 by Mike Lochmann

Winds of Change In Financial Services Regulation

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Businesses clamoring for reforms must wait to see how the politics of change will play out.

The Trump administration is committed to reducing the regulatory burden on American businesses to stimulate economic growth and job creation. Many in Washington feel the place to start with regulatory reform is the Dodd-Frank Act.

Dodd-Frank was passed in 2010 in response to the financial crisis, and was intended to solve the "too-big-to-fail" problem. Since then, however, it has become increasingly unpopular as the four largest commercial banks in the United States have grown even larger, and now control more bank deposits and market share than they did before law was passed. As a result of Dodd-Frank, smaller community banks have been buried by an avalanche of new financial regulations. "Too-small-to-survive" is now the problem facing many community banks.

Wholesale repeal of the Dodd-Frank Act appears unlikely, but Congress may take up a modified version of the Financial CHOICE Act that would re-engineer the Dodd-Frank regulatory landscape. Several areas of financial services regulation are ripe for legislative or executive actions.

Reform of the CFPB. There is growing support for replacing the single Director of the Consumer Financial Protection Bureau with a five-member board of directors, as is the case for many federal regulatory agencies. Further, many believe that making the bureau budget subject to congressional appropriations would make the agency more accountable. Currently, the bureau's entire budget is funded by the Federal Reserve, but Director Richard Cordray does not report to the Board of Governors of the Federal Reserve or to the president. This independent funding mechanism—which is unique among federal agencies—has drawn particular criticism. Adding due process protections against the bureau's enforcement actions would alleviate many concerns, chief among them that the director is now the prosecutor, judge, jury and sole source of appeal for the bureau's enforcement actions.

Regulatory Relief for Community Banks. Community banks want regulatory relief from increased capital and liquidity requirements. The international Basel III regulatory capital requirements, which apply to the world's largest and most sophisticated banks and holding companies, also apply (with some exceptions) to small financial institutions that do not pose a risk to the financial system. Increased capital requirements reduce the amounts that banks can lend to small business customers. Community banks make more loans to small businesses and start-ups than large banks. Look for Republicans to introduce legislation that will provide exemptions from the Basel III regulatory capital requirement for community banks below a certain asset size that are well managed and well capitalized.

Repeal of the Durbin Amendment. Most big banks want Congress to repeal the Durbin Amendment to the Dodd-Frank Act, which required the Federal Reserve to cap debit-card interchange fees charged by banks with more than $10 billion in assets. The current cap is 21 cents per debit transaction, plus 0.05 percent of the transaction amount. Under the Durbin Amendment, big banks have lost substantial interchange revenue that went directly to retailers, and smaller banks have also experienced decreased interchange revenues. Banks and credit unions argue that retailers have not passed on the savings to consumers, and the free market, not the Federal Reserve, should determine interchange prices. Republicans may introduce legislation that would completely repeal the Durbin Amendment caps, but they are not united on the issue, because retailers are also an important constituency.

DOL Fiduciary Rule Delayed. The president signed an executive memorandum instructing the Department of Labor to reexamine its controversial fiduciary rule scheduled to become effective April 10, 2017. On March 2, 2017, the DOL delayed the effective date of the fiduciary rule for 60 days. The rule requires that fiduciary advisers act in the best interests of their retirement-plan customers, but the rule is very broad and extremely complex, with extensive and costly required contracts, disclosures and record-keeping requirements.

So far, the rule has survived multiple court challenges, congressional resolutions and spending bills that would overrule, or prohibit the department from enforcing, the rule. Legislative action to replace the fiduciary standard or limit the department's jurisdiction is possible, but could be blocked by Senate Democrats. In the absence of legislation, the new Secretary of Labor may undertake a complete rewrite and simplification of the fiduciary rule.

President Trump has set an aggressive agenda for regulatory reform. Whether or not he is successful in accomplishing that goal will depend on cooperation from Republicans, and at least a few Democrats, as well as the support of the businesses clamoring for these reforms. I