

GIBSON DUNN



Public Policy Update

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DOGE Details: The Knowns and Unknowns of Trump's Cost-Cutting Board

This update addresses some of the most common questions clients have about DOGE and discusses how DOGE might be structured, its proposed objectives and legal barriers to achieving those objectives, and its potential authorities and mechanisms for action.

President-elect Trump has tasked an entity he has dubbed the Department of Government Efficiency (DOGE) with making good on his campaign promises of cutting government spending and reducing regulatory burdens. How DOGE, led by Elon Musk and Vivek Ramaswamy, will accomplish these mandates has raised many questions for our clients. DOGE's structure, composition, authorities, sources of funding, objectives, and internal processes remain unknown, as does how DOGE's agenda will affect clients who must comply with potentially changing regulations. This Alert addresses some of the most common questions clients have about DOGE, including how DOGE might be structured, its proposed objectives and legal obstacles to achieving those objectives, and its potential authorities and mechanisms for action.

I. What is DOGE?

As of now, DOGE's structure remains unclear. President-elect Trump has stated that DOGE will operate "outside the government."^[1] Based on its proposed function and precedent, it most likely will be a federal advisory committee (FAC) subject to the requirements of the Federal Advisory Committee Act (FACA). President Reagan's Private Sector Survey on Cost Control (known as the Grace Commission) and President Obama's National Commission on Fiscal Responsibility and Reform (known as the Simpson-Bowles Commission) are DOGE's nearest analogues, and

both operated as FACs. It is possible, however, that DOGE also may try to operate as an independent, non-governmental organization. DOGE's status will determine the restrictions and requirements that will apply to it and its members.

A. What is a Federal Advisory Committee?

If DOGE is a FAC, it will be subject to the various recordkeeping, disclosure, and conflicts requirements of FACA. The statute provides a formal process for establishing, operating, overseeing, and terminating bodies that advise the president or an executive branch agency. Under the statute, a FAC is any "committee, board, commission, council, conference, panel, task force, or other similar group" that (1) includes at least one non-governmental member; (2) is "established or utilized to obtain advice or recommendations for the President or one or more agencies or officers of the Federal Government"; and (3) "established or utilized by the President; or . . . established or utilized by one or more agencies."[\[2\]](#)

Whether DOGE is classified as a FAC will depend on its structure and operations. The president or an agency typically will establish FACs by an order that describes the function of the FAC, its composition, and its administration.[\[3\]](#) Even if a president or agency does not declare an entity to be a FAC, however, courts can rule that an entity is a FAC if it performs the functions of a FAC and enjoin its activities unless and until it complies with FACA.[\[4\]](#)

To courts, an "important factor" will be whether DOGE has "an organized structure, a fixed membership, and a specific purpose."[\[5\]](#) Additionally, to the extent DOGE "render[s] advice as a *group*, and not as a collection of individuals," courts may be more inclined to classify DOGE as a FAC.[\[6\]](#)

Even if DOGE were otherwise a FAC, the Trump administration or DOGE itself may conclude, as some scholars have, that FACA is unconstitutional in whole or in part because the president has "inherent power to seek the views of outside advisers" under the Vesting and Recommendation Clauses of the Constitution.[\[7\]](#) Then-Deputy Attorney General Antonin Scalia supported a version of this argument in 1974,[\[8\]](#) but courts have generally avoided addressing the argument to date.[\[9\]](#) Whether a court would agree with that position is unclear.

B. What would be the implications if DOGE is a FAC?

If DOGE is classified as a FAC, it presumably will have to comply with FACA's transparency and conflict of interest requirements. FACA requires presidential advisory committees (i.e., FACs that advise presidents) to file a charter outlining the committee's objectives and duties with the General Services Administrator, open most committee meetings to the public, and make their records available under the Freedom of Information Act.[\[10\]](#) Additionally, any directive establishing a FAC must include "appropriate provisions" to ensure the FAC's advice "will not be inappropriately influenced by the appointing authority or by any special interest."[\[11\]](#) Thus far, no definitive authority exists regarding what FAC procedures comply with FACA's inappropriate influence requirement. Further, the viewpoints of FAC members must be "fairly balanced."[\[12\]](#)

i. How could FACA requirements be enforced?

Although some courts have held that FACA does not create a cause of action, plaintiffs may be able to challenge DOGE's compliance with FACA and related laws in at least three other ways.^[13] First, at least one court has assumed that FACs are subject to the Mandamus Act.^[14] The Mandamus Act creates subject-matter jurisdiction over any action to "compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."^[15] Second, although some courts have held that FACs are not agencies that can be sued under the Administrative Procedure Act (APA), they have allowed suits against the convening agency for a FAC's failure to comply with FACA.^[16] Third, some courts have allowed suits to proceed directly against FACs under the Freedom of Information Act.^[17]

ii. What authorities would DOGE have if it is a FAC?

As the term implies, federal advisory committees are meant to provide advice to the president and federal agencies. In FACA's findings, Congress specifically stated that the "function of advisory committees should be advisory only, and all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved."^[18] That said, the statute also provides that "advisory committees shall be utilized solely for advisory functions" "[u]nless otherwise specifically provided by statute or Presidential directive."^[19]

Thus, if DOGE is a FAC, we anticipate that it will advise the president and agencies, and it is possible that Trump will try to authorize DOGE to carry out some of its recommendations—although we have seen no precedent for this, and Trump would have to overcome several legal obstacles to do so. For example, statutes often provide that only agency heads can modify regulations,^[20] and any exercise of "significant authority" could raise constitutional questions about whether Musk and Ramaswamy are invalidly appointed officers of the United States.^[21] Beyond legal challenges, having private persons implement controversial recommendations likely would create much public controversy. The Reagan administration considered empowering a successor to the Grace Commission with the authority to implement its recommendations but, based on a memorandum drafted by then-Associate Counsel to the President John Roberts, declined to do so amidst concerns that it would create public uproar and "serious conflict of interest problems" in having corporate executives implement recommendations with regard to agencies that regulated their businesses.^[22]

Accordingly, it appears likely that DOGE will make recommendations and advise Trump, agency leaders, and agency staff on how to implement its recommendations.

iii. What would be the implications for DOGE's members if it is a FAC?

Musk, Ramaswamy, and other DOGE personnel may be subject to disclosure and conflict-of-interest rules if DOGE is a FAC. Private sector individuals participate on FACs in one of two capacities: either as a special government employee (SGE) or a representative member.^[23] SGEs are typically (but not always) paid and exercise their own, independent judgment on behalf of the government. Representative members generally are not paid and represent the perspective of an identifiable outside organization or industry—they are expected to offer a biased view.^[24] In this case, although Musk and Ramaswamy are not taking pay,^[25] they are being presented as leaders of DOGE and offering their independent judgment about the functioning of the entire government, making them appear to be closer to SGEs than

representative members of a FAC. Some media sources have reported that Musk will be a special government employee, but there has not yet been a public announcement.[\[26\]](#)

If DOGE members serve as SGEs, they would have to file financial disclosures and would be subject to federal employee criminal conflict of interest rules if they use their “public office for their own private gain.”[\[27\]](#) They would not be permitted to serve for longer than “one hundred and thirty days during any period of three hundred and sixty-five consecutive days.”[\[28\]](#) Of note, they would be barred from participating “personally and substantially in an official capacity” in any matter in which they have a financial interest if the matter “will have a direct and predictable effect on that interest.”[\[29\]](#) Such interests can include matters relevant to their companies as well as companies in which they own stock. That said, the official responsible for appointing the DOGE members (likely Trump) can waive the federal employee conflict-of-interest laws if he “certifies in writing that the need for the individual’s services outweighs the potential for a conflict of interest created by the financial interest involved.”[\[30\]](#)

The Federal Acquisition Regulation also imposes organizational conflict-of-interest restrictions on SGEs. Contracting officers are not permitted to knowingly award contracts to SGEs or their companies if the contract arises directly out of the individual’s activity as an SGE, their activity puts them in a position to influence the award of the contract, or the contracting officer determines that another conflict exists.[\[31\]](#) The agency head may authorize an exception “only if there is a most compelling reason to do so, such as when the Government’s needs cannot reasonably be otherwise met.”[\[32\]](#) Competitors also may try to challenge the award of contracts based on perceived organizational conflicts of interest. Musk’s companies Tesla and SpaceX, along with several companies of other individuals reported to be associated with DOGE, are government contractors that could be affected by their executives’ DOGE service.

iv. How could DOGE be funded if it is a FAC?

If DOGE is classified as a FAC, it may be funded either by public or private sources. The General Services Administration provides public funds for FACs. Based on the precedent of President Reagan’s Grace Commission, which received its funding from a private foundation established to support it, DOGE could also receive funding from private entities.[\[33\]](#)

C. What would be the implications if DOGE operates as an independent or informal non-governmental organization or think tank?

DOGE also could operate as a think tank or nonprofit that has a bully pulpit and the president’s ear. As noted above, DOGE could attempt to avoid being classified as a FAC by taking on an informal structure and rendering advice as individuals rather than as a group. If DOGE successfully avoids being classified as a FAC and instead operates as an independent, non-governmental organization, it will not be subject to FACA’s disclosure, transparency, or conflict-of-interest requirements or to FOIA. Musk has asserted that DOGE will pursue “maximum transparency” and that “[a]ll actions of [DOGE] will be posted online,”[\[34\]](#) but avoiding FACA’s requirements would give DOGE and its members materially more flexibility on matters of transparency and conflicts of interests.

As an NGO, DOGE would have no legal authority to implement its recommendations, but could still publish reports and advise President Trump directly. To the extent that DOGE's activity constituted lobbying, it would have to file disclosures under the Lobbying Disclosure Act, and it would be subject to additional lobbying limits if it is a tax-exempt entity.^[35] Although communications made in the course of participating in a FAC are excluded from the definition of a "lobbying contact," there is no equivalent across-the-board exception for NGO activities.^[36]

II. How will DOGE be staffed?

In addition to Musk and Ramaswamy, Trump has announced that William McGinley—who was Trump's White House Cabinet secretary in his first administration and initially had been Trump's designee for White House Counsel in the second administration—will be "Counsel to the Department of Government Efficiency."^[37] In November, DOGE called for staff applications via a post on X, stating "we need super high-IQ small-government revolutionaries willing to work 80+ hours per week on unglamorous cost-cutting. If that's you, DM this account with your CV. Elon & Vivek will review the top 1% of applicants."^[38] It appears that applying via direct message is the only public process for interested applicants to submit their resumes to DOGE.^[39]

In addition to staff, a number of corporate executives are reported to be advising DOGE. Those executives include: Bill Ackman (founder and CEO, Pershing Square Capital Management), Marc Andreessen (co-founder, Andreessen Horowitz), Steve Davis (President, Boring Company), Antonio Gracias (founder and CEO, Valor Equity Partners), Travis Kalanick (former Uber CEO; current CEO, City Storage Systems), Sriram Krishnan (General partner, Andreessen Horowitz), Joe Lonsdale (co-founder, Palantir), and David Sacks (general partner, Craft Ventures).^[40]

III. What are DOGE's goals and likely targets?

DOGE's overarching goals are to reduce the deficit, reduce the federal workforce, and curtail the administrative state. DOGE has identified a number of specific objectives, many of which are subject to a variety of legal and political challenges.

A. Significantly reduce the deficit.

Musk and Ramaswamy have announced DOGE's intent to dramatically reduce federal spending and related waste, fraud, and abuse.^[41] Musk has suggested a target of \$2 trillion in cuts;^[42] via X, DOGE has announced a goal of balancing the budget.^[43]

i. What spending will DOGE target?

Musk, Ramaswamy, and the DOGE X account have identified a number of targets for spending reductions. These include several specific appropriations or federal grants that they consider to be wasteful, such as appropriations for NGOs, DEI training programs, PBS, NPR, \$300 million in funding to Planned Parenthood and related organizations, and \$1.5 billion in grants to international organizations.^[44] Musk told lawmakers he supports "get[ting] rid of all [tax] credits" for electric vehicles—which he said "will only help Tesla,"^[45]—and has previously advocated removing subsidies from all industries.^[46] Ramaswamy has also asserted that DOGE will closely review CHIPS Act contracts, especially those the Biden administration accelerated ahead

of the transition.^[47] The DOGE X account has also identified Pentagon spending as a potential area for reduction, although President Trump has said he would not cut defense spending.^[48]

More generally, Musk and Ramaswamy have suggested that Trump may decline to spend appropriations for which Congress's authorizations have expired. The Congressional Budget Office has identified \$516 billion in appropriations for 2024 associated with 491 expired authorizations of appropriations across a range of agencies, including a number of appropriations administered by the Department of Veterans Affairs, State Department, Department of Education, National Institutes of Health, Federal Aviation Administration, NASA, and more.^[49] Note that Congress can appropriate funds without authorization or pursuant to an expired authorization; these appropriations carry their own authorizations and are available to agencies for "obligation and expenditure."^[50] Withholding such funds likely would be subject to legal challenge. It likely also would be politically unpopular to cut a number of these programs, such as veterans' healthcare benefits and Pell Grants.

Other sources of potential cuts or reforms could be the Government Accountability Office High Risk List, which identifies programs particularly subject to waste, fraud, and abuse,^[51] and a 2,000-page list of proposed cuts Senator Rand Paul (R-KY) has reportedly sent to Musk and Ramaswamy.^[52]

Finally, DOGE will be open to suggestions from the public. Ramaswamy has announced that "DOGE will soon begin crowdsourcing examples of government waste, fraud, ... and abuse."^[53] In addition, some Republican fundraising emails have announced that DOGE will be crowdsourcing its agenda with which government programs to cut and have included short surveys regarding the cuts.^[54]

ii. Government contractors under the microscope.

Musk and Ramaswamy have also indicated a desire to scrutinize federal contracts that they state have "gone unexamined for years," and have alluded to conducting "[l]arge-scale audits . . . during a temporary suspension of payments."^[55] Ramaswamy has said to expect "massive cuts among federal contractors . . . who are overbilling the government."^[56] It is not clear how DOGE will decide which contracts to scrutinize, how it will go about reviewing those contracts, or how it will determine whether to recommend any for termination or modification. It is also not clear whether DOGE will recommend that agencies attempt to modify or terminate existing contracts still in effect, or if it will focus more on making changes when contracts are up for renewal. Nor is it clear how DOGE or the federal government would institute a "temporary suspension of payments," including whether it would attempt to require contractors' continued performance under those contracts during any such suspension. It is possible that DOGE will try to pressure contractors to agree to changes to the terms of contracts it deems wasteful.

iii. What challenges will DOGE face?

DOGE will face at least three obstacles in meeting its goal to significantly reduce the deficit.

First, during the campaign, Trump asserted he will not cut defense, Social Security, or Medicare,^[57] but those and interest payments on the national debt constitute over 60 percent of

federal spending. All discretionary non-defense spending is less than \$1 trillion, but the 2024 deficit is \$1.8 trillion.^[58] While Musk and Ramaswamy have generally steered away from discussing entitlement reform, they have suggested that at least some defense cuts could be on the table, including changes to the defense procurement process and eliminating waste generally, as well as, particularly from Musk, even the future of manned fighter jets like the F-35.^[59]

Second, federal spending is authorized and appropriated by Congress, not the president (or his advisors). Congress may not be willing to authorize such drastic cuts to federal spending, especially if such cuts touch Social Security, Medicaid, and other programs that would be politically unpopular to curtail.

Third, statutes restrict the president's power not to spend money that has been appropriated. The Supreme Court overturned President Nixon's impoundments of congressionally-appropriated funds on the basis that, at least where the appropriations provide that "[s]ums authorized . . . shall be allotted," the appropriation itself does not implicitly provide the president discretion not to spend the full amount of those funds.^[60] Congress then went further and passed the Impoundment Control Act which requires the president to propose rescissions to Congress if the president does not wish to spend appropriated funds. If Congress does not pass a rescission bill within 45 days, the funds must be made available for obligation.^[61]

Precedent from the previous Trump administration may shed light on the challenges the new Trump administration may face under the Impoundment Control Act. In January 2020, the Government Accountability Office concluded that the Office of Management and Budget (OMB) violated the Impoundment Control Act when it withheld obligated funds for Ukraine security assistance.^[62] OMB asserted the withholding was part of a "programmatic delay" pending policy developments and so did not require notice to Congress.^[63] Similar disputes may arise if the second Trump administration attempts impoundment or similar withholdings without congressional approval. Notably, Trump has repeatedly asserted the ICA is unconstitutional and that the president is empowered to impound funds that have been appropriated by Congress. As part of his campaign, the Trump suggested that he would challenge the constitutionality of the ICA and simultaneously work with Congress to overturn the law.^[64]

B. Streamline the federal workforce.

Musk and Ramaswamy have said they plan to eliminate a significant amount of the federal workforce and prescribe new rules for the civil service.^[65] Musk and Ramaswamy seek to elicit voluntary resignations by ending remote work for federal government employees, relocating agencies out of D.C., providing early retirement incentives, and offering severance packages.^[66] They also may seek to institute large-scale layoffs.^[67] Federal civil service protections could impede some strategies to streamline the federal workforce, but those protections generally do not apply to large-scale mass layoffs.^[68] Musk and Ramaswamy have also suggested that the president may modify civil service rules by executive order.^[69]

Separately, Trump may be aiming to convert many civil service positions into political appointments, which would then give political leaders more control over appointment and

retention decisions. Trump has announced that he intends to nominate Russell Vought to head OMB. Late in Trump's first term, Vought designed a "Schedule F" classification to facilitate the conversion of civil service positions to political positions,^[70] but President Biden cancelled that plan,^[71] and the Office of Personnel Management promulgated formal rules through notice-and-comment rulemaking restricting such conversions of civil service positions into political positions.^[72] Vought's nomination suggests the second Trump administration may attempt to resurrect Schedule F.

C. Curtail the administrative state.

Musk and Ramaswamy have said they plan to eliminate approximately 75 percent of federal agencies, in part by consolidating duplicative and miscellaneous agencies into larger agencies.^[73] Musk and Ramaswamy also seek to halt enforcement of and eventually repeal regulations based on the logic of the Supreme Court opinions of *West Virginia v. EPA*,^[74]—which approved the major questions doctrine that Congress does not implicitly authorize agencies to decide questions of vast economic and political significance—and *Loper Bright Enterprises v. Raimondo*^[75]—which overturned *Chevron* deference to agency interpretations of ambiguous statutes. Musk and Ramaswamy interpret these cases to suggest that “a plethora of current federal regulations exceed the authority Congress has granted under the law.”^[76]

To achieve these goals, DOGE may have to overcome a number of legal obstacles. For example, agencies generally must go through notice-and-comment rulemaking to amend or revoke rules.^[77] Musk and Ramaswamy have suggested that Trump may be able to revoke some rules unilaterally through executive order,^[78] but it remains to be seen whether an agency acting on such orders would be acting arbitrarily and capriciously or otherwise in violation of the APA. More information regarding how Trump can pause agency rules that have not yet been finalized can be found in this [Gibson Dunn Client Alert](#).

In addition, Musk and Ramaswamy also have suggested that Trump could direct agencies not to enforce regulations that the administration disfavors or believes are unlawful in light of recent Supreme Court precedent.^[79]

i. Potential DOGE targets.

Musk and Ramaswamy have singled out many agencies as targets for consolidation and/or elimination. The Consumer Financial Protection Bureau (CFPB) is one such target: on November 27, 2024, Musk posted on X, “Delete CFPB. There are too many duplicative regulatory agencies.”^[80] The Department of Education is another target: in response to a question regarding the Department of Education, Ramaswamy stated that he expects “certain agencies to be deleted outright.”^[81] Musk is also expected to target agencies like the Federal Trade Commission, Securities and Exchange Commission, and Department of Justice for reductions.^[82]

Additionally, agencies that appear on the GAO's High Risk List, which identifies agencies and programs that have significant potential for waste, fraud, or abuse, may be targets for consolidation or elimination.^[83] The president's authority to delegate and reorganize such

agencies and programs, however, is constrained by statute.^[84] Accordingly, significant agency reorganizations likely will require legislative action.^[85]

D. Other objectives.

Lastly, DOGE plans to increase the use of AI and software within government more broadly and to reform the tax payment process by developing a free tax filing app.^[86]

IV. Who in Congress intends to work with DOGE?

DOGE will have to partner with Congress and federal agencies to effect many of its plans, although Trump likely will be able to implement some of its recommendations via executive action. Even without direct implementation authority, however, DOGE's recommendations are likely to get sympathetic hearings from Trump's political appointees in the agencies.

Numerous Republican members of Congress, and some Democratic members, have expressed enthusiasm for some or all of DOGE's objectives and are forming entities within both the House and the Senate to partner with DOGE. The House Committee on Oversight and Reform has announced that it is forming a Delivering on Government Efficiency ("DOGE") subcommittee, chaired by Rep. Marjorie Taylor Greene (R-GA).^[87] This subcommittee will, among other things, examine the "salaries and status of members of the federal civil service and intergovernmental personnel."^[88]

Rep. Aaron Bean (R-FL) has launched a new congressional caucus aimed at working with DOGE, which he will co-chair with Rep. Pete Sessions (R-FL).^[89] Democratic Congressman Rep. Jared Moskowitz (D-FL) has joined the caucus and it is reported other Democrats also may join.^[90]

The Senate DOGE caucus is led by Senator Joni Ernst (R-IA.), and it will lead the Senate's partnership with DOGE.^[91] Other caucus members include Senators John Cornyn (R-TX), Ted Budd (R-NC), Mike Lee (R-UT), Rick Scott (R-FL), Roger Marshall (R-KS), and James Lankford (R-OK). Sen. Ernst has already met with Ramaswamy to share suggestions for spending cuts, including consolidating government office space and reducing payments to the United Nations,^[92] as well as reducing government telework.^[93] Senator Bernie Sanders (I-VT) has said he will not join the caucus but that he intends to work with DOGE to go after waste specifically within the Department of Defense.^[94]

V. How will DOGE engage with the public?

DOGE currently is engaging with the public via posts on its X account and posts on Elon Musk's X account. Musk has also suggested that DOGE will be open to suggestions and feedback, saying that "[a]nytime the public thinks we are cutting something important or not cutting something wasteful, just let us know!"^[95] The House DOGE caucus has launched a tipline to receive public input, but it is unclear whether and how that will be communicated to DOGE itself.^[96] Additionally, Ramaswamy has announced that he and Musk will host a podcast ("DOGEcast") that will provide the public with updates on DOGE.^[97]

VI. How can businesses prepare for DOGE?

DOGE promises to be disruptive, but businesses can prepare to make the most of the situation by gathering information, advocating for their interests, and—if necessary—by being prepared to litigate. Specifically, businesses should consider whether and how best to:

- Identify regulations, programs, and contracts that (a) affect its business or its competitors and (b) may be targets for DOGE. This can include monitoring Musk, Ramaswamy, and DOGE's public statements and, if necessary, making FOIA requests.
- Advocate for their interests directly to DOGE. For example, consider proactive engagement on a particular contract that appears to be a focus of DOGE. In addition to more traditional forms of advocacy, it appears that DOGE may be unusually open to online and public advocacy.
- Develop relationships with members of Congress and administration officials who work with and can influence DOGE. DOGE is likely to work closely with allies on the Hill and in executive branch agencies and it could be prudent to communicate with those allies in addition to DOGE.
- Consider leveraging DOGE's work by challenging burdensome regulations in court, especially where the major questions doctrine or *Loper Bright* could apply. In light of recent Supreme Court decisions, even longstanding regulations might be susceptible to such a challenge.^[98] In addition to potentially winning vacatur of the regulation, litigation might have the added benefit of bringing strong arguments against the regulation to DOGE's and the agency's attention.

VII. Conclusion.

The coming days will yield some answers to the questions posed here about DOGE. Gibson Dunn will be monitoring those developments closely, and our attorneys are available to assist clients as they navigate these challenges and opportunities that DOGE's recommendations may present.

The endnotes referenced in this update are available on Gibson Dunn's website. Please click on a particular footnote above to view details or view the full alert at the link below.

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