

ALERTS

Finance, Insolvency And Restructuring Law Alert - Future Of Dodd-Frank And Financial Regulations: Trump Administration Takes First Steps To Reduce Financial Regulations

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An executive order and a memorandum issued by President Trump shed light on the new administration's desired "core principles for regulating the U.S. financial system" and direct the U.S. Department of Labor (DOL) to prepare an updated economic and legal analysis of its "fiduciary duty rule." While neither of these actions will have an immediate effect on existing financial regulations, they each likely signal future changes intended to lessen the regulatory burden for financial institutions.

Financial Regulations Executive Order

The executive order announces the following "core principles" the administration intends to follow in regulating the U.S. financial system:

1. Empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement and build individual wealth
2. Prevent taxpayer-funded bailouts
3. 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
4. Enable American companies to be competitive with foreign firms in domestic and foreign markets
5. Advance American interests in international financial regulatory negotiations and meetings
6. Make regulation efficient, effective and appropriately tailored
7. Restore public accountability within federal financial regulatory agencies and rationalize the federal financial regulatory framework

The order also directs the treasury secretary to consult with the heads of the member agencies of the Financial Stability Oversight Council and to report to the president within 120 days, and periodically thereafter, on the extent to which existing laws and regulations promote these core principles. The order also directs the treasury secretary to include in each report the actions already taken to promote and support the core principles and to identify any laws, regulations and government policies that inhibit the regulation of the U.S. financial system in a manner consistent with the core principles.

While the executive order does not specifically mention the Dodd-Frank Wall Street Reform and Consumer Protection Act, President Trump made

RELATED PEOPLE



David P. Hooper

Partner
Indianapolis

P 317-231-7333
F 317-231-7433
david.hooper@btlaw.com



Thomas M. Maxwell

Partner
Indianapolis

P 317-231-7796
F 317-231-7433
thomas.maxwell@btlaw.com



Jonathan Sundheimer

Partner
Indianapolis

P 317-231-7319
F 317-231-7433
jonathan.sundheimer@btlaw.com

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clear in his comments during the recent campaign and since assuming office that he intends to roll back restrictions on financial companies implemented under that statute. Given this, it is likely that the treasury secretary's report to the president will recommend amending or rescinding several Dodd-Frank Act restrictions on the basis that they are inconsistent with one or more of the core principles outlined in the executive order. To the extent that significant changes to existing rules will require either new legislation and/or an agency to amend or replace its current regulations, this process could take months or even years, particularly since the agency would need to comply with the notice and comment procedures for adopting new regulations set forth in the Administrative Procedures Act.

Fiduciary Duty Rule

In his memorandum to the DOL, President Trump directed the agency to reconsider the "fiduciary duty rule," which was adopted in April 2016 and is scheduled to become effective on April 10, 2017. The fiduciary duty rule greatly expands the circumstances in which persons will be considered "fiduciaries" to plans and individual retirement accounts under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1956 in connection with the provision of investment advice. In short, the rule requires that individuals and firms act as fiduciaries when they are paid to advise individuals with respect to their retirement savings, meaning that they must act in the best interests of their customers and avoid conflicts of interest.

President Trump's memorandum directs the DOL to review the fiduciary duty rule to determine what its likely impact will be and to consider its effect on:

- investors' and retirees' access to retirement products, information, or advice
- dislocations and disruptions in the retirement services industry that may adversely affect investors and retirees
- litigation and fees borne by investors and retirees

The memo concludes by directing the DOL, if it determines that the fiduciary duty rule is inconsistent with these considerations or is inconsistent with empowering Americans to make their own financial decisions, to publish a proposed rule rescinding or revising the rule. Implementing any such changes could be a challenging process since the current regulation was issued as a final rule after going through the required notice and comment process. This means that any subsequent change to the fiduciary duty rule must also go through the same process, which could take months or even years to complete. That said, it is expected that the DOL will delay the fiduciary duty rule's April 10 compliance date.

Following the issuance of President Trump's memorandum to the DOL, a federal district court in Texas, on Feb. 8, 2017, upheld the fiduciary duty rule in a case brought by representatives of the securities industry, including, the Securities Industry and Financial Markets Association, the Financial Services Institute, and the U.S. Chamber of Commerce. In bringing the litigation, the plaintiffs asserted, among other things, that the

DOL exceeded its authority when it implemented the fiduciary duty rule and did not properly conduct the required cost-benefit analysis. While the court rejected these contentions and concluded the fiduciary duty rule is lawful, its decision is unlikely to prevent the DOL from delaying the rule's April 10 compliance deadline. The decision could, on the other hand, complicate any action by the DOL to weaken or rescind the rule by emboldening advocates of the existing rule to challenge any future changes. As a result, the fiduciary rule's future is difficult to predict.

For more information, please contact the Barnes & Thornburg LLP attorney with whom you work, Thomas M. Maxwell at Thomas.maxwell@btlaw.com or (317) 231-7796 or David P. Hooper at david.hooper@btlaw.com or (317) 231-7333 of our Banking and Financial group, or the following members of our Finance, Insolvency & Restructuring Department: Jonathan D. Sundheimer at jsundheimer@btlaw.com or (317) 231-7319 and Rubin Pusha III at rubin.pusha@btlaw.com or (317) 231-7325.

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