

SPECIAL ALERT: PRESIDENT SIGNS EXECUTIVE ORDER CALLING FOR REVIEW OF FINANCIAL REGULATIONS

On February 3, President Trump signed an [executive order](#) (the Executive Order) directing the Treasury Secretary and the heads of the member agencies of the Financial Stability Oversight Council (FSOC) to review financial laws and regulations—including the Dodd-Frank Act and regulations implementing that law—thereby setting into motion a process by which the 2010 financial law could be significantly scaled back.

Under the Executive Order, the Secretary of the Treasury – who has yet to be confirmed – has 120 days to review and report to the President which existing laws, treaties, regulations, guidance, reporting and recordkeeping requirements promote the “core principles” listed below and those that do not. The core principles include:

- restoring public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework
- fostering 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
- enabling American companies to be competitive with foreign firms in domestic and foreign markets
- advancing American interests in international financial regulatory negotiations and meetings
- preventing taxpayer-funded bailouts, and
- empowering Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth

Whereas the President’s “Two for One” executive order from earlier in the week applied to initiatives of executive departments and agencies, but not to independent agencies, this Executive Order is sufficiently broad to mandate a review of any law or rule in the government that touches on the “United States financial system.”

To execute on the Executive Order, it is expected that the Treasury Secretary will direct the FSOC member agencies (which include, among others, the Federal Reserve Board, the OCC, the CFPB, the SEC, the FDIC, the CFTC, the FHFA, and the NCUA) to identify Dodd-Frank-related and other rules that, in the view of the Administration, have created disproportionate compliance costs and, therefore, negatively impacted banks’ ability to lend. Importantly, the Executive Order requires only that the Treasury Secretary “consult” with the heads of the FSOC agencies (including CFPB Director Cordray), thereby empowering the Secretary to include in his report any and all rules that may conflict with the core principles, even if FSOC members dissent. In fact, the very existence of FSOC could be on the table for consideration.

However, because the President and the Treasury Secretary have limited authority over independent agencies such as the CFPB, it appears that their voluntary cooperation would be necessary to implement the Secretary's findings and recommendations. Furthermore, while the independent agencies could initiate rulemakings to amend existing Dodd-Frank regulations in order to reduce the burden of compliance on industry and the economy, because so much of those rulemakings were specifically directed by Congress in the Dodd-Frank Act, wholesale elimination may not be possible without legislation amending the act itself.

Nevertheless, it is expected that this report will result in recommendations to challenge the creation and funding of the CFPB and the array of federal consumer financial laws that it implements and enforces.

Examples of major financial regulatory initiatives undertaken by the CFPB since its inception that could be placed under the microscope include: the Ability-to-Repay and Qualified Mortgage Rule, the Qualified Residential Mortgage Rule, the TILA-RESPA integrated mortgage disclosure rule (TRID), the mortgage servicing rules under TILA and RESPA, and even the Bureau's unfair, deceptive and abusive acts and practices authority.

Further, the Executive Order's focus on the core principle of American competitiveness in a global market may require a cost-benefit analysis of the gold-plating of the Basel capital requirements for the largest US banks, and the Executive Order's call to prevent taxpayer-funded bailouts could prompt a reassessment of the utility of the "Volcker Rule" and the "Systemically Important Financial Institution" designation threshold. Finally, the Administration has signaled its intent to move Fannie Mae and Freddie Mac out of government conservatorship and allow them to recapitalize and re-enter the private market – which, after consulting with the FSOC under this Executive Order, the Administration may choose to implement unilaterally.

If you have questions about the order or other related issues, visit our [Consumer Financial Protection Bureau practice](#) for more information, or contact a BuckleySandler attorney with whom you have worked in the past.