Financial Regulation Policies And Leadership During the Trump Administration

Introduction

The financial crash of 2008 left millions of Americans without jobs, many of whom also lost their homes to mortgage foreclosures. In order to stabilize an economy in free-fall, former president Barack Obama signed the Dodd-Frank Act into law in 2010.

Dodd-Frank established the Financial Stability Oversight Council ("FSOC"), the Consumer Financial Protection Bureau ("CFPB"), the Office of Financial Research ("OFR"), the Volcker Rule, as well as a plethora of other increased regulatory rules and guidelines. While these new agencies and rules play many important roles in unique ways, they are all unified in upholding the key principles reflected in the drafting of Dodd-Frank. According to BetterMarkets, these are:

1) Preventing future financial crashes

2) Protecting consumers and investors

3) Ensuring banks are supporting the real economy rather than gambling with taxpayer money

Upon coming into office, Donald Trump immediately began efforts to undo many of the provisions in Dodd-Frank, either by changing rules or by gutting the agencies established under it. These deregulations significantly undermined our economic system, especially since climate change is already introducing new financial risks that threaten to dwarf the crash of 2008 in magnitude several times over.

The Personnel Story

Trump appointed Gary Cohn, Steve Mnuchin, Joseph Otting, Brian Brooks, and Mick Mulvaney to some of the most important regulatory positions in the country. Many of these bankers were well acquainted with each other from working together at Goldman Sachs, OneWest bank, or both. The former is notorious for its role in the 2008 financial crisis, and the latter is known for wrongfully foreclosing on the elderly, and discriminating against African American and Latino mortgage-seekers. In their roles as Trump's financial regulatory conduits, this group of bankers focused on gutting and compromising many of the protections that had been put in place to prevent Wall Street from recklessly fomenting another financial catastrophe.

Treasury Secretary Steven Mnuchin

Before being appointed as Treasury Secretary by President Trump, Steve Mnuchin was a former Goldman Sachs executive and hedge fund manager. His career was marked by profiting from the foreclosure crisis during the Great Recession. After spending 17 years at Goldman Sachs, Mnuchin led OneWest Bank. With Mnuchin at its helm, OneWest became infamous for its aggressive foreclosure practices that preyed on the elderly, as well ruthlessly discriminating against racial minorities in California when disbursing home loans.

With Mnuchin as its secretary, Trump's Treasury department pursued an unrelenting deregulation campaign. Most notable was Executive Order 13772, which was issued almost immediately after Trump took office. This executive order established the basis and direction—the so-called "core principles—of the Trump administration's deregulation effort. The order instructed the Treasury Secretary to consult with members of various regulatory agencies as well as the FSOC and then report back deregulatory changes to be made. The Treasury department then released four reports from June 2017 to July 2018 on banks and credit unions, capital markets, asset management and insurance, as well as nonbanks and financial technology. All of these reports nakedly reflected Wall Street's relentless drive to strip away sections of Dodd-Frank since its 2010 enactment.

Joseph Otting and Brian Brooks at the Office of the Comptroller of the Currency

Joseph Otting was sworn in as the Comptroller of the Currency in late 2017, and was then appointed the acting director of the Federal Housing Finance Agency (FHFA). Otting was a bank executive who had spent decades at the helm of many of the financial institutions he was appointed to oversee. He served on Bancorp's executive management committee, as the president of CIT Bank and co-president of CIT Group. Otting was the CEO, president, and a board member of OneWest Bank, where he worked with close associate Steven Mnuchin.

While serving as Comptroller, Otting kept the interests of his former business partners top of mind, approving a merger between OneWest and CIT, which was based on a fraudulent public comment campaign he had engineered some years prior.

Otting's legacy at the OCC and the FHFA is similarly mired in racism and a disregard of the public interest. Otting tried to "modernize" the Community Reinvestment Act, a law which required bank regulators to combat redlining and stop neighborhood lending bias in which entire neighborhoods are denied credit. Otting eased compliance requirements for lenders, while referencing how burdensome the requirements were when he was leading OneWest, despite the fact that OneWest engaged in the exact type of behavior that the CRA is meant to mitigate.

Additionally, Otting was appointed to head the FHFA at a time when the constitutionality of the department was being fundamentally questioned by bad-faith actors on the right. Otting opted not to defend the existence of the department that he was appointed to lead.

Brian Brooks

Brian Brooks was appointed to be the First Deputy Comptroller of the Currency by Joseph Otting upon the latter's resignation. From 1994 to 2011, Brooks worked at a law firm called O'Melveny & Myers, where he represented a group of investors which included OneWest bankers Steven Mnuchin, and John Paulson. Brooks then worked for OneWest as the vice chairman, helping the bank avoid regulatory scrutiny of the bank's merciless foreclosure practices. Brooks then joined Fannie Mae as their General Counsel. In that role, he ignored a near-decade precedent, which limited the organization's input in discussions surrounding its structure and existence, to urge Mnuchin to release Fannie Mae from government control. Lastly, he left Fannie Mae to become Chief Legal Officer at cryptocurrency exchange Coinbase.

Brooks predictably brought this pro-crypto mindset to his role at the OCC, vowing to push banks to conduct more business with crypto firms. One of his notable decisions before stepping down as Acting Comptroller and heading to Binance.US was the release of guidance that weakened the eligibility requirements for a national trust charter. Brooks' new interpretation would have allowed fintech firms and other financial institutions to apply for national bank trust charters even though they do not engage in fiduciary activities.

Equally troubling was his attempt to gut the longstanding true lender doctrine, which protected consumers from usurious lending rates. Brooks' proposed rule loosened lending restrictions on predatory consumer finance institutions like payday lenders, permitting them to issue loans at illegally high rates as long as a partner bank was named as lender and provider of the loan. It was an active decision to undercut states' interest rate caps by allowing predatory lenders to launder their loans through national banks. The rule was eventually struck down by Congress via the Congressional Review Act in June 2021.

Mick Mulvaney and the Attack on the Consumer Financial Protection Bureau

Donald Trump appointed Mick Mulvaney to be the head of the CFPB. Under Mulvaney's leadership, the CFPB immediately started gunning for the repeal of the payday lending rules that were instituted to protect consumers from predatory lending practices. Mulvaney targeted a 2017 rule that would require lenders to consider clients' ability to pay when issuing payday loans. The same rule also prohibited banks from charging interest equaling more than 6 percent of a client's income. Payday loans are short-term

loans purportedly intended to provide workers with early access to a future paycheck, but in reality are a dangerous way to enter into mountains of debt at high interest rates. Payday lenders disproportionately prey on the working poor.

Another proposal eliminated underwriting requirements entirely. This decision to rescind underwriting provisions coincided with Mulvaney's meetings with the payday lending industry. Underwriting requirements are a key regulatory tool that ensures that lenders review their client's basic documentation before issuing loans. Kathy Kraninger, Mulvaney's successor, finalized the new payday lending rule in July 2020. Aggressive industry resistance has prevented the Biden administration from reversing these rules; the bureau is still caught up in 14 different lawsuits meant to limit its regulatory efficacy.

Mulvaney also set about gutting the bureau. He installed political cronies into senior supervisory positions at the CFPB, and went on a deregulatory rampage by

> "...undertaking a pointless, counterproductive effort to rename the CFPB, which would have cost taxpayers $19 million and the financial industry $300 million; firing the CFPB's advisory council; zeroing the CFPB's budget; and reopening the CFPB's well-considered payday lending rule".

Between 2015 and 2018, enforcement actions by the CFPB fell by 80%. The CFPB only brought up 11 enforcement actions under Mulvaney, the lowest since the Bureau was founded in 2012. Kraninger continued this trend, and in 2019 brought 25 actions—still far less than the number of enforcement actions which the CFPB pursued under its original Obama-era appointees.

Gutting the Financial Stability Oversight Council

Trump appointees exempted several risky financial institutions from FSOC oversight, which was established in the wake of the financial crisis. Specifically, AIG and MetLife were de-designated as systemically important financial institutions despite posing obvious systemic risk to the financial system.

At the same time, Trump's FSOC also created new guidelines that intentionally limited the council's ability to designate nonbank financial firms for prudential regulation. These new guidelines required regulators to conduct cost-benefit analyses before designating firms for oversight, stipulating that firms only need to be designated if FSOC determines that "material financial distress" is likely. Lastly, these new guidelines required that the department focus on "activities-based" designations rather than "entity-based" designations. This shift in guidelines moved the department away from stringent oversight of large, systemic financial institutions to a more ambiguous regulation of financial activities. In November 2023, the Biden administration finalized new guidance restoring FSOC's designation authority, while introducing an analytic framework to clarify the process for identifying systemic risks.

Weakening Office of Financial Research (OFR)

The Office of Financial Research (OFR) was created in response to the 2008 financial crisis to provide data,analysis and research to FSOC to identify and mitigate systemic risks in the financial system. While OFR is not a regulatory body, the office plays a critical role by investigating systemic risks and providing regulators with a robust empirical base to devise regulations. As such, the office's research is crucial to prevent future crises from risks like climate change, ensure economic stability, and protect consumers from the fallout of unchecked financial practices.

OFR was designed to be an independent cross-depository of research for financial regulators. However, the Trump administration actively undermined this independence by having FSOC and Treasury leadership set the office's priorities. Trump's pick to direct the office Dino Falaschetti oversaw significant budget and staffing cuts, including a 25 percent slashing of the office's budget between 2017 and 2021. It's no surprise considering Falaschetti advocated for the closure of the office while serving as chief economist of the House Financial Services Committee.

Whistleblower protections

The SEC Whistleblower Program is an initiative that rewards individuals who provide original information that leads to successful enforcement actions with monetary penalties of over $1 million. Whistleblowers are eligible to receive between 10% and 30% of the levied sanctions, and the program also offers protections, including confidentiality and anti-retaliation provisions. These incentives help the SEC obtain critical information that would be otherwise difficult to gather.

The program was still successful under Trump, but his administration did notably try to undermine it. Under Jay Clayton, Trump's appointment as SEC chair, the agency proposed two harmful rules. The first one proposed to put a cap on awards, limiting them to only 10% of any possible sanctions. The second one proposed to "discount or dismiss a whistleblowers award if the information provided could have been inferred from public sources." Both of those proposed changes would undermine the incentive structure that makes the whistleblower program so effective in the first place.

S2155: The Volcker Rule and Silicon Valley Bank Collapse

One of the key regulatory tools attacked by the Trump administration was the Volcker Rule. This rule is intended to prevent bank holding companies from making risky bets, including investments in hedge funds or private equity funds. Since banks hold deposits which are federally insured, using these funds for speculative trading directly puts the money of both depositors and, via a potential bail-out, taxpayers at risk. The rule was

also drafted to promote transparency and accountability, since it requires banks to maintain detailed records and report their trading activities.

In 2019 and 2020, the five main financial regulatory institutions issued and eventually instituted the "New Volcker Rule,' a severe blow to the regulatory efficacy of the original rule. The new rule significantly limited the scope of speculative trades that would be in violation of the Volcker rule. It also allowed the banks to enforce their own compliance with the rule, which inherently undermines effective government financial supervision. Furthermore, the rule was incredibly lenient when it came to categorizing what financial activities count as "hedging"—banks were allowed to say whatever trading activities they wanted were considered "hedging," in effect allowing them to circumvent the ban on proprietary trading.

The assumption of "self-enforcement" (as well as some alterations to the applicability of key Dodd-Frank regulations for banks within the $100 billion asset threshold) that undermined the meaning of government financial regulation directly contributed to the collapse of the Silicon Valley Bank.

In 2018, Trump signed the pro-Wall Street Growth, Regulatory Relief, and Consumer Protection Act (S2155) into law, which raised the threshold for increased regulation for bank holding companies from $50 billion to $250 billion. It also lifted collateral calculations, supervisory stress testing, and exempted certain banks and bank holding companies from conducting company-run stress tests. Silicon Valley and Signature Banks were both mid-size banks (their assets totalled around $100 billion) and thus were exempt from enhanced regulations under these new guidelines.

Crucially, this act was one deregulatory move in a sea of rule changes across the many agencies meant to prevent this type of failure. Jerome Powell, who Trump originally appointed to be the chairman of the Federal Reserve, spearheaded many such rule changes. Powell watered down the most important methods of communication between regulators and the boards of banks. He issued a proposal in 2017 that would require that Matters Requiring Attention ("MRA"), and Matters Requiring Immediate Attention ("MRIA") only be reported to senior management at banks, rather than their boards. This rule, which was finalized on February 26, 2021, meant that warnings from the Fed that SVB and Signature Bank were likely to fail piled up on the desks of management officials who lacked the authority to make more important adjustments that the board had.

The aforementioned weakening of the Volcker Rule significantly contributed to these two bank failures. Since the Trump-era Volcker rule was modified to no longer limit investments in hedge funds, private equity, and venture capital funds, Silicon Valley Bank was able to drastically increase its risky investments across the board. The rule also worsened communication between regulators and banks, and effectively exempted positions held for less than 60 days from the enforcement of the rule. The bank could

then engage in unstable short-term trading practices. Some of these were sketchy hedging strategies in pursuit of short-term profits from its available for sale ("AFS") portfolio, which eventually led the bank to have $15.26 billion in unrealized losses.

As clearly demonstrated by the collapse of Silicon Valley and Signature Banks, the Trump administration created an environment ripe for financial malfeasance and systemic risk. His appointees to key regulatory positions had obvious vested interests in deregulation, thus exemplifying a profound disregard for the kind of financial oversight and consumer protection which ensure that middle and working class Americans will not, once again, become the unwitting victims of the foolish gambling habits of the wealthy. A potential second Trump administration, which would undoubtedly continue this deregulatory trajectory, would further undermine these crucial regulatory safeguards, and thus threaten the resilience of the entire financial system.

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