



# EXPLAINER

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## The Power of the Pen: Using Executive Actions to Secure Policy Wins

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### Introduction

Over the last two years, President Biden has taken steps to enact executive actions (EA), that address a broad swath of issues including the COVID-19 pandemic, making progress in the fight against climate change, and providing economic security for people throughout the United States. Yet, while these EAs were part of an economic plan that [improved the lives of millions](#), there are many policy changes that the Biden administration can still pursue to improve people's lives and build a better, more resilient nation.

This explainer explores the Biden administration's use of various executive actions — such as executive orders, memoranda, and statements — as policy tools. This explainer also documents a short list of transformative, EAs enacted during the first two years of President Biden's term. The last part of this explainer lays out a platform of potential EAs across a range of issue areas that the Biden Administration could act on during the remainder of his term.

### What are Executive Actions?

Executive Actions (EAs) are used in this explainer as a catch-all for direct actions by the executive branch (the president and federal agencies) to create, enforce, implement, influence, and interpret government policies, regulations, and rules. As described by the Congressional Research Service, EAs are “...[used extensively by Presidents to achieve policy goals, set uniform standards for managing the executive branch, or outline a policy view intended to influence the behavior of private citizens](#).” EAs do not require Congressional approval. However, future administrations can offer [new EAs that negate previous EAs, and Congress can pass laws that overrule an executive action](#). For instance, [Proclamation 10141](#), issued by President Biden on January 20, 2021, effectively revoked the travel bans — also known as Muslim bans — issued by President Trump on 14 countries, most of which were

African or Muslim. In this explainer, EAs refer to executive orders, proclamations, memoranda, statements, and other directives issued by the president. **Table 1** provides definitions of each of these EAs.

## TABLE 1: TYPES OF EXECUTIVE ACTIONS

TYPE	WHAT IT IS
<b>EXECUTIVE ORDERS</b>	Executive orders (EOs) are EAs with the power of federal law. EOs are directed at the federal government to instruct the operation of the executive branch. For example, EOs can create new commissions, committees, or organizations. While not mentioned explicitly in the Constitution, the powers enumerated in Article II of the Constitution form the legal basis for EAs. Since 1962, all EOs must state the president's authority to issue it. The National Archives records each EO in the Federal Register.
<b>PRESIDENTIAL PROCLAMATIONS</b>	Like an EO, a presidential proclamation is archived in the federal register but instructs private parties rather than the government, similar to E. O.s. The Emancipation Proclamation, signed by Abraham Lincoln to end slavery in the Confederate states, is one of the most well-known examples.
<b>PRESIDENTIAL MEMORANDA</b>	Memoranda are similar to EOs and direct the federal government's operation. However, memoranda are not numbered in the Federal Register, but they can be issued by federal agencies, and are only sometimes published. Further, memoranda are not required to cite a presidential authority. When issued by the president, they are sometimes referred to as <u>administrative orders</u> . An example of a memorandum is the <u>Deferred Action for Childhood Arrivals (DACA)</u> immigration policy established by the Department of Homeland Security (DHS) under President Obama in 2012.
<b>STATEMENTS OF ADMINISTRATION POLICY</b>	Statements of administration policy (SAP) are communications from the president, vetted by the Office of Management and Budget, and submitted to Congress to express executive branch sentiment on legislation. For example, President Biden issued an SAP supporting H.R. 1280, the George Floyd Justice in Policing Act of 2021.

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### Overview of Executive Actions since 2020

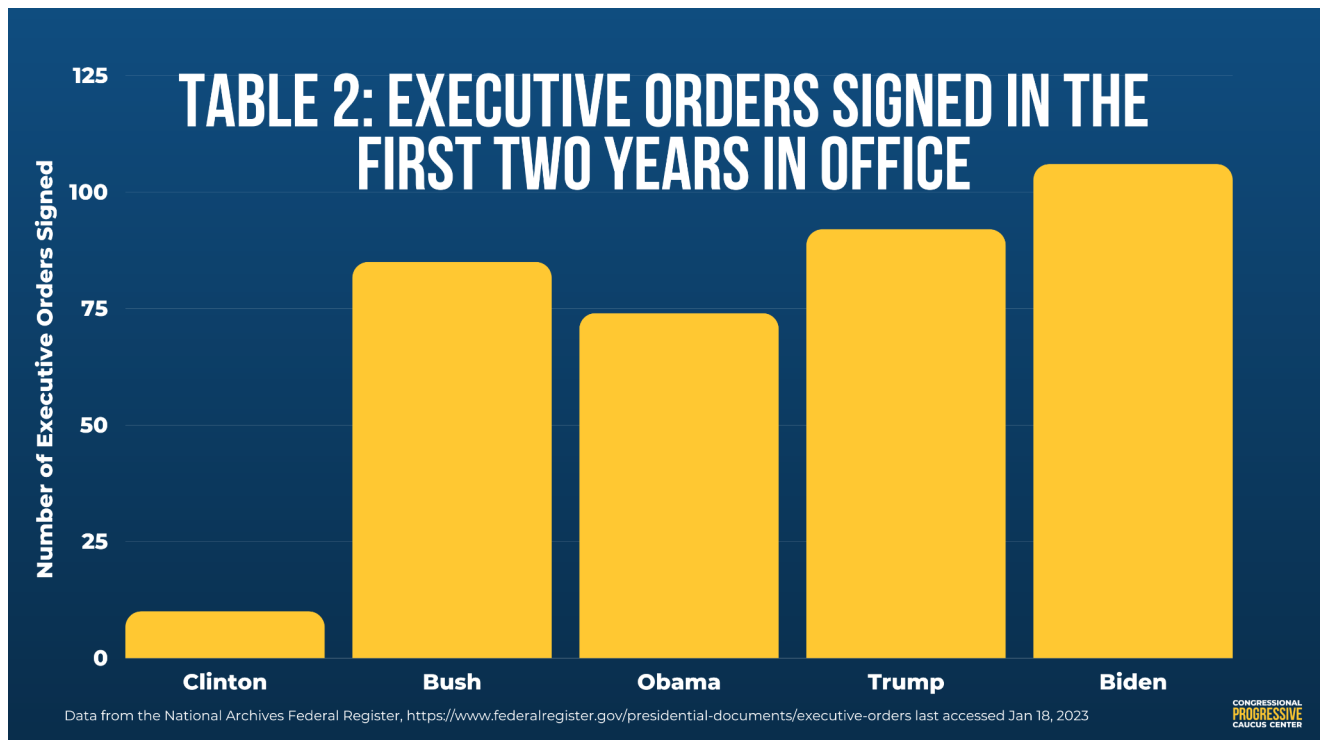
The 2020 elections set the backdrop for President Biden's approach to EAs. After President-elect Biden won the White House in 2020 and Democrats secured slim majorities in the House of Representatives and the Senate, Democrats held a governing trifecta — or complete control of the executive branch and both houses of Congress — for the first time in 12 years.

During the first two years of the Biden Administration, Democrats leveraged their trifecta to pass major legislative packages, including the American Rescue Plan (ARP), the bipartisan Infrastructure Investment and Jobs Act (IIJA), the Inflation Reduction Act (IRA), and the Chips and Science Act (CHIPS). The [ARP](#) secured temporary relief from the COVID-19 crisis for millions of Americans and helped boost the economy. The [IIJA](#) made critical long-term investments in our nation's infrastructure to repair our bridges and roads and expand access to clean drinking water. The [Inflation Reduction Act](#) made historic investments in fighting the climate crisis, expanding our domestic energy production, and taxing giant corporations that had avoided paying their fair share of taxes. Finally, the [CHIPS Act](#) increases U.S.

domestic capacity to manufacture semiconductor chips and strengthens the supply chain.

However, the slim margins in the House of Representatives and Senate meant that Congress could limit the full implementation of the Biden administration's agenda. From the outset of his presidency and anticipating these Congressional limitations, President Biden utilized EAs to help fulfill his policy agenda.

Using EAs to enact policy and to instruct the federal government and the public is not unprecedented. However, the issuance of EAs by presidents of both parties varies from administration to administration. President Franklin D, Roosevelt issued [3,701 executive actions while in office](#). [President George H.W. Bush signed 166](#), the **Federal Register lists 106 EOs alone signed by President Biden in the first two years of his presidency**. As seen in **Table 2** below, President Trump signed 92 EOs in his first two years in office, while Presidents Obama, G.W. Bush, and Clinton signed 74, 85, and 10, respectively, over the same period in their presidencies.



## **Enacted EAs**

As soon as President Biden won the 2020 presidential election and formed his transition team, grassroots, advocacy, and policy groups urged the Biden administration to use EAs to enact key movement proposals and priorities. To document some of the critical policy victories, the Congressional Progressive Caucus Center reached out to our partners and allies at progressive advocacy and policy organizations to identify high-priority EAs issued by President Biden. Taken together, these enacted EAs are progressive policies that have the potential to strengthen our democracy, build more resilient communities, and make sure we can live safe, healthy, and dignified lives.

## **Executive Action Wins Under The Biden Presidency**

The chart below is not exhaustive. However, this list highlights pivotal policies supported by the CPC Center and allied groups.

# TABLE 3: EXECUTIVE ACTION WINS UNDER THE BIDEN PRESIDENCY

ISSUE	WIN
<b>CLIMATE CRISIS</b>	
Addressing the Climate Crisis at Home and Abroad	<p>The Biden administration signed E.O. 14008 to create the White House Office of Domestic Climate Policy, which coordinates working groups to assist the National Climate Task Force, a group of 27 federal agencies and department leaders also created by this order. E.O. 14008 also established the White House Environmental Justice Advisory Council (WHEJAC) to advise the EPA's National Environmental Justice Advisory Council on environmental justice issues. The WHEJAC has been extended through September of 2023 to continue its advisory role. E.O. 14008 also created President Biden's Justice40 Initiative, a government-wide pledge to commit 40 percent of federal investments to disadvantaged frontline communities. A summary of Justice 40 allocated funds and new programs can be found <a href="#">here</a>. E.O. 14008 also established a new Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization to provide more federal resources to communities hard hit by coal and power plant closures. As of February of 2023, the working group has made available \$180 billion in competitive funds and \$317 billion in state-based funding. As also outlined in the E.O., Biden issued a presidential statement to rejoin the Paris Agreement and took decisive action on hydrofluorocarbons (HFCs) by submitting the Kigali amendment for ratification by the Senate. At home, EPA has finalized strict rules to reduce HFCs.</p>
Supply Chains	<p>E.O. 14017 launched a whole-of-government initiative to strengthen the use of federal procurement to support manufacturing and established the Supply Chains Disruptions Task Force. In addition, the Government Accountability Office (GAO) also found that the task force built relationships with global supply chain partners and strengthened America's supply chains. The White House summarized the progress made to increase supply resiliency <a href="#">here</a>.</p>
Linking the climate crisis and trade	<p>E.O. 14005 announced intentions to incorporate climate considerations into trade policy and trade agreements and a commitment in practice to the US-EU negotiated carbon-based sectoral trade arrangement on steel and aluminum trade. Negotiations are ongoing.</p>
<b>DEMOCRACY</b>	
Ethics and the revolving door	<p>With E.O. 14003, President Biden reversed E.O. 13957, an E.O. under then-President Trump, which eliminated statutory and constitutional job protection for career federal employees and allowed agency heads to move political appointees into career positions without competition. E.O. 14003 restored these protections and guardrails. E.O. 13989, addressed ethics concerns by prohibiting officials who leave the administration from lobbying the executive branch or registering as foreign agents for two years, all to end "shadow lobbying" and the "revolving door" of politics wherein elected officials to leave office and then lobby issues they worked on while in office.</p>
Voting rights	<p>Issued E.O. 14019 to strengthen access to voting by requiring agencies to develop strategic plans to promote voter registration. The agency plans are still in development and have not yet been implemented.</p>

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<b>ISSUE</b>	<b>WIN</b>
<b>ECONOMIC JUSTICE</b>	
Federal workers	E.O. 14003 revoked a series of President Trump's E.O.s that undermined federal workers' right to form unions and collectively bargain. E.O. 13985 directed federal agencies and departments to identify and redress inequities in their programs that serve as barriers to equal opportunity.
<b>FOREIGN POLICY</b>	
2002 Authorization for Use of Military Force (AUMF)	Released a SAP supporting H.R. 256, to Repeal the Authorization for the Use of Military Force Against Iraq Resolution of 2002, to help end our "forever wars."
Weapons transfers	E.O. 14074 reinstated and expanded President Obama's E.O. limiting the transfer of weapons from the Pentagon to local law enforcement.
<b>HEALTHCARE</b>	
Lowered the price of prescription drugs	E.O. 14036, laid out comprehensive actions to address anti-competitive behaviors in health care and prescription drug markets, supported efforts to combat prescription drug price gouging, and called on the FDA to make hearing aids available over the counter, without a prescription. E.O. 14087, called for the Center for Medicare and Medicaid Innovation (CMMI) within Health and Human Services (HHS) to prioritize new payment and delivery models which lowered drug prices for Medicare and Medicaid beneficiaries.
Access to Health Care	E.O. 14009 strengthened the Affordable Care Act and fixed the 'Family Glitch' and in the process expanded healthcare access for 1 million people.
COVID-19 Pandemic	Signed E.O. 13997, which helped stop the spread of COVID-19. In 2021 alone, HHS found that among Medicare recipients, the Biden administration's vaccination program prevented over 300,000 deaths and 650,000 COVID-19 hospitalizations.
Access to reproductive healthcare	After the Dobbs ruling, the Administration issued E.O. 140767, to protect access to contraception, emergency medical treatment, medication abortion, and the right to travel between states for reproductive health services. This E.O. instructed HHS to take steps to protect access to emergency contraception and medical treatment, access to medication abortion, and the right to travel between states for reproductive services. HHS was also instructed to establish a reproductive task force, engage in public education efforts, convene volunteer lawyers for legal representation, and work with the FTC to protect the safety and privacy of providers and patients. Following this directive, HHS released a report detailing the steps the agency has taken to strengthen and expand access to reproductive health services, in accordance with the EO.

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<b>ISSUE</b>	<b>WIN</b>
<b>RACIAL JUSTICE AND IMMIGRATION</b>	
Tribal Sovereignty	The Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships reaffirmed the government's commitment to E.O. 13175 and the Presidential Memorandum of November 5, 2009, requiring Tribal consultation and action plans. DOI also resumed the White House Council on Native American Affairs, and the White House reinstated the annual Tribal Nations Conference.
Travel bans	Reversed the anti-Black and anti-Muslim EO targeting certain U.S. citizens and immigrants by issuing proclamation 1041 repealing all iterations of the African, Muslim, refugee, asylum, and other travel bans and inviting those denied visas to re-apply for admission.
Delayed Action for Childhood Arrivals (DACA), Temporary Protected Status (TPS), and work authorizations	Issued a memorandum titled Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA), ensuring that no one currently eligible for DACA or TPS loses their work authorization, including those who lost their eligibility under the Trump administration. The memorandum also reinstated and expanded DACA while protecting current TPS recipients and newly designated or redesignated countries eligible for TPS or Deferred Enforced Departure (DED) because it is unsafe for citizens to return, including Cameroon, the Northern Triangle countries, Somalia, South Sudan, and Venezuela. Limited implementation of the final rule on DACA began in the fall of 2022.
Border wall	Issued a proclamation that halted all border wall construction and committed to no further construction of border walls or barriers. Implemented a process to mitigate the wall's harmful impacts on Tribal Nations, border region communities, and lands, including removing the most harmful sections of the wall, in consultation with communities on both sides of the border, indigenous communities, and environmental justice advocates.
<b>WORKER POWER AND CORPORATE POWER</b>	
Federal contractor wages	EO 14026 Raised the minimum wage for federal contractors to \$15 initially, then to \$16.20 on January 1, 2023, and, adjusting for inflation, will continue to raise it each year as determined by the Department of Labor. The initial increases raised wages for up to 390,000 federal contractors.
Federal workers, and racial justice	E.O. 13985 revoked E.O. 13950 and the accompanying OMB Memorandum, which sought to prohibit Federal agencies, employees, contractors, subcontractors, and grantees from using so-called "divisive concepts" typified as "systemic racism," "White privilege," "unconscious bias," "intersectionality," "Critical Race Theory," and other concepts tied to systemic racism and sexism.

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## Potential Executive Actions for 2023

The bold EAs described above represent positive change for millions of workers and families. Still, there are more EAs that the Biden administration could sign to impact even more people’s lives. Moreover, in 2023, the decision-making landscape to pass broad legislative packages via reconciliation or other tools looks different for the White House and Congress. As a result, EAs are now the most effective policy tool President Biden can employ to enact his administration’s remaining policy objectives.

The CPC Center, partner organizations, and allied coalitions have identified the EAs below as potential priority policies for 2023 that the administration could pursue over the next two years. The EAs focus on one particularly transformative potential EA in the following areas: child care and elder care; the climate crisis; democracy; economic justice, foreign policy; healthcare; and immigration. The potential EAs are detailed in **Table 4** below.

### TABLE 4: POTENTIAL ADDITIONAL EXECUTIVE ACTIONS

<i>ISSUE</i>	<i>RECOMMENDATION</i>
<b>CHILD CARE AND ELDER CARE</b>	Support care workers by encouraging widespread adoption of strong labor standards and creating opportunities for worker engagement and voice; using rulemaking to stabilize the care workforce and create a path to unionization for child care workers.
<b>CLIMATE</b>	Declare a Climate Emergency to address the climate crisis and stop the expansion of the oil and gas industry.
<b>DEMOCRACY</b>	Release detained individuals on public health grounds, phase out detention use, and invest in community-based case management programs not rooted in surveillance.
<b>ECONOMIC JUSTICE</b>	Via E. O., create incentives in subsidy programs to encourage companies to forego buybacks, narrow CEO-worker pay gaps, and stay neutral in union drives.
<b>FOREIGN POLICY</b>	Given the strong likelihood of another devastating global recession and soaring levels of debt in the developing world, the Treasury Department could endorse a fresh allocation of Special Drawing Rights (SDRs) by the International Monetary Fund (IMF) to support the global economy, and US export-related jobs, at no cost to US taxpayers.
<b>HEALTH CARE</b>	Lower the costs of essential drugs like insulin, naloxone, hepatitis C drugs, HIV/AIDS drugs, Xtandi, EpiPens, and inhalers
<b>IMMIGRATION</b>	Terminate existing agreements between DHS and local governments that turn law enforcement against their communities.



## Conclusion

Executive action has long been a tool employed by presidents and their administrations to shape policy. President Biden used EAs to help end the COVID-19 pandemic, provide economic relief from the resulting recession, protect basic rights by overturning or strengthening EAs from previous administrations, and complement signature legislation like the ARP, IIJA, IRA, and CHIPS. The enacted EAs discussed in this document enshrined many of the policies President Biden campaigned on — and that many grassroots advocates called for — while changing lives for the better.

There are still a number of policies the administration could pursue via additional EAs. The EAs explored in the last part of this explainer represent just some of the ways the Biden administration could win transformative change. These seven executive actions are clear, specific examples of how President Biden could use the power of the pen to fulfill his administration's policy agenda and bring about real change now.