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Republicans Move on Financial Deregulation; Fed Finalizes Stress Test Guidance

Article By:

Legislative Activity

President Trump Orders Review of Financial Regulations

Last Friday, February 3, ***President Trump*** issued an Executive Order related to financial services regulatory reform (generally) and an Executive Memorandum specifically targeting the ***Department of Labor's (DOL)*** Fiduciary Rule. The Executive Order on Core Principles for Regulating the United States Financial System directs the Secretary of the Treasury to consult with the other Financial Stability Oversight Council (FSOC) member agencies (CFTC, CFPB, FDIC, FHFA, Federal Reserve Board, NCUA, OCC, and SEC) and to report to the president within 120 days (June 3, 2017) on the extent to which existing laws, regulations, and guidance promote the following "Core Principles":

- Empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;
- Prevent taxpayer-funded bailouts;
- Foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry;
- Enable American companies to be competitive with foreign firms in domestic and foreign markets;
- Advance American interests in international financial regulatory negotiations and meetings;
- Make regulation efficient, effective, and appropriately tailored; and
- Restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.

The report must:

- Assess whether existing laws, treaties, regulations, guidance, reporting and recordkeeping requirements, and other government policies promote the Core Principles;
- Identify what actions have been taken or are being taken to promote and support the Core Principles; and
- Identify any laws, treaties, regulations, guidance, reporting and recordkeeping requirements, and other government policies that inhibit federal regulation of the U.S. financial system in a manner consistent with the Core Principles.

The first report is due June 3, 2017, and the Executive Order calls for subsequent periodic reports.

As for the Fiduciary Rule, President Trump signed an Executive Memorandum (Memorandum) instructing DOL to examine the rule in order to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice. The Fiduciary Rule, which is set to take effect on April 10, 2017, requires financial advisers to act exclusively in their clients' best financial interest when offering retirement advice.

The Memorandum calls for DOL to conduct a legal and economic review concerning the likely impact of the Fiduciary Rule. The review shall consider, among other things, the following:

- Whether the anticipated applicability of the rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;
- Whether the anticipated applicability of the rule has resulted in "dislocations or disruptions" within the retirement services industry that may adversely affect investors or retirees; and
- Whether the rule is likely to cause an increase in litigation and an increase in the prices that investors and retirees must pay to gain access to retirement services.

If DOL makes an affirmative determination on any of the above provisions, then the Memorandum instructs DOL to rescind or revise the rule. Additionally, DOL is instructed to rescind or revise the rule if it concludes "for any other reason" that the rule is inconsistent with the Trump Administration priority to "empower Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home and paying for college, and to withstand unexpected financial emergencies."

Not unexpectedly, Congressional Republicans praised the Trump Administration's moves. Of particular note, Senate Banking Committee Chairman Mike Crapo (R-ID) applauded the reform efforts, emphasizing that "financial regulators should review all rules and regulations in an effort to minimize unnecessary burdens on our financial institutions and promote economic growth, while ensuring the safety and soundness of the financial system." Similarly, House Financial Services Committee Chairman Jeb Hensarling (R-TX) supported the President's actions, stating that the Executive Order on regulatory reform "closely mirrors provisions that are found in the Financial CHOICE Act to end Wall Street bailouts, end 'too big to fail,' and end top-down regulations that make it harder for our economy to grow and for hardworking Americans to achieve financial independence."

Democrats, however, have come out in strong opposition to the Administration's efforts and are no doubt going to oppose any actions that would be seen as undermining financial regulation.

House Financial Services Committee Opens with Partisan Debate; Committee Democrats Get Subcommittee Posts

Last Thursday, the House Financial Services Committee held an organizational meeting to approve the Committee's rules for the 115th Congress and welcome the Committee's new members. Chairman Hensarling urged his fellow lawmakers to act in a bipartisan way; however, the hearing proved to be a partisan debate over the Committee's rules. Ranking Member Maxine Waters (D-CA) and other Committee Democrats introduced several amendments aimed at increasing transparency and preventing conflicts of interest within the Committee. While all of the amendments were voted down, the contentious debate provided a glimpse into what may be in store for the Committee this Congress.

Separately, Ranking Member Waters announced subcommittee assignments for Democrats. Rep. Daniel Kildee (D-MI) will serve as the Committee's Vice-Ranking Member.

This Week's Hearings:

- On Tuesday, February 7, the House Financial Services Committee has scheduled a meeting to approve the Committee's Authorization and Oversight Plan.

Regulatory Activity

SEC May Reconsider Conflict Minerals Rule; Congress Votes to Repeal SEC's Resource Extraction Rule

Last week, Acting Chairman of the Securities and Exchange Commission (SEC) Michael Piwowar asked the agency to reconsider its public guidance for implementing a rule that requires companies to disclose information about how they extract conflict minerals in Africa. He requested that the public provide comment about the guidance the SEC issued in 2014 for its conflict minerals rule, which has been long opposed by Republicans.

Separately, the House and Senate voted last week to repeal a Dodd-Frank-required rule related to resources extraction by oil, gas, and mining companies. After the House voted in favor of the rule's repeal, the Senate approved a resolution eliminating the "resource extraction" rule, which requires certain companies to publicly state the taxes and other fees they pay to governments. President Trump is expected to sign the bill providing for repeal of the law.

Federal Reserve Finalizes Stress Test Rules, Faces Criticism Over Basel Participation

Last week, the Federal Reserve finalized a rule aimed at simplifying the stress test process for banks with less than $250 billion in assets. The rule applies to banks with assets between $50 and $250 billion and average total nonbank assets of less than $75 billion. Pursuant to the rule, the Federal Reserve will no longer scrutinize those banks' risk management systems as part of the stress tests. Moreover, having an on-balance sheet foreign exposure of above $10 billion is no longer an exception to the rule.

Note too, the Federal Reserve continues to receive criticism from Congressional Republicans. In fact, last week, Vice Chairman of the House Financial Services Committee Patrick McHenry (R-NC) called on the Federal Reserve to unilaterally disengage its work with the Financial Stability Board and Basel Committee on Banking Supervision until President Trump has installed his nominees on the Federal Reserve Board of Governors. Specifically, Rep. McHenry sent a letter to Federal Reserve Chair Janet Yellen noting that continued participation in those international standard setting forums is “predicated on achieving the objectives set by the new Administration,” thus the Federal Reserve “must cease all attempts to negotiate binding standards burdening American business until President Trump has had an opportunity to nominate and appoint officials that prioritize America’s best interests.”

Patrick Kirby is co-author of this article.

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