



The Biden Administration's Spring 2024 Unified Agenda of Regulatory Actions

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EXECUTIVE SUMMARY

- The Biden Administration recently released its Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions (UA) detailing the nearly 2,400 rulemakings it plans to put forward within the next year or so.
- While the total amount of planned actions is relatively low compared to the past few years, this is likely a function of the administration having completed over the past few months many of the priorities it had slated for its first term.
- A deeper analysis of the UA's data reveals that tax-related rulemakings will see a noticeable uptick and that agencies will continue to be mindful of the timing of their rulemakings in the face of the coming election and potential Congressional Review Act implications next year.

INTRODUCTION

On July 5, the Office of Information and Regulatory Affairs (OIRA) released the Biden Administration's Spring 2024 [edition](#) of the "Unified Agenda of Regulatory and Deregulatory Actions" (UA). The biannual report lays out "the actions administrative agencies plan to issue in the near and long term." This edition of the report is notable for providing the last look at the Biden Administration's regulatory plans as it heads into the heart of election season. The most significant conclusions to draw from this UA are: 1) The administration has relatively few actions for the next year or so, primarily due to having already finalized many regulations this past spring; 2) the Department of Treasury (Treasury) appears to be the busiest agency in coming months, likely due to a series of statutorily driven tax credit rulemakings; and 3) agencies clearly remain mindful of the need to get major actions across the finish line ahead of not only election day but also the potential "lookback" period under the Congressional Review Act (CRA).

OVERALL REGULATORY VOLUME

One of the more helpful aspects of a given UA is that it can demonstrate the scope of an administration's regulatory plans. The following table includes statistics on the volume of prospective actions included over the past decade of Spring UAs. "Active" items include those that agencies reasonably expect to act on within 12 months of the UA's publication. "Long-Terms" are those that agencies expect to act on outside of that one-year window. The "Total Prospective" category is the sum of those two. "Major" items include rulemakings that agencies expect to meet the [definition](#) of a "major rule" under the CRA and include actions from independent

agencies. “Significant” items include those that carry the designation of either: 1) “economically significant” as established under [Executive Order \(E.O.\) 12866](#) (and/or the relevant designation as modified under [E.O. 14094](#)), or 2) “other significant” items that OIRA defines as: “A rulemaking that is not economically significant but is considered significant by the agency. This category includes rules that the agency anticipates will be reviewed under E.O. 12866 or rules that are a priority of the agency head.”

<u>Trends in Rulemaking Volume Across Spring Unified Agendas</u>										
Year	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Active Items	2323	2239	1731	2224	2597	2697	2551	2673	2617	2361
Long-Term Items	460	502	696	647	610	575	623	574	582	648
<u>Total Prospective Items</u>	<u>2783</u>	<u>2741</u>	<u>2427</u>	<u>2871</u>	<u>3207</u>	<u>3272</u>	<u>3174</u>	<u>3247</u>	<u>3199</u>	<u>3009</u>
“Major” Active Items	141	125	49	88	123	155	170	217	236	193
“Major” Long-Term Items	33	43	51	34	30	40	47	38	44	42
<u>Total “Major” Items</u>	<u>174</u>	<u>168</u>	<u>100</u>	<u>122</u>	<u>153</u>	<u>195</u>	<u>217</u>	<u>255</u>	<u>280</u>	<u>235</u>
“Significant” Active Items	905	800	429	707	919	974	945	1055	1042	892
“Significant” Long-Term Items	200	208	299	222	218	218	262	263	284	275
<u>Total “Significant” Items</u>	<u>1105</u>	<u>1008</u>	<u>728</u>	<u>929</u>	<u>1137</u>	<u>1192</u>	<u>1207</u>	<u>1318</u>	<u>1326</u>	<u>1167</u>

For the Fall edition of the UA, the American Action Forum (AAF) examined the report in the context of preceding Fall versions. To maintain a comparable level of context for this iteration, we looked at how this latest report compared to past Spring editions of the UA. The most notable finding in this data is that, after seeing fairly steady year-over-year increases in the various categories, there is a noticeable dip in planned regulatory activity. The “Total Prospective Items” count drops to a six-year low. Parsing that figure some more, however, one finds that the “Long-Term Items” counts is still among the highest in the dataset. This suggests that the Biden Administration still has some plans to come if it continues on to a second term, but that perhaps these plans will need to wait until later in 2025 and beyond.

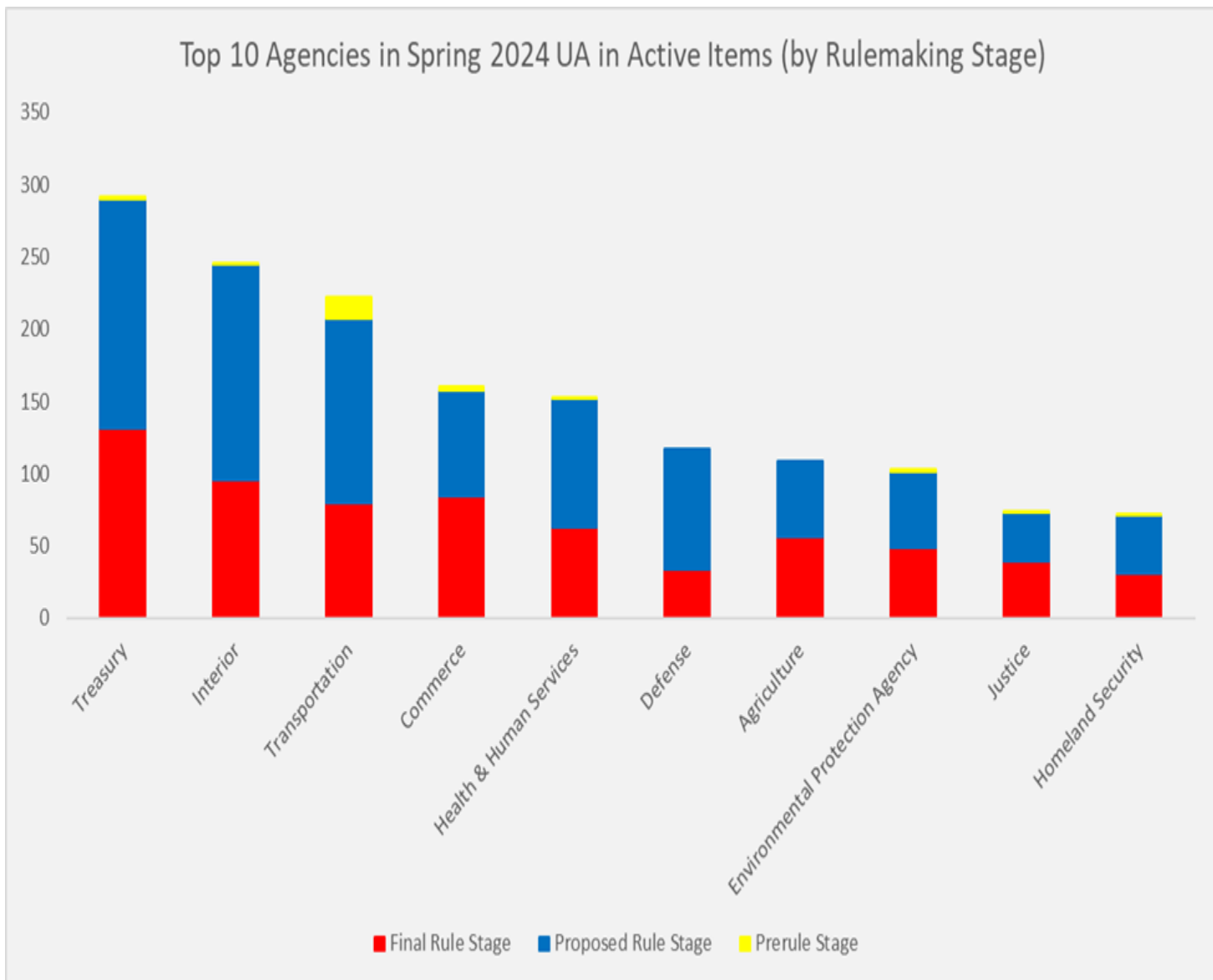
Another potential explanation for this relative decline in the volume of agenda items may be that agencies have already completed most of the plans that they had in mind from the administration’s outset. Loyal readers of AAF’s Week in Regulation likely have that sense after some of the weeks documented during this [past spring](#). The data in the table below regarding the “Completed Actions” (“actions or reviews the agency has completed or withdrawn since publishing its last agenda”) for each UA that unambiguously involves the Biden

Administration[1] further bolster this contention, with “Spring 2024” having far and away the highest totals across the three categories:

<u>Biden “Completed Action” Trends</u>						
<i>Period</i>	<i>Fall 2021</i>	<i>Spring 2022</i>	<i>Fall 2022</i>	<i>Spring 2023</i>	<i>Fall 2023</i>	<i>Spring 2024</i>
Total Completed	475	556	443	467	431	689
“Major” Completed	46	44	59	39	52	97
“Significant” Completed	140	167	154	109	145	283

MAJOR TRENDS ACROSS AGENCIES

As [in other recent examinations](#) of UA activity, it is important to look at which agencies have the busiest agendas planned. The following table details the top 10 agencies in terms of active items.

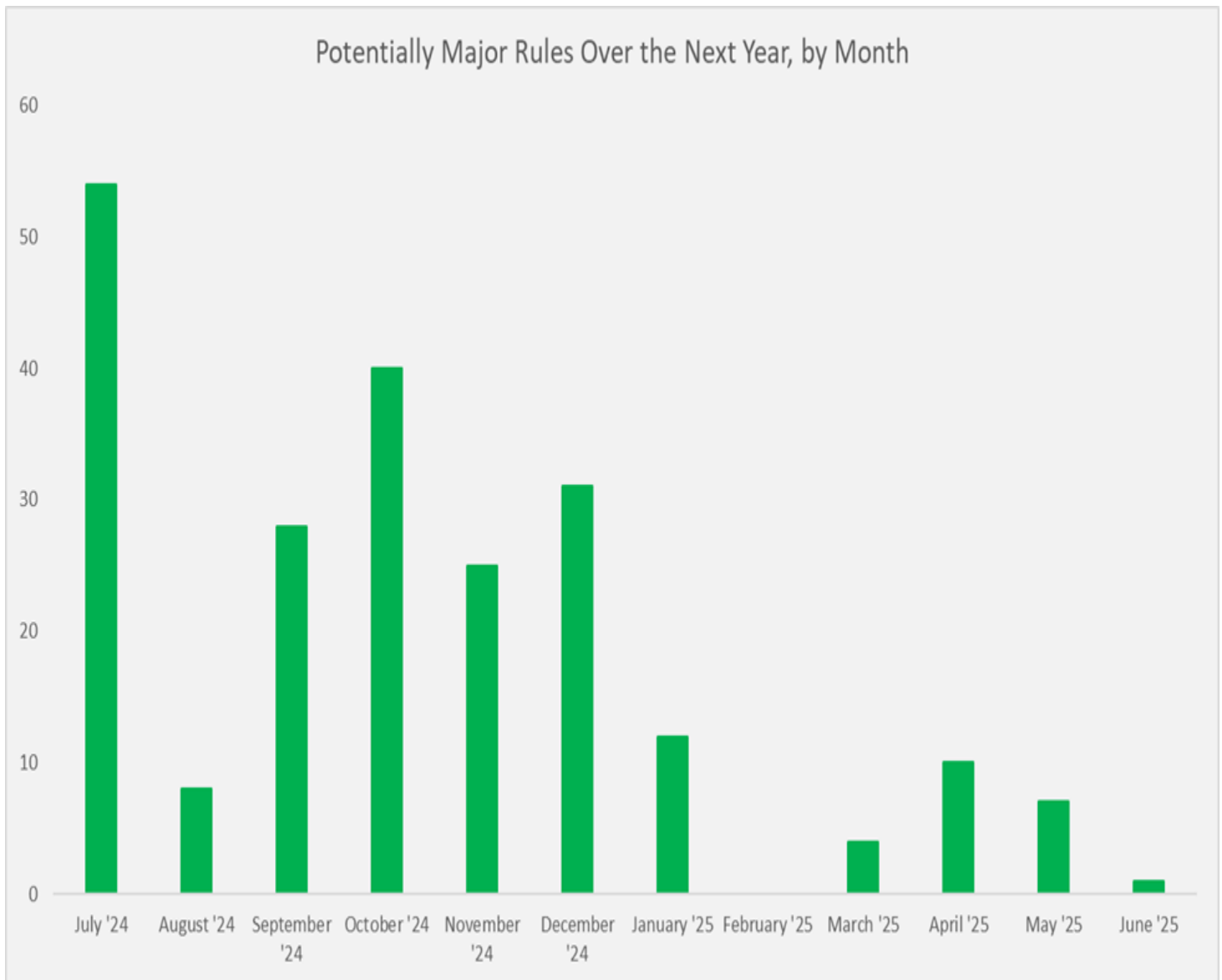


Perhaps the most important development is Treasury taking the top spot from the Department of Interior – and in fairly decisive fashion. While the [past two](#) UAs had the agencies roughly tied, this edition has Treasury jumping to a 292 to 246 lead in “Active Items” over its runner-up. This is likely due to a significant uptick in upcoming rules related to the issue of tax credits emanating from legislation such as the Inflation Reduction Act, with the “Active Items” count for the Internal Revenue Service specifically spiking up to 196 versus 165 in the Fall 2023 UA.

Outside of this trend, however, the agencies included here were all in the top 10 from last fall’s edition. The Department of Health and Human Services and the Environmental Protection Agency saw the most substantial dips – with roughly 20 fewer actions for each – dropping these agencies to fifth and seventh place, respectively. There were also no notable shifts in the relative balance of rulemaking stages, with proposed actions taking an average of 55 percent of the share across the agencies – almost identical to the [56 percent share](#) recorded in last fall’s UA.

REGULATORY VOLUME TRENDS

AAF’s analysis of the most recent preceding UA included a [brief look](#) at when the public could potentially expect certain rules during the latter half of 2024. Yet as the numbers in the chart below illustrate, producing a similar regulatory “calendar” for this UA edition is less practical since it would now be prohibitively lengthy. Nevertheless, the chart below includes the same kind of rules included in that analysis, namely: “Below are such rules that also currently carry either: A) a ‘major’ designation or B) an ‘undetermined’ designation (thereby denoting the possibility they still could be major rules upon finalization).”



As the chart shows, much of the administration’s planned activity within this category of rules is set to come before the election. This is almost surely a product of the administration seeking to get as many policy points as possible on the board ahead of the heart of campaign season. Additionally, this month looks to be particularly active. This may be driven in part by agencies’ continued wariness of potential implications under the CRA. Of particular concern is the [CRA’s lookback window](#) that allows a new administration and Congress to repeal the rulemakings finalized during a preceding administration’s final months via an expedited process.

While the CRA lookback deadline could potentially be as early as the end of [May 2024](#), as AAF noted in this [analysis](#) from last fall:

In the aftermath of the [2016](#) and [2020](#) elections, the relative shifts in which party controlled the executive and legislative branches allowed for incoming policymakers to utilize the CRA’s “lookback” provision to target rules finalized in the later portion of the preceding administration. While it is impossible to predict exactly when this lookback cut-off point will fall in 2024 since it is contingent on how many days Congress is in session next fall, *in the most recent cycles it has come in either July or August*. [emphasis added]

If this cycle’s lookback deadline ultimately falls sometime in late summer, agencies can rest assured that this cohort of July rules would largely be safe from potential CRA repeal next year.

OTHER KEY STATISTICS

With nearly 2,400 active items included in the pages of this UA, it is not practical to include full lists of the various potential cross-sections of rulemakings. It is, however, possible and potentially helpful to highlight the volume of items that fall into certain subcategories. Some of these totals include:

- 405 “Novel Rulemakings,” or those included in the UA for the first time;
- 162 rulemakings that agencies find “likely to have a significant economic impact on a substantial number of small entities” under the [Regulatory Flexibility Act \(RFA\)](#);
- 179 rulemakings that agencies expect “to have international trade and investment effects, or otherwise may be of interest to our international trading partners”;
- 26 rulemakings set for retrospective review under [Section 610 of the RFA](#); and
- 39 rulemakings that agencies find “likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than \$100 million in one year” under the [Unfunded Mandates Reform Act](#).

CONCLUSION

While most of America was likely cleaning up from – or continuing – their Fourth of July festivities last Friday, the Biden Administration released the latest look at its core regulatory plans heading into the waning months of its first term. This report reveals that, at least for the next year or so, it has already run through most of its major priorities. Additionally, Treasury looks to be the busiest agency in coming months as it prepares and finalizes a series of rules on tax credits stemming from recent legislation ahead of the next tax year. Finally, the administration seems especially mindful of both the political need to get its final rulemaking priorities out the door ahead of the election and, potentially more critical from a policymaking perspective, perhaps just under the wire of the CRA deadline.

[1] The Spring 2021 edition’s “Completed Action” count would include items from the Trump Administration.