

Client Alert

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Is it Time to Streamline Financial Regulation?

By Jay Baris and Oliver Ireland

A March 13, 2017 presidential order requiring a comprehensive plan to reorganize the executive branch could be the first step toward streamlining the financial regulatory structure.

The Executive Order requires the Director of the Office of Management and Budget to propose a plan within a year to reorganize government functions and eliminate unnecessary agencies, agency components, and programs. The stated goal is to “improve the efficiency, effectiveness and accountability” federal agencies. It appears that the plan is to address the Fed, the SEC, the CFTC, and other independent agencies even though those agencies are not typically subject to Executive Orders.

Within 180 days, the head of each agency must submit a proposed plan to reorganize the agency, if appropriate, in order to achieve the stated goal. And the OMB Director must publish a notice in the Federal Register soliciting public comments on how to improve government efficiency. Six months after the closing of the comment period, the Director must submit to the president a plan to achieve the stated goal, including recommendations for any legislative, or administrative measures necessary to achieve a proposed reorganization.

In developing the plan, the Director shall consider the following factors, among others:

- whether some or all of the functions of an agency, a component, or a program are appropriate for the federal government or would be better left to state or local governments or to the private sector through free enterprise;
- whether some or all of the functions of an agency, a component, or a program are redundant, including with those of another agency, component, or program;
- whether certain administrative capabilities necessary for operating an agency, a component, or a program are redundant with those of another agency, component, or program;
- whether the costs of continuing to operate an agency, a component, or a program are justified by the public benefits it provides; and
- the costs of shutting down or merging agencies, components, or programs, including the costs of addressing the equities of affected agency staff.

Notably, the order provides that the Director can use outside consultants “with relevant expertise in organizational structure and management.”

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OUR TAKE

The order opens a wide door that could lead to significant legislative and regulatory changes. Efforts to streamline our financial regulatory structure in the past have met with only limited success and, of course, it is much too early to predict what the OMB will recommend, and whether Congress will adopt legislation to implement those recommendations. Nevertheless, it seems, at least for the moment, that everything is on the table for discussion.

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