Will Trump Gut Dodd-Frank, Dissolve The CFPB?

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It has been two weeks since Donald Trump won the election, and already, we are getting some glimpses into how his presidency might impact the mortgage industry. First off, mortgage rates took a nice jump, with the average rate for a 30-year, fixed-rate mortgage increasing to nearly 4.0% in the week following the election for the first time since July 2015. This was due mainly to a bond sell-off in response to the president-elect's stated goals to lower taxes, dial back regulation and make massive infrastructure investments. Investors know that a growing economy fueled by government spending can trigger higher inflation. As bond prices fell from the sell-off, yields rose, leading to higher mortgage rates. As a result of the rate hike, the industry is seeing lower application volume – especially for refinances. Meanwhile, the Federal Reserve has given its strongest indication yet that it will vote to raise short-term rates in December.

Regardless of what happens with mortgage rates in 2017, President-Elect Trump's political appointments (Ben Carson for secretary of the Department of Housing and Urban Development? Rep. Jeb Hensarling as secretary of the Treasury?) and the policies that are enacted under his administration will, no doubt, reshape the mortgage market to a degree. But, will Trump follow through on his pledge to dismantle the Dodd-Frank Act, which could result in the dissolution of the Consumer Financial Protection Bureau (CFPB) and a major rollback of the many onerous regulations placed on the mortgage industry during the past eight years?

Trump is already being seen as back-peddling on some of his campaign promises (e.g., he has indicated that he may decide to keep parts of Obamacare intact), leaving many in the industry wondering, will he follow through with his plans? Will he abolish the CFPB or keep it intact? Will he seek to redefine the role of the Federal Housing Administration? Will he return Fannie Mae and Freddie Mac to the private sector?

With the Republicans in full control of the House and Senate, it will be interesting to see just how far this administration will go to reduce the government's footprint in the mortgage market. It will also be interesting to see how quickly these things happen. Needless to say, Trump will have a very full plate of things to accomplish once he takes the Oval Office in January, so whether housing is really a priority remains to be seen.

Michael Cremata

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MortgageOrb recently polled experts from across the industry to get their views on how a Trump presidency might impact the mortgage market. Participating in this second helping of emailed responses (the first round can be accessed here) are Jonathan Payne, operations manager at American Financing Corp.; Brian Koss, executive vice president of Mortgage Network Inc.; Rick Sharga, chief marketing officer at Ten-X; Debora Aydelotte, chief operating officer for Altavera Mortgage Services; Jeff Bode, CEO and president of Mid America Mortgage; and Michael Cremata, senior counsel and director of compliance for ClosingCorp.

Q: According to President-Elect Trump's website, "Great Again" (www.greatagain.gov), Trump plans to dismantle Dodd-Frank, which gave birth to the CFPB. It states that the "Financial Services Policy Implementation team will be working to dismantle the Dodd-Frank Act and replace it with new policies to encourage economic growth and job creation." In your opinion, how likely is it that Trump will completely replace the act as opposed to keeping certain sections of it intact?

Payne: I am not sure it will totally go away altogether. It is likely that a part of the Dodd-Frank Act will get redistributed into other areas such as TILA and RESPA. This will allow them to decide what part of the act was helpful, as well as what parts they feel were harmful, to consumers.

Koss: There are too many positive pieces to the Dodd-Frank Act and too many champions of the act still left in Congress to gut it. In order to get a bill through quickly, a compromise like Rep. Hensarling's bill proposing to revamp Dodd-Frank would be smart.

Sharga: It's much, much easier to amend a piece of legislation than it is to repeal it – especially one as unwieldy as the Dodd-Frank Act – so it's more likely that we'll see a lot of the law rewritten rather than the entire act replaced. That said, President-Elect Trump is on record blaming Dodd-Frank not just for causing the mortgage industry to seize up, but also for strangling credit availability for small and midsize businesses across the country. So, if he's going to take aim at replacing any law, it's likely to be this one.

Aydelotte: Repealing the act in total would be very difficult, as Dodd-Frank covers a complex, multifaceted edict. For example, the act reassigned responsibilities from certain regulators to the CFPB – such as the FDIC, the OTC and the Federal Reserve. Rolling such changes back would be considerable. Additionally, some portions within the act are now relied upon to analyze individual bank and system stability, such as stress testing and the required establishment of living wills. This will be a section-by-section review, likely taking into consideration some of the proposals offered up over the past few years by both bipartisan and non-bipartisan groups (e.g., Rep. Hensarling's bill).

Bode: I think Trump is already walking a lot of his promises back. I do think that regulations will take a hit under Trump. I think a lot of the rollback will be dependent upon the Senate filibuster rules. If the Democrats can block the repeal of Dodd-Frank, then Trump will weaken the enforcement substantially.

Cremata: It seems unlikely Trump will replace Dodd-Frank completely. Given the current makeup of the Senate, he would not have the votes to do so even if he wanted to – that is, unless Republicans were to pursue the so-called "nuclear option" of abolishing the filibuster, but I don't think anyone realistically expects that to happen.

Q: What do you think any new legislation replacing Dodd-Frank might look like – and what impact do you think this will have on the mortgage industry? What would a major rollback of the current regulations do to the industry in terms of operations?

Payne: You will see the lenders start to come back with programs they feel there is a niche for in the market. This could include stated income loans for the high credit score/low loan-to-value customer. This would allow a lot of people who are self-employed to be able to refinance for the first time in nearly a decade and could start another "refi boom."

Sharga: Trump has talked about having two major objectives in replacing Dodd-Frank. First, do what the law was originally intended to do, and eliminate (or at least mitigate) the "too-big-to-fail" scenario that the country faced in 2008. The current act really doesn't do that and has effectively created a system with so many burdens that it has, instead, created a "too-small-to-survive" environment that has forced many smaller banks to exit the lending space. Trump's plans call for guidelines that ensure adequate capitalization and severe penalties for malfeasance. The second part of his plan is to create a regulatory environment that makes it feasible for smaller lenders such as community banks to reenter the market without crushing compliance costs or the kind of regulatory and litigation risk that could put them out of business. If the law is changed, I can't imagine the current litigation structure – in which a borrower who defaults on a loan can sue the lender – will survive. It also seems likely that a Trump administration would want some clear guidelines about buybacks so that lenders don't feel the need to be so extraordinarily risk-averse about every loan. And it also seems likely that there might be an agreement on national default servicing guidelines, or, at least, a way to minimize the current conflicts that servicers face between federal, state, government-sponsored enterprise (GSE) and CFPB rules. Overall, I think a less rigid, burdensome regulatory environment – and more regulatory certainty – would make more credit more readily available to the average borrower, which would have the effect of "priming the pump" for the entire housing industry.

Bode: Many of the consumer protections that were put into place will probably stick, but letting banks invest as they want will probably be loosened. I doubt that the Republicans will focus on "too big to fail."

Cremata: If there is any new legislation replacing Dodd-Frank, it could look a lot like the Financial CHOICE Act, which recently passed the House Financial Services Committee but received zero Democratic support. Republicans will likely need to modify the act in certain respects to get past a Democratic filibuster in the Senate (again, barring the nuclear option), but I suspect some version of it will ultimately get passed. The author of the bill, Rep. Hensarling, is close with Vice President-Elect Mike Pence, has traveled with the Trump campaign, and has even been rumored to be on the short list for Treasury secretary (although, most are now expecting that post to go to Steven Mnuchin), so that may be the direction the Trump administration is headed. A major rollback of current regulations could have a significant impact on the industry in terms of operations, but that's part of the reason why I don't expect it to happen. There has been so much regulatory turmoil in the financial services industry over the past several years that I think even banks and lenders wouldn't welcome a massive overhaul at this point. What the industry is craving more than anything at this point is certainty and stability.

Q: What do you think replacing Dodd-Frank means for the future of the CFPB? Do you think the bureau will end up being abolished? Or will it live on in another form?

Payne: There still needs to be some sort of consumer protection out there. I think the industry has learned that over the last few years with the billions that have been returned to consumers from lenders. I am sure they will keep some form of the CFPB alive in some way.

Koss: The CFPB isn't going away. It will just look more like other agencies, with some check and balance. More importantly, there will hopefully be more clarification as to how to meet the regulations. Like Dodd-Frank, there are good aspects of having a strong presence to regulate the industry. You just want clarity so that all firms will follow the rules the same way.

Sharga: Because the CFPB was created by a mandate within Dodd-Frank, it's possible that if the law is repealed, the regulator could be eliminated, as well. It seems more likely that the bureau will survive but with a different management structure (a committee rather than an executive director), congressional oversight and budgeting, and probably more of a focus on policy than on enforcement actions.

Aydelotte: The CFPB has assumed regulatory responsibilities from several other bodies (such as the FDIC), making itdifficult to summarily abolish. More likely, it will change over time, in line with changes to Dodd-Frank. The current director's term expires in 2018; however, the president may consider a change prior to that. Look for the promotion of a junior-ranking politician with an alignment to Republican banking committee ethos.

Bode: I think the CFPB will continue, but its power will be diminished.

Cremata: I think the CFPB will live on but with less power, more oversight and a more measured enforcement approach. Director Richard Cordray will probably be replaced at some point with a bipartisan commission, as is contemplated in the proposed Financial CHOICE Act and has been called for by Republicans since the bureau's inception. Key parts of the Financial CHOICE Act also include making the bureau subject to Congressional oversight and appropriations, repealing the Chevron deference doctrine (which forces courts to provide deference to agencies' interpretations of statutes), and restoring notice and comment rulemaking. Although it's hard to say which elements of the act will ultimately make it past the Senate, these issues have been among the most frequent subjects of Republican – and industry – criticism around Dodd-Frank, so I would expect them to remain in any reform bill passed by Congress.

Q: How quickly do you think these changes might come about?

Payne: It will probably take one to two years to totally take effect, but we will likely begin to see changes by the end of 2017.

Sharga: It seems like the Trump transition team, along with the Republicans in the House and Senate, is already talking about this, so I'd be surprised if this isn't on the "First 100 Days" agenda. Pushing massive reforms – or repealing a major piece of legislation – could take a few months. But I suspect that, along with the Affordable Care Act and tax reforms, this will be pretty high on the new president's agenda.

Aydelotte: Clearly, the industry and markets prefer policy certainty. Until there is more consistent policy rhetoric and evidence from the newly established White House and Senate/House, confidence will be cautious. Stronger investment may bide time, awaiting more concrete indicators.

Bode: Attempts will be made in the first 100 days.

Cremata: It depends on how willing Senate Republicans and Democrats are to work together. If they can find some common ground and agree on a modified version of the Financial CHOICE Act, then the changes could come very quickly. However, if both sides dig in their heels and the Republicans come up against a filibuster, then it could be a very long time before we see any significant changes to Dodd-Frank.

Q: Will this lead to a major loosening of credit standards and the return of riskier lending, as some have predicted? (What of the investors?)

Payne: There will be a few looser standards after the change. I am sure we will not see things go back to how they were pre-2008 with the 580 credit score, no-doc programs. People are wise to what happened with the junk bond mortgage loans, thanks to movies like "The Big Short." They will have to find balance between what loans consumers need and what investors are willing to buy on the back end. I feel investors are going to take the "dip your toe in" approach as opposed to just jumping into new programs.

Koss: If Dodd-Frank gets repealed or RESPA is changed, of course there would be widespread changes, many of which would be bad for our industry if there is no model to replace them.

Sharga: I'm hopeful that lenders (and the investors who funded them) learned their lessons during the last boom-and-bust cycle – and that we'll keep basic regulations in place to help ensure that credit doesn't get as ridiculously loose as it was in the early 2000s. Remember that the industry had already adjusted to much stricter standards before the CFPB put its qualified mortgage (QM) rules in place – those rules essentially codified what the market was already doing. There's also no secondary market for the kinds of toxic loans that were written during the last housing boom, and I doubt too many lenders will be interested in keeping those kinds of loans in portfolio. What should happen – what I hope will happen – is that lenders will, once again, be able to price loans appropriately to reflect risk and that the millions of creditworthy borrowers who would normally have qualified for loans before QM will be able to qualify again.

Bode: Ultimately, yes, but not in the short run.

Cremata: Most of the talk from Trump's camp has been around reining in regulatory overreach and eliminating certain overly burdensome regulations, especially those that disadvantage community banks and credit unions. It would be highly unpopular, politically, if they were to loosen credit standards to the extent of ushering back the kind of risky lending that led to the 2008 collapse. I don't hear anyone calling for that.

Q: In what other ways do you see a Trump presidency potentially reshaping the housing and mortgage markets?

Payne: I don't feel it's going to "reshape" the mortgage or housing markets. You have to remember, a lot of laws have been put in place on a state level, so those will not change. I feel that Trump will listen to what people want and does not want to rock the boat too much in this area.

Koss: Clarity that brings back the securities market and uniting the GSEs are big issues that could be reshaped in a Trump administration.

Sharga: Making credit available again will go a long way toward reshaping the mortgage and housing markets. But the biggest, single impact a Trump presidency can have on housing is the creation of more higher-paying jobs. The kind of infrastructure rebuilding project President-Elect Trump has been talking about would create a massive number of construction jobs and fuel manufacturing and service industry jobs, as well. Those are the kinds of jobs that typically lead to housing demand, which, in turn, should drive home building back to healthier levels, creating even more jobs. If Trump's economic plans are half as successful as he hopes they'll be, the housing market will soar.

Aydelotte: Very critical to the housing market I would further watch, both short and long term, are board of governor appointments. There are currently two vacancies on the board, and the current Fed chair, Janet Yellen, and Vice Chair Stanley Fischer complete their terms in those specific positions in 2018. Look for changes in 2017. This, of course, directly impacts monetary policy, including interest rates.

Bode: I can see something finally happening with the GSEs. Not sure if Trump will adopt Rep. Hensarling's ideas on the GSEs, but as an independent mortgage banker, I do fear he might.

Cremata: It will be interesting to see what happens with origination volumes. There are obviously a lot of factors at play there, but, in theory, reducing regulations, increasing access to credit and stimulating the economy through tax benefits should all point to increased purchase volumes. It's also possible that we could see an uptick in new construction, as Trump specifically pledged on the campaign trail to significantly reduce regulations around home building. Conversely, higher interest rates could lead to a further reduction in refinance volumes, which were already cooling.