

## **Banking and Finance Law Daily Wrap Up, OVERSIGHT AND INVESTIGATION—House Committee Chairs guard against potential ‘midnight rulemaking’ by Trump Administration, (Nov. 17, 2020)**

Banking and Finance Law Daily Wrap Up

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By [Thomas G. Wolfe, J.D.](#).

In letters to three federal agencies, Democratic leaders Jerrold Nadler and Carolyn Maloney express their concerns about possible "last-minute" roll-backs of consumer protections by the outgoing administration.

House Judiciary Committee Chairman Jerrold Nadler (D-NY) and House Oversight and Reform Committee Chairwoman Carolyn Maloney (D-NY) have jointly transmitted letters to the Office of Management and Budget (OMB) and the Office of Information and Regulatory Affairs (OIRA), [expressing](#) their concerns about a "potential last-minute roll-back of protections by the outgoing Trump Administration," and urging the OMB and OIRA to instruct executive branch agencies not to engage in "midnight rulemaking." Concerned about new rules possibly being "rushed through without providing Congress adequate time to review" them, Nadler and Maloney also have submitted a letter to the Government Accountability Office (GAO), requesting that the GAO "carefully monitor agency activity during this transition period to ensure that all rules issued during the final months of the Trump Administration comply with the CRA [Congressional Review Act]," which requires federal agencies to submit reports of new rules to Congress before the rules may take effect.

Maloney and Nadler refer to a 2018 GAO study finding that during pertinent transition periods for prior presidential administrations in 2000, 2008, and 2016, about 25 percent of "economically significant rules did not comply with the procedural requirements of the CRA." According to the two committee chairs, the failure of federal agencies to comply with the CRA has made it more difficult for Congress "to exercise its oversight role under CRA," and can "potentially create legal uncertainty for agencies and regulated parties."

**Letter to OMB, OIRA.** In their Nov. 16, 2020, letter to the OMB and OIRA, Nadler and Maloney note that the Congressional Research Service has explained that during presidential transitions—when control of the executive branch shifts—"agencies may have an increased incentive to engage in 'midnight rulemaking' in order to implement policies before the end of the president's term." Accordingly, the legislators [request](#) that the OMB and OIRA "immediately instruct agencies to avoid promulgating midnight rules" and "ensure that before any rule is finalized between now and Jan. 20, 2021, it meets all legal requirements, including a notice and comment process." This approach also encourages the federal agencies to focus their efforts on responding to "the ongoing national public health emergency and economic recovery," Nadler and Maloney maintain.

**Letter to GAO.** Similarly, in their Nov. 16, 2020, letter to the GAO, Maloney and Nadler [urge](#) the GAO to "closely monitor federal agencies for potential last-minute roll-backs" of various consumer protections "by the outgoing Trump Administration." Moreover, "[w]e also request that you inform our Committees of any major rules issued during this period that do not fully comply with the requirements of the CRA," the Democratic congressional leaders state.

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