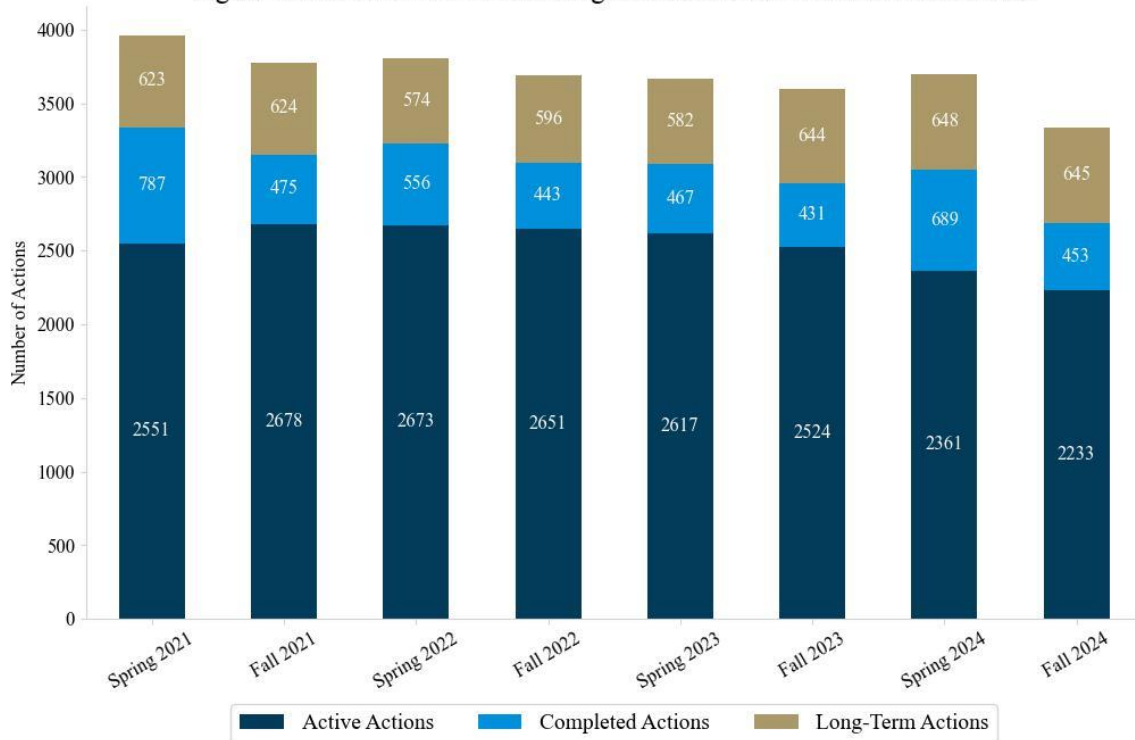
The Fall 2024 Unified Agenda contains a total of 3,331 agency actions, including 222 “section 3(f)(1) significant” actions—those with an expected annual effect of more than \$200 million as defined in [Executive Order \(EO\) 14094](#) (Table 1). The Agenda lists actions by stage of development: 2,233 are active (the next agency action is expected within 12 months), 645 are long-term (beyond 12 months), and 453 are completed (rules finalized or withdrawn since the previous Unified Agenda was published). Among the 2,233 active actions, 275 (approximately 12%) are being published for the first time in this Unified Agenda, and 126 (6%) are section 3(f)(1) significant actions (of which 24 are published for the first time).

**Table 1: Overview of the Fall 2024 Unified Agenda**

Stage	All Agency Actions	Section 3(f)(1) Significant	First Time Published
Active	2,233	126	275
Long-term	645	59	38
Completed	453	37	45
Total	3,331	222	358

The total number of actions in this Agenda is the lowest among all the Biden administration’s Unified Agendas (Figure 1). This is largely driven by a decline in active actions—those that agencies plan to take within the next year. This is unsurprising, as agencies often anticipate shifts in policy priorities under a new administration.

Figure 1: Fall 2024 and Previous Agendas under the Biden Administration



The number of section 3(f)(1) significant actions dropped from 287 in the Spring 2024 Agenda to 222 in the current Agenda, a notable 23% reduction. Specifically, the number of active section 3(f)(1) significant actions fell by 30% from the previous Agenda (from 180 to 126), marking the lowest count in any of Biden’s prior Agendas. This aligns with our earlier [observation](#) of a surge in high-impact regulatory activity earlier this year (as reflected by the number of completed actions in the Spring Agenda), which has left fewer actions for the final months of this presidential term.

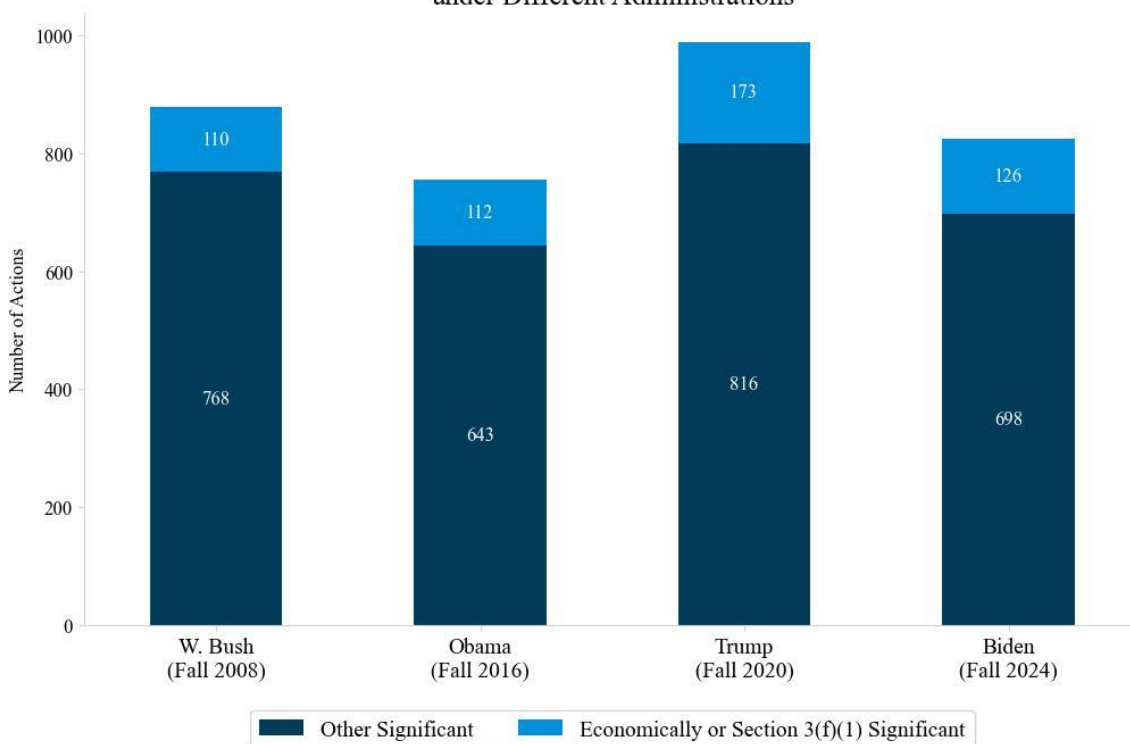
Compared across administrations, however, the number of active section 3(f)(1) significant actions remains higher than the number of active economically significant actions published in the final Agendas of the W. Bush and Obama administrations, indicating a potentially more active midnight period under the Biden administration (Figure 2).<sup>1</sup> The current count is lower than that of the Trump administration’s final Agenda, largely because agencies were also addressing a number of COVID-19-related actions in late 2020.

<sup>1</sup> Note that section 3(f)(1) significant actions and economically significant actions are not entirely comparable. EO 14094 applies a higher monetary threshold (i.e., an annual impact of \$200 million) to the designation of section 3(f)(1) significant actions, while the economically significant actions are based on the \$100 million threshold set in EO 12866.

Of the 126 active section 3(f)(1) significant actions in this Agenda, agencies plan to take 53 rulemaking actions (42%) within the last two months of the current administration (i.e., December 2024 and January 2025), including 18 proposed rules and 35 final rules.<sup>2</sup> This is a large number, considering that there are [typically](#) less than five section 3(f)(1) significant actions issued in an average month. Regulations issued between the election and inauguration dates are referred to as “[midnight rulemakings](#).” These midnight rules provide agencies with a final opportunity to advance an outgoing president’s policy priorities, but they are subject to review and potential repeal by an incoming administration. In particular, final rules issued during the last two month of the current administration will [highly likely](#) fall within the Congressional Review Act (CRA) lookback window, and thus face the risk of being overturned by the new Congress and the incoming Trump administration.

A list of these 53 potential midnight, section 3(f)(1) significant regulations is available [here](#).

Figure 2: Active Significant Actions Published in the Last Unified Agenda under Different Administrations



Note: Light blue bars indicate section 3(f)(1) significant actions published in the Fall 2024 Unified Agenda and economically significant actions in the previous Agendas.

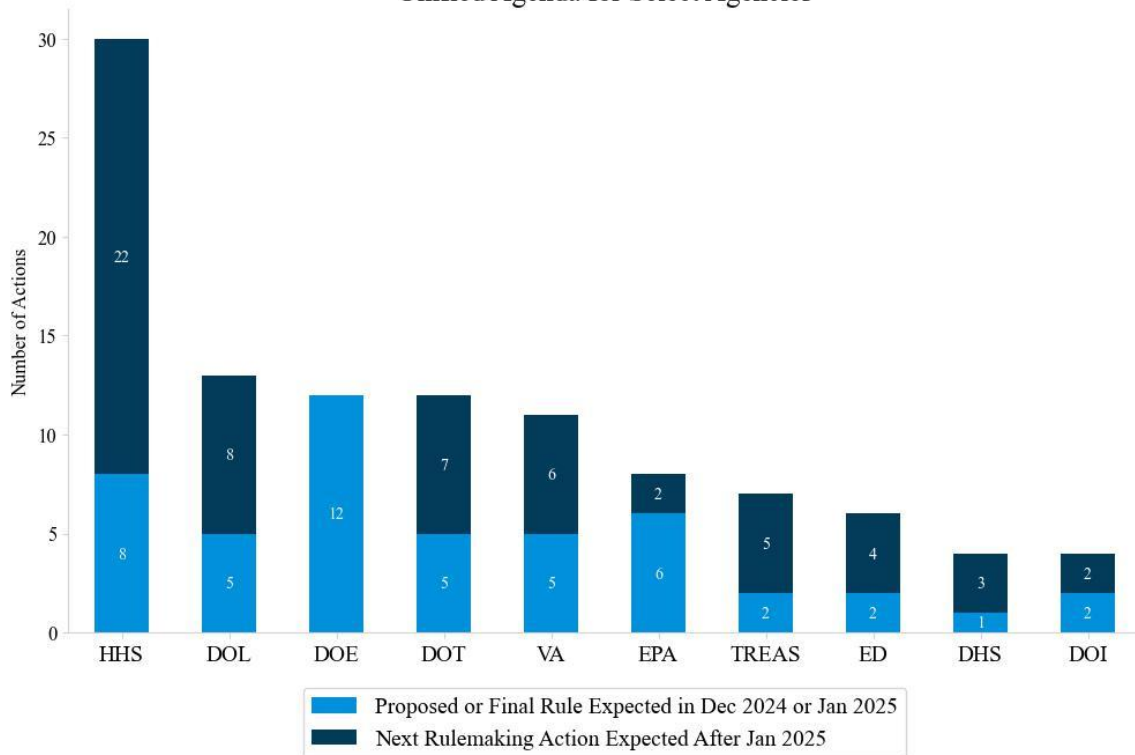
## Potential Midnight Section 3(f)(1) Significant Regulations

Breaking down the active section 3(f)(1) significant actions by agency highlights the Biden administration’s high-impact priorities in the final months before the presidential transition. As shown in Figure 3, the top ten agencies with the highest number of active section 3(f)(1) significant actions planned

<sup>2</sup> Note that as the Unified Agenda and this commentary were being published, some actions with an expected date of December 2024 may have already been published in the Federal Register. Final actions include final rules, interim final rules, and temporary final rules.

include the Department of Health and Human Services (HHS), the Department of Labor (DOL), the Department of Energy (DOE), the Department of Transportation (DOT), the Department of Veterans Affairs (VA), the Environmental Protection Agency (EPA), the Department of the Treasury (TREAS), the Department of Education (ED), the Department of Homeland Security (DHS), and the Department of Interior (DOI). Together, these agencies account for 107 active section 3(f)(1) significant actions—nearly 85% of such actions in the current Agenda—and plan to issue a proposed or final rule for 48 of these actions by February 2025.

Figure 3: Active Section 3(f)(1) Significant Actions in the Fall 2024 Unified Agenda for Select Agencies



HHS is working on the largest number of section 3(f)(1) significant actions, including eight actions expected by the end of the current administration. Over 60% of these actions (19 out of 30) come from the Centers for Medicare and Medicaid Services. The Food and Drug Administration plans to take seven actions in the near term, including two expected in December 2024: a [proposal](#) on front-of-package nutrition labeling and a [final rule](#) updating the definition of the implied nutrient content claim “healthy.” In addition, HHS plans to issue a [proposal](#) in December that would modify the HIPAA Security Rule to improve cybersecurity of electronic protected health information.

Among its nine active section 3(f)(1) significant rulemakings, DOL aims to advance five actions during this midnight period. Specifically, the Occupational Safety and Health Administration expects to [propose](#) regulations addressing infectious disease hazards in health care and other high-risk workplaces, as well as [finalize](#) its June 2021 [interim final rule](#) on occupational exposure to COVID-19 in healthcare settings. The other three actions include a [proposal](#) that would phase out the issuance of certificates allowing employers to pay subminimum wages to workers with disabilities (which was [published](#) in the Federal Register on

December 4); a [temporary final rule](#) that increases the numerical limitation for H-2B temporary nonagricultural worker visas in fiscal year 2025 (which was [published](#) on December 2); and a [final rule](#) implementing a statutory exemption for certain automatic portability transaction.

DOE plans to move forward with all its 12 active section 3(f)(1) significant actions within the last two months of the Biden administration. Of those, 10 are final actions related to energy conservation standards for commercial and consumer appliances, such as [walk-in coolers and freezers](#), [ceiling fans](#), and [water heaters](#).

DOT is working on 12 section 3(f)(1) significant actions, including five final actions that it plans to issue by the end of the current administration. Those include a [final rule](#) that would withdraw the waiver of the applicable Buy America statute to manufactured products, a [final rule](#) on heavy vehicle automatic emergency braking, and a [final rule](#) that would require automobile manufacturers to install a seat belt reminder system for certain designated seating positions.

The VA aims to finalize two section 3(f)(1) significant actions within the next month, including an [interim final rule](#) that would establish a presumptive service connection for leukemias and multiple myelomas due to exposure to PM 2.5, and a [final rule](#) governing Supportive Services for Veteran Families program. The Agenda also includes three VA proposals scheduled for December, all of which have already been published in the Federal Register.

As one of the agencies that has [issued the most](#) section 3(f)(1) significant actions this year, EPA still expects to finalize four actions and propose two rules in December. The final actions include [emission guidelines](#) for large municipal waste combustors, [modifications](#) to its emissions inventory reporting requirements, [regulations](#) addressing unreasonable health risk of perchloroethylene (PCE) under the Toxic Substances Control Act, and a [supplemental action](#) addressing interstate transport obligations for the 2015 Ozone National Ambient Air Quality Standards. The PCE rule was just [published](#) on December 18.

ED's priorities during the final months of the Biden administration focus on student debt relief, with a [final rule](#) and a [proposed rule](#) lined up for December. The only section 3(f)(1) significant action that DHS planned to take during this period is a [final rule](#) on its previous temporary final rule that increased the automatic extension period for the Employment Authorization Documents of certain renewal applicants from up to 180 days to up to 540 days. This rule was [published](#) on December 13.

Beyond these ten agencies, the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Federal Reserve Board are expecting to [finalize](#) their joint rulemaking that would require certain large depository institution holding companies to issue and maintain a minimum amount of long-term debt. The Department of Justice is [planning to](#) issue a final rule regarding access to Americans' bulk sensitive personal data by countries of concern, which implements President Biden's Executive Order 14117.

## Conclusion

With about one month remaining before the inauguration, federal agencies are still planning to issue a substantial number of actions, according to the Fall 2024 Unified Agenda. These midnight regulations, if issued, will be subject to review, modification, and repeal by the incoming Trump administration and may face potential disapproval under the CRA. However, the extent to which agencies can fulfill the commitments outlined in this Agenda remains uncertain. It is not uncommon for agencies to delay or suspend actions listed in a Unified Agenda. Given the limited time and resources, many of these actions may ultimately serve more as signals of the Biden administration's policy priorities than as initiatives that agencies can realistically complete.