Worse than the Disease: The Case for Reforming Dodd-Frank

By Kirstin Erickson

***Resolved: The United States Federal Government should substantially reform its banking, finance, and/or monetary policy.***

Sometimes a cure is worse than the disease.

After the financial crisis that rocked the U.S. from around 2007-2009, Congress was determined to prevent such a thing from every happening again. Its solution was the Dodd-Frank Wall Street Reform and Consumer Protection Act, or Dodd-Frank as it is better known. Unfortunately, Congress’ expectations for this bill did not match reality. Not only is Dodd-Frank not an effective solution to the causes of the previous financial crisis, but it introduced many new regulations that are unnecessary and burdensome both for banks and for American citizens. If Congress is serious about protecting the American people, it would repeal and reform significant provisions in Dodd-Frank through passing the Financial CHOICE Act of 2017, a bill that passed the House of Representatives but never became law.  
  
Because Dodd-Frank is a massive bill with hundreds of pages and a sweeping number of reforms, there are far too many points to put into one case. This case included some of the simplest and strongest arguments in the 1AC and categorized them as justifications. However, there are many more areas of Dodd-Frank you could focus on, some of which are included in the 2A evidence. To maximize the research, the 2AC should focus both on extending the points in the 1AC as well as presenting new areas of Dodd-Frank that will be reformed through the plan.

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Worse than the Disease: The Case for Reforming Dodd-Frank

Maybe you’ve heard the saying, “The cure is worse than the disease.” The 2008 financial crisis was a big bad mess, but the cure Congress enacted, known as the Dodd-Frank law, is worse than the disease. Please join my partner and me as we affirm that: The United States Federal Government should substantially reform its banking, finance, and/or monetary policy.

OBSERVATION 1. INHERENCY, or the Status Quo.

Fact 1: Dodd-Frank was passed after the 2008 financial crisis

History.com editors 2018. January 26, 2018, updated August 21, 2018. “Dodd-Frank Act” History.com (a history-based digital cable and satellite television network that is owned by A&E Networks) <https://www.history.com/topics/21st-century/dodd-frank-act>

The Great Recession, a crisis that left millions of Americans unemployed and sparked worldwide economic decline, began in December 2007 and lasted well into 2009. In September 2008, financial instability peaked when the fourth largest investment bank in the United States, Lehman Brothers, collapsed. Stocks plummeted, and the markets froze. Fear and instability paralyzed the country as large companies and small businesses alike struggled to continue operating. Many experts and politicians attribute the downfall to a lack of oversight and regulation of financial institutions. Banks were permitted to use hidden fees and lend to unqualified consumers. In addition, many investors were extending their funds and exhausting their financial reserves. The federal government stepped in quickly, proposing legislation for financial reform. The administration of President Barack Obama first proposed the legislation that became known as Dodd-Frank in June 2009. The initial version was presented to the House of Representatives in July 2009. Senator Chris Dodd and U.S. Representative Barney Frank introduced new revisions to the bill in December 2009. The legislation was eventually named after the two men. The Dodd-Frank Act officially became law in July 2010.

Fact 2: What Dodd-Frank Does

History.com editors 2018. January 26, 2018, updated August 21, 2018. “Dodd-Frank Act” History.com (a history-based digital cable and satellite television network that is owned by A&E Networks) <https://www.history.com/topics/21st-century/dodd-frank-act>

The Dodd-Frank Act is a comprehensive and complex bill that contains hundreds of pages and includes 16 major areas of reform. Simply put, the law places strict regulations on lenders and banks in an effort to protect consumers and prevent another all-out economic recession. Dodd-Frank also created several new agencies to oversee the regulatory process and implement certain changes. Some of the main provisions found in the Dodd-Frank Act include:

Banks are required to come up with plans for a quick shutdown if they approach bankruptcy or run out of money.

Financial institutions must increase the amount of money they hold in reserve to account for potential future slumps.

Every bank with more than $50 billion of assets must take an annual “stress test,” given by the Federal Reserve, which can help determine if the institution could survive a financial crisis.

The Financial Stability Oversight Council (FSOC) identifies risks that affect the financial industry and keeps large banks in check.

The Consumer Financial Protection Bureau (CFPB) protects consumers from the corrupt business practices of banks. This agency works with bank regulators to stop risky lending and other practices that could hurt American consumers. It also oversees credit and debit agencies as well as certain payday and consumer loans.

The Office of Credit Ratings ensures that agencies provide reliable credit ratings to those they evaluate.

A whistle-blowing provision in the law encourages anyone with information about violations to report it to the government for a financial reward.

OBSERVATION 2. THE PLAN, to be enacted by Congress and the President

1. Congress passes the Financial CHOICE Act of 2017.
2. Funding: No funding is anticipated; any incidental funding will be allocated from the general budget.
3. Timeline: The plan will take effect immediately.
4. Enforcement: Congress, the President, and any other necessary bodies.
5. Affirmative speeches may clarify.

OBSERVATION 3. The JUSTIFICATIONS

Justification 1: Costs and delays

A. Dodd-Frank harms small banks and consumers

Alex Verkhivker 2017. (Associate Economist at the Federal Reserve Bank of Chicago and worked as a researcher with the Federal Trade Commission. He graduated from The University of Chicago and UCLA’s Anderson School of Management, with degrees in economics and management.) May 10, 2017. “The Financial Choice Act Will Roll Back Wall Street Regulations - And That's A Good Thing.” Forbes. <https://www.forbes.com/sites/alexverkhivker/2017/05/10/the-financial-choice-act-will-roll-back-wall-street-regulations-and-thats-a-good-thing/#2d592cce7b89>

The reality, however, is that the current financial regulatory system isn’t working. “Somebody has to protect consumers, not just from Wall Street but protect them from Washington as well,” noted Rep. Hensarling when being interviewed by National Public Radio. “Free checking at banks has been cut in half. Banking fees have gone up. Working people are finding it more difficult to get mortgages.” Rep. Hensarling has taken to task issues like bank stress testing, debit card overage fees, and bank bailouts in the Financial Choice Act - a bill that is aimed at “creating hope and opportunity for investors, consumers and entrepreneurs.” At the heart of the matter is creating a resilient, stable financial system that affords economic opportunity for Americans. Dodd-Frank’s excessive regulatory complexity has resulted in a financial system that limits credit and access to capital for the small guys. Small banks have been saddled with confusion and overlapping regulations that limit their ability to give out loans to small businesses.

B. The Impact: Billions of dollars in costs and millions of hours in paperwork delays

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) July 21, 2016. “Oh, the Places You’ll Go: Dodd-Frank Edition.”) <https://www.americanactionforum.org/insight/oh-places-youll-go-dodd-frank-edition/>

Without Dodd-Frank, we would have paid $36.2 billion less in total regulatory costs and spent 73,943,194 fewer hours doing government paperwork. That’s an average of $114 and about 15 minutes wasted on Dodd-Frank per U.S. resident.

C. The Solution: CHOICE Act cuts burdensome compliance costs

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously she was a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) June 7, 2017. “Top 9 Wins For Consumers in the CHOICE Act.”) <https://www.americanactionforum.org/insight/top-9-wins-consumers-choice-act/>

This week the House will vote on the Financial CHOICE Act – CHOICE, standing for “Creating Hope and Opportunity for Investors, Consumers, and Entrepreneurs.” It’s landmark legislation that’s been years in the making, first taking on the form of CHOICE 1.0 last year, and finally receiving approval as CHOICE 2.0 this year. Coming in at nearly 600 pages, there is a lot to digest. What’s in this for the average American? The overarching goal of this administration and this congress is to improve economic conditions, and the best way to improve economic conditions is to do so from the ground up. CHOICE does just that by cutting burdensome compliance costs, increasing options for both consumers and businesses, and fostering and environment of innovation and capital creation.

Justification 2: CFPB Burdens

A. The Problem: The Consumer Financial Protection Bureau (CFPB) has burdened both consumers and businesses

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously she was a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) June 7, 2017. “Top 9 Wins For Consumers in the CHOICE Act.” American Action Forum (AAF is an independent, nonprofit organization that is not affiliated with or controlled by any political group) <https://www.americanactionforum.org/insight/top-9-wins-consumers-choice-act/>

The Consumer Financial Protection Bureau (CFPB) has become one of the most well known and most controversial creations of Dodd-Frank. Since its inception, instead of protecting consumers it has burdened consumers with nearly 17 million hours of paperwork requirements and almost $3 billion in regulatory costs. That doesn’t account for the billions in civil penalties that the CFPB has levied on businesses, many of which resulted from unsubstantiated accusations that were agreed upon under the sole direction of the Bureau’s director, without the oversight of a panel or even the oversight of the congressional appropriations process. Instead, the CFPB relies on a set, annual draw from the Fed – funds ultimately traceable back to the average American.

B. The Solution: CHOICE act would solve for CFPB over-regulation and better protect consumers

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously she was a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) June 7, 2017. “Top 9 Wins For Consumers in the CHOICE Act.” <https://www.americanactionforum.org/insight/top-9-wins-consumers-choice-act/>

The CHOICE Act will dramatically change these consumer burdens from the agency meant to protect them. First, it will change the structure from an independent, unaccountable director, to a director that serves at the will of the president and is subject to removal. CHOICE will further subject the CFPB (which will be renamed the Consumer Law Enforcement Agency or CLEA) to the congressional appropriations process – so if it is not living up to congressional expectations, it will not continue to receive hundreds of millions of taxpayer dollars. Finally, CHOICE will reform the mission of the CFPB. Instead of allowing it to go rogue and create costly new regulations, CLEA will only be tasked with enforcing those laws and regulations that are already on the books from the several other financial regulatory agencies. All things combined, CHOICE will make the CFPB a workable, efficient entity that will no longer burden, but that will actually protect, consumers.

Justification 3: The Volcker Rule

A: The Plan: Dodd-Frank enacted the Volcker Rule to limit bank trading activity, and the CHOICE Act repeals it

Adam Johnson 2017. (Public policy analyst, currently works for the American Israel Public Affairs Committee, a bipartisan, non-profit organization) June 12, 2017. “House Passes Financial CHOICE Act to Reform Dodd-Frank Regulatory Burden.”) <https://www.atr.org/house-passes-financial-choice-act-reform-dodd-frank-regulatory-burden>

Originally enacted under Dodd-Frank, the Volcker Rule limits the type of trading activities banks can engage in, specifically as it relates to proprietary trading. As a result, U.S. financial institutions have become less competitive globally while the cost of raising capital has increased. Recent, former Federal Reserve Chairman Paul Volcker (the provisions namesake) has acknowledged proprietary trading did not lead to the financial crisis, calling the justification for the rule into question. The Financial CHOICE Act also repeals this stranglehold on U.S. financial institutions.

B. The Impact: Repeal is good because the Volker Rule increases the risk of bankruptcies and financial crisis

Peter J. Wallison 2017. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies. A codirector of the American Enterprise Institute’s program on financial policy studies, former general counsel of the U.S. Treasury Department; also served as White House counsel to President Ronald Reagan. LL.B from Harvard Law School) April 26, 2017. Testimony on the CHOICE Act House Financial Services Committee. “The CHOICE Act.” <https://www.aei.org/wp-content/uploads/2017/04/Peter-J.-Wallison-The-CHOICE-Act-Testimony-4-26.pdf>

Fifth, the CHOICE Act would repeal the Volcker Rule, which has driven many bankrelated financial firms out of the business of making markets in debt securities. This has resulted in a serious lack of liquidity in the debt markets, and could result in many bankruptcies—and even a financial crisis—in a stress environment where many investors want to sell debt securities to get needed liquidity.

2A Evidence: Reform Dodd-Frank

OPENING QUOTES / PHILOSOPHY

Dodd-Frank is like Obamacare: Expensive and bad for American consumers

Iain Murray 2017. (Vice President for Strategy and senior fellow at the Competitive Enterprise Institute and directs the Center for Economic Freedom. Former Director of Research at the Statistical Assessment Service. Master of Business Administration from the University of London and a Master of Arts from the University of Oxford.) June 6, 2017. “The Top Ten Reasons to Pass the Financial CHOICE Act.” Competitive Enterprise Institute (CEI is a non-profit public policy organization) <https://cei.org/content/top-ten-reasons-pass-financial-choice-act>

It’s no secret that the Dodd-Frank Act did for Americans’ access to financial services what Obamacare did for their access to health insurance. In both cases, many Americans were left paying far more for services that were available to them much more affordably before the passage of the thousand-page bill.

BACKGROUND INFORMATION

For more AFF advocacy

<http://thf-reports.s3.amazonaws.com/2016/The%20Case%20Against%20Dodd-Frank.pdf>

This link has multiple lengthy articles by qualified experts in 2016 advocating reform or repeal of Dodd-Frank. You can get lots more evidence from this source to add to this case.

Full text of Dodd-Frank

Congress.gov. 2009 (Congress.gov is the official website for U.S. federal legislative information.) “H.R.4173 - Dodd-Frank Wall Street Reform and Consumer Protection Act.” <https://www.congress.gov/bill/111th-congress/house-bill/4173>

[It’s 849 pages, so be careful deciding whether to print it out]

Full text of the Financial CHOICE Act

Congress.gov. 2017 (official website of Congress for legislative information)“H.R.10 - Financial CHOICE Act of 2017.” <https://www.congress.gov/bill/115th-congress/house-bill/10>

**[It’s long, but probably worth it to print the entire text and bring to the round.]**

Summary of Dodd-Frank

Mark Koba 2012. (senior editor at CNBC.com; spent 11 years at Bloomberg LP, where he was program producer for the award-winning "Bloomberg Small Business" television show.) May 11, 2012; updated April 30, 2013. “Dodd-Frank Act: CNBC Explains.” CNBC. <https://www.cnbc.com/id/47075854>

The term Dodd-Frank refers to a comprehensive and complicated piece of financial regulation born out of the Great Recession of 2008. But what does it do and how does it really work? CNBC explains. The full name of the bill is the Dodd-Frank Wall Street Reform and Consumer Protection Act, but it is better known and most often referred to as Dodd-Frank. In simple terms, Dodd-Frank is a law that places major regulations on the financial industry. It grew out of the Great Recession with the intention of preventing another collapse of a major financial institution like Lehman Brothers. Dodd-Frank is also geared toward protecting consumers with rules like keeping borrowers from abusive lending and mortgage practices by banks.

Congress rolled back portions of Dodd-Frank in 2018

Will Kenton (reviewer) 2019. (10 years of experience as a writer and editor for digital publications such as Kapitall Wire, Cultural Capitol, Time Inc.,) May 10, 2019. “Dodd-Frank Wall Street Reform and Consumer Protection Act.” Investopedia (Investopedia is a group of editors, writers, product experts, developers, data scientists, analysts and executives who help provide financial literacy and education.) <https://www.investopedia.com/terms/d/dodd-frank-financial-regulatory-reform-bill.asp>

Siding with the critics, the U.S. Congress passed a bill in 2018 called the Economic Growth, Regulatory Relief and Consumer Protection Act, which rolls back significant portions of the Dodd-Frank Act. It was signed into law by President Trump on May 24, 2018. These are some of the provisions of the new law, and some of the areas in which standards were loosened:  
Small and regional banks  
The new law eases the Dodd-Frank regulations for small and regional banks by increasing the asset threshold for the application of prudential standards, stress test requirements, and mandatory risk committees.  
Large custodial banks  
For institutions that have custody of clients' assets but do not function as lenders or traditional bankers, the new law provides for lower capital requirements and leverage ratios.

Mortgage credit

The new law exempts escrow requirements for residential mortgage loans held by a depository institution or credit union under certain conditions. It also directs the Federal Housing Finance Agency to set up standards for Freddie Mac and Fannie Mae to consider alternate credit scoring methods

Small lenders

The law exempts lenders with assets of less than $10 billion from requirements of the Volcker rule and imposes less stringent reporting and capital norms on small lenders.

Credit bureaus

The law requires that the three major credit reporting agencies allow consumers to "freeze" their credit files free of charge as a way of deterring fraud.

INHERENCY

A/T: “2018 rollback solved Dodd-Frank”

No major impact on Dodd-Frank

[Aaron Klein](https://www.brookings.edu/experts/aaron-klein/) 2018. (fellow in Economic Studies and policy director of the Center on Regulation and Markets. Former deputy assistant secretary for economic policy at US Dept of the Treasury; graduate of Dartmouth College and the Woodrow Wilson School for Public Affairs at Princeton Univ.) May 25, 2018. “No, Dodd-Frank was neither repealed nor gutted. Here’s what really happened.” <https://www.brookings.edu/research/no-dodd-frank-was-neither-repealed-nor-gutted-heres-what-really-happened/>

The largest legal change to financial regulation since passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 just occurred. This new law neither repeals nor replaces Dodd-Frank as House Speaker Ryan claimed nor does it ‘gut Dodd-Frank’ as some of its opponents argue.

Leaves much of Dodd-Frank’s important provisions intact

[Aaron Klein](https://www.brookings.edu/experts/aaron-klein/) 2018. (fellow in Economic Studies and policy director of the Center on Regulation and Markets. Former deputy assistant secretary for economic policy at US Dept of the Treasury; graduate of Dartmouth College and the Woodrow Wilson School for Public Affairs at Princeton Univ.) May 25, 2018. “No, Dodd-Frank was neither repealed nor gutted. Here’s what really happened.” <https://www.brookings.edu/research/no-dodd-frank-was-neither-repealed-nor-gutted-heres-what-really-happened/>

To the contrary, the legislation leaves intact the core Dodd-Frank framework: increasingly tougher regulation on larger banks, new authority and discretion for the Federal Reserve, enhanced authority for the federal government to unwind a failed financial institution, and the creation of new federal regulators, including the Consumer Financial Protection Bureau (CFPB). The legislation itself does not touch the CFPB, a key requirement for Democratic congressional support.

The new law actually furthers one aspect of Dodd-Frank

[Aaron Klein](https://www.brookings.edu/experts/aaron-klein/) 2018. (fellow in Economic Studies and policy director of the Center on Regulation and Markets. Former deputy assistant secretary for economic policy at US Dept of the Treasury; graduate of Dartmouth College and the Woodrow Wilson School for Public Affairs at Princeton Univ.) May 25, 2018. “No, Dodd-Frank was neither repealed nor gutted. Here’s what really happened.” <https://www.brookings.edu/research/no-dodd-frank-was-neither-repealed-nor-gutted-heres-what-really-happened/>

The major change cited in this argument is the increase of the so-called ‘Bank SIFI’ threshold, which increases the size at which a bank is subject to enhanced regulation by the Federal Reserve. Dodd-Frank set this line at $50 billion, unindexed for inflation or economic growth. The law raises this figure to $250 billion, with an important caveat that the Federal Reserve retains the discretion to apply enhanced regulatory standards to any specific bank greater than $100 billion, if the Fed feels that is warranted. Dodd-Frank attempts a difficult balancing act in regulating large banks. The idea is to internalize the negative externalities that a large, complex financial institution creates through the imposition of higher regulatory scrutiny, specifically through higher capital standards and other forms of enhanced regulation. This was Dodd-Frank’s solution to the debate raging at the time, between nationalizing and breaking up the largest banks or allowing the market to determine proper bank size. Dodd-Frank delegated, largely to the Federal Reserve, the important task of how to set the scales to achieve this balancing act. The new legislation goes further down this path, granting the Fed greater discretion in how to set those scales for institutions between $100 and $250 billion, including providing the option of essentially no penalty for size. Congress is changing the weights on the scale, and is empowering the Fed even more, but it is continues the Dodd-Frank structures

The new law does not deliver on the promise that consumers will have greater access to lending

[Aaron Klein](https://www.brookings.edu/experts/aaron-klein/) 2018. (fellow in Economic Studies and policy director of the Center on Regulation and Markets. Former deputy assistant secretary for economic policy at US Dept of the Treasury; graduate of Dartmouth College and the Woodrow Wilson School for Public Affairs at Princeton Univ.) May 25, 2018. “No, Dodd-Frank was neither repealed nor gutted. Here’s what really happened.” <https://www.brookings.edu/research/no-dodd-frank-was-neither-repealed-nor-gutted-heres-what-really-happened/>

As the Independent Community Bankers Association argues: “The new law will spur greater consumer access to credit and business lending in Main Street communities nationwide.” There is no direct provision in this law that accomplishes this and the argument that reduced regulatory costs for a subset of banks will translate into more lending as opposed to greater profits is just speculation. Bank profits just reached a record $56 billion last quarter, and small business lending by community banks is already growing twice as fast as that by large banks, according to the FDIC. The new tax law and this new bank de-regulation law will continue to help boost profits, what trickles down in lending is less clear. Consider two provisions of the new law: the repeal of Truth-In-Lending Act protections for certain mortgages on mobile homes, and the exemption of small banks and mortgage lenders from enhanced reporting of data to detect racial discrimination (known as HMDA+).   
  
**[END QUOTE. He goes on to say later in the article to conclude QUOTE**:]   
  
These two provisions are both bad policy and unlikely to spur greater overall lending. Instead, they are likely to generate higher profits for the providers of credit and potentially worse terms for borrowers.

HARMS

Dodd-Frank hurts consumers

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) July 21, 2016. “Oh, the Places You’ll Go: Dodd-Frank Edition.”) <https://www.americanactionforum.org/insight/oh-places-youll-go-dodd-frank-edition/>

For starters, the availability of consumer revolving credit would be significantly higher. As American Action Forum (AAF) research found earlier this year, Dodd-Frank financial reform has led to a 14.5 percent drop in consumer revolving credit since the law was passed in 2010. As a result, in part, of its $36 billion in final regulatory costs and 74 million hours of paperwork, consumer credit has been one of the most substantially hit victims of the reforms. In a recent AAF update on Dodd-Frank, we noted how the Federal Reserve’s (Fed) final rule for “Margin and Capital Requirements,” a product of Dodd-Frank, could cost up to $46 billion with a more conservative estimate of $5.2 billion. The stream of capital, oversight, and reporting requirements has already imposed tens of billion in costs on the U.S. financial system, including small and mid-size banks, despite the authors of the law insisting that the large banks would bear the majority of these costs. Dodd-Frank’s regulatory burden must be borne by someone, whether by financial institutions and their employees, shareholders, or consumers by way of higher prices and less access to credit. Unfortunately, it appears that the law has affected all three. Further, we know that Dodd-Frank has imposed a regressive impact on smaller financial institutions, has driven up the price of obtaining a mortgage, along with its reduction in average revolving credit loaned to consumers by small banks, as shown in the chart below.

Dodd-Frank harms small banks/businesses

Dodd-Frank is counterproductive because it gives “too-big-to-fail” banks an advantage over smaller banks

Peter J. Wallison 2017. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies. A codirector of the American Enterprise Institute’s program on financial policy studies, former general counsel of the U.S. Treasury Department; also served as White House counsel to President Ronald Reagan. LL.B from Harvard Law School) April 26, 2017. Testimony on the CHOICE Act House Financial Services Committee. “The CHOICE Act.” <https://www.aei.org/wp-content/uploads/2017/04/Peter-J.-Wallison-The-CHOICE-Act-Testimony-4-26.pdf>

As a rule of thumb, whatever regulatory costs are imposed on banking organizations— whether they be $2 trillion banks like JPMorgan Chase, $50 billion banks or $50 million banks— the larger the bank the more easily it will be able to adjust to these costs. As Federal Reserve Governor Daniel Tarullo has observed, “Any regulatory requirement is likely to be disproportionately costly for community banks, since the fixed costs associated with compliance must be spread over a smaller base of assets.” William Grant, then chair of Community Bankers Council of the American Bankers Association, noted in congressional testimony in 2012, “The cost of regulatory compliance as a share of operating expenses is two-and-a-half times greater for small banks than for large banks.” That’s most likely why, since the enactment of Dodd-Frank, the smallest banks, as we will see, have suffered the greatest losses of market share and the largest banks have continued to grow. Ironically, then, although there has been great concern in Congress about the financial advantages of too-big-to-fail banks (TBTF), the heavy regulations in Dodd-Frank have given the largest TBTF banks even more significant competitive advantages over their smaller competitors. Indeed, Jamie Dimon, the chair of JPMorgan Chase, has referred to regulation as a “moat” that reduced competition from its smaller rivals. Consistent with these data, small banks have been losing market share to larger banks since the enactment of Dodd-Frank. In a 2015 paper, Marshall Lux and Robert Greene noted that “Community banks withstood the financial crisis of 2008-09 with sizeable but not major losses in market share—shedding 6 percent of their share of U.S. banking assets between the second quarter of 2006 and mid-2010…But since the second quarter of 2010, around the time of the Dodd-Frank Wall Street Reform and Consumer Protection Act’s passage, we found community banks’ share of assets has shrunk drastically—over 12 percent...Since Q2 2010, the smallest community banks’ ($1 billion or less in assets) share of U.S. banking assets has fallen 19 percent.”

Dodd-Frank hurts community banks

Peter J. Wallison 2017. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies. A codirector of the American Enterprise Institute’s program on financial policy studies, former general counsel of the U.S. Treasury Department; also served as White House counsel to President Ronald Reagan. LL.B from Harvard Law School) April 26, 2017. Testimony on the CHOICE Act House Financial Services Committee. “The CHOICE Act.” <https://www.aei.org/wp-content/uploads/2017/04/Peter-J.-Wallison-The-CHOICE-Act-Testimony-4-26.pdf> (brackets in original)

A similar analysis applies to small banks, which have also been required to conform to many new regulations coming out of Dodd-Frank, especially in mortgage and consumer lending. A study by the Government Accountability Office (GAO) identified seven Dodd-Frank titles that have the potential to increase the costs or the competitive burdens for “community banks,” which the GAO and many others define as banks with assets of $10 billion or less (unless otherwise stated, this testimony will use that definition). Similarly, studies by the Mercatus Center and the American Enterprise Institute have also shown that Dodd-Frank regulations have imposed substantial additional costs on community banks. As noted earlier, banks of this size or less are 98.5 percent of all US banks; as of 2015, there were only 98 banks in the US with more than $10 billion in assets,11 and only 39 with assets of $50 billion or more. The additional costs are substantial. Mercatus, in particular, based its study on a survey of approximately 200 small banks, noting that “our survey reveals increased hiring of compliance personnel, more noncompliance employee time spent on compliance, and increased spending on compliance, trends noticed in other surveys." The study further reported, “[A]pproximately ninety percent of respondents reported an increase in compliance costs, and most (82.9%) of participating banks reported that their compliance costs had increased by more than five percent.” In effect, for these banks the median number of compliance personnel doubled—from one to two—after July 2010, and a quarter of respondents planned to hire additional compliance officers. More compliance officers, or more noncompliance employees engaged in compliance activities, translates directly into higher employee costs and lower employee productivity— meaning in the end less credit or more costly credit for the small businesses that borrow from banks.

Dodd-Frank is bad for community banks

Peter J. Wallison 2017. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies. A codirector of the American Enterprise Institute’s program on financial policy studies, former general counsel of the U.S. Treasury Department; also served as White House counsel to President Ronald Reagan. LL.B from Harvard Law School) April 26, 2017. Testimony on the CHOICE Act House Financial Services Committee. “The CHOICE Act.” <https://www.aei.org/wp-content/uploads/2017/04/Peter-J.-Wallison-The-CHOICE-Act-Testimony-4-26.pdf>

Because of the unique role of community banks in lending to small firms, increases in bank regulatory costs and tightening bank credit requirements are particularly bad news for small business. As Drew Breakspear, the commissioner of Florida’s Office of Financial Regulation, pointed out in a 2015 article, “Community banks have traditionally supported local agricultural and small business needs by incorporating information about borrower’ characters into lending decisions. But Dodd-Frank has standardized lending practices, which works to the advantage of large banks and punishes community banks.” Indeed, anecdotal information from small business managers and small banks indicates that since the enactment of Dodd-Frank examiners have been insisting that all borrowers with similar financial standing be treated the same way, so that credit is not necessarily available anymore to borrowers that do not meet certain revenue standards or do not have suitable collateral, guarantors, or vouching materials such as audited financial statements. Character loans, as Mr. Breakspear described them, one of the strengths of community banks that know their customers, appear to be a thing of the past.

Dodd-Frank slowed recovery from the 2008 financial crisis

Slowed recovery

Peter J. Wallison 2017. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies. A codirector of the American Enterprise Institute’s program on financial policy studies, former general counsel of the U.S. Treasury Department; also served as White House counsel to President Ronald Reagan. LL.B from Harvard Law School) April 26, 2017. Testimony on the CHOICE Act House Financial Services Committee. “The CHOICE Act.” <https://www.aei.org/wp-content/uploads/2017/04/Peter-J.-Wallison-The-CHOICE-Act-Testimony-4-26.pdf>

The Dodd-Frank Act is the only plausible reason for the slow recovery of the US economy from the 2008 financial crisis. The US economy is a giant multifaceted organism that cannot be easily suppressed. Anything capable of doing so would have to be a very large and 7 comprehensive shock—something only the US government could produce. During the last eight years, there have only been three major policies that could qualify for this role—the Affordable Care Act, the Fed’s Quantitative Easing program, and the Dodd-Frank Act. The first two would most likely be stimulative, because they both either pumped more money into the financial system or lowered interest rates. Accordingly, the third, the strict new financial regulations in Dodd-Frank, are the likely sources of suppressed growth.

Dodd-Frank slowed economic recovery and made things worse: It was merely designed to punish the financial sector

Peter J. Wallison 2016 (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies; former general counsel of the U.S. Treasury Department. LL.B from Harvard Law School) “Why Large Portions of the Dodd–Frank Act Should Be Repealed or Replaced” <http://thf-reports.s3.amazonaws.com/2016/The%20Case%20Against%20Dodd-Frank.pdf>

Nothing, then, in this record justifies the enactment of the Dodd–Frank Act, a massive regulatory edifice that has imposed enormous and unwarranted costs on the U.S. economy and prevented the quick economic recovery that usually follows a sharp financial downturn. Instead of focusing on how to help the economy recover, President Obama and the Congress that took office after the 2008 election sought to punish the private financial sector through new and harsher regulation.

Dodd-Frank did not work

Alan Rappeport 2017. (economic policy reporter at The New York Times; master’s degrees from the London School of Economics and the Columbia University Graduate School of Journalism.) June 8, 2017. “Bill to Erase Some Dodd-Frank Banking Rules Passes in House.” The New York Times. <https://www.nytimes.com/2017/06/08/business/dealbook/house-financial-regulations-dodd-frank.html?_r=0>

“The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act is among the most inappropriately named laws ever enacted in the U.S.,” said Norbert Michel, a Heritage Foundation research fellow. “It neither reformed Wall Street nor protected consumers, and it imposed massive new regulations on banks far away from Wall Street.”

SOLVENCY / ADVOCACY

The CHOICE act is beneficial

**Dr. Norbert J. Michel 2016. (PhD;** *Research Fellow in Financial Regulations in the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom and Opportunity, at Heritage Foundation.)* August 31, 2016. “Money and Banking Provisions in the Financial CHOICE Act: A Major Step in the Right Direction.”.) <https://www.heritage.org/markets-and-finance/report/money-and-banking-provisions-the-financial-choice-act-major-step-the>

There is little reason to heavily regulate banks that can absorb their own financial risks, and reducing the likelihood of taxpayer bailouts gives investors and customers the necessary incentives to monitor—and to discipline—firms’ behavior. Thus, the CHOICE Act replaces government regulation with market regulation for firms that absorb their own risks. The CHOICE Act also restructures (or repeals) several harmful sections of the 2010 Dodd–Frank Act that make future financial crises and bailouts more likely, and makes several major improvements to the Federal Reserve. There is no doubt that adopting the ideas in the CHOICE Act would be an overwhelmingly positive step for U.S. financial markets and the broader U.S. economy.

Total impact of Dodd-Frank is bad and it needs serious reform

Peter J. Wallison 2017. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies. A codirector of the American Enterprise Institute’s program on financial policy studies, former general counsel of the U.S. Treasury Department; also served as White House counsel to President Ronald Reagan. LL.B from Harvard Law School) April 26, 2017. Testimony on the CHOICE Act House Financial Services Committee. “The CHOICE Act.” (ellipses in original) <https://www.aei.org/wp-content/uploads/2017/04/Peter-J.-Wallison-The-CHOICE-Act-Testimony-4-26.pdf>

Finally, the Goldman paper expresses concern that this is not necessarily a temporary phenomenon: “Taken together, the reduced competitiveness of small firms…are reshaping the competitive structure of the US economy in ways that are likely to reverberate well into the future, and in ways that any future evaluation of the aggregate effects of post-crisis regulations should consider.” It would be hard to find a better way to express the dangers of leaving the Dodd-Frank Act in place without serious reforms.

Advocacy: American Action Forum

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously she was a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) June 7, 2017. “Top 9 Wins For Consumers in the CHOICE Act.”) <https://www.americanactionforum.org/insight/top-9-wins-consumers-choice-act/>

Considering that Dodd-Frank has been called the Obamacare for financial services, the CHOICE Act should be considered a repeal and replacement of it, and an effective one at that. The House should pass CHOICE this week, and the Senate should work toward a companion bill of its own to ensure that Americans don’t continue to be burdened by Dodd-Franks onerous regulations.

Advocacy: Heritage Foundation

Dr. Norbert Michel 2018. (director of Heritage Foundation Center for Data Analysis; formerly a tenured professor at Nicholls State University’s College of Business, teaching finance, economics and statistics. PhD in financial economics from the Univ of New Orleans.) January 2, 2018. “A Comparison of Two Financial Regulatory Reform Approaches.” <https://www.heritage.org/markets-and-finance/report/comparison-two-financial-regulatory-reform-approaches>

During the 115th Congress, the House passed the Financial CHOICE Act (H.R. 10), a comprehensive financial regulatory reform bill that would replace large parts of the 2010 Dodd–Frank Act. The cornerstone of the CHOICE Act is a regulatory off-ramp, a provision that provides regulatory relief to all banks that choose to maintain a higher equity–capital ratio than currently required. The Financial CHOICE Act represents an overwhelmingly positive approach to regulatory reform that would help to restore market discipline and reduce regulatory burdens, thus moving the nation’s financial markets in the right direction.

Advocacy: Competitive Enterprise Institute

Iain Murray 2017. (Vice President for Strategy and senior fellow at the Competitive Enterprise Institute and directs the Center for Economic Freedom. Former Director of Research at the Statistical Assessment Service. Master of Business Administration from the University of London and a Master of Arts from the University of Oxford.) June 6, 2017. “The Top Ten Reasons to Pass the Financial CHOICE Act.” Competitive Enterprise Institute (CEI is a non-profit public policy organization) <https://cei.org/content/top-ten-reasons-pass-financial-choice-act>

It is time to right the wrong of Dodd-Frank. It is time to pass the Financial CHOICE Act.

Advocacy: Peter J. Wallison (American Enterprise Institute)

Peter J. Wallison 2017. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies. A codirector of the American Enterprise Institute’s program on financial policy studies, former general counsel of the U.S. Treasury Department; also served as White House counsel to President Ronald Reagan. LL.B from Harvard Law School) April 26, 2017. Testimony on the CHOICE Act House Financial Services Committee. “The CHOICE Act.” <https://www.aei.org/wp-content/uploads/2017/04/Peter-J.-Wallison-The-CHOICE-Act-Testimony-4-26.pdf>

The balance of this prepared testimony will focus on five elements of the Dodd-Frank Act that have, or I believe will have, severe adverse consequences for the US economy—(i) the compliance costs imposed on community banks that have stifled US economic growth; (ii) the authority provided to the Financial Stability Oversight Council; (iii) the Orderly Liquidation Authority; (iv) the danger inherent mandatory clearing of derivatives; and (v) the Volcker Rule. The CHOICE Act addresses all of these important issues, as summarized below, and I urge its approval by this committee.

Advocacy: Adam Johnson (public policy analyst)

Adam Johnson 2017. (Public policy analyst, currently works for the American Israel Public Affairs Committee, a bipartisan, non-profit organization that works to strengthen the U.S.-Israel relationship.) June 12, 2017. “House Passes Financial CHOICE Act to Reform Dodd-Frank Regulatory Burden.”) <https://www.atr.org/house-passes-financial-choice-act-reform-dodd-frank-regulatory-burden>

Overall, the Financial CHOICE Act is a great first step to the reform that is needed for Dodd-Frank and banking regulations. Now that it has passed the House, the Senate should take up the measure in order to begin making that step to relieving banks and the American people from unnecessary, harmful, and burdensome regulations.

Advocacy: Alex Verkhivker (Associate Economist at the Federal Reserve Bank of Chicago)

Alex Verkhivker 2017. (Associate Economist at the Federal Reserve Bank of Chicago and worked as a researcher with the Federal Trade Commission) May 10, 2017. “The Financial Choice Act Will Roll Back Wall Street Regulations - And That's A Good Thing.” Forbes. <https://www.forbes.com/sites/alexverkhivker/2017/05/10/the-financial-choice-act-will-roll-back-wall-street-regulations-and-thats-a-good-thing/#2d592cce7b89>

Nevertheless, the Financial Choice Act aims to promote economic growth and more financial freedom for small businesses, aiming to empower Americans rather than Washington bureaucrats.

ADVANTAGES / JUSTIFICATIONS

Reduced federal deficit

CHOICE act would reduce federal deficit

Alan Rappeport 2017. (economic policy reporter at The New York Times, based in Washington. Mr. Rappeport has master’s degrees from the London School of Economics and the Columbia University Graduate School of Journalism.) June 8, 2017. “Bill to Erase Some Dodd-Frank Banking Rules Passes in House.” The New York Times. <https://www.nytimes.com/2017/06/08/business/dealbook/house-financial-regulations-dodd-frank.html?_r=0>

According to an analysis by the Congressional Budget Office, the Financial Choice Act would reduce federal deficits by $24.1 billion over a decade. The budget office cautioned, however, that there was considerable uncertainty in its estimates because it was difficult to predict when a “systemically important” financial firm might fail.

CHOICE act would reduce federal deficit and direct spending

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously she was a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) June 7, 2017. “Top 9 Wins For Consumers in the CHOICE Act.” American Action Forum (AAF is an independent, nonprofit organization that is not affiliated with or controlled by any political group) <https://www.americanactionforum.org/insight/top-9-wins-consumers-choice-act/>

Consumers aren’t the only ones that will benefit from reforms in the CHOICE Act. Last month the Congressional Budget Office (CBO) scored the bill and found that, if enacted, the legislation would reduce the federal deficit by $24.1 billion over 10 years and reduce direct spending by $30.1 billion, most of which results from the elimination of OLF and the restructuring of the CFPB.

Reformed Consumer Financial Protection Bureau

CHOICE Act restricts the CFPB with appropriate power checks

Dr. Norbert Michel 2018. (director of Heritage Foundation Center for Data Analysis; formerly a tenured professor at Nicholls State University’s College of Business, teaching finance, economics and statistics. PhD in financial economics from the Univ of New Orleans.) January 2, 2018. “A Comparison of Two Financial Regulatory Reform Approaches.” <https://www.heritage.org/markets-and-finance/report/comparison-two-financial-regulatory-reform-approaches>

Protecting Financial Consumers. Title VII of the CHOICE Act converts the Consumer Financial Protection Bureau (CFPB) into an enforcement-only agency, and changes the structure of the agency so that its director would be removable by the President at will. The CHOICE Act places the new agency under congressional appropriations, thus eliminating the CFPB’s unusual funding mechanism, and eliminates Dodd–Frank’s overly vague “unfair, deceptive, or abusive” concept from consumer financial protection law.

CHOICE Act subjects the CFPB to proper accountability

Iain Murray 2017. (Vice President for Strategy and senior fellow at the Competitive Enterprise Institute and directs the Center for Economic Freedom. Former Director of Research at the Statistical Assessment Service. Master of Business Administration from the University of London and a Master of Arts from the University of Oxford.) June 6, 2017. “The Top Ten Reasons to Pass the Financial CHOICE Act.” Competitive Enterprise Institute (CEI is a non-profit public policy organization) <https://cei.org/content/top-ten-reasons-pass-financial-choice-act>

It will finally subject the Consumer Financial Protection Bureau, a rogue agency among rogue agencies, to proper accountability. It will restructure it as the Consumer Law Enforcement Agency to be answerable to the President in his duty to faithfully execute the laws, make it accountable to Congress through the appropriations process, and curtail its immense discretion to regulate any industry it dislikes out of existence.

Reformed Financial Stability Oversight Council

Explanation of FSOC

Mark Koba 2012. (senior editor at CNBC.com.. Before working at CNBC.com, he spent 11 years at Bloomberg LP.) May 11, 2012; updated April 30, 2013. “Dodd-Frank Act: CNBC Explains.” CNBC. <https://www.cnbc.com/id/47075854>

One of the main goals of the Dodd-Frank act is to have banks subjected to a number of regulations along with the possibility of being broken up if any of them are determined to be “too big to fail.” To do that, the act created the Financial Stability Oversight Council(FSOC). It looks out for risks that affect the entire financial industry. The Council is chaired by the Treasury Secretary, and has nine members including the **Federal Reserve**, the Securities and Exchange Commission and the new Consumer Financial Protection Bureau or CFPA. It also oversees non-bank financial firms like **hedge funds**. If any of the banks gets too big in the council's determination, they could be be regulated by the Federal Reserve, which can ask a bank to increase its reserve requirement—the money it has 'saved up' and is not using for lending or business costs. Under Dodd-Frank, banks are also required to have plans for a quick and orderly shutdown in the event that the bank becomes insolvent—or runs out of money.

Another summary of FSOC

Dr. Norbert Michel 2018. (director of Heritage Foundation Center for Data Analysis; formerly a tenured professor at Nicholls State University’s College of Business, teaching finance, economics and statistics. PhD in financial economics from the Univ of New Orleans.) January 2, 2018. “A Comparison of Two Financial Regulatory Reform Approaches.” <https://www.heritage.org/markets-and-finance/report/comparison-two-financial-regulatory-reform-approaches>

Title I of Dodd–Frank created the FSOC, a sort of super-regulator tasked with singling out firms for especially stringent regulation. The problem is that these firms, commonly called systemically important financial institutions (SIFIs), are those that regulators believe would damage the broader economy if allowed to file bankruptcy. In other words, Title I of Dodd–Frank charges the FSOC with identifying those firms regulators deem too big to fail.

Several problems with the FSOC

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously she was a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) June 7, 2017. “Top 9 Wins For Consumers in the CHOICE Act.” American Action Forum (AAF is an independent, nonprofit organization that is not affiliated with or controlled by any political group) <https://www.americanactionforum.org/insight/top-9-wins-consumers-choice-act/>

AAF has written extensively about the Financial Stability Oversight Council (FSOC), how it is flawed at its core as an entity; how its decision making processes are arbitrary and capricious; how its designations levy huge cost burdens on companies (without performing a cost-benefit analysis beforehand) and harm their international competitiveness; and how it is perhaps the most powerful and least transparent regulatory body. FSOC’s process has prioritized designation and regulation of institutions, often arbitrarily, over the identification of activities that pose actual systemic threats and has done so in a fundamentally flawed manner – namely FSOC has designated companies inconsistently and with little to no transparency to the companies or to taxpayers during the process. Doing so puts those companies and their customers at risk of serious financial consequence.

Specifically, FSOC’s regulatory designation imposes direct costs and risks on the designated institutions. The magnitude of the costs is uncertain, given that the specific rules and capital requirements have yet to be determined, but it cannot be presumed to be negligible. More worrisome is the fact that FSOC’s two-tiered system will alter competition in the insurance sector. Other things being equal, the increased costs of enhanced supervision by FSOC will reduce companies’ ability to compete effectively, shifting business and risk to non-designated companies not subject to enhanced supervision and, in effect destabilizing rather than stabilizing the market.

The FSOC can designate any company as a SIFI and dramatically increase costs and lower competition

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously she was a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business . J.D. from Pepperdine Univ.) July 21, 2016. “Oh, the Places You’ll Go: Dodd-Frank Edition.”.) <https://www.americanactionforum.org/insight/oh-places-youll-go-dodd-frank-edition/>

Dodd-Frank created another government entity that we could have done without: the Financial Stability Oversight Council (FSOC), which, among other things, is tasked with designating companies as Systemically Important Financial Institutions (SIFIs). Unfortunately for those companies and their customers, these designations can be slapped on businesses that pose no discernable systemic risk to the U.S. economy, like insurance companies MetLife and Prudential. Nevertheless, they are being subjected to intrusive, unnecessary regulation that dries up capital for infrastructure projects and harms investors and policyholders. To make matters worse, FSOC’s process for designating these companies lacks transparency and doesn’t allow companies to work with FSOC to shed their designation. What does a designation mean for a SIFI? At a minimum, it means increased costs. Since these designations are relatively new, we don’t yet know exactly how high those costs will be, but in the U.S. District Court’s opinion in MetLife v. FSOC, Judge Collyer explains that FSOC “foist[ed] billions of dollars of regulatory costs on MetLife under the auspices of safeguarding it.” And, as a result, MetLife “would have to raise prices and withdraw from certain markets, thereby reducing consumer choice and competition.” For an entity and a designation process that was intended to strengthen companies and increase their ability to withstand a financial crisis, increasing their costs so significantly and forcing them to lose their competitive edge are not the results that anybody wanted.

CHOICE act is good: Keeps the FSOC intact but requires it to be more transparent and consistent

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously she was a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) June 7, 2017. “Top 9 Wins For Consumers in the CHOICE Act.” <https://www.americanactionforum.org/insight/top-9-wins-consumers-choice-act/>

CHOICE would repeal FSOC’s authority to designate non-bank financial companies as Systemically Important Financial Institutions (SIFIs) and would repeal any previous SIFI designations that were made. It would also require FSOC to be more transparent and consistent as it transitions to serving as an inter-agency forum for (1) monitoring market developments; (2) facilitating information sharing and regulatory coordination; (3) bringing the primary federal regulators together to identify and mitigate risks to financial stability; and (4) report those risks to Congress with ameliorative policy recommendations. Keeping FSOC intact as the forum, or Council, that it was originally intended to be but removing its burdensome ability to designate is a win for taxpayers, businesses, and their customers.

CHOICE act solves for FSOC

Dr. Norbert Michel 2018. (director of Heritage Foundation Center for Data Analysis; formerly a tenured professor at Nicholls State University’s College of Business, teaching finance, economics and statistics. PhD in financial economics from the Univ of New Orleans.) January 2, 2018. “A Comparison of Two Financial Regulatory Reform Approaches.” <https://www.heritage.org/markets-and-finance/report/comparison-two-financial-regulatory-reform-approaches>

The CHOICE Act strips the FSOC of its authority to designate non-bank financial firms for more stringent regulations (section 113 of Dodd–Frank), as well as its authority to recommend more stringent regulations for individual financial activities (section 120 of Dodd–Frank). It repeals the FSOC’s authority to make recommendations for more stringent regulations to the Federal Reserve Board of Governors for both non-bank financial firms and large bank holding companies (Section 115 of Dodd–Frank). The CHOICE Act also retroactively repeals any previously made FSOC designations for non-bank financial companies. Finally, section 141 of the CHOICE Act repeals similar FSOC authority for systemically important financial market utilities (SIFMUs) in Title VIII of Dodd–Frank. The CHOICE Act effectively transforms the FSOC into a regulatory council for sharing information.

The CHOICE Act prevents the FSOC from designating SIFIs

Peter J. Wallison 2017. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies. A codirector of the American Enterprise Institute’s program on financial policy studies, former general counsel of the U.S. Treasury Department; also served as White House counsel to President Ronald Reagan. LL.B from Harvard Law School) April 26, 2017. Testimony on the CHOICE Act House Financial Services Committee. “The CHOICE Act.” <https://www.aei.org/wp-content/uploads/2017/04/Peter-J.-Wallison-The-CHOICE-Act-Testimony-4-26.pdf>

Second, the CHOICE Act would rescind the authority of the FSOC to designate systemically important financial institutions, or SIFIs. This is certainly a much-needed reform. A federal district court in the District of Columbia, has already determined, in the MetLife case, that the FSOC’s actions in designating MetLife as a SIFI were arbitrary and capricious. But it could hardly be otherwise. It is impossible for any agency, or council of agencies, to know that at some point in the future—in completely unknown market conditions—the failure of a particular firm will cause instability in the US financial system. The FSOC, already of doubtful constitutionality, also has the authority under Dodd-Frank to prohibit other firms from engaging in lawful activities that the FSOC deems to be risky for the economy. This was too much discretionary power to be given to any government agency, and the CHOICE Act would also eliminate that authority.

Volcker Rule

Explanation of the Volcker Rule, and how it hurts the economy and kills jobs

Meghan Milloy 2017. (former Director of Financial Services Policy at the American Action Forum. Previously a Presidential Management Fellow at the Small Business Administration and the House Committee on Small Business. J.D. from Pepperdine Univ.) July 21, 2016. “Oh, the Places You’ll Go: Dodd-Frank Edition.”) <https://www.americanactionforum.org/insight/oh-places-youll-go-dodd-frank-edition/>

Without Dodd-Frank, we would also be without the Volcker Rule, which was adopted in 2013 by the Commodity Futures Trading Commission (CFTC), the Office of the Comptroller of the Currency (OCC), the Securities and Exchange Commission (SEC), and the Fed, and took effect on July 21, 2015. At its heart, it prohibits banks from engaging in proprietary trading and subjects those banks that do trade to enhanced prudential monitoring by the Fed. It also limits banks’ ownership in hedge and private equity funds. By the government’s own estimates, the Rule will cost banks $4.3 billion. Not only that, Volcker statutorily limits bank’ ability to “make market” by buying selling, and holding inventories in various securities. As banks are forced to shed their market-making operations, customers lose their ability to trade quickly and at a steady price.

Furthermore, now that banks have higher capital requirements, another product of Dodd-Frank, they’re not taking up any excess space holding inventories of assets awaiting a buyer. By way of example, in 2007, JPMorgan carried $2.7 trillion in corporate bonds. By 2015 that number was down to $1.7 trillion and falling. That decrease in liquidity directly hurts consumers, as their options for financial products and services become more limited, and indirectly, as less liquid U.S. banks use their competitiveness abroad – Europe and much of the rest of the world are not restricted by bans on proprietary trading, etc. Relatedly, it is well documented that as liquidity decreases, the cost of capital for businesses, especially small businesses, decreases. A 2006 Amihud and Mendelson study shows that the level of liquidity (which the study measures as the bid-ask spread on a sample set of securities) affects the anticipated return on those securities and thus the firm’s resulting cost of capital. There is therefore a positive relationship between stocks’ excess monthly returns and bid-ask spreads for any given level of systematic risk. And, as such, average returns are higher for stocks with higher bid-ask spreads, and the increase in the bid-ask spread as a result of the Volcker Rule will result and has resulted in higher capital costs for those businesses, which, of course, results in slower economic growth and reduced job creation.

Regulatory off-ramp – created by the CHOICE Act

Off-ramp is good

Dr. Norbert Michel 2018. (director of Heritage Foundation Center for Data Analysis; formerly a tenured professor at Nicholls State University’s College of Business, teaching finance, economics and statistics. PhD in financial economics from the Univ of New Orleans.) January 2, 2018. “A Comparison of Two Financial Regulatory Reform Approaches.” <https://www.heritage.org/markets-and-finance/report/comparison-two-financial-regulatory-reform-approaches>

The cornerstone of the CHOICE Act is a regulatory off-ramp, a provision that provides regulatory relief to all banks that choose to maintain a higher equity–capital ratio than currently required. The Financial CHOICE Act represents an overwhelmingly positive approach to regulatory reform that would help to restore market discipline and reduce regulatory burdens, thus moving the nation’s financial markets in the right direction.

Details on the off-ramp

Dr. Norbert Michel 2018. (director of Heritage Foundation Center for Data Analysis; formerly a tenured professor at Nicholls State University’s College of Business, teaching finance, economics and statistics. PhD in financial economics from the Univ of New Orleans.) January 2, 2018. “A Comparison of Two Financial Regulatory Reform Approaches.” <https://www.heritage.org/markets-and-finance/report/comparison-two-financial-regulatory-reform-approaches>

Providing a Regulatory Off-Ramp. The regulatory off-ramp (capital election) in Title VI of the CHOICE Act provides regulatory relief to banks that choose to maintain a higher equity–capital ratio, thus improving their ability to absorb losses and reducing the likelihood of taxpayer bailouts. Section 601 establishes the capital election, such that any bank that chooses to meet the required 10 percent leverage ratio is treated as a “qualifying banking organization for purposes of the regulatory relief described under section 602.” The required leverage ratio, as defined in Section 605, is the bank’s ratio of tangible equity to leverage exposure.

Section 602 spells out all of the specific regulations of which qualifying banks will be relieved, including any federal law, rule, or regulation addressing capital or liquidity requirements, as well as any federal law, rule, or regulation that allows banking regulators to provide limitations on mergers, consolidations, or acquisitions (to the extent such limitations relate to capital or liquidity). Qualifying banks would also be exempt from the “heightened prudential standards” implemented by section 165 of Dodd–Frank.

Off-ramp

Peter J. Wallison 2017. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies. A codirector of the American Enterprise Institute’s program on financial policy studies, former general counsel of the U.S. Treasury Department; also served as White House counsel to President Ronald Reagan. LL.B from Harvard Law School) April 26, 2017. Testimony on the CHOICE Act House Financial Services Committee. “The CHOICE Act.” <https://www.aei.org/wp-content/uploads/2017/04/Peter-J.-Wallison-The-CHOICE-Act-Testimony-4-26.pdf>

First, the Dodd-Frank Act has had a highly adverse effect on economic growth in the United States, primarily—although not entirely—through imposing substantial costs on small and community banks. The CHOICE Act attacks this problem in a comprehensive way— providing these banks, and potentially others, with an “off-ramp” that would allow them to avoid many of the most costly regulations if they adopt a capital position based on a 10% leverage ratio instead of the Basel risk-based capital standards. Larger banks could also take advantage of this exemption. This is an imaginative way comprehensively to address the problem of excessively costly regulations for small and community banks and restore the growth in the small bank sector that has been missing since the enactment of Dodd-Frank. A return of small and community banks, over time, will restore the growth among small business and startups that will get our economy moving where it needs the most help—at the local level.

DISADVANTAGE RESPONSES

A/T “Another financial crisis without D-F”

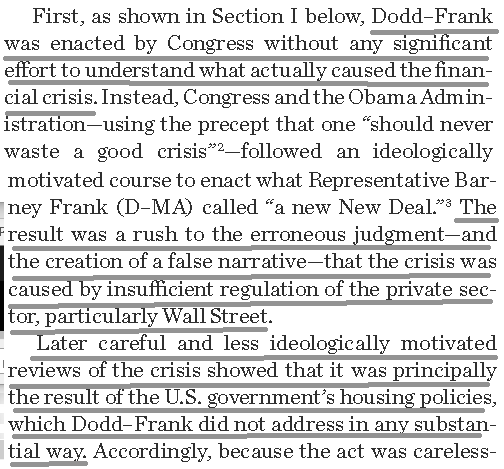
Dodd-Frank misunderstood the cause of the 2008 crisis, so it can’t solve. Turn: D-F makes it worse

Peter J. Wallison 2015. (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies; former general counsel of the U.S. Treasury Department. LL.B from Harvard Law School and a B.A from Harvard College.) January 3, 2015. “‘Hidden in Plain Sight’: A Q&A with Peter Wallison on the 2008 financial crisis and why it might happen again.” <https://www.aei.org/publication/hidden-plain-sight-qa-peter-wallison-2008-financial-crisis-might-happen/>

Legislation can only be effective if it is drawn up by a Congress that understands the nature of the problem it is supposed to solve. Dodd-Frank was based on the false idea that the 2008 financial crisis was caused by insufficient regulation of the private sector. This narrative supported what the 2010 Democratic Congress wanted to accomplish—the imposition of much greater regulation on the US financial system—but did not come close to identifying or addressing the government policies that were the actual cause of the crisis. Indeed, by absolving the government from any role in the crisis, the supporters of Dodd-Frank left the government free to do the same thing again—something that is occurring right before our eyes.

Dodd-Frank never addressed the real cause of the crash: Federal housing policies

Peter J. Wallison 2016 (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies; former general counsel of the U.S. Treasury Department. LL.B from Harvard Law School) “Why Large Portions of the Dodd–Frank Act Should Be Repealed or Replaced” <http://thf-reports.s3.amazonaws.com/2016/The%20Case%20Against%20Dodd-Frank.pdf>

First, as shown in Section I below, Dodd–Frank was enacted by Congress without any significant effort to understand what actually caused the financial crisis. Instead, Congress and the Obama Administration—using the precept that one “should never waste a good crisis” —followed an ideologically motivated course to enact what Representative Barney Frank (D–MA) called “a new New Deal.” The result was a rush to the erroneous judgment—and the creation of a false narrative—that the crisis was caused by insufficient regulation of the private sector, particularly Wall Street. Later careful and less ideologically motivated reviews of the crisis showed that it was principally the result of the U.S. government’s housing policies, which Dodd–Frank did not address in any substantial way.

Rolling back D-F won’t hurt economy or cause a crash. Turn: D-F hurts the economy and makes crash more likely

Peter J. Wallison 2016 (Senior Fellow and Arthur F. Burns Fellow in Financial Policy Studies; former general counsel of the U.S. Treasury Department. LL.B from Harvard Law School) “Why Large Portions of the Dodd–Frank Act Should Be Repealed or Replaced” <http://thf-reports.s3.amazonaws.com/2016/The%20Case%20Against%20Dodd-Frank.pdf>

Finally, any effort to repeal or replace major provisions of Dodd–Frank will be characterized by the act’s supporters as an attempt to roll back the “progress” they have made in preventing another financial crisis. Yet, if anything, by stifling economic growth, Dodd–Frank has made another financial crisis more likely, and has brought on the concerns about middle-income stagnation, income inequality, and a future without economic progress that most Americans have never experienced before.

A/T “Crisis without the Volcker Rule”

Absence of V. Rule had no impact on the 2008 crisis, and would not have prevented or softened it

Dr. Norbert Michel 2018. (director of Heritage Foundation Center for Data Analysis; formerly a tenured professor at Nicholls State University’s College of Business, teaching finance, economics and statistics. PhD in financial economics from the Univ of New Orleans.) January 2, 2018. “A Comparison of Two Financial Regulatory Reform Approaches.” <https://www.heritage.org/markets-and-finance/report/comparison-two-financial-regulatory-reform-approaches>

Repealing the Volcker Rule. Title IX of the CHOICE Act repeals Section 619 of Dodd–Frank, otherwise known as the Volcker rule. The Volcker rule supposedly protects taxpayers by prohibiting banks from engaging in proprietary trading—that is, making risky investments solely for their own profit. Although it sounds logical to stop banks from making “risky bets” with federally insured deposits, this idea ignores the basic fact that banks make risky investments with federally insured deposits every time they make a loan. Furthermore, long before the 2008 crisis, federal regulators had—and used—the authority to regulate proprietary trading. There is no reason to think that the Volcker rule would have prevented—or even softened—the 2008 crisis.

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