LEGISLATIVE UPDATE

REGULATORY REFORM IN THE 115TH CONGRESS

By Erin Stackley

Before his first 100 days were up, President Trump made it clear that one his priorities to roll back regulations from the federal agencies. He has spoken broadly about the need to scale back the administrative agencies role in governing the country, and specifically singled-out targeted areas – for example, regulations on financial institutions created under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

To accomplish this, the President has signed several executive orders that reign in regulations. Through them, he has created “Regulator Reform” offices within each federal agency, directed to review existing regulations and recommend ones for repeal; required that for every one new regulation an agency proposes, it must identify two to repeal; and capped spending on new regulations at $0. He has also released executive orders directing the Secretary of Treasury to review existing regulations on the financial system, and signed memos directing rolling-back Dodd-Frank. Members of Congress as well – particularly Republicans – are eager to repeal certain regulations, or better tailor them to accomplish their goals.

So, what does this mean for commercial real estate? Scaling back certain regulations could result in some positive effects for commercial real estate. For example, Congress passed Dodd-Frank in response to the financial crisis of 2007-2008, with the aim of reforming the country’s financial system to prevent a future event like that from occurring. Its administration involves several federal agencies and has resulted in several hundred regulations. The resulting compliance costs have caused many regional and community banks to scale back their lending operations, as they do not have the resources to keep up with them the way that a large bank does - despite the fact that these smaller lenders were not at the root of the financial crisis that spurned the legislation. Local and community banks are top sources of capital for NAR’s commercial members, so this trend is troubling for them and makes it difficult for their clients to get financing.

Regulatory reform that scales back and tailors the Dodd-Frank regulations could provide some relief to those smaller lenders, and translate into more lending to commercial real estate. While the Treasury carries out its review of the regulations, Congress has already begun to act, introducing bills that will better tailor and clarify certain regulations impacting financial institutions. One such bill is H.R. 2148, “Clarifying Commercial Real Estate Loans,” introduced by Representative Robert Pittenger (R-NC). This bill would clarify the regulations that created the “High Volatility Commercial Real Estate” (HVCRE) risk-weight category for lenders. This category currently includes commercial acquisition, construction, and development (ADC) loans, which are assigned a risk-weight of 150 percent, up from the pre-rule level of 100 percent. This makes commercial loans less attractive than other types with lower risk-weights, and especially difficult for smaller lenders to take on. Rep. Pittenger’s bill will clarify the rule and which loans its applies to, hopefully providing some relief for local and community banks.

On the other hand, the executive orders from the President have resulted in some confusion within the federal government as to how to apply them and what they include. For example, the "1-in 2-out" rule for regulations has resulted in questions about what counts as a rule-making, which rules are eligible for repeal, and what the process of a repeal will look like. This means that much rule-making has been paused in the agencies until there is more clarity. For example, the Federal Aviation Administration (FAA) was working on a rule to allow commercial use of "Micro-UAS" (very small, lightweight drones) for commercial purposes over crowds, as well as rules for beyond-visual-line-of-sight and night flights. These rules, which are deregulatory in spirit in that they would potentially lift bans on certain activities, have been put on hold until there is more clarity on how they can proceed, resulting in a pause in the process.

As the 115th Congress continues its work and the Trump Administration keeps pushing to scale back regulations from the federal agencies, NAR will closely monitor all the actions and bills and weigh the potential costs and benefits for the real estate industry. NAR will advocate for regulatory reform that relieves unnecessary lending burdens for commercial real estate – such as H.R. 2148 – and also urge the agencies to continue moving forward with important rule-making that will benefit our members and the economy as a whole. ▽