“How’m I Doin?”—Treasury Secretary Mnuchin Doesn’t Need to Ask—He Will Tell You How Successful He Has Been With Regulatory Reform

By Thomas A. Brooks / Apr 30, 2018

In the 80’s, the three term and often blunt-spoken and theatrical NYC Mayor Ed Koch often would stand on street corners asking constituents, “How’m I Doin”, in his unmistakable Bronx laden accent. It’s been over a year since President Trump signed Executive Orders 13771-“Reducing Regulation and Controlling Regulatory Costs”, 13772-“Core Principles for Regulating the United States Financial System”, and 13777-“Enforcing the Regulatory Reform Agenda.” So, how has Secretary Mnuchin been “doin” in implementing these Executive Orders? On April 24th, Treasury released a report, “Regulatory Reform Accomplishments Under President Trump’s Executive Orders” (“Report”) detailing its actions in reducing regulatory burdens imposed on financial institutions as well as out-of-date IRS regulations. While most actions are not final accomplishments, but are proposals or suggestions, some provide meaningful regulatory relief for financial institutions.

Since the issuance of EO 13772 articulating the Core Principles of the President regarding the regulation of the financial system, Treasury has issued three Reports to implement EO 13772: a report on banks and credit unions; a report on capital markets; and a report on asset management and insurance. A fourth report relating to “fintech” activities is expected be submitted by early summer. Additionally, in April, 2017, Treasury issued a report on the Financial Services Oversight Council with recommended changes to be made, particularly the processes used in determining what non-bank entities are deemed to be significantly important financial institutions.

One of Treasury’s efforts to reduce the regulatory burden on financial institutions was to issue a report highly critical of the Arbitration Rule promulgated by the CFPB (now known as the BCFP). It found that the Arbitration Rule would have imposed extraordinary, unjustified new costs on depository institutions. Treasury determined that the BCFP failed to consider the share of class actions that lack merit, as well as the benefits of arbitration and regulatory alternatives potentially available to it. The Arbitration Rule was nullified by Congress using the Congressional Review Act, where members often cited the Treasury criticisms as the basis for their vote.

The Report also notes that Treasury has been active in promoting changes in the Volcker Rule by not making it applicable to smaller financial institutions, advocating changes in the Home Mortgage Disclosure Act to provide more flexibility for small lenders, and a reduction in data collected by the Federal Insurance Office relating to terrorism risk insurance as being duplicative. Treasury also has been supportive of many of the elements contained in bills in both the House and Senate that would reduce the regulatory burden resulting from the provisions of the Dodd Frank Act.

The Report does not exclusively relate to depository institutions and includes actions of Treasury’s three principal sources of regulation: the Office of Tax Policy and the IRS; the Alcohol and Tobacco Tax and Trade Bureau; and the Financial Crimes Enforcement Network. By Treasury’s count, the regulatory reform accomplishments include the following actions.

- Treasury states that it has reduced its regulatory agenda by approximately 100 items from 2016 to 2017, but only two of these were identified as significant regulatory actions in its Fall 2017 Regulatory Plan. The remaining items are deemed to be burden-reducing, however.
- It claims that it has eliminated, reduced or proposed to eliminate more than 300 regulations (almost all related to activities of the IRS) in total, including ineffective, unnecessary, or out-of-date “deadwood” regulations.
- Treasury has recommended more than 250 specific actions to reform and reduce the burdens of regulation in the U.S. domestic financial system.
- Treasury has introduced zero new significant regulatory actions under Executive Order 13771.

If you would like additional information regarding regulatory changes proposed by the banking prudential regulators or being considered by Congress or if you have any questions regarding any existing regulation, please contact Tommy Brooks at tbrooks@clarkhill.com, or call him at 202 552 2356.