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Trump era heralds prospective changes to Dodd-Frank

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Just as the banks were getting used to the Dodd-Frank Act and the attendant regulatory and compliance costs, the coming administration of President-elect Donald J. Trump adds an additional layer of uncertainty and likely change. How far those changes will go cannot be determined at this time, but we can predict some of the changes we are likely to see in connection with the Consumer Financial Protection Bureau and the Consumer Financial Protection Act.

During his campaign, Trump vowed to stop new banking regulations and indicated he believed the regulatory environment for banks was unduly stifling. He likely was speaking about regulations that put limits on banks' ability to lend, but he could just as easily been referring to some of the more nuanced portions of the CFPA or changes to existing legislation brought about by the CFPB—such as the "ability to repay" rules and more fulsome "know before you owe" disclosures—or to the plight of smaller community banks without the resources to respond quickly to edicts from the CFPB. To be sure, Trump's complaints are not new: the broad-brush criticism of Dodd-Frank has come from banks for the past five years. But without the power to repeal Dodd-Frank, the banks have, in many respects, simply absorbed higher compliance costs. While banks argued that Dodd-Frank actually stifled growth by making it harder for banks to lend money, they also found ways to cope.

Remodeled or eradicated?

While candidate Trump hinted he would repeal Dodd-Frank, wholesale eradication might be difficult to undertake. More likely is the scenario in which portions of the law are remodeled, potentially with bipartisan input, rather than eliminated. This would preserve many of the benefits of the legislation while avoiding some of the issues that led to the need for the reforms. For example, one of the likely benefits of Dodd-Frank was to consolidate rulemaking, enforcement, and regulatory authority over a number of different enumerated consumer protection laws (Truth in Lending Act, Real Estate Settlement Procedures Act, Federal Debt Collection Protection Act, etc.) that previously were governed by different agencies. Wholesale repeal of Dodd-Frank would send control of those laws back to the various agencies that previously had responsibility for them, and this could lead to the same maelstrom that was in place before Dodd-Frank. Consumers and those who provide financial services likely benefit from having the consumer protection laws under a single umbrella.

Editor's Note: The CFPB Watch provides Commentary and Analysis on developments relating to consumer financial protection issues involving the regulatory authority of the Consumer Financial Protection Bureau or related topics.

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A different kind of fix

Instead of wholesale repeal, it is likely the CFPB will remain conceptually intact with some important structural changes. For example, it is not likely that the CFPB will continue to be led by a single decision-maker. But President-elect Trump and his administration will not be able to take all the credit for this change. A month prior to the election, in a landmark decision, the United States Court of Appeals for the District of Columbia ruled that the CFPB is "unconstitutionally structured" because the bureau is headed by a "single, unaccountable, unchecked Director." The decision in *PHH Corporation, et al. v. Consumer Financial Protection Bureau*, Case No. 15-1177, (DC Cir. Oct. 11, 2016) concluded that the present structure—with concentration of power in a single individual—cannot legally be maintained. While the decision is being challenged—the CFPB has requested a rehearing—it is likely that Congress and the new president will push to see that CFPB Director Richard Cordray is pushed out and some form of oversight panel is brought in.

Further, we are likely to see a push for some Congressional budgetary oversight of the CFPB. At present, the CFPB's budget comes from the Federal Reserve Board, not from Congress, and while the budget presently is subject to certain caps, Congressional oversight of the CFPB's budget would give greater comfort to the Republicans, if only in a symbolic way.

Time will tell

It is premature to predict how Dodd-Frank, the CFPA, and the CFPB will fare in the Trump administration. However, while it seems like some change is inevitable, it may be impractical for a new administration to carry out sweeping changes, even if they were election promises. Congress can add to its long "to do" list finding the right balance between campaign rhetoric and political reality. Unlike election results, this won't happen overnight.

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