Financial Regulatory Relief: Approaches for Congress, Regulators, and the Administration

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June 14, 2017

Congressional Research Service
7-....
www.crs.gov
R44869

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The 2007-2009 financial crisis led to significant changes in financial regulation, but critics argue that the burden these changes have imposed now exceeds their benefits. Congress and the Administration are considering financial regulatory relief from various postcrisis regulatory changes, including the Dodd-Frank Act (P.L. 111-203). This report provides an overview of the options available to pursue that goal.

Approaches for Congress

Congress can mandate that regulators provide relief through legislation. Most relief legislation likely would follow the normal legislative process. For example, H.R. 10, a wide-ranging regulatory relief package, was passed by the House on June 8, 2017. Two special legislative procedures may be available in limited circumstances, however.

- The **Congressional Review Act** (CRA, 5 U.S.C. §§801-808) provides expedited procedures for Congress to overturn recently promulgated regulations. To date, the 115th Congress has used the CRA to overturn one Dodd-Frank Act rulemaking (disclosure requirements for resource-extraction firms).
- The **reconciliation process** provides for expedited consideration in the Senate, but is intended to be limited to provisions intended to change direct spending or revenues. Only a few of the funding provisions affecting financial regulators might meet these criteria.

Approaches for Financial Regulators

The vast majority of postcrisis regulatory reforms have been issued by independent financial regulators, not the Administration. In theory, the regulators issuing any regulation could issue new regulations modifying or repealing the original, provided they have authority under the authorizing statute to do so. But to overturn a final rule that has already been promulgated, regulators must initiate new rulemaking following the standard process, generally including notice and comment procedures. In addition, applying a regulation involves judgment by regulators. Regulators can alter how a regulation is interpreted and enforced using their supervisory (e.g., regulatory guidance and supervisory letters) and enforcement powers. Until new leadership is appointed, regulators may have little desire to revisit regulations that they have issued recently under current or previous leadership.

Approaches for the Administration

On February, 3, 2017, President Trump signed an executive order to "identify any laws, treaties, regulations, [and] guidance ... that inhibit Federal regulation of the United States financial system in a manner consistent with the Core Principles." One of the core principles is to "make regulation efficient, effective, and appropriately tailored." The order does not revise or repeal any specific regulation, which can be done administratively only through the standard rulemaking process. Because financial regulators are independent regulatory agencies, they cannot be compelled to comply with executive orders governing certain aspects of the rulemaking process.

The Treasury Secretary has the opportunity to influence regulatory priorities through his position as chair of the Financial Stability Oversight Council (FSOC), a council made up predominantly of the federal financial regulators. FSOC has limited rulemaking authority, however. It can make recommendations to member agencies, but it cannot compel agencies to follow those recommendations. FSOC's most notable rulemaking authority is its ability to designate nonbank financial institutions as systemically important (SIFIs).

One notable regulation issued by the previous Administration—as opposed to by an independent regulatory agency—was the Department of Labor's (DOL's) *fiduciary rul*e, which requires a uniform fiduciary standard for registered broker-dealers and investment advisers when giving financial advice on retirement accounts. On February 3, 2017, President Trump issued a presidential memorandum directing the DOL to rescind or revise the rule if it "adversely affect(s) the ability of Americans to gain access to retirement information and financial advice."

All the leadership positions at the financial regulators have fixed terms and are appointed by the President following Senate confirmation. Although most of these individuals may be removed only "for cause," over time, these positions will become vacant, allowing President Trump to nominate candidates to fill most, if not all, of them. At present, President Trump has filled the chair of the Securities and Exchange Commission (SEC), while several other positions are vacant, including the chairs of the Office of the Comptroller of the Currency (OCC) and the Commodity Futures Trading Commission (CFTC). Most, but not all, multimember boards or commissions have statutory political affiliation requirements that give the President's party a majority of seats but limit the number of seats that one party can hold.

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Introduction

Financial regulatory relief has been identified as a policy priority by President Donald Trump—who has reportedly called for the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) to be "dismantled"[1]—and by some Members of the 115th Congress. This report does not discuss the content of current financial regulatory policy or proposals to provide relief from those policies. Instead, it provides a framework for understanding how relief might be pursued, which could be useful to proponents and opponents of such relief. It discusses the sources of policy changes following the 2007-2009 financial crisis that have been the focus of recent relief efforts and outlines the different legislative strategies available to Congress. In addition, the report addresses what regulators and the Administration could do to provide relief without statutory change, to clarify where legislative action would or would not be necessary.

Sources of Postcrisis Financial Reforms

Many financial reforms were adopted in response to the 2007-2009 financial crisis. Reforms aimed to address problems that emerged during the crisis, such as financial instability and inadequate protection for consumers and investors. Critics argue that these reforms went too far and that the burden of financial regulation now exceeds the benefits. The financial reforms at the center of the current debate primarily stem from legislation enacted since 2008, international agreements, and preexisting authority of the financial regulators.

Recent Statutory Changes

The largest source of postcrisis reform was the Dodd-Frank Act of 2010, wide-ranging legislation that made regulatory changes across the financial system, including to the regulation of derivatives, banks, consumer and investor protection, systemic risk, and mortgages.[2] Hundreds of regulations promulgated by regulators since the Dodd-Frank Act's passage are pursuant to new authority granted by the act. According to the Government Accountability Office, regulators had issued final rules for about 75% of rulemaking requirements in the act as of the end of 2016.[3]

Recent Congresses have debated legislation to amend the Dodd-Frank Act.[4] Several bills have been enacted in past Congresses that make minor changes to the act,[5] but no bills that make more fundamental changes have been enacted to date.

Other, more narrowly targeted, postcrisis regulatory changes stem from various acts, including the following:

[1] Glenn Thrush, "Trump Vows to Dismantle Dodd-Frank 'Disaster'," *New York Times*, January 30, 2017, at https://www.nytimes.com/2017/01/30/us/politics/trump-dodd-frank-regulations.html?_r=0.

[2] For more information, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by (name redacted)

[3] Government Accountability Office (GAO), *Dodd-Frank Regulations*, GAO-17-188, December 29, 2016, at https://www.gao.gov/products/GAO-17-188.

[4] See, for example, CRS Report R44631, *The Financial CHOICE Act in the 114th Congress: Policy Issues*, coordinated by (name redacted) .

[5] For more detail, see the Appendix of CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by (name redacted)

- The Housing and Economic Recovery Act (HERA; P.L. 110-289), which created the Federal Housing Finance Agency (FHFA) with enhanced powers to regulate the housing government-sponsored enterprises (Fannie Mae, Freddie Mac, and the Federal Home Loan Banks). Fannie Mae and Freddie Mac have remained in FHFA conservatorship since September 2008 under the powers provided by HERA. HERA also set licensing standards for mortgage loan originators.[6]
- The Credit Card Accountability Responsibility and Disclosure Act (P.L. 111-24), which required new consumer protections for credit card users.[7]

International Agreements[8]

Other recent regulatory changes implemented by U.S. regulators stem from principles agreed to multilaterally through international fora. The overall agenda-setting for international financial cooperation and coordination is most associated with the Group of 20 (G-20) and the Financial Stability Board (FSB).[9] The G-20 is an informal grouping of 19 major economies (including the United States) and the European Union; since 2009, the G-20 has been the primary political steering forum for international economic cooperation. The FSB is a technical body, which was established by the G-20 to coordinate the G-20 agenda and set the priorities for the international financial standard-setting process. FSB members include the regulators from the G-20 countries (and others), as well as several international financial institutions and international standard-setting bodies, such as the Basel Committee on Bank Supervision, the International Association of Insurance Supervisors (IAIS), and the International Organization of Securities Commissions (IOSCO).

As illustrated in **Figure 1**, national financial authorities are the primary actors responsible for devising rules and providing oversight and supervision of financial institutions operating under their jurisdiction. National financial authorities also are responsible for participating in the international standard-setting bodies. The international agenda and standard-setting bodies operate on a consensual basis and have no legally binding authority. Because national regulators (or other authorities) cannot enter into treaties with other countries, agreements made at international fora or by regulators at standard-setting bodies require domestic legislative or regulatory changes before they are implemented. Many of the primary postcrisis reform initiatives of the FSB closely match parts of the Dodd-Frank Act. International financial institutions, primarily the International Monetary Fund, provide overall monitoring of national compliance with the agreed-upon international financial standards, among other functions.

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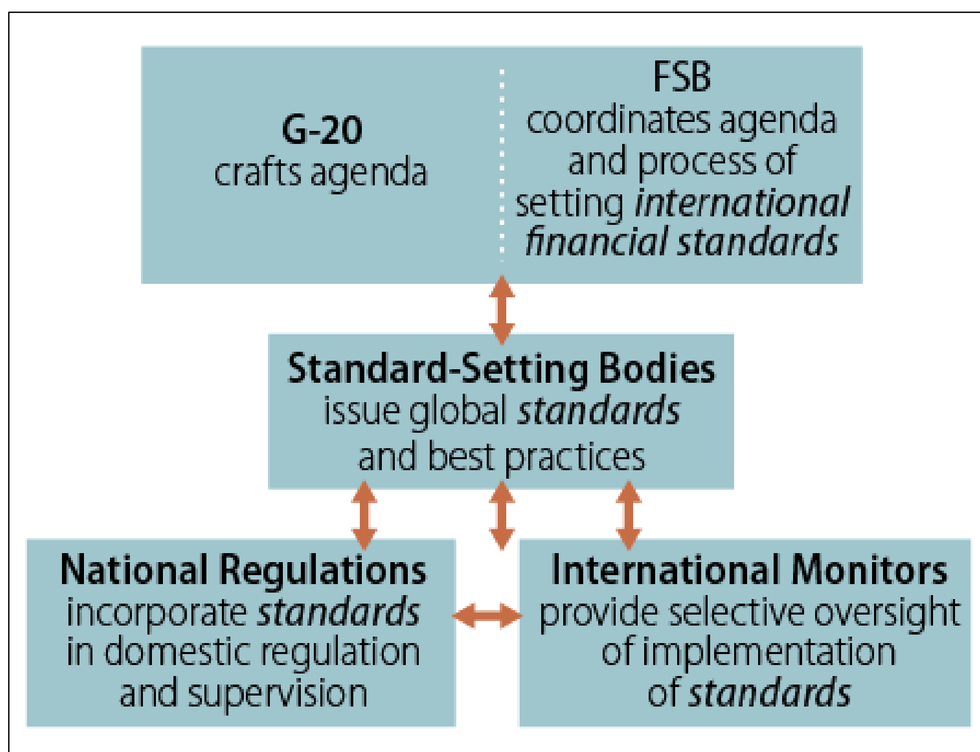
[6] For more information, see CRS Report RL34623, *Housing and Economic Recovery Act of 2008*, coordinated by (na me redacted)

[7] For more information, see CRS Report R43364, *Recent Trends in Consumer Retail Payment Services Delivered by Depository Institutions*, by (name redacted).

[8] Adapted from CRS In Focus IF10129, *Introduction to Financial Services: International Supervision*, by (name reda cted) .

[9] For more information, see CRS Report R40977, *The G-20 and International Economic Cooperation: Background and Implications for Congress*, by (name redacted) .

Figure 1. International Financial Architecture



Source: Congressional Research Service (CRS).

Notes: G-20 = Group of 20; FSB = Financial Stability Board.

For banks, an important source of new and revised prudential regulatory standards is the multilateral Basel III accords, a nonbinding international agreement to harmonize banking regulation, such as capital requirements. U.S. banking regulators promulgated new regulations to comply with the standards set out in Basel III.[10] For globally active financial institutions, the FSB, in coordination with the Basel Committee and IAIS, respectively, designates firms as global systemically important banks (G-SIBs) and global systemically important insurers. U.S. bank regulators have tailored some heightened regulatory standards to apply only to G-SIBs. Some regulatory changes for securities, derivatives, and insurance markets have implemented international attempts to set standards and harmonize policies through IOSCO and IAIS.

Standing Authority

Financial regulators have broad discretionary standing authority to achieve their mandated objectives, such as ensuring the safety and soundness of regulated financial institutions or providing consumer and investor protection. In some cases, postcrisis reforms stem from this authority rather than from recent statutory changes. For example, the Securities and Exchange Commission (SEC) used its long-standing authority to regulate money market mutual funds to set new regulatory standards for those funds in response to a money market run in 2008.[11]

[10] For more information, see CRS Report R44573, *Overview of the Prudential Regulatory Framework for U.S. Banks: Basel III and the Dodd-Frank Act*, by (name redacted).

[11] For more information, see CRS Legal Sidebar WSLG1037, *Securities and Exchange Commission Issues New Money Market Rules*, by (name redacted) .

Regulatory Relief[12]

Regulatory relief in financial services refers to policy changes to reduce or eliminate regulatory requirements or the costs of complying with those requirements. This report does not discuss the content of current financial regulatory policy or proposals to provide relief from those policies. Instead, it discusses different approaches to implementing regulatory relief. Nevertheless, the following framework for evaluating relief proposals may be useful to consider before choosing between different approaches. In determining whether to provide regulatory relief, a central question is whether an appropriate trade-off has been struck between the benefits and costs of regulation.

Benefits. Financial regulation has different objectives and potential benefits, including enhancing the safety and soundness of certain institutions; protecting consumers and investors from fraud, manipulation, and discrimination; and promoting financial stability while reducing systemic risk. A financial regulatory system that delivers a baseline level of stability and trust between financial agents is a precondition to a healthy financial system that can generate robust economic growth.

Regulators employ different tools to achieve these goals. Regulators issue rules; supervise and examine institutions to verify that the rules are followed; and take enforcement actions, such as imposing fines, when the regulations are not followed. In other cases, regulators require companies or individuals to meet certain standards and receive a license before engaging in a particular business practice. The specific goals regulators attempt to achieve and the tools they use vary by market. For example, risk management is emphasized for banking regulation and disclosure is a priority in securities regulation.

Costs. The costs associated with government regulation—rulemaking, supervision, and enforcement—are frequently referred to as *regulatory burden*. Regulatory requirements often are imposed on providers of financial services, so financial institutions frequently are the focus of discussions about regulatory burden. But costs associated with regulation can flow through the providers and ultimately be borne, in part, by different entities, including consumers, the government, and the economy at large. For example, a provider may respond to increased regulatory burden by raising the prices it charges to customers. If regulatory burden reduces the long-term availability of credit, it would have a negative effect on business investment and economic growth.

Regulatory burden may manifest itself in different forms. *Operating costs* are the costs the company must bear to adhere to the regulation, such as employee training. Some regulations create one-time operating costs borne up front, whereas other regulations create recurring costs that exist as long as the requirement is in effect. *Opportunity costs* are the costs associated with foregone business opportunities because of additional regulation. For example, a lender may make fewer mortgages because new regulations make mortgage lending more expensive, and that lender may instead perform a different type of lending that is now more profitable.

Trade-Offs. Regulatory relief may face trade-offs between reducing regulatory burden and potentially reducing the benefits of regulation. The trade-offs are not limited to the effects on the direct recipients of relief—usually the providers of financial services—but may extend to the effects on consumers, investors, particular markets, and market stability more broadly.

[12] Adapted from CRS In Focus IF10162, *Introduction to Financial Services: "Regulatory Relief"*, by (name redacted)

The presence of regulatory burden does not necessarily mean that a regulation is undesirable or should be repealed. A regulation can have benefits that could outweigh its costs, but the presence of costs means, tautologically, that the regulation causes regulatory burden. The concept of regulatory burden can be contrasted with the phrase *unduly burdensome*. Whereas regulatory burden is about the costs associated with a regulation, unduly burdensome refers to the balance between benefits and costs. For example, some would consider a regulation to be unduly burdensome if costs are in excess of benefits or the same benefits could be achieved at a lower cost. However, the presence of regulatory burden does not mean that all regulations are unduly burdensome.

Policymakers consider these trade-offs and evaluate the broader effects of regulation that could be either positive or negative, such as how a requirement would impact innovation, the price of credit, and the availability of credit. For example, efforts to protect consumers against potential actions taken by banks may drive up the cost for a bank to provide certain services and may result in that activity migrating to a less regulated part of the financial system or to foreign jurisdictions with lower regulatory standards. However, trade-offs are not always present. If regulation makes an unstable system more stable, it could reduce costs and increase the availability of credit.

Approaches for Congress

Through legislation, Congress provides financial regulators with the authority that underpins the regulations they issue. Thus, Congress can amend or repeal that authority through new legislation. Congress can pass legislation that amends or repeals specific rules or parts of the statute that those rules are based on. Congress can also instruct regulators to revisit rules, sometimes by requiring studies, in light of policy goals that Congress specifies. Alternatively, Congress may provide regulators with broad authority to provide relief at their discretion. Congress may provide relief to all financial services providers or target it to specific groups, such as small financial institutions.[13]

Regulatory relief could be enacted through the normal legislative process. For example, H.R. 10, a wide-ranging regulatory relief package, was passed by the House on June 8, 2017. Regulatory relief could also occur through the annual appropriations process. In addition, two special legislative procedures are available that Congress may use in limited circumstances—the Congressional Review Act (CRA) and the reconciliation process. These tools have advantages and disadvantages compared to the normal legislative process. The main advantage is that both require only a simple majority for approval in the Senate. The disadvantage is that many of the regulatory relief proposals under consideration would not qualify for either process, for reasons discussed below.[14]

[13] For more information, see CRS Legal Sidebar WSLG888, *How to Repeal a Rule*, by (name redacted)

[14] This advantage is highlighted in, for example, Representative Jeb Hensarling, "How We'll Stop a Rogue Agency," *Wall Street Journal*, February 9, 2017, http://financialservices.house.gov/blog/?postid=401497; Senator Patrick Toomey, "Reform Dodd-Frank with a Simple Majority If Necessary," *press release*, December 8, 2016, at https://www.toomey.senate.gov/?p=news&id=1856.

Congressional Review Act[15]

The CRA is an oversight tool that Congress can use to invalidate a final rule issued by a federal agency.[16] The CRA provides Congress with a special set of expedited parliamentary procedures, which Congress may use to consider legislation that strikes down agency rules it opposes. These "fast-track" parliamentary procedures, which are available primarily in the Senate, limit debate and amendment on a joint resolution disapproving a rule and ensure that a simple majority can reach a final up-or-down vote on the measure.

Members of Congress have specified time periods in which to submit and act on a joint resolution of disapproval invalidating a rule. If both houses agree to such a joint resolution, it is sent to the President for his signature or veto. If a CRA joint resolution of disapproval is enacted, either by being signed by the President or by being enacted over his veto, the agency final rule in question "shall not take effect (or continue)."[17] The CRA also provides that if a joint resolution of disapproval is enacted, a new rule may not be issued in "substantially the same form" as the disapproved rule unless the rule is specifically authorized by a subsequent law.[18] The CRA prohibits judicial review of any "determination, finding, action, or omission under" the act.[19]

Before the 115th Congress, the CRA mechanism had successfully overturned one agency final rule: a 2000 Occupational Safety and Health Administration rule related to workplace ergonomics standards. Through May 25, 2017, the CRA has been used to successfully overturn 14 rules in the 115th Congress.

Of the 14, one rule was issued by financial regulators—the SEC's resource extraction rule, which had a resolution of disapproval signed into law as P.L. 115-4. The rule, implementing a provision of the Dodd-Frank Act, required companies that are "resource extraction issuers to include in an annual report information relating to any payment made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer, to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals."[20]

The 115th Congress initially focused on using CRA to overturn rules issued by the previous Administration, which was possible only until a May 2017 deadline. Some Members of Congress may nevertheless still be interested in using CRA to overturn financial regulations issued in the future, particularly those issued by financial regulators headed by leaders appointed by the previous Administration.

The 115th Congress has considered changes to the CRA to make it easier to overturn rules. On January 4, 2017, the House passed the Midnight Rules Relief Act (H.R. 21), which would make it easier for a new Congress to disapprove multiple rules issued in the final months of an outgoing

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[15] Adapted from "Congressional Review Act," by Christopher Davis, in CRS Report R44839, *The Financial CHOICE Act in the 115th Congress: Selected Policy Issues*, by (name redacted) et al.

[16] The Congressional Review Act (CRA) was enacted on March 29, 1996, as part of the Small Business Regulatory Enforcement Fairness Act (Title II of P.L. 104-121, 110 stat. 868). The CRA is codified at 5 U.S.C. §§801-808. For more information on the CRA, see CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by (name redacted) and (name redacted) .

[17] 5 U.S.C. §801(b)(1).

[18] For a discussion of the "substantially the same" phrase in the CRA, see CRS Insight IN10660, *What Is the Effect of Enacting a Congressional Review Act Resolution of Disapproval?*, by (name redacted).

[19] 5 U.S.C. §805.

[20] Securities and Exchange Commission, "Disclosure of Payments by Resource Extraction Issuers," 81 *Federal Register* 49360, *July 27, 2016,* RIN 3235-AL53, p. 1, at https://www.sec.gov/rules/final/2016/34-78167.pdf.

administration.[21] On January 5, the House passed the Regulations from the Executive in Need of Scrutiny Act (REINS Act; H.R. 26), which would require Congress to vote to approve all so-called major rules before they could become effective.[22]

Reconciliation Process[23]

Recently, some Members of Congress have suggested using the budget reconciliation process to pass legislation that provides regulatory relief.[24] The budget reconciliation process, however, was designed to allow Congress to use expedited procedures when considering legislation that would achieve the budgetary goals expressed in the annual budget resolution, and is thus generally restricted to changes in laws concerning direct spending, revenues, or the debt limit.

If Congress intends to use the reconciliation process, Congress must first agree on an annual budget resolution that includes reconciliation instructions to specific committees. These instructions trigger the second stage of the process by directing individual committees to develop and report legislation that would change laws within their respective jurisdictions concerning direct spending, revenue, or the debt limit. Once a specified committee develops legislation, the reconciliation legislation is eligible to be considered under expedited procedures in both the House and Senate. These expedited procedures are particularly important in the Senate, because reconciliation legislation does not require the support of three-fifths of Senators to invoke cloture in order to reach a final vote. As described below, there are restrictions as to what can be included in reconciliation.

If Congress chose to employ the budget reconciliation process, the House Financial Services Committee and the Senate Banking Committee would need to be directed to report legislation within their jurisdiction that would accomplish a specific budgetary goal over a specified time period (e.g., legislation that would reduce the deficit by $1 billion over 10 years).[25]

In general, when responding to a reconciliation instruction, committees may report any matter within their jurisdiction that would allow them to achieve their instructed budgetary goal. This leaves the directed committees with the discretion to determine the details of the legislation.

The content of reconciliation legislation, however, is restricted by the Congressional Budget Act (2 U.S.C. §644), and in particular by the *Byrd rule* (Section 313) in the Senate. Under the Byrd rule, "extraneous" material is not permitted to be included in a reconciliation measure or offered as an amendment to it. If such extraneous material is included in reconciliation legislation, or offered as an amendment to it, any Senator may raise a point of order against that material. If a point of order is raised and sustained against a legislative provision for violating the Byrd rule, the provision in question is stricken, but further consideration of the bill may proceed. If the point of order is sustained against an amendment or motion, further consideration of that amendment or

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[21] For more information, see CRS Report R42612, *Midnight Rulemaking: Background and Options for Congress*, by (name redacted).

[22] H.R. 26 would keep the CRA process the same for nonmajor agency rules.

[23] Adapted from CRS Report R40480, *Budget Reconciliation Measures Enacted Into Law: 1980-2010*, by (name red acted).

[24] See, for example, Representative Jeb Hensarling, "How We'll Stop a Rogue Agency," *Wall Street Journal*, February 9, 2017, at http://financialservices.house.gov/blog/?postid=401497; and Senator Patrick Toomey, "Reform Dodd-Frank with a Simple Majority If Necessary," *press release*, December 8, 2016, at https://www.toomey.senate.gov/?p=news&id=1856.

[25] For more information on reconciliation instructions, see CRS Report R41186, *Reconciliation Directives: Components and Enforcement*, by (name redacted) .

motion would not be in order. The Byrd rule may be waived by a vote of three-fifths of all Senators.

A provision is prohibited if it falls under one or more of the rule's six definitions of extraneous—that is, a provision is considered extraneous if

1. it does not produce a change in outlays or revenues or a change in the terms and conditions under which outlays are made or revenues are collected;[26]
2. it produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
3. it is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
4. it produces a change in outlays or revenues that is merely incidental to the nonbudgetary components of the provision;
5. it would increase the deficit for a fiscal year beyond the "budget window" covered by the reconciliation measure; or
6. it recommends changes in Social Security.

CRS does not determine whether specific legislative provisions might violate the Senate's Byrd rule (the Senate Parliamentarian and the Senate Budget Committee may provide authoritative guidance). Nevertheless, it may be useful to first examine whether a provision of interest might be projected to produce a change in outlays or revenues (or a change in the terms and conditions under which outlays are made or revenues are collected). If a provision is not projected to produce such a change, it may be considered extraneous and therefore prohibited. It should be noted, however, that even if a provision *does* have such a budgetary impact, it still might be considered extraneous if the change in outlays or revenues is considered to be merely incidental to the nonbudgetary components of the provision.

The question of what changes to financial regulation might not be projected to have a budgetary impact (and, thus, would be considered extraneous, and therefore prohibited in reconciliation) is not easily answered. This is because such legislation would typically provide regulators with a change to their mandate or authority (e.g., increasing or decreasing a regulator's responsibilities by adding or eliminating the authority to regulate a specific activity), but not include language that makes changes that would directly relate to funding. For example, legislation might make changes that increase or decrease a regulator's responsibilities (e.g., by adding or eliminating the authority to regulate a specific activity); such legislation need not include changes to regulators' budget levels because, among other reasons, all of the regulators in **Table 1** except the SEC and the CFTC set their own budgets. For any regulator that sets its own budget, it would be at the discretion of that regulator to decide whether to respond to the change in its responsibilities by increasing or decreasing its budget, respectively, or by handling its changed responsibilities within the same budget levels. If the regulator did subsequently increase or decrease its budget in response, that action might be projected beforehand to affect direct spending. If such actions were projected to have a budgetary effect, it is unclear whether that effect might nevertheless be

[26] CRS identified one provision related to financial regulation that was stricken, based on a point of order raised under the Byrd rule. In 1990, an amendment to reconciliation legislation that would have reformed Federal Deposit Insurance Corporation (FDIC) deposit insurance premiums was found to be extraneous on the grounds that it did not have a budgetary impact. See "Senate Amt. 3025," Senate Debate, *Congressional Record*, October 18, 1990, pp. 30589-30596.

considered merely incidental to the policy impact of the legislative provision and therefore in violation of the Byrd rule.[27]

Another example of proposed regulatory reform that would likely be considered extraneous is related to moving the funding for financial regulators to the annual appropriations process.[28] Such proposals typically include authorizations of appropriations for financial regulators, the funding for which subsequently would be provided by appropriations legislation. Because authorizations of appropriations do not provide budget authority, they typically are not viewed as producing a change in spending (or a change in the terms and conditions under which outlays are made or revenues are collected) and therefore may be prohibited under the Byrd rule.

It has been argued, however, that a few financial regulatory proposals might be projected to have a budgetary impact and therefore be more likely to be eligible for inclusion in reconciliation.[29] In attempting to determine what might qualify for inclusion in reconciliation, it may be helpful to examine some of the few provisions of the Dodd-Frank Act that were scored by the Congressional Budget Office (CBO) as having a budgetary impact.[30] As discussed above, many regulatory relief proposals have focused on changing parts of the Dodd-Frank Act.

- **Fees Assessed on Financial Institutions.** To finance specific new regulatory duties, the Dodd-Frank Act creates a number of new fees that CBO scored as increasing general revenues. For example, the Dodd-Frank Act assesses fees on certain large financial institutions to finance losses to the Orderly Liquidation Fund, the budget of the Office of Financial Research, and the Federal Reserve's supervisory responsibilities under Title I of the act. CBO also scored the Orderly Liquidation Fund and the Office of Financial Research's budget as increasing direct spending.
- **Changes That Affect Borrowing from Treasury.** The Dodd-Frank Act affects the ability of the Federal Deposit Insurance Corporation (FDIC) and the Securities Investor Protection Corporation to borrow from the Department of the Treasury to temporarily cover certain losses and the likelihood that those agencies would experience losses. Although these agencies must repay any Treasury borrowing, these provisions were scored as having an impact on the level of direct spending within the 10-year scoring window since repayment is not instantaneous.
- **Agency Funding Sources.** The Dodd-Frank Act requires the Federal Reserve to transfer a fixed amount of revenues to the CFPB to finance its operations.

[27] Under the Byrd rule, even if a provision *does* have such a budgetary impact, it still might be prohibited under the Byrd rule if the change in outlays or revenues is merely incidental to the nonbudgetary components of the provision. Typically, spending by a financial regulator is included as direct spending in the federal budget and is offset by offsetting receipts or collections (in the form of fees that the regulator charges) on the revenue or spending side of the budget, respectively. The Federal Reserve is one exception. Its spending is not included in the federal budget, but its remittances to the Department of the Treasury (deriving from its profits) are included on the budget as federal revenues.

[28] This proposal is included, for example, in H.R. 10.

[29] See, for example, Representative Jeb Hensarling, "How We'll Stop a Rogue Agency," *Wall Street Journal*, February 9, 2017, at http://financialservices.house.gov/blog/?postid=401497; and Senator Patrick Toomey, "Reform Dodd-Frank with a Simple Majority If Necessary," *press release*, December 8, 2016, at https://www.toomey.senate.gov/?p=news&id=1856.

[30] See Congressional Budget Office (CBO), *Cost Estimate, H.R. 4173, Dodd-Frank Wall Street Reform and Consumer Protection Act*, June 28, 2010, at https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/costestimate/hr41731.pdf.

Spending by the CFPB is recorded in the federal budget as direct spending and is dependent on the transfer under current law. Bills from previous Congresses that eliminated the Fed transfer have been scored by CBO to reduce direct spending.[31]

- **Funds Provided to Agencies Outside the Appropriations Process.** The Dodd-Frank Act allowed the SEC to deposit up to $100 million of fees in a newly created reserve fund that could be spent at the SEC's discretion. CBO scored this as increasing direct spending. Previously, the SEC's budget was provided solely through annual appropriations.

Most of these examples involve the resources available to a regulator to carry out some specified regulatory duty; changes to those resources would affect its ability to carry out that duty. Each of these examples, however, represents just one aspect of a broader policy area. Although legislative provisions related to a narrow aspect of that broad policy might be eligible on its own for inclusion in reconciliation, other changes related to that policy area might not. Because the Byrd rule applies to any specific matter within reconciliation legislation, provisions that make broad changes still might be stricken for violating the Byrd rule even if they are coupled with a change that might be eligible for inclusion. For example, in the past, the proposal to eliminate the Fed's transfer to the CFPB has been paired with broader reforms to the CFPB's budgetary status, structure, powers, and mission. If it were determined that these broader reforms had no budgetary impact, they would arguably be considered extraneous even if changes to the Fed transfer provision were considered eligible under the Byrd rule on its own.

Appropriations

Annual appropriations legislation provides Congress a regular opportunity to consider changes to financial policy. Appropriations legislation can provide funds or prohibit the use of funds to an agency in a specific policy area. More generally, Congress can change the overall level of an agency's funding, which would have implications for its capacity to perform rulemaking, supervision, and enforcement. However, the SEC and the CFTC are the only two financial regulators that are currently funded primarily through the appropriations process. In addition, appropriations bills might include "policy riders" that make policy changes to financial regulators, whether or not those agencies receive appropriations.[32]

Congress has recently included legislative language in appropriations bills that would make changes affecting agencies that do not receive appropriations. Using the Dodd-Frank Act as an example, the FY2016 Consolidated Appropriations Act (P.L. 114-113) made minor changes to the CFPB, the Orderly Liquidation Authority, and swaps regulation, and the FY2015 Consolidated

[31] See, for example, Congressional Budget Office, *CBO Estimate of Direct Spending Effects of H.R. 3193*, February 7, 2014, at https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/hr3193rules0.pdf; Congressional Budget Office, *Cost Estimate of H.R. 3519*, January 15, 2014, at https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/hr35192.pdf. These scores did not project a change in overall revenues, presumably because the reduction in the Fed transfer would be projected to be offset by higher Fed remittances to Treasury.

[32] It should be noted that some such provisions may violate House and Senate rules against "legislating on an appropriations bill." For more information, see CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by (name redacted) ; and CRS Legal Sidebar WSLG789, *2014 Omnibus Appropriations: Controlling Federal Agencies through Appropriations*, by (name redacted) ; and CRS Legal Sidebar WSLG888, *How to Repeal a Rule*, by (name redacted)

and Further Continuing Appropriations Act (P.L. 113-235) made minor changes to the swap pushout rule and rescinded funds from the SEC's reserve fund.[33]

Some recent versions of the Financial Services and General Government appropriations (FSGG) bill that have not become public law have included more significant changes to financial regulation. For example, in the 114th Congress, the FY2017 House FSGG bill (H.R. 5485) included provisions that would have eliminated the CFPB's funding source (a transfer from the Federal Reserve) and authorized appropriations for the CFPB. It also would have changed the leadership structure of the CFPB from a single head to a five-member bipartisan board and delayed implementation of a CFPB regulation on payday loans. In addition, it would have restricted the use of appropriated funds by the SEC to implement rules on conflict minerals and the pay ratio. This bill passed the House but was never taken up by the Senate. In the Senate, a comprehensive regulatory relief bill with dozens of provisions (S. 1484) was added to the FY2016 FSGG bill (S. 1910) in 2015, which was reported to the Senate.

Approaches for Financial Regulators[34]

Financial policy is implemented mainly through regulations issued by the federal financial regulators, shown in **Table 1**, not by agencies that are more directly influenced or controlled by the Administration. Although the authority for these regulations derives from statute, regulators often have considerable latitude to determine the practical details of how a regulation is structured and hence the regulatory burden it imposes. The financial regulators have been statutorily structured to be independent from the Administration, in the sense that they have greater autonomy from the President's leadership and insulation from partisan politics than is typical of executive-branch agencies. A number of organizational features found in some of these agencies, including self-funding and "for cause" (as opposed to "at will") removal, support this independence.[35]

Table 1. Federal Financial Regulators

Name (Abbreviation)	General Responsibilities
Commodity Futures Trading Commission (CFTC)	Regulation of derivatives markets
Consumer Financial Protection Bureau (CFPB)	Regulation of financial products for consumer protection
Federal Deposit Insurance Corporation (FDIC)	Provision of deposit insurance, regulation of banks, receiver for failing banks
Federal Housing Finance Agency (FHFA)	Regulation of housing government sponsored enterprises
Federal Reserve System (Fed)	Monetary policy and regulation of banks, systemically important financial institutions, and the payment system
National Credit Union Administration (NCUA)	Provision of deposit insurance, regulation of credit unions, receiver for failing credit unions
Office of the Comptroller of the Currency (OCC)	Regulation of banks

[33] For background, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by (name redacted)

[34] Adapted from CRS Legal Sidebar WSLG1697, *With the Stroke of a Pen: What Executive Branch Actions Can President-elect Trump "Undo" on Day One?*, by (name redacted)

[35] For more information, see CRS Report R43391, *Independence of Federal Financial Regulators: Structure, Funding, and Other Issues*, by (name reda cted), (name redacted), and (name redacted)

Name (Abbreviation)	General Responsibilities
Securities and Exchange Commission (SEC)	Regulation of securities markets

Source: Table compiled by CRS.

Note: For more information on the roles, duties, and responsibilities of the federal financial regulators, see CRS Report R43087, *Who Regulates Whom and How? An Overview of U.S. Financial Regulatory Policy for Banking and Securities Markets*, by (name redacted) .

In theory, a regulator could issue new regulations modifying or repealing any previously issued regulation, assuming in the case of repeal that the rule is not statutorily or judicially required to be in place. The repeal process can be time-consuming and must comply with certain mandated procedures, however. The vast majority of agency rulemakings must comply with the Administrative Procedure Act's (APA's; 5 U.S.C. §551 et seq.) notice and comment process,[36] which requires an agency to provide the public with notice of a proposed rulemaking and a meaningful opportunity to comment on the rule. The APA explicitly defines rulemaking as "the agency process for formulating, amending, or repealing a rule."[37] Under the APA, the agency must provide a reasoned justification for repealing a rule.[38]

Proposed rules can be modified more quickly and easily than final rules. Each financial regulator currently has several proposed rules that have not yet been finalized. If a rule is in the proposed stage, a regulator can more easily modify it by withdrawing the proposed rule or by republishing a modified proposed rule for public comment. Sometimes, agencies decide not to finalize proposed rules, although a key factor in such a decision would be whether the statute requires or gives regulators the discretion to act.

This discussion of an agency's *ability* to modify regulations says nothing about the financial regulators' *desire* to modify regulations. Until new leadership is appointed,[39] regulators may have little desire to revisit regulations that they have issued recently under current or previous leadership.

After a rule has been finalized, ensuring that firms comply with the regulation involves judgment by regulators. Regulators can alter how a regulation is interpreted and enforced using their supervisory and enforcement powers. Regulators can issue nonbinding guidance and supervisory letters to regulated entities providing further explanation of how to adhere to a regulation.[40] Although changes in supervision and enforcement cannot substitute for the rulemaking process, they can subtly influence regulatory burden by changing how rules are complied with or enforced. High-profile examples of how supervision has influenced financial policy in recent years include a joint agency guidance on leveraged lending,[41] a CFPB bulletin on indirect auto lending,[42] and a joint agency statement on commercial real estate.[43] Regulators also have latitude

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[36] 5 U.S.C. §§553 et seq. For an overview of the rulemaking process, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by (name redacted).

[37] 5 U.S.C. §551.

[38] For more information on requirements agencies must meet when repealing rules, see CRS Report R41546, *A Brief Overview of Rulemaking and Judicial Review*, by (name redacted)

[39] See the section below entitled "Leadership Nominations."

[40] For the debate about the role of guidance in policymaking, see CRS Report R44468, *General Policy Statements: Legal Overview*, by (name redacted) and (name redacted)

[41] Federal Reserve, FDIC, Office of the Comptroller of the Currency (OCC), *Interagency Guidance on Leveraged Lending*, March 21, 2013, at https://www.federalreserve.gov/bankinforeg/srletters/sr1303a1.pdf.

[42] Consumer Financial Protection Bureau (CFPB), *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*, CFPB Bulletin 2013-02, March 21, 2013, at http://files.consumerfinance.gov/f/201303_cfpb_march_-
(continued...)

to change firms' behavior through enforcement powers. For example, numerous legal settlements surrounding mortgage lending following the financial crisis included codes of conduct and changes in business practices, which created new industry norms.

Statutory Requirements to Consider Regulatory Burden[44]

Congress has given regulators considerable discretion to initiate specific regulatory changes that increase or decrease regulatory burden at any time. Nevertheless, when making regulatory changes, Congress has required regulators to consider ways to minimize regulatory burden within the rulemaking process. For example:

- The Paperwork Reduction Act (44 U.S.C. §§3501-3521) requires regulators to report the hours that institutions will spend complying with their requests for information. This "paperwork burden" is just one component of regulatory burden, however.
- Pursuant to the Regulatory Flexibility Act (5 U.S.C. §§601-612), financial regulators are required to include in rulemakings an assessment of the rule's impact on "small entities," a category that includes—but is not limited to—small financial institutions. Agencies are required to make an assessment about possible alternatives and projected costs of the rule, however, only if they believe that the rule will have a "significant economic impact on a substantial number of small entities."
- Each financial regulator has different statutory requirements for performing cost-benefit analyses, but, broadly speaking, all regulators have a varied set of requirements for considering costs and benefits of their regulations and are not subject to the same requirements as executive agencies. Congress is currently debating whether more quantitative, formal cost-benefit analysis requirements would be desirable for financial regulators.[45]
- Under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA; 12 U.S.C. §3311), the banking regulators review regulations every 10 years to identify regulations that are "outdated, unnecessary, or unduly burdensome" (a review is currently being conducted). At the conclusion of the review, regulators issue a report detailing whether they recommend making changes where they have the needed authority or recommending statutory changes to Congress where they do not. The latest report under EGRPRA was released in March 2017 and highlights six policy areas: capital, call reports, appraisals, frequency of examinations, the Community Reinvestment Act (P.L. 114-94), and the Bank Secrecy Act (31 U.S.C. 5318).[46]

Approaches for the Administration[47]

The President's role in financial regulation is limited relative to other policy areas. The President may issue executive orders instructing agencies to undertake rulemaking, reports, or reviews. However, the President's ability to compel agency action likely differs depending on whether the agency is a traditional executive-branch agency or an independent regulatory agency. Financial regulators are independent regulatory agencies that are not required to coordinate their policy priorities with the President's. Although the President's scope of authority over independent regulatory agencies is not completely clear, the President generally is viewed as lacking the direct

(...continued)

Auto-Finance-Bulletin.pdf.

[43] Federal Reserve, FDIC, OCC, *Statement on Prudent Risk Management for Commercial Real Estate Lending*, December 18, 2015, at https://www.fdic.gov/news/news/financial/2015/fil15062.html.

[44] Adapted from CRS In Focus IF10162, *Introduction to Financial Services: "Regulatory Relief"*, by (name redacted)

[45] For more information on current requirements for cost-benefit analysis at the financial regulators, see CRS Report R44813, *Cost-Benefit Analysis and Financial Regulator Rulemaking*, by (name redacted) and (name redacted) .

[46] Federal Financial Institutions Examination Council, *Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act*, March 2017, at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

[47] Adapted from CRS Legal Sidebar WSLG1697, *With the Stroke of a Pen: What Executive Branch Actions Can President-elect Trump "Undo" on Day One?*, by (name redacted)

authority to order an independent regulatory agency to repeal a rule or revoke a discretionary agency directive or guidance document.

The following sections highlight major areas where the President can directly influence financial regulation. The President may nominate individuals with similar priorities to fill an agency's leadership positions when those positions become vacant. In addition, the Treasury Secretary plays a role in financial regulation as the chair of the Financial Stability Oversight Council (FSOC).

Executive Orders[48]

On February 3, 2017, President Trump signed an executive order entitled "Core Principles for Regulating the United States Financial System." This order directed the Treasury Secretary, in consultation with FSOC, to report to the President within 120 days to "identify any laws, treaties, regulations, guidance, reporting and recordkeeping requirements, and other Government policies that inhibit Federal regulation of the United States financial system in a manner consistent with the Core Principles." The core principles are

> (a) empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;
>
> (b) prevent taxpayer-funded bailouts;
>
> (c) 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;
>
> (d) enable American companies to be competitive with foreign firms in domestic and foreign markets;
>
> (e) advance American interests in international financial regulatory negotiations and meetings;
>
> (f) make regulation efficient, effective, and appropriately tailored; and
>
> (g) restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.[49]

The order does not revise or repeal any specific regulation, which can be done only through the standard rulemaking process.

On January 30, 2017, President Trump issued Executive Order 13371, stating that for FY2017,

> (a) Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.
>
> (b) For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget (Director).

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[48] Adapted from CRS Report RS20846, *Executive Orders: Issuance, Modification, and Revocation*, by (name redacted)

[49] The White House, "Presidential Executive Order on Core Principles for Regulating the United States Financial System," February 3, 2017, at https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states.

> (c) In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Any agency eliminating existing costs associated with prior regulations under this subsection shall do so in accordance with the Administrative Procedure Act and other applicable law.[50]

Although the President's ability to use executive orders as a means of implementing presidential power has been established as a matter of law and practice, it is equally well established that the substance of an executive order, including any requirements or prohibitions, may have the force and effect of law only if the presidential action is based on power vested in the President by the U.S. Constitution or delegated to the President by Congress.

Because financial regulators are independent regulatory agencies, they cannot be compelled to comply with executive orders such as Executive Order 13371 that direct agencies to provide regulatory relief. Nevertheless, some agencies have indicated that they intend to voluntarily comply with certain executive orders.[51]

Regulations Issued by the Administration

One notable postcrisis regulation issued by the previous Administration—as opposed to an independent regulatory agency—was the Department of Labor's (DOL's) 2016 *fiduciary rule*,[52] which requires a uniform fiduciary standard for registered broker-dealers and investment advisers when giving financial advice on retirement accounts. Previously, broker-dealers were held to a lower "suitability" standard. On February 3, 2017, President Trump issued a presidential memorandum directing the DOL "to examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice."[53] If the DOL finds the fiduciary rule to be inconsistent with the priorities of the

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[50] The White House, "Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs," January 30, 2017, at https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling. On April 5, 2017, the Office of Management and Budget issued final guidance instructing agencies on how to comply with this order. The guidance is available at https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation.

[51] For example, Mark McWatters, acting chairman of the National Credit Union Association (NCUA), stated "Although these executive orders do not apply to independent agencies like the NCUA, I assure you the agency will abide by their spirit and intent because the credit union community faces an array of ill-conceived and wholly unnecessary regulatory burdens." (J. Mark McWatters, Remarks at Credit Union National Association's 2017 Governmental Affairs Conference, February 28, 2017, at https://www.ncua.gov/newsroom/Pages/speech-2017-feb-remarks-of-chairman-mcwatters-gac.aspx). Christopher Giancarlo, acting chairman of the Commodity Futures Trading Commission (CFTC) stated that "the CFTC must reinterpret its regulatory mission consistent with the goals of the Trump Administration.... The CFTC will embrace President Trump's directive that each federal agency minimize the costs borne by their regulation." (J. Christopher Giancarlo, Remarks before the 11th Annual Capital Market Summit, U.S. Chamber of Commerce, March 30, 2017, at http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-21.) Federal Reserve Chair Janet Yellen testified that "I certainly do agree with the core principles" in the February 3, 2017, executive order. (Transcript for Semiannual Monetary Policy Report to Congress, Senate Banking, Housing, and Urban Affairs Committee, February 14, 2017.)

[52] Department of Labor, "Definition of the Term 'Fiduciary'; Conflict of Interest Rule- Retirement Investment Advice," 81 *Federal Register* 68, p. 20946, April 8, 2016, at https://www.gpo.gov/fdsys/pkg/FR-2016-04-08/pdf/2016-07924.pdf. For more information, see CRS Legal Sidebar WSLG1562, *Labor Department Issues Final Rule on Fiduciaries and Investment Advice*, by (name redacted) and (name redacted) .

[53] The White House, "Presidential Memorandum on Fiduciary Duty Rule," February 3, 2017, at https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule.

presidential memorandum, the memorandum directs the DOL to initiate rulemaking to rescind or revise the rule.

Treasury Secretary

The Treasury Secretary plays a key role in some of the new authorities that the Dodd-Frank Act created to promote financial stability. The Treasury Secretary has the opportunity to influence regulatory priorities through his position as chair of FSOC. FSOC is a council created by the Dodd-Frank Act and made up predominantly of the federal financial regulators that is tasked with identifying risks to financial stability, promoting market discipline, and responding to emerging threats to financial stability. As FSOC chair, the Treasury Secretary sets the council's agenda. FSOC has limited rulemaking authority, however. It can make recommendations to member agencies, but it cannot compel agencies to follow those recommendations. Potentially, these powers could be used to "name and shame" a member agency that is conducting activities with which the FSOC chair or other members disagree—but the agency could choose to ignore that pressure. With the exception of limited authority regarding the CFPB,[54] FSOC cannot override or reverse member agency rulemaking.

FSOC's most notable rulemaking authority is its ability to designate nonbank financial institutions as systemically important financial institutions (SIFIs). SIFIs are subject to enhanced prudential regulation by the Federal Reserve.[55] On April 21, 2017, President Trump issued a presidential memorandum calling for the Secretary of the Treasury to conduct a review of the SIFI designation process within 180 days. The memorandum recommended a temporary pause on designations until the review was complete.[56] Currently, two insurers (AIG and Prudential) are designated as SIFIs. FSOC is required to review SIFIs' designations at least once a year. FSOC last designated a SIFI in December 2014. If a SIFI were de-designated, it would automatically cease to be subject to enhanced regulation. In a vote to designate a company as a SIFI, the FSOC chair has veto power. However, de-designating an existing SIFI requires a vote of two-thirds of FSOC, including the chair. In other words, the chair can unilaterally prevent a SIFI from being designated or de-designated but cannot unilaterally de-designate an existing SIFI.

Title II of the Dodd-Frank Act created the Orderly Liquidation Authority (OLA) to resolve certain failing financial firms. OLA can only be triggered if the Treasury Secretary makes a determination, subject to a recommendation by the Fed and FDIC and subject to judicial review, that the firm's failure would "have serious adverse effects on financial stability," and no viable private alternative is available to OLA. OLA has never been used since its enactment in 2010. On April 21, 2017, President Trump issued a presidential memorandum calling for the Treasury Secretary to review OLA and refrain from using OLA until the review is complete.[57]

[54] §1023 of the Dodd-Frank Act created a process by which the Financial Stability Oversight Council (FSOC) may nullify CFPB regulations that FSOC believes put the banking or financial system at risk. Under this process, another agency may request that a CFPB regulation be set aside. The Treasury Secretary then decides whether to issue a temporary stay delaying implementation of a CFPB regulation. After deliberation, the regulation may be set aside by a vote of at least two-thirds of the members of FSOC.

[55] To date, regulations applying to nonbank systemically important financial institutions have not been finalized.

[56] The White House, "Presidential Memorandum for the Secretary of Treasury," April 21, 2017, at https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury.

[57] The White House, "Presidential Memorandum for the Secretary of Treasury," April 21, 2017, at https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury-0.

Leadership Nominations

All the leadership positions at the financial regulators have fixed terms and are appointed by the President following Senate confirmation. Many recent reforms were approved by current agency leadership, who might therefore be reluctant to revisit them. Although not always specified in statute, it appears that the heads of financial regulators, in contrast with Cabinet Secretaries, typically do not serve at the pleasure of the President ("at will"). Instead, most financial regulators may be removed only if a higher "for cause" threshold is met.[58] (An ongoing court case will determine whether the CFPB director's for cause removal status is constitutional given the unique structure of the CFPB.)[59] Thus, opportunities to nominate individuals for these positions generally must wait until the positions become vacant as terms end or individuals step down prematurely. Over time, these positions will become vacant, allowing President Trump to nominate candidates to fill most, if not all, of them. On May 2, 2017, the Senate confirmed President Trump's nominee, Jay Clayton, to be chair of the SEC. At present, several positions are vacant, including the chairs of the OCC and the CFTC. President Trump's nominees for chairs of the OCC and the CFTC await Senate confirmation.

Some financial regulators are led by a single director, and some are led by a multimember board or commission. Most, but not all, multimember boards or commissions have statutory political affiliation requirements that give the President's party a majority of seats but limit the number of board members from one party.[60] These requirements might limit the number of like-minded nominees that the President could select.

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[58] Some financial regulators have an explicit "for cause" removal standard in statute, while others are assumed to have "for cause" protection based on legal precedent. For example, in SEC v. Blinder, Robinson & Co., Inc., 855 F.2d 677, 681 (10th Cir. 1988), while the court noted that the chairman of the SEC served at pleasure of the President and therefore may be removed at will, it determined that commissioners may be removed only for inefficiency, neglect of duty, or malfeasance in office. The one clear statutory exception is the OCC's comptroller, who "shall hold his office for a term of five years unless sooner removed by the President, upon reasons to be communicated by him to the Senate." (12 U.S.C. §2). See CRS Report R43391, *Independence of Federal Financial Regulators: Structure, Funding, and Other Issues*, by (name redacted), (name redacted), and (name redacted)

[59] The outcome of this case could potentially have implications for other single headed agencies, such as the FHFA. For more information, see CRS Legal Sidebar WSLG1680, *UPDATE: D.C. Circuit Rules Consumer Financial Protection Bureau's Structure is Unconstitutional*, by (name redacted) and (name redacted)

[60] An exception is the Fed, which does not have any party affiliation requirements.

Acknowledgments

The coordinator would like to acknowledge valuable research assistance from (name redacted) and (name r edacted), senior research librarians.

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