

Predictions for the Federal Financial Service Agencies—Slow Down and Wait

by Joseph Lynyak and Erin Bryan

The Current Status Quo

Following the myriad nominations, acting appointments and Executive Orders by the new Administration, many clients and friends have requested advice regarding legal and regulatory changes that might be forthcoming in the financial services arena.

Paramount among these executive actions is the appointment of Russell Vought as Director of the Consumer Financial Protection Bureau (“CFPB”), the subsequent nomination of Jonathan McKernan as its Director, the closure of its headquarters building, the furloughing of its employees, the termination of probationary employees, the termination of expert witness contracts, and the cessation of all examination, enforcement, and rulemaking activities.

The prudential banking agencies have likewise been instructed not to proceed with proposed rulemakings, and Republican nominees and appointees have now populated seats formerly occupied by Democrats.

These numerous administrative actions have occurred in a governance environment that is unique in its aggressive adoption and implementation of the unitary theory of the executive. Unlike every former administration in memory, the new Administration has exercised its authority in a manner that critics complain arguably ignores written and unwritten guardrails that heretofore were believed to protect civil service employees, including the creation and authorization of the “DOGE” to reduce the size and mission of government agencies. In addition to hobbling the agendas of numerous administrative agencies, the Administration has expressed constitutional arguments supporting its actions that arguably infringe on the authorities of the other two branches of the federal government.

While changes in a presidential administration typically create objections by the losing political party, the aggressive exercise of executive authority has resulted in a wave of lawsuits seeking to halt the Administration’s numerous actions and directives. During the

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course of litigation, in several instances plaintiffs have been successful already in obtaining partial or complete national injunctions that have halted or significantly slowed the pace of changes being implemented by the Administration.

The financial services agencies are not immune from the attention of the DOGE and other senior officials in the Administration. In addition, both banks and non-banks are actively lobbying the affected agencies not only to cease rulemaking activities but to reconsider recently adopted rules and regulations. Similarly, advocates for reduced regulatory oversight have requested the Administration to abandon litigation positions defending pro-consumer regulations that were adopted by the CFPB in recent years.

Predicting Revised Policy and Adjustments to Regulatory Oversight

The onslaught of the actions taken by the Administration has caught banks and non-banks by surprise—and the question being asked at this moment is simply: What happens now? For example, the CFPB is effectively shuttered at present, and the regulatory and supervisory activities of the prudential regulators have, for the moment, been minimized as new agency management is assuming their respective roles and implementing policies.

Additionally, regardless of the status of the CFPB's enforcement activities, it remains the case that state attorneys general and state regulators may “enforce provisions of [the Consumer Financial Protection Act (Title X of the Dodd-Frank Act) (the “CFPA”)] or regulations issued under [the CFPA]” and “secure remedies under provisions of [the CFPA] or remedies otherwise provided under other law.” While there are exceptions, the consequence of these provisions of the CFPA is to empower state attorneys general and state regulators to enforce the CFPA's prohibitions against unfair, deceptive, or abusive conduct as well as any specific rules enacted by the CFPB.

Our response to our clients during these uncertain times is a simple observation—patience is necessary before adopting strategic and tactical plans while the legal authority of the Administration and concomitant challenges by opponents are resolved. In particular, because former well-understood guardrails that could reliably limit changes in regulation and oversight now no longer apply, we believe that stakeholders cannot reasonably predict what the financial services sector will resemble until Congress and the courts address the Administration's authority and approach to regulatory oversight.

While prognostication is currently being offered by various commentators, making concrete predictions at this stage is perhaps as effective as using a divining rod to anticipate what the federal financial service landscape will look like in the next several months (and on a going-forward basis).

In the alternative, we believe that a measured and objective evaluation of Administration actions is called for, particularly during the period while high-visibility “messaging” actions are resolved and regular order is restored. In that regard, in order to assist our clients and friends, we suggest the following:

First, our financial services regulatory team will remain immediately available to provide legal guidance as directives from the Administration are announced and implemented. Our financial services team leaders' contact information is set forth below.

Second, our team will provide updates regarding the financial regulatory landscape as patterns of consistency become apparent. In that regard, commencing at our Bank Roundtable in late March, we will focus on developments that occur in the next several weeks, including legal challenges to the Administration in respect to the prudential banking regulators and the CFPB.

Finally, please note that Dorsey has also created a task force to assist clients with questions regarding the broader range of Executive Orders beyond the financial services sector. Information regarding the task force can be found on the [Executive Actions Resources](#) page.