Simpson Thacher

Memorandum

Treasury Department Issues Recommendations on Reforming the U.S. Financial System

June 14, 2017

On June 12, 2017, the U.S. Department of the Treasury issued recommendations for streamlining banking regulation and changing key features of the Dodd-Frank Act and other measures taken by regulators following the 2008 financial crisis. The recommendations are included in the first of a series of reports to President Trump pursuant to an Executive Order issued on February 3.

The recommendations cover a wide spectrum, from easing capital and liquidity requirements to altering the structure and regulatory powers of the Consumer Financial Protection Bureau. A number of the recommendations will require specific action by Congress in order to be effected, such as exempting certain banking organizations from the Volcker Rule and raising the $50 billion threshold for the application of certain enhanced prudential requirements for bank holding companies. However, the vast majority of the recommendations—according to Treasury Secretary Mnuchin, close to "70 or 80 percent"—can be addressed by regulators through their rulemaking authority. Examples include revising guidance from 2013 on leveraged lending activities, avoiding overlapping and inconsistent examination procedures and streamlining the process for granting deposit insurance for de novo banks. As such, the recommendations effectively acknowledge the decreasing likelihood of Congress passing comprehensive regulatory reform legislation and instead focus on incremental reforms that the regulatory agencies can implement themselves.

The recommendations differ in some notable respects from the Financial CHOICE Act (the "CHOICE Act"), which was passed by the House of Representatives on June 8.[1] Although the White House has expressed support for the CHOICE Act (and the Treasury recommendations include an endorsement of the CHOICE Act's "off-ramp" provisions), the set of recommendations released by Treasury are significantly less ambitious on several fronts. For example, Treasury does not recommend an outright repeal of the Volcker

[1] For additional information regarding the CHOICE Act, please see our Firm's memo, available here.

Rule as the CHOICE Act does. In addition, the recommendations are focused primarily on regulatory relief for smaller and less complex banking organizations, rather than broad-based deregulation.

The following is a summary of Treasury's initial report and recommendations to President Trump. Subsequent reports are expected to be issued by Treasury in the coming months focusing on capital markets, asset management, and non-bank financial institutions.

Regulatory Structure and cybersecurity

- **Regulatory Overlap and Duplication.** In general, Treasury recommends legislative action to reduce regulatory fragmentation, overlap, and duplication. It does not, however, propose any specific consolidation or elimination of agencies. Instead, Treasury recommends that the statutory mandate of the Financial Stability Oversight Council ("FSOC") be broadened so that it can assign a lead regulator as primary regulator on issues where regulatory agencies have conflicting or overlapping jurisdiction. Treasury also calls for reforming the structure and mission of the Office of Financial Research, specifically that it become part of Treasury, with its Director subject to appointment by the Treasury Secretary (without a fixed term and removable at will) and its budget subject to the appropriations and budget process.
- **Cybersecurity.** Treasury recommends that federal and state financial regulatory agencies establish processes for coordinating regulatory tools and examinations related to cybersecurity across financial sub-sectors. Financial regulatory agencies should work to harmonize the development and implementation of cybersecurity regulations and regulatory interpretations.

Volcker Rule

- **Exempt Smaller Institutions from the Volcker Rule.** Treasury recommends that banking organizations with $10 billion or less in total consolidated assets should be entirely exempt from all aspects of the Volcker Rule (which would require a legislative change to the statute, unlike many of the other recommended changes noted below). In addition, a further exemption from the proprietary trading prohibition should be provided for all banking organizations, regardless of size, that have less than $1 billion in trading assets and trading liabilities on a consolidated basis and whose trading assets and trading liabilities represent 10% or less of total consolidated assets.
- **Revised Definition of Proprietary Trading.** The proprietary trading prohibition should be revised by revising the implementing regulations to eliminate the rebuttable presumption that financial positions held for fewer than 60 days constitute proprietary trading. In addition, policymakers should assess whether the purpose test should be eliminated altogether, to avoid requiring banks to dissect the intent of a trade.
- **Market-Making Restrictions.** Regulators should give banks additional flexibility to adjust their determinations of the amount of market-making inventory necessary to meet the "reasonably

expected near term demand" ("RENTD") test. In particular:

- For illiquid securities, banks should be permitted to focus less on predicting with precision the future demands of clients based on past patterns and should have greater leeway to anticipate changes in markets that could increase demand for such securities.
- For over-the-counter derivatives, which are less suited to the RENTD framework, regulators should focus more on ensuring that banks appropriately hedge the positions they maintain. Banks that have not yet established a market-making presence in a particular asset class should have more discretion to meet the RENTD test while they are building up customer volume.
- Banking entities should be able to enter into block trades even if they involve a trading volume outside of historical averages.
- Policymakers should evaluate the benefits of other potential modifications to the RENTD framework, including an ability for banking entities to opt out of the RENTD requirement altogether if they adopt enhanced written policies for their market making trading desks (covering, for example, the trading desks' permitted financial instruments, risk levels, holding periods, and hedging strategies) or hedge all significant risks arising from their inventory of financial instruments.

- **Hedging Activity Compliance.** Although banks should be required to establish policies and procedures to ensure that their hedging activity is designed to reduce particular risks to the bank, banks should not be required to maintain ongoing calibration of a hedge over time to ensure that it meets regulatory requirements. Instead, banks should be required to monitor risks as part of their standard business practice and should be responsible for taking reasonable action to mitigate material new risks that develop over time including from existing positions. Further, the requirement to maintain documentation of the specific assets and risks being hedged should be eliminated.
- **Covered Funds Restrictions.** Regulators should adopt a simple "covered fund" definition that focuses on the characteristics of hedge funds and private equity funds with appropriate additional exemptions as needed.
  - The exemptions in Section 23A of the Federal Reserve Act should be restored in the Volcker Rule so that they apply to banking entities' transactions with their covered funds. Currently, the so-called "Super 23A" provision of the Volcker Rule applies as a flat prohibition on covered transactions.
  - The initial "seeding period" exemption from the covered funds investment restriction should be extended to three years, rather than one year, to provide banking entities with additional time to stand up new funds and allow them to establish the track records they need to attract investors.
  - Banking entities other than depository institutions and their holding companies should be permitted to share a name with funds they sponsor, provided that the separate identity of the

funds is clearly disclosed to investors.

   - An exclusion from the Volcker Rule's definition of "banking entity" should be provided for foreign funds owned or controlled by a foreign affiliate of a U.S. bank or a foreign bank with U.S. operations.

- **Volcker Rule Compliance Regime.** The existing "enhanced" compliance program under the regulations should be focused in application so that it applies only to those banking entities with at least $10 billion in trading assets and liabilities on a consolidated basis, rather than the current application to all banking entities with over $50 billion in total consolidated assets.

   - All banks should be given greater ability to tailor their compliance programs to the particular activities engaged in by the bank and the particular risk profile of that activity.

   - Agencies should eliminate any required metrics for reporting that are not necessary for effective supervision.

- **Off-Ramp for Highly Capitalized Banks.** Consideration should be given to permitting a banking entity that is sufficiently well-capitalized to opt out of the Volcker Rule altogether if the institution remains subject to written policies for its trading desks (covering, for example, the trading desks' permitted financial instruments, risk levels, holding periods, and hedging strategies) and ongoing supervision and examination.

Leveraged Lending

- **Reissuance of Guidance.** The banking regulators should re-issue the 2013 leveraged lending guidance for public comment. Following the public comment process, the guidance should be refined with the objective of reducing ambiguity in the definition of leveraged lending and achieving consistency in supervision, examination and enforcement.

- **Bank Internal Metrics.** Banks should be encouraged to incorporate a clear but robust set of metrics when underwriting a leveraged loan, instead of solely relying on a 6x leverage ratio discussed in the 2013 leveraged lending guidance.

Capital and Liquidity

- **Enhanced Prudential Standards and Thresholds.** Congress should amend the $50 billion threshold under Section 165 of Dodd-Frank for the application of enhanced prudential standards to more appropriately tailor these standards to the risk profile of bank holding companies.

   - The U.S. liquidity coverage ratio ("LCR") should be applied only to the eight U.S. global systemically important banks ("GSIBs"), and a less stringent LCR standard should be applied to internationally active bank holding companies that are not GSIBs.

   - There should be expanded treatment of certain qualifying instruments as "high quality liquid assets" ("HQLA") under the LCR, including by categorizing high-grade municipal bonds, which are not currently counted as HQLA, as Level 2B liquid assets. In addition, improvements should be made to the degree of conservatism in cash flow assumptions incorporated into calculations of the LCR to more fully reflect banks' historical experience with calculation methodologies.

  - Significant adjustments should be made to the calculation of the supplementary leverage ratio ("SLR"). In particular, deductions from the leverage exposure denominator should be made, including for: (i) cash on deposit with central banks; (ii) U.S. Treasury securities; and (iii) initial margin for centrally cleared derivatives.
  - Treasury recommends changing the threshold for compliance with the single-counterparty credit limit rules from the current level of $50 billion in total assets to match the revised threshold for the application of enhanced prudential standards.

- **"Off-Ramp" for Well-Capitalized Banks.** As an alternative approach for providing regulatory relief to banking institutions, Congress should consider establishing a regulatory "off-ramp" from all capital and liquidity requirements, nearly all aspects of Dodd-Frank's enhanced prudential standards, and the Volcker Rule for depository institutions and depository institution holding companies that elect to maintain a sufficiently high level of capital, such as a 10% non-risk-weighted leverage ratio. A version of this "off-ramp" proposal is included in the CHOICE Act recently approved by the House of Representatives.
- **Delay of Pending Rules.** Treasury recommends delaying the domestic implementation of the Net Stable Funding Ratio and Fundamental Review of the Trading Book rules until they can be appropriately calibrated and assessed, on the grounds that both of these standards represent additional regulatory burdens and would introduce potentially unnecessary capital and liquidity requirements on top of existing capital and liquidity requirements.
- **Bank Capital Accounting Standards.** The Financial Accounting Standards Board recently finalized new accounting standards affecting how banks reserve for credit losses, replacing the former "incurred loss model" (which recognizes losses only generally as they are incurred) with an alternative "current expected credit loss model" ("CECL") (which recognizes expected lifetime losses upon the underwriting or purchase of loans). Treasury recommends that U.S. regulators carefully review the potential impact of the CECL standard on banks' capital levels, with a view towards harmonizing the application of the standard with regulators' supervisory efforts.
- **Operational Risk Capital Requirements.** The method of calculating operational risk capital requirements under the "advanced approaches" framework for risk-weighting assets should be made more transparent as compared to the current approach, which is largely driven by supervisory actions.
- **Approach to International Standard Setting Processes.** U.S. rules that exceed international standards should be recalibrated to more closely adhere to the international standards, including (i)

the GSIB risk-based surcharge for U.S. GSIBs, including the short-term wholesale funding component; (ii) the mandatory minimum debt ratio included in the Federal Reserve's TLAC and minimum debt rule; and (iii) the calibration of the "enhanced" SLR for GSIBs. However, Treasury endorses the general concept of international rulemaking, noting that it provides a "level playing field" for U.S. banking organizations, and generally supports efforts to finalize remaining elements of the Basel Committee's international reforms (including establishing a global risk-based capital floor to promote a more level playing field for U.S. firms and strengthen the capital adequacy of global banks).

Stress Testing

- **DFAST Threshold and Process.** The total asset threshold for mandatory participation in company-run stress tests under the Dodd-Frank Act Stress Testing ("DFAST") regime should be raised from $10 billion to $50 billion, and banking regulators should be granted authority to increase this threshold for certain institutions based on the degree of risks and complexity of the institution.
    - The mid-year DFAST cycle should be eliminated, as should the "adverse" stress scenario (retaining only the "baseline" and "severely adverse" stress scenarios).
    - Further, banks should have flexibility to determine the appropriate number of models that are sufficient to develop appropriate output results, in accordance with the size and complexity of the institution and the nature of its asset mix.
- **CCAR Threshold and Process.** The Federal Reserve should revise the threshold for the application of the Comprehensive Capital Analysis and Review ("CCAR") process to match the revised threshold for the application of the enhanced prudential standards described above.
    - The Federal Reserve should (i) reassess assumptions in the CCAR process that create unrealistically conservative results, such as the assumption that firms continue to make capital distributions and grow their balance sheets and risk-weighted asset exposure in severely adverse stress scenarios; (ii) improve its modeling practices by better recognizing firms' unique risk profiles; and (iii) consider changing the CCAR process to a two-year cycle (with more frequent reviews permitted to allow revisions to capital plans in the case of extraordinary events).
- **CCAR Transparency.** The Federal Reserve should subject its stress-testing and capital planning review frameworks to public notice and comment, including with respect to its models, economic scenarios, and other material parameters and methodologies.
    - The qualitative CCAR element should no longer be the sole basis for the Federal Reserve's objection to capital plans for all banks subject to CCAR, and should be adjusted for all banking institutions to conform to the horizontal capital review that the Federal Reserve has already implemented for non-complex banking institutions with less than $250 billion in total assets.
    - The CCAR process could also be modified to provide management with greater control of capital

distribution planning by providing firms an accurate understanding of the capital buffers they would have after considering the projected results of the Federal Reserve's supervisory models under the severely adverse scenario. This additional certainty about the size of a firm's capital cushion could be achieved through (i) changing the sequence of the CCAR process; or (ii) integrating the risk-based capital and CCAR stress testing regimes, without increasing post-stress capital requirements.

    - Any countercyclical capital measures should be implemented through the existing CCAR and DFAST stress testing processes rather than through the countercyclical capital buffer (currently included in the risk-based capital rules).

Living Wills

- **Living Will Threshold and Process.** Treasury recommends changing the threshold for compliance with living will requirements from the current level of $50 billion in total assets to match the revised threshold for the application of the enhanced prudential standards described above.
    - The banking agencies should change the living will process to a two-year cycle (but could require firms to provide notice of material events that occur between living will submissions).
    - The banking agencies should develop specific, clear, and accountable guidance for living will submissions as well as the assessment framework for determining deficiencies in living will submissions (including remediation procedures). All assessment framework and guidance should be subject to a public notice and comment process.
    - The Federal Reserve should be required to complete its review and give feedback to firms on their living wills within six months.
    - Treasury notes that current guidance requires certain companies subject to the living will requirements to pre-position enough liquidity and capital to pre-fund a bankruptcy resolution (including through the "Resolution Liquidity Execution Need" and "Resolution Liquidity Adequacy and Positioning" liquidity standards and the "Resolution Capital Execution Need" capital standard). However, the recommendations only comment that such guidance should be "minimized" and be subject to public notice and comment procedures.
- **FDIC Involvement in Living Wills.** Treasury recommends that Congress amend Section 165(d) of Dodd-Frank to remove the FDIC from the living will process.

Foreign Banking Organizations

- **Enhanced Prudential Standards for FBOs Based on U.S. Footprints.** The application of enhanced prudential standards and living will requirements to a foreign banking organization ("FBO") should be based on the FBO's U.S. risk profile (using the same revised threshold as is used for the application of enhanced prudential standards to U.S. bank holding companies), as opposed to the current standard based on the FBO's global consolidated assets.

- **Recalibrating IHC Requirements.** The Treasury report specifically endorses the concept of requiring certain FBOs to conduct their U.S. operations through U.S. intermediate holding companies ("IHCs")—a concept that is not mandated by Dodd-Frank. However, the report recommends that, consistent with the thresholds recommended for U.S. BHCs, the threshold for an IHC to comply with CCAR should be raised from the current $50 billion level to match the revised threshold for enhanced prudential standards, subject to the ability of the Federal Reserve to impose these requirements on smaller IHCs in cases where the potential risks posed by the firm justify the additional requirements. Other IHC regulatory standards, such as resolution planning and liquidity, should also be recalibrated.
    - In considering such a recalibration, greater emphasis should be given to the degree to which home-country regulations are comparable to the regulations applied to similar U.S. bank holding companies. Where home-country regulations are sufficiently comparable, FBOs should be allowed to meet certain U.S. requirements through compliance with home-country regimes.
- **Recalibrating TLAC and LTD Rules.** Treasury recommends that the Federal Reserve consider recalibrating the internal TLAC requirement applicable to IHCs of foreign GSIBs, taking into account the foreign parent's ability to provide capital and liquidity resources to the U.S. IHC.

Community Banks

- **Recommendations for Community Banks.** The capital regime for community banks having total assets less than $10 billion should be simplified, which can be achieved by providing for an exemption from the U.S. Basel III risk-based capital regime and, if required, an exemption from Dodd-Frank's Collins Amendment. Regulators should simplify and improve the calculation of capital requirements for mortgage servicing assets and high volatility commercial real estate loans. In addition, Treasury recommends raising the Small Bank Holding Company Policy Statement asset threshold from $1 billion to $2 billion.
- **Encouraging De Novo Activity.** Treasury strongly supports efforts to encourage de novo formation, and recommends implementing changes to the existing regulatory capital requirements and other burdensome rules for community banks and a critical review of capital requirements applicable to de novo banks. The application process of obtaining deposit insurance should be significantly streamlined, and Treasury supports the FDIC's recently announced efforts to encourage de novo charters.
- **Examinations.** Treasury recommends that Congress consider raising the current asset threshold for smaller banks eligible for an 18-month examination cycle, and that all banking regulators expand upon current efforts to further coordinate and rationalize their examination and data collection procedures to promote accountability and clarity.

Consumer Financial Protection Bureau

- **CFPB Structural Reforms.** The Director of the Consumer Financial Protection Bureau ("CFPB") should be removable at-will by the President or, as an alternative, the CFPB could be restructured as an independent multi-member commission.
  - The CFPB should be funded through the annual congressional appropriations process and subject to the Office of Management and Budget apportionment.
  - CFPB's other funding mechanism, the Consumer Financial Civil Penalty Fund, should be reformed to permit the CFPB to retain and use only those funds necessary for payments to the bona fide victims of activities for which the CFPB has imposed civil money penalties. Any funds in excess of such payments to victims should be remitted to Treasury.
- **CFPB Interpretations.** The CFPB should issue rules or guidance subject to public notice and comment procedures before bringing enforcement actions in areas in which clear guidance is lacking or the CFPB's position departs from the historical interpretation of the law. In particular, the CFPB should adopt regulations that more clearly delineate its interpretation of the "unfair, deceptive, or abusive acts or practices" standard. Unlike the CHOICE Act, Treasury did not recommend that the CFPB's power to prohibit "abusive" acts and practices—which was added by Dodd-Frank—be eliminated.
  - The CFPB should seek monetary sanctions only in cases in which a regulated entity has had reasonable notice—by virtue of a CFPB regulation, judicial precedent, or FTC precedent—that its conduct was unlawful.
  - The CFPB should make the requirements for CFPB no-action relief less onerous, and align its policies for issuing no-action letters or analogous documents with the no-action policies of the SEC, CFTC, and FTC.
- **CFPB Supervisory Authority.** The CFPB currently has supervisory authority over depository institutions with over $10 billion in assets and their affiliates, as well as nonbank mortgage originators and servicers, payday lenders, and private student lenders of all sizes. Pursuant to this supervisory authority, such institutions are subject to ongoing CFPB oversight, examination and reporting requirements for the purpose of assessing compliance with the requirements of federal consumer financial laws. Treasury recommends that Congress repeal the CFPB's supervisory authority. The responsibility to supervise banks with respect to consumer compliance should be entrusted to the prudential regulators, while supervision of nonbanks should be returned to state regulators.
- **CFPB Enforcement Authority.** While the Treasury report recommends repealing the CFPB's ongoing supervisory and examination authority over banks and certain nonbank institutions, the recommendations would preserve the CFPB's authority to enforce compliance with federal consumer financial laws, subject to the following reforms:

- The CFPB should bring enforcement actions in federal district court rather than use administrative proceedings. To the extent CFPB continues to pursue some enforcement actions through administrative adjudications, it should promulgate a regulation specifying binding criteria that it will use when deciding whether to bring an action in federal court or before an administrative law judge in the first instance.
- The CFPB's Civil Investigative Demand ("CID") process should be reformed to ensure subjects of an investigation receive the benefit of existing statutory protections, backed by judicial review. In addition, the CFPB should adopt procedures to ensure that review of a CID appeal remains confidential if requested. Congress should amend Dodd-Frank to permit persons who receive a CID to proactively file a motion in federal district court to modify or set aside a CID, rather than limiting recourse to an appeal to the Director.

- **CFPB Regulatory Review Requirement.** The CFPB should promulgate a regulation committing it to regularly reviewing all regulations that it administers to identify outdated or otherwise unnecessary regulatory requirements imposed on regulated entities.
- **Consumer Complaint Database.** The CFPB's Consumer Complaint Database should be reformed to make the underlying data available only to federal and state agencies, and not to the general public.

Residential Mortgage Lending

- **Qualified Mortgage Loan Origination.** The CFPB should review the "ability to repay" / "qualified mortgage" ("QM") rule and work to align QM requirements with GSE eligibility requirements, ultimately phasing out the QM Patch and subjecting all market participants to the same transparent set of requirements.
    - These requirements should make ample accommodation for compensating factors that should allow a loan to be a QM loan even if one particular criterion is deemed to fall outside the bounds of the existing framework, such as when a borrower has a high DTI ratio with compensating factors.
- **Points and Fees Cap for QM Loans.** The CFPB should increase the $103,000 loan threshold for application of the 3% points and fees cap to encourage additional lending in the form of smaller balance loans. The CFPB should scale points and fees caps in both dollar and percentage terms for loans that fall below the adjusted loan amount threshold for application of the 3% points and fees cap.
- **Maximum Asset Threshold for Making Small Creditor QM Loans.** Treasury recommends raising the total asset threshold for entities eligible to make Small Creditor QM loans from the current $2 billion to a higher asset threshold of between $5 and $10 billion in order to accommodate loans made and retained by small depository institutions.
- **Loan Originator Compensation Rule.** The CFPB should improve flexibility and accountability of

the Loan Originator Compensation Rule, particularly in those instances where an error is discovered post-closing, in order to facilitate post-closing corrections of non-material errors. The CFPB should establish clear ex ante standards through notice and comment rulemaking, which will clarify its enforcement priorities with respect to the Loan Originator Compensation Rule.

- **HMDA Reporting Requirements.** The CFPB should delay the 2018 implementation of the new HMDA reporting requirements until borrower privacy is adequately addressed and the industry is better positioned to implement the new requirements. The new requirements should be examined for utility and cost burden, particularly on smaller lending institutions. Consideration should be given to moving responsibility for HMDA back to bank regulators, discontinuing public use, and revising regulatory applications.
- **Mortgage Loan Servicing.** The CFPB should place a moratorium on additional rulemaking in mortgage servicing while the industry updates its operations to comply with the existing regulations and transitions from HAMP to alternative loss mitigation options. In addition, the CFPB should work with prudential regulators and state regulators to improve alignment where possible in both regulation and examinations.
- **Mortgage-Backed Securitizations.**
    - Treasury recommends repealing or substantially revising the residential mortgage risk retention requirement in Dodd-Frank. If the requirement is revised rather than repealed, the legislation should designate one agency from among the six rule-writing agencies to be responsible for the interpretation of the risk retention rule.
    - Congress should consider legislation providing additional protections for investors in private label mortgage-backed securities. The CFPB should clarify assignee liability for secondary market investors related to errors in the origination process where such errors are not apparent on the face of the disclosure statement and are not asserted as a defense to foreclosure.
    - Prudential bank regulators should review the regulatory framework for risk-weighting and stress-testing applicable to securitizations held by banking organizations in order to better align the framework with the risk of the asset and with international standards for securitized products. U.S. banking regulators should consider the impact that capital and liquidity rules implementing Basel III standards would have on secondary market activity, and calibrate them to reduce complexity and avoid punitive capital requirements.

Small Business Lending

- **Bank Internal Metrics.** Banks should be encouraged to incorporate a clear but robust set of metrics when underwriting a leveraged loan, instead of solely relying on a 6x leverage ratio discussed in the 2013 leveraged lending guidance.

- **CRE Concentration Risk.** Rather than focusing on the management of concentration risk in commercial real estate ("CRE") lending, regulators should consider alternatives to assessing concentration risk to allow banks engaged in CRE lending to maximize access to credit for small businesses and optimize balance sheet usage while still maintaining safety and soundness.
- **Small Business Loan Data Collection.** Congress should repeal Section 1071 of Dodd-Frank, which requires the CFPB to establish regulations and issue guidance for small business loan data collection.

Improving "Regulatory Engagement"

- **Reassessing Regulatory Requirements on a Banking Organization's Board of Directors.** According to one study, there are over 800 provisions in law, regulation, and agency guidance that impose obligations on bank boards of directors, which often blur the line between roles and responsibilities for bank boards of directors and bank management. Treasury recommends an interagency review of the collective requirements imposed on bank boards of directors in order to reassess and better tailor these expectations to the proper role of the bank board and restore balance in the relationship between regulators, bank boards of directors, and bank management.
- **Enhanced Use of Regulatory Cost-Benefit Analysis.** Federal financial regulatory agencies should conduct rigorous cost-benefit analyses and make greater use of notices of proposed rulemakings to solicit public comment in order to promote transparency and public accountability. In particular, Treasury recommends that financial regulatory agencies perform and make available for public comment a cost-benefit analysis at least with respect to all "economically significant" proposed regulations.
- **Improving the Process for Remediating Identified Regulatory Issues.** Treasury endorses rigorous regulatory procedures and accountability in the regulation of depository institutions, but recommends some rebalancing of the volume of regulatory actions based on materiality and the nature of required remediation. A modified regulatory approach might focus more on regulatory coordination, along with supervisory guidance and recommendations, in lieu of overly prescriptive actions requiring specific remediation, such as matters requiring immediate attention.
    - Regulators and banking organizations should develop an improved approach to addressing and clearing regulatory actions in order to limit the sustained and unnecessary restriction of banking activities and services provided to customers.
- **Community Reinvestment Act.** Treasury expects to comprehensively assess how the Community Reinvestment Act of 1977 ("CRA")framework could be reformed and modernized, including by: (i) improving how banks' CRA investments are measured to improve their benefit to communities; (ii) harmonizing CRA-related oversight; (iii) changing the way CRA geographic assessment areas are defined in light of technological and other factors; and (iv) improving the regulatory review and rating

assessment process, which would consider the frequency of examinations, the ability of institutions to remediate ratings, and the transparency of how the overall CRA assessment rating is determined.

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