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**Impact of 2016 Presidential and
Congressional Elections on Financial
Services Regulatory Policy**

It appears likely that the financial services
regulatory environment will change

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Executive summary

The 2016 Presidential and Congressional election results have implications for regulatory policy. However, the specifics of any changes are uncertain, and can be expected to take time to implement

Key takeaways

- **Wholesale changes to Dodd-Frank or an outright repeal of the law would require legislative negotiation.** The Senate's procedural rules require a 60-vote majority to invoke cloture on legislative business, and Republicans only have a slim majority (52-48). Accordingly, Democrats retain the ability to influence any new legislation, and many have expressed strong opposition to efforts to repeal or significantly alter Dodd-Frank
- **The prioritization of financial services regulatory reform remains unclear.** The President-Elect and his transition team have signaled the policy priorities for the first 100 days—including health care, immigration, and the nomination of a Supreme Court justice—without mentioning financial regulation
- **However, the prospect of financial regulatory reform has increased.** The contents of the Financial CHOICE Act, legislation introduced in September 2016 by House Financial Services Committee Chairman Jeb Hensarling (R-TX), could become an important component of a Republican approach to these issues. In a recent speech, Chairman Hensarling predicted that the CHOICE Act would be discussed on the House floor “fairly early in the next Congress,” but expressed his willingness to “negotiate in good faith” on the previously introduced version of the bill
- **The Senate's position on regulatory reform will influence the direction of this legislation.** Although Senator Mike Crapo (R-ID), who will likely become Chairman of Senate Banking Committee, has supported various regulatory reform bills in the past, his position on the CHOICE Act remains unclear. In order for regulatory reform to gain legislative traction, Senator Crapo's support is essential
- **In addition, the appropriations process may offer a path for amendments.** Republicans could attempt to introduce policy riders that would amend Dodd-Frank or other financial services regulations through the annual appropriations process, as they did in December 2014 by substantively repealing the swaps “push-out” (Section 716 of Dodd-Frank). It is unclear whether such an effort would be successful
- **The President-Elect has called for a temporary moratorium on new regulations.** Even if this mandate is issued, several questions remain, including: To what extent would such a moratorium affect independent agencies, such as the Federal Reserve Board? Would the moratorium affect agency guidance? How would it affect currently proposed regulations?
- **Agency nominations and appointments will be significant.** The Administration's nominations and appointments to the federal financial regulatory agencies will signal how those agencies plan to proceed with their rulemaking and enforcement regimes. Key vacancies exist at the Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC). There may be turnover elsewhere. In addition, the activities of the Financial Stability Oversight Council (FSOC), the Chair of which is the Treasury Secretary, are likely to change

Sources: <https://www.greatagain.gov/policy/financial-services.html>, <http://www.npr.org/2016/10/27/499489585/the-first-100-days-what-clinton-and-trump-want-to-get-done>, <https://www.greatagain.gov/policy/regulatory-reform.html>, <http://financialservices.house.gov/blog/?postid=401199>

Avenues for changes to financial services regulatory policy

Below is a description of the primary avenues through which changes may occur in financial services regulatory policy during the Trump Administration

New financial services-related legislation 	Changes to existing rules or guidance at the agency level 	Changes to agency personnel and future rulemaking/enforcement 
<ul style="list-style-type: none"> ▪ Most significant changes to Dodd-Frank or other financial services regulatory policy would require new legislation: <ul style="list-style-type: none"> ○ Many current regulatory requirements for large banks (e.g., capital planning and resolution planning) are statutorily required and could only be repealed or amended on a large scale through new legislation ▪ Given the Republicans' narrow majority in the Senate (52-48) and many Democrats' strong opposition to substantially overhauling Dodd-Frank, this path could be challenging ▪ However, targeted regulatory relief for smaller banks is an issue that both parties support, and the enactment of legislation to achieve this goal appears to be less challenging given Democratic support ▪ Legislative changes could also occur through policy riders attached to appropriations bills 	<ul style="list-style-type: none"> ▪ Changes to financial services regulatory policy may also be enacted at the agency level, including both the rulemaking process and the issuance or recession of guidance: <ul style="list-style-type: none"> ○ Although many regulatory requirements are statutorily required, Dodd-Frank provides the agencies with discretion on how to implement the law in certain areas ▪ While enacting changes through this avenue would be relatively easier than passing new legislation, these changes would be more narrow in scope given the limited degree of flexibility ▪ In addition, an agency may revise or rescind its interpretations or guidance to permit a greater deal of flexibility on certain issues 	<ul style="list-style-type: none"> ▪ An agency may change its approach to rulemaking, supervision, or enforcement, including by choosing not to finalize a pending proposed rule and or by taking a less aggressive approach to enforcement: <ul style="list-style-type: none"> ○ This type of approach will largely be signaled through the nominations and appointments to executive branch and independent agencies ▪ Given the high number of regulatory and supervisory issues at each agency, the prioritization of future work will be a significant factor in shaping financial services regulatory policy ▪ Notably, at least two agencies—the SEC and the CFTC—will switch from Democratic majorities to Republican majorities as a result of the election

Source: <http://www.banking.senate.gov/public/index.cfm/democratic-press-releases?ID=9325EBF3-49DB-4449-87AA-B322569E1A2B>

Examples of changes to financial services regulatory policy

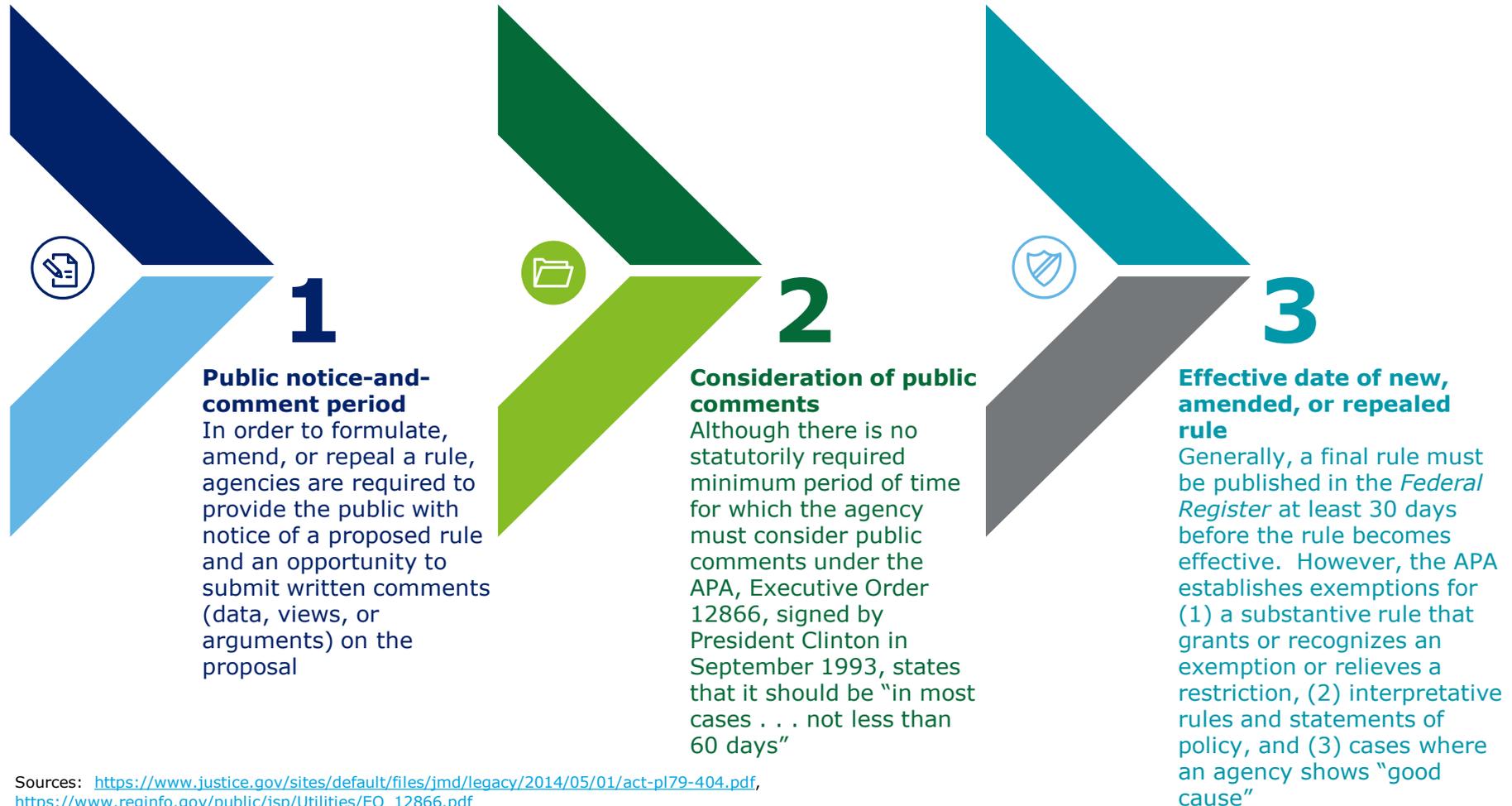
Below are examples of changes to financial services regulatory policy that could occur under a Trump Administration, as well as key agency positions that are vacant or are expected to become vacant

New financial services-related legislation 	Changes to existing rules or guidance at the agency level 	Changes to agency personnel and future rulemaking/enforcement 
<ul style="list-style-type: none"> ▪ The Consumer Financial Protection Bureau (CFPB) could be changed from a director-led agency to one with a bipartisan commission, and the agency could be subject to Congressional appropriations ▪ The \$50 billion statutory asset threshold, codified in Section 165 of Dodd-Frank, which triggers the imposition of enhanced supervision and prudential standards, may be raised ▪ The Volcker Rule could be repealed or amended to permit a greater deal of flexibility ▪ The FSOC’s activities could be subject to greater transparency, and could be subject to Congressional appropriations ▪ Title II of Dodd-Frank (the Orderly Liquidation Authority) may be repealed and replaced with a new chapter of the Bankruptcy Code to facilitate the failure of a large financial institution 	<ul style="list-style-type: none"> ▪ Further to its pending proposed rule to amend the Comprehensive Capital Analysis and Review (CCAR) process for “large and noncomplex” firms by exempting these firms from the qualitative assessment, the FRB could make additional discretionary changes to the program, such as providing greater transparency regarding its stress scenarios ▪ The Department of Labor (DOL) could delay the initial April 2017 compliance date for its “Conflict of Interest” rule ▪ The FRB and FDIC could amend its resolution planning rule to require submissions every two years rather than annually ▪ The Treasury Secretary, as Chair of the FSOC, could seek to rescind the existing nonbank financial company designations and decline to pursue additional designations 	<ul style="list-style-type: none"> ▪ Among the most significant vacancies or expected vacancies for the Trump Administration to fill: <ul style="list-style-type: none"> ○ Treasury Secretary (also serves as FSOC Chair) ○ Two FRB Governors (including the Vice Chairman for Supervision) ○ Independent Director of the FDIC Board (Chairman Gruenberg’s term expires in November 2017 and Vice Chairman Hoenig’s term expires in April 2017) ○ Comptroller of the Currency (Comptroller Curry’s term expires in April 2017) ○ CFPB Director (ability to replace Director Cordray at will is contingent on ongoing litigation) ○ Three SEC Commissioners (including Chair White) ○ Two CFTC Commissioners (three if Chairman Timothy Massad resigns)

Source: <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-51>

Process for changing existing rules

Although changes to existing rules at the agency level would not require additional legislation, this process is not likely to be quick or easy given the requirements under the Administrative Procedure Act (APA) and related Executive Orders



Sources: <https://www.justice.gov/sites/default/files/jmd/legacy/2014/05/01/act-pl79-404.pdf>,
https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf

Summary of major provisions of Financial CHOICE Act (1 of 2)

On September 9, 2016, House Financial Services Committee Chairman Hensarling introduced the “Financial CHOICE Act of 2016,” which established the Republican position to significantly amend certain aspects of Dodd-Frank. On September 13, 2016, the Committee passed the bill by a near party-line vote of 30 to 26. Although the bill was strongly opposed by the Obama Administration, it may be significant under the Trump Administration and the Republican-controlled 115th Congress. Below is a summary of the key provisions as currently written. Importantly, as Chairman Hensarling has suggested, the bill may be modified if it is reintroduced in the 115th Congress

Topic	Summary
<p>Higher leverage capital requirement in exchange for relief from other regulatory requirements</p>	<ul style="list-style-type: none"> ▪ The bill would allow a banking organization to make an election to be treated as a qualifying banking organization by choosing to maintain (1) a simple leverage ratio of at least 10 percent and (2) a CAMELS rating of 1 or 2 rather than be subject to the enhanced prudential standards under Section 165 of Dodd-Frank and the Basel III capital and liquidity standards <ul style="list-style-type: none"> ○ The leverage ratio would be defined as the ratio of tangible equity (i.e., Common Equity Tier 1 capital plus additional Tier 1 capital) to leverage exposures (including both on-balance sheet assets and asset equivalents of certain off-balance sheet exposures) ○ Qualifying banking organizations would be exempt from (1) the capital surcharge for global systemically important banks (G-SIBs), (2) total loss-absorbing capacity (TLAC) requirements, (3) compliance with the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR), and (4) the submission of resolution plans, among other things
<p>Capital planning and stress testing</p>	<ul style="list-style-type: none"> ▪ The FRB would be permitted to conduct stress tests (but not limit capital distributions) of a qualifying banking organization ▪ The bill would also require that the different sets of conditions under which stress tests are evaluated be made public and subject to a notice-and-comment period
<p>Resolution planning</p>	<ul style="list-style-type: none"> • In addition to suspending the resolution planning requirement for a qualifying banking organization, the bill would provide that resolution plans for all other organizations would only be required to submit plans every two years (rather than annually) • The bill would also require the FRB and FDIC to provide feedback on every resolution plan within six months of submission, and would require the agencies to publicly disclose their assessment frameworks
<p>Consumer Financial Protection Bureau (CFPB)</p>	<ul style="list-style-type: none"> • The bill would replace the CFPB’S sole director with a bipartisan five-member commission similar to other consumer or investor protection agencies, and subject the agency to Congressional appropriations

Source: <https://www.congress.gov/114/bills/hr5983/BILLS-114hr5983ih.pdf>

Summary of major provisions of Financial CHOICE Act (2 of 2)

Although most Democrats have expressed strong opposition to the Financial CHOICE Act as currently proposed, Republican majorities in the House and Senate may seek to advance certain portions of the bill through the legislative process or through Congressional appropriations

Topic	Summary
Ending "Too-Big-To-Fail"	<ul style="list-style-type: none"> • The bill would establish a six-step plan to prevent future taxpayer bailouts of financial firms: <ul style="list-style-type: none"> ○ Repealing Title II of Dodd-Frank (the Orderly Liquidation Authority) ○ Replacing Title II with a new chapter of the Bankruptcy Code designed to facilitate the failure of a large, complex financial institution ○ Imposing new limitations on the FRB's emergency lending authority under Section 13(3) of the Federal Reserve Act ○ Prohibiting the use of the Exchange Stabilization Fund to bail out a financial firm ○ Repealing the FDIC's authority to establish a widely available program to guarantee banks' obligations during times of severe economic stress ○ Repealing the FSOC's authority to designate nonbank financial companies and financial market utilities as systemically important
FSOC	<ul style="list-style-type: none"> • In addition to repealing the FSOC's authority to designate nonbank financial companies and financial market utilities as systemically important, the bill would rescind previous FSOC designations
Volcker, Durbin	<ul style="list-style-type: none"> • The bill would repeal the Volcker Rule (Section 619 of Dodd-Frank) and the Durbin Amendment (Section 1075 of Dodd-Frank)
Fiduciary rule	<ul style="list-style-type: none"> • The bill would repeal the DOL's "Definition of the Term 'Fiduciary'; Conflict of Interest Rule—Retirement Investment Advice by: <ul style="list-style-type: none"> ○ Establishing that the final rule "shall have no force or effect" ○ Prohibiting the DOL Secretary from issuing any regulation under the Employee Retirement Income Security Act of 1974 defining the circumstances under which an individual is considered a fiduciary until 60 days after the Securities and Exchange Commission (SEC) issues a final rule relating to standards of conduct for broker-dealers ○ Prohibiting the SEC from issuing a rule before providing the House Financial Services Committee and Senate Banking Committee with a report on the issue, supported by an economic analysis ○ Requiring the SEC to publish in the <i>Federal Register</i> alongside any rule its "formal findings that such rule would reduce confusion or harm to retail customers due to different standards of conduct applicable to brokers, dealers, and investment advisors"

Source: <https://www.congress.gov/114/bills/hr5983/BILLS-114hr5983ih.pdf>

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