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Banking measure largely stalled

Dodd-Frank faces big lobbying effort

Less than a third of rules in force

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WASHINGTON — Nearly two years after the signing of the landmark Dodd-Frank legislation, many of the rules meant to restore public trust in the country's financial institutions have yet to be enacted.

Squads of lobbyists and lawyers have overwhelmed the rule-making process in minutia, blizzards of paper, and hundreds of meetings.

As a result, government regulators have missed more than half of their rule-making deadlines, with just 120 of the 398 regulations enumerated by the law in effect, according to a tally by the Wall Street law firm Davis Polk. Key provisions are still months away, most notably the so-called "Volcker Rule" meant to rein in banks' appetite for risky investments and prevent a repeat of the 2008 meltdown that led to the public bailout of some of the country's largest financial institutions.

"The richest industry in the history of the world is using its vast and unlimited resources to slow, delay, gut, and weaken as many of the rules as possible," said Dennis Kelleher, a former aide to the late Senator Edward

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2 years later, Dodd-Frank law is largely stalled

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Kennedy and the chief executive of Better Markets, a Wall Street watchdog group. "If they don't get their way, they file suit."

A year ago, a federal court in Washington sided with the US Chamber of Commerce when the business group challenged the Securities and Exchange Commission on a controversial rule that made it easier for shareholders to replace corporate directors. Although the court did not invalidate the rule, it required the SEC to launch a rigorous — and time-consuming — cost-benefit analysis before finalizing the regulation.

At least two other lawsuits are pending, challenging other aspects of the rule-making process. One was filed by a Texas community bank, and the second by several financial industry associations.

The Dodd-Frank Wall Street Reform and Consumer Protection Act was a major victory for Democrats in 2010: an offensive against what they viewed as the free-wheeling culture of Wall Street.

Supporters envisioned stronger protections for consumers against predatory lenders, stricter rules for protecting bank deposits from being used for high-risk investments, and the transformation of Wall Street into a more accountable and responsible public citizen.

To mark the law's two-year anniversary, House Republicans are convening at least six hearings this month to provide a forum for the continuing debate over Dodd-Frank. That debate is already playing out on the campaign trail, where presumptive Republican presidential nominee Mitt Romney has vowed to repeal the law.

"There's no way in hell that's going to happen, but you could get modifications and tweaking," said Robert Litan, a senior economics fellow at the Brookings Institution. Senate Democrats would surely oppose any wholesale changes, he said.

Still, the power dynamics in Congress remain a serious threat, said Representative Barney Frank, a Democrat from Newton. Frank, who is retiring from Congress at the end of the year, will spend his final months in Washington defending his namesake law and protecting funding for those regulatory agencies writing the rules and overseeing the firms.

"There's this egregious effort to kill it by not funding them," Frank said, referring in particular to potential cuts to the Commodity Futures Trading Commission and the SEC.

"Republicans don't want to give enough money to do the job right," he said. "We are pushing back to get them more money, and we'll be fighting in the House."

The Commodity Futures Trading Commission, which will have to enforce dozens of new rules on the $300 trillion derivatives industry, faces uncertainty because House Republicans are seeking to slash its current $205 million budget by $25 million. Senate Democrats have backed President Obama's request to boost the agency's funding to $308 million.

"Even if we finish the rules, we won't have the resources, the people," said commission chairman Gary Gensler. He likened his challenges to a football game without enough referees. "Without appropriate funding, we can't truly oversee these markets."

Until its enactment on July 21, 2010, the financial industry had been focused on blocking the overhaul, swarming the nation's capital with some 600 lobbyists to influence the deliberations.

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With such high stakes, industries spent a record $302 million in 2010 for lobbying, according to OpenSecrets.org. That same year, the US Chamber, a fierce critic of Dodd-Frank, spent $157 million for lobbying, also a record.

CHIP SOMODEVILLA/GETTY VIA BLOOMBERG NEWS/FILE 2010

Senator Christopher Dodd (center), and Representative Barney Frank (second from right) celebrated their bill.

Industry representatives are unapologetic for their efforts on Capitol Hill.

So many of the law's repercussions are largely unknown, and business groups are understandably concerned, said Tom Deutsch, executive director of the American Securitization Forum, a financial industry trade group.

"It's not that the industry is trying to delay the regulators," Deutsch said. "But if you stick a patient with 20 different needles, the interaction of all those regulatory medicines may end up being more lethal than helpful."

Tom Quaadman, vice president of the chamber's center for capital markets and competitiveness, said much of the slowdown naturally arises from the complexities of the law and the issues involved. He cites as an example that government regulators, including the Federal Reserve and SEC, asked industry representatives to weigh in on 1,400 questions having to do with the Volcker Rule, a linchpin of Dodd-Frank authored by Paul Volcker, former chairman of the Federal Reserve.

The rule, which would limit high-risk trading by banks, is far from finalized because many of the 17,000 written public comments submitted to the SEC still await review, page by page.

Most of the comments are short, pithy postcards from ordinary Americans, but others are hundreds of pages of dense legalese that require careful reading by staffers.

"Sometimes, regulators don't understand the markets they regulate, and the regulators themselves don't even know how to construct a system to enforce a provision of the law," Quaadman said.

The arcane exercise of defining such terminology as "swaps" in derivatives markets illustrates the daunting task of fully implementing Dodd-Frank, a task that was a year overdue even though observers thought regulations for that market were among the most vital to enact. In the end, after hundreds of hearings and thousands of public comments over two years, it took more than 600 pages to specify what would constitute a swap under the law.

Derivatives reform, Gensler said, is about "to spring to life," ordaining the finalized rules on swaps announced last week as a breakthrough that will begin clearing a backlog of other stalled rules meant to bring transparency to markets mostly operating in the shadows.

Still, much work remains on other elements of the law.

"To the extent that the purpose of this entire exercise is to restore confidence in our financial system, then that objective is far off in the distance," said Cornelius Hurley, a professor and the director of Boston University's Morin Center for Banking and Financial Law. "A deeply flawed statute is being implemented haltingly under very difficult circumstances."

Some important elements of Dodd-Frank provisions are in place, including the requirement that the country's largest banks draft a "living will," a blueprint for parceling out assets should an institution suffer a setback from which it cannot recover.

The rule was precipitated by the outrage over government bailouts of firms once deemed "too large to fail."

The Consumer Financial Protection Bureau — a new agency that is supposed to police consumer credit to be sure companies are not taking advantage of small-time borrowers — has opened for business. But that bureau, too, is struggling to enact its rules and is months behind. For a year, the fledgling agency had been without a director because Republicans, who sought to limit the bureau's authority, had refused to confirm one.

Republicans opposed President Obama's first choice to lead the agency: Elizabeth Warren, the Harvard professor who was among the bureau's chief architects and is now running for the Senate.

Warren, a Democrat, is seeking to oust Senator Scott Brown, the Massachusetts Republican who provided the 60th and decisive vote for passage of Dodd-Frank.

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