U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL SERVICES

MAXINE WATERS (CA-43), RANKING MEMBER

DODD-FRANK FIVE YEARS LATER: ACCOMPLISHMENTS, THREATS, AND NEXT STEPS

DEMOCRATIC STAFF REPORT
114TH CONGRESS

JULY 21, 2015

Table of Contents

EXECUTIVE SUMMARY

Five years later the purpose of the Dodd-Frank Act remains the same: to prevent another financial crisis and the incalculable costs that it would inflict on the economy, the financial markets, and society. Indeed, the 2007-2008 financial crisis was the worst financial disaster since the Great Depression: Nearly $13 trillion in household wealth simply disappeared, with the retirement accounts of many swept away. All told, around 11 million individuals were displaced from their homes, many of whom may never again have the opportunity of homeownership.

In response, Congress passed the Dodd-Frank Act, which has had an indelible impact on our financial markets. Regulators have taken important steps to implement the Act. They are on the lookout for systemic risk, have taken steps to prevent future bailouts, have added transparency and structure to the once-opaque derivatives market, reined in credit ratings agencies, and implemented new investor protections. Consumers now have the Consumer Financial Protection Bureau (CFPB) on their side, which has provided billions in relief to millions of consumers through its enforcement actions, while also regulating industries that have historically lacked strong Federal oversight. Specific achievements of Dodd-Frank include:

Protecting Consumers

- To date, the CFPB has returned $10.1 billion to over 17 million consumers through its enforcement actions.
- The CFPB finalized its Qualified Mortgage (QM) and Ability-to-Repay (ATR) rules, which became effective in January 2014. These rules protect consumers by ensuring that borrowers have the ability to repay mortgage loans and that such loans are free from the tricks and traps (i.e. negative amortization, balloon payments, etc.) that were characteristic of loans made during the subprime crisis.
- In March 2015, the CFPB proposed a rule to end payday debt traps by requiring lenders to take steps to make sure consumers can repay their loans and to restrict lenders from attempting to collect payment from consumers' bank accounts in ways that tend to rack up excessive fees.

Identifying and Mitigating Systemic Risk

- 2,700 private fund advisors have registered with the Securities and Exchange Commission (SEC) and begun reporting information on approximately 8,000 hedge funds, 70 liquidity funds, and 7,000 private equity funds.
- The Financial Stability Oversight Council (FSOC) has designated four non-bank firms, MetLife, Inc., American International Group, Inc., General Electric Capital Corporation, Inc., and Prudential Financial Inc, for heightened prudential requirements and supervision by the FSOC and the Federal Reserve.
- The SEC, prompted by the FSOC, has finalized reforms of money market mutual funds.

Preventing Future Bailouts

- The Volcker rule, which prohibits taxpayer subsidized banks from making proprietary trades, was finalized in 2013.
- Stress tests required by Dodd-Frank, as well as the comprehensive capital analysis and review (CCAR), have helped regulators to implement and enforce new capital standards, ensuring stability through future financial downturns.
- Regulators have finalized a liquidity coverage ratio (LCR) rule and have finalized an international agreement on the net stable funding ratio (NSFR) with the Basel Committee, both of which are designed to make sure banks have sufficient levels of capital.
- Last August, regulators sent comments to 11 large banks on their second round of living will submissions, identified shortcomings, and required them to submit new plans that address those shortcomings by July 2015.

Creating Transparency and Oversight of Derivatives

- More than 100 swap dealers and two major swap participants are provisionally registered with the Commodity Futures Trading Commission (CFTC). The SEC estimates that 50 security-based swap dealers and five major security-based swap participants will be required to register upon the SEC's derivatives rules going into effect.
- About 75 percent of the transactions in the swaps market, measured by notional amount, are cleared, compared to about 15 percent in December 2007. Single-name credit default swaps (CDS)—the derivatives at the heart of the financial crisis— began clearing in 2009, with less than 5 percent being cleared. As of September 2014, between 15 and 18 percent of the single-name CDS (in terms of gross notional value) in global single-name CDS market were cleared.
- There are now four swaps data repositories (SDRs) in the U.S., making a previously opaque market significantly more transparent.

New Requirements for, and Oversight of, Credit Ratings Agencies

- Each nationally recognized statistical ratings organization (NRSRO) is now examined a least once a year, and the findings from the examination are publicly disclosed.
- NRSROs now report their methodologies and ratings performance to better inform investors and analysts.
- Financial regulators have adopted rules to reduce investor reliance on credit ratings by removing references to credit ratings from most rules.

Providing Shareholders with a Say-on-Pay and Greater Accountability to Shareholders

- To date 1,574 Russell 3000 companies have conducted Say-on-Pay votes, creating a shareholder voice to oppose steep increases in executive compensation packages. As of July 2015, 32 or 2 percent of Russell 3000, companies have failed a Say-on-Pay vote.

Additional Investor Protections

- In Fiscal Year 2014, the SEC received over 3,600 tips (about 10 a day), covering a variety of securities law violations. Whistleblowers that provide the SEC with original information that leads to a successful enforcement action can receive an award of up to 30 percent of the amounts collected in the action. So far 17 whistleblowers have received awards totaling nearly $50 million.

Despite these accomplishments, there has been a sustained campaign by opponents of reform to weaken, slow down, or repeal key provisions of the law.

The CFPB has been more targeted than any other agency:

- House Republicans have passed legislation attempting to undermine the CFPB's rules and to subject the Bureau to the appropriations process.
- Committee Republicans have used the investigatory process to initiate 21 investigations of the CFPB since January 2014, 16 of those continue as of the publishing of this report.
- These investigations have forced the Bureau to produce more than 10,700 pages of documents for the Committee since January 2014 in response to no fewer than 58 letters of inquiry.
- CFPB officials have also been called to testify in front of the Committee more than 20 times since the Bureau opened its doors in 2011.

Opponents of reform have used the legislative process to weaken critical parts of the Act:

- Republicans have repeatedly cut funding to the SEC and the CFTC, impairing their ability to write rules and to enforce those on their books. The SEC is currently funded at 88 percent of its budget request.
- Republicans have also passed bills out of the House that subject all SEC rulemakings to much more onerous cost/benefit standards, which would make it impossible for the SEC to effectively regulate our capital markets and protect investors.
- Republicans have also sought to apply such standards to the Federal Reserve in an effort to undermine its ability to take action to mitigate systemic risk.

- Opponents also repealed a major part of reform, the requirement that federally insured banks push out their derivatives operations, by tucking it into a must-pass appropriations bill.

Opponents of reform have also used the court system to stall Dodd-Frank:

- At least 11 lawsuits have been filed challenging parts of Dodd-Frank.
- Four of these lawsuits resulted in the regulators either withdrawing or re-proposing their rules.

Committee Republicans, aided by new subpoena authorities, have undertaken aggressive and partisan investigations into several components of reform:

- To augment the Chairman's power, the Committee's rules were changed to give him the authority to issue unilateral subpoenas for documents and testimony on behalf of the Committee.
- Additionally, the rules of the House were also changed to grant Committee staff new investigatory authority to conduct official depositions – in certain circumstances even without the presence of a Committee Member.
- In total more than 23,000 pages of documents have either been produced to the Committee or made available for *in camera* review, since January 2014.
- Currently the Majority has 78 ongoing investigations into agencies or programs under the jurisdiction of the Committee and has issued 4 subpoenas related to 17 investigations.

In order to ensure that the promise of Dodd-Frank is kept, regulators and Congress play a critical role:

- Regulators must hold financial institutions to a high standard in reviewing their activities. They should also not be afraid to proactively use the full Dodd-Frank "toolkit" to fix problems before they emerge, such as requiring divestiture.
- Regulators can and should push banks away from overly complicated deals and transactions and encourage simplification wherever possible.
- Regulators must also hold bad actors accountable by letting financial institutions that break the law experience the impact of the collateral consequences of their behavior, as Congress intended.
- Regulators should examine the possibility of regulatory capture of their institutions and take steps to prevent it.
- Regulators also have to be vigilant in rooting out attempts by the industry to evade or avoid the requirements of Dodd-Frank.
- To further limit risk taking the SEC should finalize its rules on executive compensation.

- Regulators should ensure diversity among their own workforces, consistent with Section 342 of Dodd-Frank.
- Congress should take action so that the SEC is self-funded like banking regulators. Allowing the SEC to self-fund would protect its budget from the whims of Congress and allow it to better police the markets.

Congress and regulators should work together to bridge the recovery gap. While the economy has rebounded significantly since the enactment of Dodd-Frank, some groups and communities have yet to fully benefit from the recovery. The wealth gap—the difference in wealth between high, middle and low-income households or between white and minority households— is currently at its widest level in 30 years. Middle-, lower-class, and minority families have seen their wealth stagnate. **The recovery gap also includes small financial institutions.** While bank failures have greatly slowed since Dodd-Frank and the law and Democrats have provided numerous exemptions and exceptions for smaller financial institutions, which have helped them to stabilize, small financial institutions could benefit from additional regulatory relief. As Congress intended for Dodd-Frank to help struggling communities, bridging the recovery gap for these persons and institutions should be the next phase of reform.

- Consumers are struggling with high levels of student loan debt. The CFPB's oversight over student loan servicers should be comprehensive and Congress should pass legislation like the CLASS Act to provide additional protections for student borrowers.
- Technological advances and the debt collection industry have changed significantly since passage of the Fair Debt Collection Practices Act and although the CFPB is taking steps to rein in this industry, Congress should consider bringing the law up to date.
- Despite the improvements in the housing market, homeowners in unsustainable mortgages will continue to need relief. The CFPB should revise its mortgage servicing rules to require loan modifications in all cases.
- Consumer credit reporting remains an area in need of comprehensive reform, given the importance of credit reports and their use for non-credit purposes.
- While Republicans have tried to blame the Community Reinvestment Act for the financial crisis, the program is a critical tool for helping spur investment into communities and should be reformed to reflect the current state of banking.
- Community banks and credit unions still need additional regulatory relief. This is why all Democrats on the House Financial Services and Senate Banking Committees drafted legislation—H.R. 2642 and S. 1491, the Community Lender Regulatory Relief and Consumer Protection Act—to provide community banks and credit unions with targeted regulatory relief. The bill strikes the right balance between relief and consumer protection.

- While Fannie Mae and Freddie Mac remain profitable, their conservatorship cannot continue indefinitely. If Congress is able to address housing finance reform any potential changes to the housing system should be considered in the context of shrinking the wealth gap.

Introduction

As we mark the fifth anniversary of the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), it's important to remember that the 2008 financial crisis was not a natural disaster. Instead, it was the result of deliberate choices: choices on the part of some on Wall Street, who put their own short-term self-interest ahead of the long-term economic health of our nation's investors and consumers. It was also the result of choices on the part of some of our financial regulators, who failed to respond to both vulnerabilities in the system and the existence of illegal conduct in the sector.

Those choices have had tremendously damaging consequences. Newspaper headlines from the summer and fall of 2008 show a nation plagued by small business closures, large drops in the stock market, stunning job losses, rising home foreclosures, and fears of a looming repeat of the Great Depression.

Indeed, in the six months before President Obama took office in February 2009, our economy hemorrhaged a total of nearly 4 million private sector jobs – an average of 750,000 per month.[1] Our nation experienced the loss of nearly $13 trillion in household wealth, with the retirement accounts of many swept away.[2] All told, around 11 million individuals were displaced from their homes, many of whom may never again have the opportunity of homeownership.[3]

Luckily, swift action by both Republican and Democratic administrations, in partnership with both parties in Congress, prevented our economy from falling off of a cliff.

And once the economy had been stabilized, Democrats in Congress worked diligently with the Obama Administration to advance legislation to restore responsibility and accountability in our financial system, and to give Americans confidence that we had the tools in place to avoid another 2008 crisis.

---

[1] Treasury Department, DODD-FRANK AT FIVE YEARS REFORMING WALL STREET AND PROTECTING MAIN STREET, July 2015, http://www.treasury.gov/press-center/Documents/DFA%205%20Year%20Deck.pdf
[2] *Id.*
[3] Dean Starkman *The New Black Migration*, Columbia Journalism Review, Sept. 10, 2013, http://www.cjr.org/the_audit/the_new_black_migration.php?page=all

Most notably, Dodd-Frank created a Consumer Financial Protection Bureau (CFPB) that, in just a few years, has already returned $10.1 billion to 17 million consumers who have been subjected to unfair and deceptive practices.[4] Democratic Members worked with the Bureau to create rules-of-the-road to make sure predatory mortgages never again stripped wealth from American families and endangered our economy. And with support from banking and market regulators Dodd-Frank created rules to protect retirees and other investors from the practices that wreaked havoc on savers in 2008.

The American economy has added around 12.8 million private sector jobs over 64 consecutive months of job growth,[5] dropping the unemployment rate by 4.7 percentage points to 5.3 percent[6] from its peak of 10 percent in October 2009[7]—nearly its lowest level since September 2008.[8] Moreover, the housing market is recovering, with home prices rising, negative equity falling, and measures of mortgage distress improving. In fact, FHFA's house price index was at roughly the same level in April 2015 as it was in February 2006.[9]

And retirees' investments are recovering as well. The S&P 500 has risen by more than 250 percent since February 2009 and continues to improve.[10] Fidelity reports that average 401(k) balances reached a record high in 2014.[11]

Finally, the Federal Government's budget situation has also dramatically improved, with *Bloomberg* news calling the rebound from the crisis, "the sharpest turnaround in the government's fiscal position in at least 46 years."[12] In the aftermath of the crisis in 2009, the deficit as a percentage of our nation's gross domestic product was a stunning 9.8 percent; at the end of 2014, it was less than 3 percent.[13]

---

[4] Consumer Financial Protection Bureau, *Enforcing Consumer Protection Laws*, July 15, 2015, http://files.consumerfinance.gov/f/201507_cfpb_enforcing-consumer-protection-laws.pdf

[5] Treasury Department, *supra* note 1.

[6] Press Release, Bureau of Labor Statistics, The Employment Situation — June 2015 (July 2, 2015), http://www.bls.gov/news.release/pdf/empsit.pdf

[7] Bureau of Labor Statistics, BLS SPOTLIGHT ON STATISTICS: THE RECESSION OF 2007-2009, (Feb. 2012), http://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf

[8] Treasury Department, *supra* note 1.

[9] Press Release, Federal Housing Finance Agency, FHFA House Price Index Up 0.3 Percent in April 2015 (June 23, 2015), http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-House-Price-Index-Up-0pt3-Percent-in-April-2015.aspx

[10] David B. Armstrong, *The Standard & Poor's 500 Index: 6 Years Later*, U.S. News, June 11, 2015, http://money.usnews.com/money/blogs/the-smarter-mutual-fund-investor/2015/06/11/the-standard-poors-500-index-6-years-later

[11] Press Release, Fidelity, Fidelity's Quarterly Retirement Snapshot: Average 401(k) Balance Hits Record Levels, IRA Balances Continue to Grow in 2014 (Jan. 29, 2015), https://www.fidelity.com/about-fidelity/individual-investing/q4-2014-retirement-snapshot

[12] Christopher Condon, *Deficit Decline Buys Time for Lawmakers*, Bloomberg, Nov. 4, 2014, http://www.bloomberg.com/politics/articles/2014-11-04/us-deficit-decline-to-28-of-gdp-is-unprecedented-turn

[13] Federal Reserve Bank of St. Louis and US. Office of Management and Budget, *Federal Surplus or Deficit [-] as Percent of Gross Domestic Product* [FYFSGDA188S], retrieved from FRED, Federal Reserve Bank of St. Louis https://research.stlouisfed.org/fred2/series/FYFSGDA188S/

But even as we recognize the remarkable accomplishment that Dodd-Frank and the economic stimulus packages achieved by avoiding a second Great Depression and stabilizing our economy in the face of a crisis, it's important to recognize that the events of 2008 have cast a long shadow over our nation's growth and prosperity, and that the recovery has not been shared equally by all households.

For example, research from Cornell University found that the foreclosure crisis has resulted in an increasing level of re-segregation in many urban areas where African-American and Hispanic households reside.[14] The National Council of La Raza, in partnership with the University of North Carolina at Chapel Hill's Center for Community Capital, also found that the foreclosure crisis likely had substantial negative impacts on children's well-being, including causing children to experience (1) multiple moves; (2) marital discord among their parents and guardians; and (3) anxiety, depression, and poor performance in school, in addition to other significant consequences.[15]

The foreclosure crisis has also exacerbated what was already an unacceptably large wealth gap between white and minority households. According to research from the Pew Research Center, the current wealth gap between African-Americans and whites has reached its highest point since 1989, when whites had 17 times the wealth of Black households.[16] The current white-to-Hispanic wealth ratio has reached a level not seen since 2001.[17]

White households increased their wealth by 2.4 percent between 2010 and 2013 while Hispanic and African-American households saw their wealth decrease by 14.3 and 33.7 percent, respectively.[18] Absent significant, additional public policy interventions, it remains unclear the extent to which these households will rebound, with reports from the National Association of Realtors suggesting that less than one-third of families who lost their homes to foreclosure or other distress events in the past decade are likely to become homeowners again.[19]

---

[14] Matthew Hall, Kyle Crowder and Amy Spring, *Neighborhood Foreclosures, Racial/Ethnic Transitions, and Residential Segregation*, AMERICAN SOCIOLOGICAL REVIEW, June 2015, Volume 80 Number 3, 526-549

[15] Janis Bowdler, Roberto Quercia and David Andrew Smith, National Council of La Raza and the Center for Community Capital at the University of North Carolina, THE FORECLOSURE GENERATION: THE LONG-TERM IMPACT OF THE HOUSING CRISIS ON LATINO CHILDREN AND FAMILIES, (Feb. 16, 2010), http://www.nclr.org/index.php/publications/the_foreclosure_generation_the_long-term_impact_of_the_housing_crisis_on_latino_children_and/

[16] Rakesh Kochhar and Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Research Center, Dec. 12, 2014, http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/

[17] *Id.*

[18] *Id.*

[19] Ken Fears, *Return Buyers: Many Already Here, Many More to Come*, National Association of Realtors, Apr. 17, 2015, http://economistsoutlook.blogs.realtor.org/2015/04/17/return-buyers-many-already-here-many-more-to-come/

In short, we have come a long way, but we must do better.

Too much time has been wasted in Congress by a Republican Majority bent on austerity policies that leave workers, retirees, and minority communities behind, while ignoring the substantial progress that has already been made on deficit reduction. And too much energy has been spent trying to re-litigate the causes of the 2008 crisis, which at this point everyone should recognize as settled consensus. Finally, far too much effort has been spent by the Majority attempting to weaken our regulatory system – whether through underfunding our regulators, relentlessly pressuring them to go soft on the rules, or holding hostage must-pass legislation needed to run the government with unrelated Wall Street giveaways. Though they don't propose repealing the popular law directly, opponents of Wall Street reform continue to employ a "death by 1,000 cuts" strategy to roll back the significant gains our nation has made since Dodd-Frank's enactment.

At Dodd-Frank's fifth anniversary, the long-term survival of financial reform is dependent upon the commitment of those in Congress to preserve the law, the will of our regulators to implement it, and the ability of supporters around the U.S. to push back against industry pressure. Democrats remain committed to fulfilling the intent of the law, building on its successes, and ensuring that our economic system provides for broadly-shared prosperity.

Causes and Costs of the Financial Crisis and How Dodd-Frank Responded

Opponents of reform have said that parts of Dodd-Frank are a problem in search of a solution.[20] To the contrary, Dodd-Frank was a targeted solution to the causes of the financial crisis. The goal of Dodd-Frank wasn't to create unnecessary burdens on the financial services industry. Rather, it was to respond to an unprecedented economic crisis caused by unscrupulous actors and conduct in the financial services industry with the tools and resources that could prevent a future crisis.

Causes and Costs of the Financial Crisis

The causes of the financial crisis are generally agreed-upon by most mainstream economists. Indeed, the Financial Crisis Inquiry Commission (FCIC), formed by Congress in 2009, found in their majority report (the "Report) that the 2008 crisis was caused by the "collapse of the housing bubble – fueled by low interest rates, easy and available credit, scant regulation, and toxic mortgages."[21] Additionally, the Report asserts that losses from mortgages

[20] *See e.g.*, Jeb Hensarling, Chairman, House Financial Services Committee, Keynote Address at the Mercatus Center and the CATO Institute conference: After Dodd-Frank: The Future of Financial Markets (July 16, 2014), http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=388236

[21] Financial Crisis Inquiry Commission, THE FINANCIAL CRISIS INQUIRY REPORT, (Jan. 2011) at xvi, http://fcic.law.stanford.edu/report

and mortgage-related securities were magnified by the use of derivatives, that were further exacerbated by failures in regulation, breakdowns in corporate governance and risk management, and a lack of transparency.[22]

The ensuing financial crisis had both measurable and immeasurable costs to the American economy and the taxpayer. Indeed, the 2007-2008 financial crisis was the worst financial disaster since the Great Depression. The costs of that crisis are staggering and long-lasting by every measure:

- The crisis ravaged our economy, costing more than $13 trillion.[23]
- Tens of millions of Americans lost their jobs as the number of unemployed climbed to 15.3 million over the course of the recession, and the number of underemployed and discouraged job seekers who wanted work but could not find it rose to 6.3 million in December 2009.[24]
- Median family income fell to $45,800 in 2010 from $49,600 in 2007, with middle-class families sustaining the largest percentage losses in both wealth and income during the crisis.[25]
- Equity investments dramatically declined, with the stock market falling by nearly 50 percent from the peak in summer of 2007 and the trough in January 2009.[26]
- Home prices across the nation fell roughly 29 percent from their peak in April 2006 until the end of the recession in June 2009.[27]
- The poverty rate steadily rose 2.5 percentage points between 2007 and 2012, with 46.5 million people living in poverty in 2012.[28]
- The U.S. government created various emergency programs and provided $12.6 trillion in direct support to the U.S. financial sector, not including pre-crisis provisions by the FDIC deposit insurance limits and the Fed's traditional monetary policy operations and lender-of-last-resort functions.[29]

[22] *Id*. at xviii-xix.
[23] Treasury Department, *supra* note 1.
[24] Press Release, Bureau of Labor Statistics, The Employment Situation – December 2009 (Jan.8, 2010) http://www.bls.gov/news.release/archives/empsit_01082010.pdf
[25] Board of Governors of the Federal Reserve System, Federal Reserve Bulletin, Changes in U.S. Family Finances From 2007 to 2010: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin, June 2012, http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf
[26] Dow Jones Industrial Average, Aug. 31, 2007 to Jan. 2, 2009, Yahoo Finance
[27] U.S. Government Accountability Office, GAO-13-180, FINANCIAL CRISIS: LOSSES AND POTENTIAL IMPACTS OF THE DODD-FRANK ACT (Jan. 2013), http://gao.gov/assets/660/651322.pdf
[28] U.S. Census Bureau, Report: 60-245, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2012, (Sep. 2013), http://www.census.gov/prod/2013pubs/p60-245.pdf
[29] Tyler Atkinson, David Luttrell and Harvey Rosenblum, *How Bad Was It? The Costs and Consequences of the 2007-09 Financial Crisis*, Federal Reserve Bank of Dallas, Economic Letter Volume 8, Number 13, Sep. 2013, http://www.dallasfed.org/assets/documents/research/eclett/2013/el1307.pdf

These figures, however, fail to capture the incalculable, widespread human suffering that affected millions of Americans and continues to this day. The Dodd-Frank Act provides an enormous collective benefit to Americans by developing a framework to prevent a recurrence of the crisis and create a financial system that is safer, stronger, and more resilient. And yet, opponents of reform overlook any benefits and rely on misleading characterizations to support their claims regarding the costs of the Dodd-Frank Act.[30]

For example, the American Action Forum (AAF) suggests that reform could cost nearly a trillion dollars over ten years, but fails to acknowledge that: (1) this only represents 0.05 percent of annual U.S. GDP; (2) if Dodd-Frank reduces the annual chance of a financial crisis by just 1 percent, the U.S. experiences $3 trillion in economic benefits or three times the purported costs; and (3) many of the costs AAF includes, such as requiring public reporting of derivatives trades and disclosure of asset-backed securities, generate significant benefits as the economy becomes more efficient and transparent.[31] In their haste to report costs, opponents of reform systematically ignore any benefits of a more stable economy and fail to understand that requiring a broken financial industry to repair itself does not result in a more productive industry.

How Dodd-Frank Responded to the Financial Crisis

Five years later the purpose of the Dodd-Frank Act remains the same: to prevent another financial crisis and the incalculable costs that it would inflict on the economy, the financial markets, and society. Dodd-Frank accomplished this by directly addressing each of the points raised by the FCIC. A summary of the Act can be found in Appendix A. A brief treatment of key reforms in Dodd-Frank follows.

To address the devastating widespread failures in supervision and regulation**,** Dodd-Frank bolstered regulatory supervision by abolishing a failed regulatory agency—the Office of Thrift Supervision—and creating new agencies to fill regulatory gaps, including the Financial Services Oversight Council (FSOC) to monitor the entire system for risks and address them before they do harm; an Office of Financial Research (OFR) to support FSOC by collecting and analyzing data, and an independent CFPB to regulate consumer-related products and practices of financial firms. The Act also required stricter regulation of large bank holding companies (BHCs), systemically important nonbank financial companies, and financial market utilities (e.g., clearinghouses), and included authority for regulators to shut down activities or require divestitures to prevent grave threats to financial stability.

[30] Douglas Holtz-Eakin, American Action Forum, THE GROWTH CONSEQUENCES OF DODD-FRANK (May 6, 2015), http://americanactionforum.org/uploads/files/research/The_Growth_Consequences_of_Dodd_5-6-15.pdf
[31] Americans for Financial Reform, AFR RESPONSE TO AMERICAN ACTION FORUM STUDY ON COSTS OF DODD-FRANK ACT (May 7, 2015), http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2015/05/AFR-Response-to-American-Action-Forum-Study.pdf

Dodd-Frank addressed failings of corporate governance and risk management at systemically significant institutions, by requiring public companies to have independent compensation committees and give shareholders a "Say-on-Pay" and financial regulators to develop and enforce executive compensation rules. Large BHCs and systemically important nonbank financial companies are required under the law to meet stricter standards for capital, liquidity, and risk-management, have risk committees, undergo periodic stress tests, and develop "living wills" that should cause firms to reduce unduly complex or risky transactions and relationships.

Under the Volcker Rule, banking entities and systemically important nonbank financial companies are prohibited from engaging in proprietary trading and from making certain investments in, or having certain relationships with, hedge or private equity funds.

Dodd-Frank also created a statutory framework to crack down on the types of predatory mortgages that ignited the crisis. Today, many of the practices that enabled risky loans that fueled the crisis are prohibited. The CFPB was required to set rules-of-the-road for lenders. These standards now require that lenders determine that borrowers have the ability-to-repay a mortgage before credit is extended, and securitizers must retain at least 5 percent of the credit risk of securitized loans that do not meet a high-quality underwriting standard.

Dodd-Frank created a new regulatory framework for derivatives, administered by the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC), which requires central clearing and exchange trading for derivatives, reporting of all derivatives transactions through clearinghouses and swap and security-based swap data repositories to improve market transparency and provide regulators with a monitoring tool. Dealers and major swap participants must now have adequate financial resources to support their transactions (i.e. capital and margin requirements, as set by the SEC, CFTC and prudential regulators).

Dodd-Frank specifically addressed failures at the credit rating agencies by establishing on Office of Credit Rating Agencies at the SEC, which can require an NRSRO to deregister if it provides bad ratings over time. The law has also addressed overreliance on ratings by prohibiting federal agencies from requiring private parties to use them.

Dodd-Frank at 5: Reform in Action

Five years after its enactment, the Dodd-Frank Act has had an indelible impact on the financial markets. Regulators have taken important steps to implement the Act. They are now on the lookout for systemic risk, have taken steps to prevent future bailouts, have added transparency and structure to the once-opaque derivatives market, reined in credit ratings agencies, and

implemented new investor protections. Consumers now have the CFPB on their side, which has provided billions in relief to millions of consumers through its enforcement actions, while also regulating industries that have historically lacked strong Federal oversight.

Protecting Consumers

The financial crisis revealed that laws meant to protect consumers from predatory practices are meaningless if they are not enforced, and that consumers needed a government agency focused on their needs and experiences. The CFPB was created to ensure that important fair lending, debt collection, consumer credit, and other borrower protections were updated in response to quickly changing markets and consistently enforced nationwide.

Prior to the crisis, these responsibilities were divided among multiple agencies with little accountability for their inaction. However, in the short years since the CFPB opened its doors, it has been hard at work implementing the marketplace reforms of the Dodd-Frank Act and vigorously pursuing bad actors in consumer financial markets. Since July 2011, the CFPB has returned $10.1 billion to more than 17 million harmed consumers – including homeowners, students, seniors, and servicemembers.[32] Millions of consumers have also taken advantage of the Bureau's financial resources at consumerfinance.gov, including 627,000 Americans that have contributed to a database for collecting consumer complaints against service providers that have proved otherwise unresponsive.[33] Servicemembers have also gained their own advocate through the Office of Servicemember Affairs headed by Holly Petraeus, who has years of experience working with military families on financial issues.

The CFPB is also increasing competition in lending markets by bringing regulation to non-bank lenders, creating an equal playing field for banks and credit unions that were pushed out of some markets by unregulated entities that engaged in unfair practices. To date, the CFPB has brought previously unregulated large participants in debt collection, consumer reporting, student loan servicing, international money transference, and indirect auto lending markets under supervision. Large banks are also now subject to examinations conducted by experts in consumer lending rather than examiners primarily trained in safety and soundness.

CFPB Enforcement Highlights

The CFPB's supervisory program has covered nearly all areas of consumer finance, including consumer reporting, payday lending, debt collection, overdraft protection, student and

[32] Consumer Financial Protection Bureau, s*upra* note 4.
[33] Press Release, Consumer Financial Protection Bureau, CFPB Publishes Over 7,700 Consumer Complaint Narratives About Financial Companies (June 25, 2015), http://www.consumerfinance.gov/newsroom/cfpb-publishes-over-7700-consumer-complaint-narratives-about-financial-companies/

mortgage lending and servicing, auto lending, fair lending, and violations of the Servicemember Civil Relief Act (SCRA). Highlights of notable enforcement actions the CFPB has taken against bad actors in these industries include:

For-Profit Colleges: In February 2015, the CFPB announced an enforcement action against for-profit Corinthian Colleges for $480 million in student debt forgiveness for students who were victims of a predatory student lending scheme.

Payday Lenders: In July 2014, the CFPB took action against ACE Cash Express, one of the largest payday lenders in the U.S., when the Bureau found that the company had engaged in illegal debt collection tactics – including harassment and false threats of lawsuits or criminal prosecution – and trained its staff to pressure overdue borrowers into taking out additional loans they could not afford.

Mortgage Servicers: In December 2013, the CFPB entered into an enforcement action against the country's largest nonbank mortgage loan servicer, Ocwen Financial Corporation, and its subsidiary, Ocwen Loan Servicing, to provide $2 billion in principal reduction to underwater borrowers. The enforcement action was accompanied by a consent order that required Ocwen to address systemic misconduct at every stage of the mortgage servicing process.

Violators of the Servicemember Civil Relief Act (SCRA): The CFPB has taken an aggressive and proactive stance in policing the market for SCRA violations that harm military families, including initiating a landmark enforcement action against USA Discounters, Ltd., a company that operates a chain of retail stores near military bases and offers financing for purchases, which tricked thousands of servicemembers into paying fees for legal protections servicemembers already had and for certain services that the company failed to provide. The CFPB has also taken a lead role in investigating and remediating student loan servicing-related complaints for SCRA-covered individuals.

Rules, Studies and Other Highlights

Military Lending Act: As one of the agencies charged with enforcing the Military Lending Act (MLA), the CFPB worked with the Department of Defense to close loopholes in the law and enhance the scope of products covered by the 36 percent rate cap and other military-specific protections under the MLA. The changes included extending MLA protections to any length of payday loan or auto title loan and by covering open-ended credit.

Payday Lending: The CFPB has undertaken comprehensive work to study and understand the payday lending industry, including completing a study in March 2014 which found that four out of five payday loans are rolled over or renewed; three out of five payday

loans are made to borrowers whose fee expenses exceed the amount borrowed; and one out of five payday borrowers receiving monthly benefits (such as social security or disability benefits) remained trapped in debt for an entire year.[34] Based on what was learned in the study, the Bureau in March 2015 proposed a rule to end payday debt traps by requiring lenders to take steps to make sure consumers can repay their loans and to restrict lenders from attempting to collect payment from consumers' bank accounts in ways that tend to rack up excessive fees.[35]

Consumer Complaint Database: In June 2012, the CFPB launched a consumer complaint database in order to provide timely and understandable information about financial products and services and to improve the transparency and efficiency of the market. Recently, the Bureau made public the consumers' narrative descriptions of their complaints. As of July 2015, the Bureau reports that companies have responded to over 410,000 consumer complaints, with 98 percent of consumers getting timely responses.

Mandatory Arbitration: In May 2015, the CFPB released a study mandated by Dodd-Frank on mandatory arbitration, which found evidence that arbitration agreements restrict consumers' relief for disputes with financial service providers by limiting class actions. The report found that more than 75 percent of consumers surveyed did not know whether they were subject to an arbitration clause in their agreements with their financial service providers, and fewer than 7 percent of those covered by arbitration clauses realized that the clauses restricted their ability to sue in court.

Small Creditor Exemption: The CFPB has used its authority to provide crucial regulatory relief to community financial institutions. Earlier in 2015, the Bureau expanded the number of institutions afforded "Small Creditor" status, raising the loan origination limit for such creditors from 500 to 2,000 mortgages, excluding those loans held in portfolio (institutions must also have less than $2 billion in assets and meet certain other conditions in order to qualify). Small Creditor status benefits community lenders by exempting such lenders from the strict 43 percent debt-to-income requirement for a loan to qualify as a Qualified Mortgage, if held in portfolio. Further, Small Creditors have greater flexibility to originate balloon loans, if they primarily serve rural or underserved areas, and have certain temporary exemptions to originate balloon loans, regardless of where they operate. The Bureau also recently expanded the definition of "rural" areas to include census blocks that are not in urban areas.

[34] Consumer Financial Protection Bureau, CFPB DATA POINT: PAYDAY LENDING , Mar. 2014, http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf

[35] Press Release, Consumer Financial Protection Bureau, CFPB Considers Proposal to End Payday Debt Traps (Mar. 26, 2015), http://www.genewsroom.com/press-releases/ge-create-simpler-more-valuable-industrial-company-selling-most-ge-capital-assets

Identifying and Mitigating Systemic Risk

Oversight and Transparency of the "Shadow Banking System": In 2011, the SEC with the CFTC adopted new Form PF, required by the Dodd-Frank Act to help the SEC, CFTC and the Financial Stability Oversight Council (FSOC) monitor hedge funds and other private funds, and identify potential systemic risks associated with their activities. Generally, certain advisers must report on Form PF information on the funds' size, leverage, types of investors, liquidity, performance, counterparty credit risk, and the use of trading and clearing mechanisms. To date, approximately 2,700 investment advisers have filed Form PF reporting information on approximately 8,000 hedge funds, 70 liquidity funds, and 7,000 private equity funds. In addition to using these reports to identify systemic risks within the U.S., the SEC has provided certain aggregated, non-proprietary Form PF data to the International Organization of Securities Commissions (IOSCO) on large hedge funds to provide it with a more complete overview of the global hedge fund market.

Non-Bank Systemically Important Financial Institution (SIFI) Designations: Since its establishment by the Dodd-Frank Act, the FSOC has worked to identify non-bank financial institutions that are systemically risky to U.S. financial stability, encouraging them to be less risky and more manageable. To date, the FSOC has designated four non-bank firms MetLife, Inc., American International Group, Inc. (AIG), General Electric Capital Corporation, Inc., and Prudential Financial Inc. These firms are now subject to heightened prudential requirements and supervision by the FSOC and the Federal Reserve Board. This additional regulatory scrutiny, along with pressure from investors and analysts, has led some firms to consider actions that will reduce their systemic footprint. In April of this year, GE announced that it would be selling off most of its financing arm to "create a simpler, more valuable company," and committed to working with the FSOC and the Fed to "take the actions necessary to de-designate GE Capital as a Systemically Important Financial Institution."[36]

Money Market Mutual Fund (MMF) Regulation: In 2012, as part of its efforts to identify and address systemic risks to financial stability, the FSOC, under Section 120 of the Dodd-Frank Act, issued proposed recommendations for how the SEC might provide more stringent regulation of MMFs. According to reports, the former SEC Chair had been previously unable to persuade her fellow Commissioners to support such crucial reforms. However, in response to FSOC's proposal, the SEC proposed MMF reforms a year later and finalized them last July. Those reforms required structural and operational changes that address risks of investor runs in MMFs

[36] Press Release, General Electric, GE To Create Simpler, More Valuable Industrial Company by Selling Most GE Capital Assets; Potential to Return More than $90 Billion to Investors Through 2018 in Dividends, Buyback & Synchrony Exchange (Apr. 10, 2015), http://www.genewsroom.com/press-releases/ge-create-simpler-more-valuable-industrial-company-selling-most-ge-capital-assets

during times of financial stress, but preserved the benefits of such funds for investors and companies.

Preventing Future Bailouts

Volcker Rule: As required by Section 619 of the Dodd-Frank Act, the SEC, CFTC and banking regulators finalized the Volcker Rule in 2013 to prohibit federally insured banks from having relationships with hedge funds or private equity funds and from taking risky, proprietary positions in securities, or derivatives with taxpayer resources. Banks have until July 2017 to conform investments in and relationships with covered funds. In the meantime, banks are recording and reporting certain quantitative measurements to regulators, and divesting their proprietary positions, including those in hedge funds.

Stress tests and Comprehensive Capital Analysis and Review (CCAR): The stress tests required by Dodd-Frank, as well as the CCAR, have helped regulators to implement and enforce new capital standards, ensuring stability through future financial downturns. From March 2009 to year end 2014, the overall quantity and quality of capital has increased at BHCs, primarily driven by a 155 percent increase in Tier 1 common equity at BHCs with assets over $250 billion and an 80 percent increase at BHCs with assets between $50 and $250 billion. In addition, for the first time since the crisis, every domestic bank has passed its stress test. Unfortunately for the real economy, many banks chose to return some capital to shareholders in the form of dividends and stock repurchases, rather than increasing their lending to consumers and small businesses.

Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR): Regulators have proposed a final LCR rule and have finalized an international agreement on the NSFR with the Basel Committee. The LCR will reduce the likelihood that banks face short term liquidity crises like those that froze the credit markets during the depths of the financial crisis, while the NSFR will ensure that banks have sustainable, long term liquidity plans. The LCR has been tailored to provide relief to smaller, less complex banks. While it has yet to be fully implemented in the U.S., implementation in Europe has not led to reductions in lending or other important financial activity. Rather, it has incentivized banks to adjust their balance sheets with greater holdings of high quality liquid assets. From March 2009 to year end 2014 there has been a 30.7 percent increase in the total volume of liquid assets at BHCs over $250 billion and a 24.3 percent increase in the total volume of liquid assets at BHCs between $50 billion and $250 billion.

Reform of Federal Deposit Insurance Corporation (FDIC) Deposit Insurance Assessments: New rules for premiums for participation in the Deposit Insurance Fund (DIF) will place more of the burden on large institutions with risky activities, providing direct relief to small banks with more traditional business models that extend credit to consumers and small

businesses in their communities. Specifically, the Dodd-Frank Act expanded the deposit insurance assessment base. When this change took effect in the spring of 2011, the results were clear: total assessments for small banks with less than $10 billion in assets fell by one-third– an annualized decrease of almost $1.4 billion at that time. The Act also raised the minimum DIF ratio and directed the FDIC to offset the cost of the increase in the minimum reserve ratio on banks with less than $10 billion in assets, effectively requiring large banks to bear the full cost. Accordingly, assessments for small banks will decrease again when the reserve ratio reaches 1.15 percent, which is expected to occur in late 2016 or the first part of 2017.

Living Wills: Under Dodd-Frank bankruptcy is the first, and preferred, option to resolve a failing financial institution and protect the financial stability of the U.S. economy. To that end, the Act required systemically important financial institutions to periodically submit to the Federal Reserve, FDIC and FSOC living wills that provide for their orderly resolution under the bankruptcy code. If the banks' plans are not adequate, the regulators may require the banks to take certain actions to simplify their structure, including divestment. As a result, banks have increased their focus on the complexity of their organizational structure and their resolvability through bankruptcy. Last August, the regulators sent comments to 11 large banks on their second round of living will submissions, identified shortcomings, and required them to submit new plans that address those shortcomings by July 2015.

Creating Transparency and Oversight of Derivatives

Registration of Major Market Participants: Major swap and security-based swap participants as well as swap and security-based swap dealers are now registered with and regulated by the SEC and CFTC. More than 100 swap dealers and two major swap participants are provisionally registered with the CFTC. The SEC estimates that 50 security-based swap dealers and five major security-based swap participants will be required to register when the SEC's rule goes into effect.

Centralized Clearing and Exchange Trading: Clearing through central counterparties is now required for most interest rate and credit default swaps. About 75 percent of the transactions in the swaps market, measured by notional amount, are cleared, compared to about 15 percent in December 2007. Single-name credit default swap (CDS) clearing started in 2009, with less than 5 percent being cleared at that time. As of September 2014, between 15 and18 percent of the single-name CDS (in terms of gross notional value) in global single-name CDS market were cleared. And swaps are now beginning to be traded on regulated exchanges. Twenty-two swap execution facilities are now temporarily registered with the CFTC and three more applications are pending. The SEC estimates that 20 security-based swap execution facilities will have to register with the SEC upon the effectiveness of its rules. According to

information compiled by the International Swaps and Derivatives Association, SEF trading accounted for about half of total volume in 2014.

Public reporting of Swap Data: Swaps transactions must now be reported to registered swap data repositories (SDRs). Currently, there are four SDRs in the U.S., and more than 20 others internationally, and thousands of participants are providing trade data, making a previously opaque market significantly more transparent.

New Requirements and Oversight of Credit Rating Agencies

Office of Credit Ratings: The office was created at the SEC to oversee Nationally Recognized Statistical Rating Organizations (NRSROs). Each NRSRO is now examined a least once a year, and the findings from the examination are publicly disclosed. The examinations have shown a number of improvements, but have also identified continuing concerns, including those about the management of conflicts of interest, internal supervisory controls, and post-employment activities of former staff of NRSROs.

Transparency of NRSRO Ratings: To improve transparency over the ratings process, Section 932 of the Dodd-Frank Act required clear public disclosure of NRSROs' credit rating procedures and methodologies, business practices, and credit ratings performance. Following SEC rulemaking, NRSROs now report their methodologies and ratings performance to better inform investors and analysts. The methodologies are also reviewed by the SEC and are encouraged to be reviewed and commented on by other NRSROs. According to the SEC, "there is a trend of NRSROs issuing unsolicited commentaries on solicited ratings issued by other NRSROs, which has increased the level of transparency within the credit ratings industry."[37] In addition, some NRSROs have issued unsolicited commentaries on an asset class, rather than a specific transaction.

Reducing Reliance on Credit Ratings: Congress passed Section 931 of the Dodd-Frank Act to remove references in federal laws to credit ratings. To that end, the financial regulators adopted rules to reduce investor reliance on credit ratings by removing references to credit ratings from most of the rules and forms that contained them. New rules also require a more robust credit risk due diligence, so that while financial entities can use credit ratings as one component of their assessment of credit, they can no longer rely solely on those ratings.

[37] Securities and Exchange Commission, ANNUAL REPORT ON NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS (DEC. 2014), http://www.sec.gov/ocr/reportspubs/annual-reports/nrsroannrep1214.pdf

Providing Shareholders with a Say-on-Pay and Greater Accountability to Shareholders

Say-on-Pay: In accordance with Section 951 of the Dodd-Frank Act, the SEC adopted rules in 2011 that require public companies subject to the federal proxy rules to provide shareholder advisory Say-on-Pay, say-on-frequency and "golden parachute" votes on executive compensation. To date 1,574 Russell 3000 companies have had their Say-on-Pay votes, creating a shareholder voice to oppose steep increases in executive compensation packages. As of June 2015, 32 Russell 3000 companies (2.0 percent) have failed a Say-on-Pay vote.[38]

Compensation Committee and Adviser Requirements: In accordance with Section 952 of the Dodd-Frank Act, the SEC adopted rules in 2012 directing the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer that does not comply with new compensation committee and compensation adviser requirements. To conform their rules to the new requirements, national securities exchanges that have rules providing for the listing of equity securities filed proposed rule changes with the SEC. The Commission issued final orders approving the proposed rule changes in January 2013.

Prohibition on Broker Voting of Uninstructed Shares: Section 957 of the Dodd-Frank Act requires each national securities exchange to prohibit brokers from voting uninstructed shares in director elections (other than in uncontested elections of directors of registered investment companies), executive compensation matters, or other significant matters, as determined by the SEC. The SEC has approved new rules for director elections and executive compensation matters for all of the national securities exchanges and these rules are all now effective.

Additional Investor Protections

Promoting and Protecting Whistleblowers: The SEC's Whistleblower Office, required by Dodd-Frank, became fully operational in 2011. In Fiscal Year 2014, the SEC received over 3,600 tips (about ten a day), covering a variety of securities law violations including those relating to corporate disclosures, financial statements, offering fraud, market manipulation, investment adviser fraud, and broker-dealer rule compliance. Whistleblowers that provide the SEC with original information that leads to a successful enforcement action with monetary sanctions exceeding $1 million are eligible to receive an award ranging from 10 percent to 30 percent of the amounts collected in the action. So far, seventeen whistleblowers have received awards totaling nearly $50 million, with the highest award being over $30 million. In addition, the SEC has brought two enforcement actions to date to protect and encourage whistleblowers—one in 2014 for wrongful retaliation and one in 2015 for the use of an inappropriate

[38] Semler Brossy Consulting Group, LLC, 2015 SAY ON PAY RESULTS (June 10, 2015), http://www.semlerbrossy.com/say-on-pay/report-update-eleven-additional-companies-fail-say-on-pay/

confidentiality agreement designed to impede whistleblowers from communicating with the SEC.

Increased Oversight Over Private Fund Advisers: Dodd-Frank also requires that advisers to certain private funds register with the SEC. To date, approximately 2,700 private fund advisers who advise approximately 8,000 hedge funds, 70 liquidity funds, and 7,000 private equity funds, have registered with the SEC. In 2014, the SEC examined how fees and expenses are handled by advisers to private equity funds and identified violations of law or material weaknesses in controls at more than 50 percent of the advisers it has examined. In addition to its work continuing to examine advisers on a risk-based basis, the SEC in May announced that it had completed its Presence Exams, which examined 25 percent of the newly registered private fund advisers.

New CFTC Enforcement Authority: The Dodd-Frank Act enhanced the CFTC's ability to prosecute manipulation by prohibiting, among other things, manipulative and deceptive devices that are intentionally or recklessly employed, regardless of whether the conduct in question was intended, to create or did create an artificial price. This authority provides the CFTC with more flexibility to go after reckless manipulation as well as fraud-based in markets. The first case brought by the CFTC using this authority was against Panther Energy Trading LLC in 2013 for engaging in the disruptive practice of "spoofing" by using a computer algorithm to illegally place and quickly cancel bids and offers in futures contracts without ever intending to buy or sell those contracts. The CFTC also used this authority to bring charges against Navinder Singh Sarao for his role in contributing to the May 6, 2010 Flash Crash and against JPMorgan Chase Bank in connection with its "London Whale" swaps trades.

SEC Office of the Investor Advocate and Investor Advisory Committee: As required by Section 915 of the Dodd-Frank Act, the SEC established the Office of Investor Advocate, charged with identifying investor protection concerns and proposing to the SEC and Congress any legislative or administrative changes necessary to mitigate those concerns. Similarly, Section 911 of the Act established the Investor Advisory Committee (IAC) comprised of the Investor Advocate, a representative of state securities commissions, a representative of the interests of senior citizens, and no fewer than 10 and not more than 20 members appointed by the SEC to represent the interests of various types of individual and institutional investors. The IAC may submit findings and recommendations for review and consideration by the Commission, which must promptly issue a public statement assessing those findings or recommendations and disclosing the action, if any, the SEC intends to take. Since its inception, the IAC has issued 11 recommendations covering:

- Shortening the trade settlement cycle in U.S. financial markets;
- Accredited investor definition;
- Impartiality in the disclosure of preliminary voting results;

- Crowdfunding;
- Decimalization and tick sizes;
- Legislation to fund investment adviser examinations;
- Broker-dealer fiduciary duty;
- Universal proxy;
- Data tagging;
- Target date mutual funds; and,
- General solicitation and advertising.

Threats to Financial Reform

Financial reform remains popular with Americans. A recent poll commissioned by Americans for Financial Reform and the Center for Responsible Lending found that 73 percent of voters support the law, with 65 percent of Republicans and 80 percent of Democrats in favor.[39] In spite of this strong bipartisan support for Dodd-Frank, in the five years since its enactment, there has been a sustained campaign by opponents of reform to weaken, slow down implementation of, or repeal sections of the law. Opponents of reform have used the legislative process to weaken critical parts of Dodd-Frank, while cutting funding to the SEC and the CFTC, impairing their ability to write rules. Opponents have also used the court system to stall reform. In the House, there have been a number of Republican attempts to roll back parts of Dodd-Frank. And Financial Services Committee Republicans, aided by new subpoena authorities, have undertaken aggressive and partisan investigations into several components of reform.

Legislative Efforts to Weaken Dodd-Frank

While there have been good-faith bipartisan efforts to enact non-controversial, technical corrections (for example, legislation to address insurance capital standards), for the most part, controversial changes to Dodd-Frank have stalled in the House. Nevertheless, Republicans have been relentless in pursuing legislation to undermine Wall Street reform. A summary of Republican efforts to undermine Dodd-Frank follows.

Attacking the Consumer Financial Protection Bureau

Even after the President nominated Richard Cordray, with the backing of 10 Republican State Attorneys General, to serve as the Bureau's first Director Senate Republicans refused to bring his nomination to the Senate floor for a vote, denying the CFPB a Director for two years. When the President filled the vacancy using recess appointment powers, the Chairman of the Financial Services Committee refused to allow the Director to testify and accused the Bureau of

[39] Center for Responsible Lending and Americans for Financial Reform, *Poll: Strong Bipartisan Support for Consumer Financial Protection Bureau*, July 7, 2015, http://www.responsiblelending.org/media-center/press-releases/archives/Poll-Strong-Bipartisan-Support-for-Consumer-Financial-Protection-Bureau.html

operating outside its mandate. Extraordinary action was required in the Senate to finally give the Director a vote in which Senate Republicans who had helped filibuster his nomination ended up supporting his appointment.

The Majority on the Financial Services and the Oversight and Government Reform Committees has inundated the CFPB with investigations and unreasonable document requests, second guessing nearly every initiative the Bureau has taken and forcing it to devote staff resources to responding. The Majority on the Financial Services Committee has initiated 21 investigations of the CFPB since January 2014, 16 of those continue as of the publishing of this report. These investigations have forced the Bureau to produce more than 10,700 pages of documents for the Committee since the beginning of January 2014 in response to no fewer than 58 letters of inquiry. CFPB officials have also been called to testify in front of the Committee 20 times since the Bureau opened its doors in 2011. To aid in its efforts to undermine the Bureau, the Majority has granted itself a fast-track process to issue subpoenas, bypassing traditional, bipartisan protocols.

Since the 112th Congress, Republicans have introduced multiple bills to destabilize the CFPB. The Majority passed bills to undercut the CFPB by changing its structure from a single director to a five-person commission, which would have made it harder for the CFPB to issue rules. The Majority has also tried to make it easier for the Financial Stability Oversight Council (FSOC) to veto CFPB rulemakings and enforcement actions (H.R. 1315 in the 112th Congress).

Specifically, Republicans introduced legislation that would make the CFPB dependent on Congress for its funding rather than the Federal Reserve. Republicans announced that this change would save $5.4 billion dollars over the next 10 years—which is true if Congress doesn't budget a single dollar for the CFPB from 2016-2025. (H.R. 1355 in the 112th Congress; H.R. 5016 in the 113th Congress, H.R. 1261 in the 114th Congress.)

Through the budget process, Republicans are attempting to eliminate the independent funding of the CFPB, and subject it to the appropriations process, which will allow them to limit the CFPB's authority with budget riders.[40]

Like all the other banking regulators, the CFPB should be independently funded, so that its rules and examination and enforcement processes are not subject to political pressure.

During the 113th Congress, the Majority passed a bill to decrease CFPB employee salaries, lower the threshold for the Financial Stability Oversight Council's veto of CFPB rules, turn the agency into a commission, and subject the agency to appropriations (H.R. 3193).

[40] Press Release, U.S. House of Representatives Committee on Appropriations, Summary of 2016 Financial Services & General Government Appropriations bill (June 16, 2015), http://democrats.appropriations.house.gov/news/press-releases/summary-of-2016-financial-services-general-government-appropriations-bill

Additionally, during the 113th Congress, the Committee passed bills to prevent the CFPB from researching consumer credit markets (H.R. 4539) or collecting data to fulfill their market monitoring mandate (H.R. 4604), to require public notice and comment in order to provide guidance (H.R. 4811), to force the director to provide guidance to individuals in secret (H.R. 4662), and to impede the examination process (H.R. 4804).

During the 114th Congress, the Majority amended and passed an otherwise bipartisan bill that would dramatically decrease CFPB funding over the next 10 years (H.R. 1195). And the harmful bills designed to change the CFPB's structure by converting it into a commission (H.R. 1266) or subjecting it to appropriations (H.R. 1261) were reintroduced.

Repealing the Orderly Liquidation Authority

The Majority passed legislation (H.R. 6684 in the 112th Congress) to repeal the Orderly Liquidation Authority (OLA) in Dodd-Frank—the method by which financial regulators could wind-down a systemically important financial firm when its insolvency poses a threat to the stability of the U.S. economy. More troubling is the false claim by the Majority that repealing the OLA would "save" $22 billion, a figure that is arrived at through the Majority's use of budgeting gimmicks.[41] This legislation also failed to provide any alternative to the OLA, meaning that regulators would have been left in the same place they were in the fall of 2008 when the Bush Administration came to Congress, saying the economy would collapse without a taxpayer bailout.

Weakening Rules for Large, Interconnected Banks

In addition to removing the regulatory authorities that would protect the economy in an unforeseen crisis, the Majority has also pushed for legislation that would remove the safeguards meant to keep large, complex financial institutions from failing in the first place. These enhanced prudential standards include common sense requirements like a robust risk management regime, increased capital and liquidity standards, "living wills," and stress tests. H.R. 1309 (114th Congress) would eliminate the asset threshold that triggers applicability of these new standards, replacing it with an unwieldy qualitative designation process that would divert scarce regulatory resources and make the FSOC vulnerable to challenges that have impeded the non-bank systemically important financial institution process.

[41] Victoria McGrane, *Would Repeal of Key Dodd-Frank Provision Really Save $22 Billion?*, Wall Street Journal, Apr. 18, 2012, http://blogs.wsj.com/economics/2012/04/18/would-repeal-of-key-dodd-frank-provision-really-save-22-billion/

Undermining the Financial Stability Oversight Council

The Committee has also passed legislation (H.R. 4387 in the 113th Congress) to undermine the work and structure of the FSOC—an agency tasked with coordinating the various federal regulatory efforts of our banking and market regulators, and deciding when additional regulation is needed to prevent systemic instability. This bill would also violate the Constitution's principle of separation of powers by letting Members of Congress attend closed-door FSOC meetings.

The Committee has passed measures to delay the ability of FSOC to make any additional designations of nonbank SIFIs for six months (H.R. 4881 in the 113th Congress). Nonbank SIFIs include firms like AIG that received large bailouts during the 2008 crisis.

Eliminating the Office of Financial Research

Through multiple budgets (H.R. 6684 in the 112th Congress; H.R. 5016 in the 113th Congress), the Majority has attempted to eliminate the Office of Financial Research (OFR), an agency tasked with collecting information on the health of our financial markets and conducting research on financial stability issues. Like a storm warning center, OFR gathers information about emerging threats to financial stability and shares that information with other regulators to allow them to intervene before a crisis occurs.

Hamstringing and Underfunding Wall Street's Sheriffs

Over the past three Congresses, Republicans passed bills out of the House that subject all SEC rulemakings to much more onerous cost/benefit standards, which would make it impossible for the SEC to effectively regulate our capital markets and protect investors (H.R. 2308 in the 112th Congress; H.R. 1062 in the 113th Congress). These bills would raise significant hurdles for the SEC to issue rules, making it much more difficult to protect investors even when the SEC has evidence of fraud or other wrongdoing. The bills did not provide any additional funding for the SEC, even though they would require significantly more resources for economic analysis before rulemakings could be issued. The Congressional Budget Office estimated that the bills would cost SEC an additional $22 million.[42] Such funds would have to be diverted from other important SEC functions, like enforcement.

While the SEC's mission is to protect investors, the bills would require that the SEC consider whether its rules present the least burden on market participants, such as investment

[42] *See*, Congressional Budget Office, *H.R. 2308, SEC Regulatory Accountability Act*, April 5, 2012, https://www.cbo.gov/publication/43158 and Congressional Budget Office, *H.R. 1062, SEC Regulatory Accountability Act*, May 13, 2013, https://www.cbo.gov/publication/44174

banks. In fact, nowhere in the bills does it require the SEC to consider the protection of investors. Finally, these bills are unnecessary, as the SEC is already subject to cost/benefit standards, as well as court review. In fact, a court upheld the SEC's proxy conflict minerals in part because its cost/benefit analysis was adequate.[43] Republicans have put forward similar legislation to subject the CFTC to new cost/benefit analysis standards (H.R. 1840 in the 112th Congress; H.R. 1003 in the 113th Congress; and H.R. 2289 in the 114th Congress).

Republican appropriators in the House undercut the SEC and CFTC by refusing to adequately increase their funding, despite the fact that they are given significant new responsibilities under Dodd-Frank. Republicans voted against the Waters Amendment to H.R. 5016 (Financial Services and General Government Appropriations for 2015), which would have restored SEC funding to the President's request of $1.7 billion at no cost to the taxpayer. Instead, Republicans underfunded the SEC by 20 percent.

Republicans voted against the DeLauro/Waters/Himes amendment to H.R. 4800 (Agriculture Appropriations for 2015), which would have restored funding to the CFTC to the President's request of $280 million. Instead, Republicans voted to underfund the CFTC by 22 percent.

Although not yet considered by the House, Republican Appropriators in this Congress have once again proposed to constrain the SEC and CFTC budgets at more than 13 percent and 22 percent *below* the President's request, respectively.

Another way Committee Republicans have sought to hamstring the SEC is by targeting the process by which the Commission reviews its regulations. H.R. 1062 would require the SEC to, within 5 years of enactment and then once every ten years thereafter, review all significant SEC rules and determine by vote whether they are: 1) "outmoded, ineffective, insufficient, or excessively burdensome;" or 2) no longer in the public interest or consistent with the SEC's mission. The SEC would also be required to amend or repeal such rules by vote, then report to Congress, and recommend any suggestions for legislative changes. This legislation would subject the SEC to additional litigation risk and allow it to repeal Congressionally mandated rulemakings, all without providing the Commission with the funding it would need to perform this additional, unnecessary function.

[43] See Appendix B.

Weakening Investor and Shareholder Protection

Republicans passed a bill out of Subcommittee to gut provisions in Dodd-Frank that provide added protections for individuals who blow the whistle on securities law violations (H.R. 2483 in the 112th Congress).

In the full Financial Services Committee, Republicans approved a measure to remove a provision in Dodd-Frank which provides that credit ratings agencies can be held liable for ratings included in the prospectuses of securities offerings (H.R. 1539 in the 112th Congress). They also passed a bill out of full Committee to repeal a provision in Dodd-Frank that requires public companies to report their CEO's salary relative to the median worker's salary (H.R. 1062 in the 112th Congress and H.R. 1135 in the 113th Congress).

Republicans have twice voted to repeal the risk retention provisions in Dodd-Frank, which require securitizers to retain an economic interest in the credit risk of the assets they securitize, thereby aligning their incentives with the incentives of investors (H.R. 3644 in the 112th Congress and H.R. 2767 in the 113th Congress).

Under Dodd-Frank, Congress exempted companies with less than $75 million in market capitalization from the requirement to obtain independent audits over their internal controls as part of financial reporting. Republicans have passed legislation to significantly expand the number of companies exempt from this requirement, thereby increasingly the likelihood of investors falling victim to accounting fraud (H.R. 3606 in the 112th Congress; H.R. 2629 in the 113th Congress).

Undoing Transparency in Derivatives Markets

Wall Street Reform served the important purpose of bringing comprehensive regulation to the swaps marketplace. Under CFTC and SEC rules, swap and security-based swap dealers are subject to robust oversight. Standardized derivatives are now required to trade on open platforms and be submitted for clearing to central counterparties. As a result, the swaps market is starting to benefit from increased transparency and decreased risk.

One of the Republicans' first acts when they took the majority in the House was to pass a bill to delay regulation of the $600 trillion derivatives market for two years, attempting to prevent the regulators from taking any action to rein in this previously unregulated market (H.R. 1573 the 112th Congress).

In the period that followed, Republicans introduced bills to repeal the Volcker Rule (H.R. 613 in the 113th Congress) and to delay the Volcker Rule by staying its enforcement until there is

international compliance with a similar policy (H.R. 6524 in the 112th Congress). The Volcker Rule is one of the most important parts of Dodd-Frank, aiming to limit taxpayer-backed banks from making risky, speculative bets and from investing in hedge funds and private equity funds.

Republicans further passed a bill (H.R. 3045 in the 112th Congress) out of Subcommittee to undercut "business conduct standards" in Dodd-Frank, which require that swaps dealers engage in fair dealing when conducting swaps transactions with certain unsophisticated entities, including retirement plans, pension funds, and municipal governments. These standards were included in Dodd-Frank to avoid a repeat of scandals such as the one in Jefferson County, Alabama, where JP Morgan Chase sold complex swaps to the county, which ultimately led to its bankruptcy.

Republicans have also worked to hamstring the CFTC's and SEC's funding in order to weaken their ability to police this large and complex market. Under the guise of reauthorizing the CFTC, House Republicans passed H.R. 4413 and H.R. 2289 in the 113th and 114th Congresses, respectively, which undermine the CFTC's regulatory authority, impose new procedural requirements on an overburdened and underfunded agency, and ultimately hamstring the Commission's ability to protect the American people. Provisions in the legislation impede the CFTC's enforcement powers by allowing banks to substitute Dodd-Frank protections in favor of more lenient, foreign rules in foreign markets, even though that risk may be imported back into the U.S. Additionally, the bills impose burdensome cost-benefit analysis requirements, despite the CFTC's current policy of considering stakeholders, markets, and many other factors in its decisions.

And finally, at the end of the 113th Congress, Republicans engaged in a new tactic of burying controversial provisions intended to roll back key provisions of Dodd-Frank in either must-pass legislation or an otherwise bipartisan package of bills. Republicans successfully repealed a provision prohibiting banks from engaging in certain derivatives transactions using taxpayer-backed deposits, known as the "swaps push-out," by attaching the provision to H.R. 83, the Consolidated and Further Continuing Appropriations Act of 2015, the funding bill for the federal government. Following on this success, Republicans tried to bury a provision delaying part of the Volcker Rule by two years in a package of otherwise largely bipartisan capital markets changes, H.R. 37. That effort, however, after initially failing to pass with the required 2/3 majority. It eventually passed the House with a simple majority, without the ability for Democrats to offer amendments.

Litigation as a Tool to Dismantle Dodd-Frank

Since the Act's passage, there have been at least 11 lawsuits filed challenging components of the Dodd-Frank Act.[44] Those lawsuits can generally be grouped into two categories: those that challenge the constitutionality of the Consumer Financial Protection Bureau and those that challenge the authority of the regulatory agencies acting pursuant to Dodd-Frank. (See Appendix B for a full listing of these cases.) The two challenges against the CFPB were dismissed. Of the remaining nine cases, four resulted in agency rules being vacated and remanded to the agencies for further proceedings.

These cases are extremely resource intensive and divert the regulators' attention from other, more important tasks, such as enforcement and investigation. With roughly one-third of Dodd-Frank rules still outstanding, it's conceivable that opponents of reform will continue to file legal challenges against new rules as they are promulgated. Given the slow pace of the SEC and the CFTC in re-proposing rules that have been vacated, it's clear that these lawsuits—or the threat of litigation—have had a chilling impact on reform.

Republican Investigations and New Authorities

In the, 114th Congress, over the strong objections of Democratic Members, Republicans voted to change the rules of the Committee in several substantive ways. To augment the Chairman's power, the Committee's rules were changed to give him the authority to issue unilateral subpoenas for documents and testimony on behalf of the Committee. Never before in the 150-year history of the Committee has a Chairman given himself such unrestrained authority to bring the force of a Congressional subpoena to bear on individuals and agencies. Additionally, the rules of the House were also changed to grant Committee staff new investigatory authority to conduct official depositions – in certain circumstances even without the presence of a Committee Member. This is another expansion of power that is unprecedented within the Committee.

In the six months after the Committee organized for the 114th Congress, Chairman Hensarling unilaterally issued four subpoenas to four different agencies, seeking documents relating to 17 different inquiries.[45] Moreover, beyond the subpoenaed documents Chairmen Hensarling and Duffy, together, have sent no fewer than seven discrete letters threatening the use of subpoenas for documents relating to 20 different investigations.[46] In total, the Majority has 78

[44] Committee staff estimates counting only lawsuits filed against federal financial regulators.
[45] Three subpoenas were authorized and issued on May 11, 2015 to: (1) The Federal Reserve Bank of New York; (2) The U.S. Department of Justice; and (3) the U.S. Department of the Treasury; and a fourth subpoena authorized and issued on May 20, 2015 to The Federal Reserve Board of Governors.
[46] Letter from Sean Duffy, Chairman, H. Comm. on Financial Services, Subcomm. on Oversight and Investigations to Richard Cordray, Director, Bureau of Consumer Financial Protection (Jun. 4, 2015); Letter from Jeb Hensarling, Chairman, H. Comm. on Financial Services to Richard Cordray (May 22, 2015); Letter from Jeb Hensarling to Fred

ongoing investigations into matters under the jurisdiction of the Committee. See Appendix C for a list of these investigations. Combined with requests that did not threaten the use of compulsory process, in total, more than 23,000 pages of documents have either been produced to the Committee or made available for *in camera* review.[47] Unfortunately, in certain cases Republicans have demanded that documents be made available and then refused to even review them once produced.[48]

Additionally, the Committee has demanded that 28 individuals from various agencies be made available for interviews with Committee staff. Diligent research into historical Committee practice has uncovered only one confirmed instance prior to the 114th Congress in which an agency employee was requested to appear for a transcribed interview with Committee staff. The instance was a CFPB employee subpoenaed to participate in an interview during the 113th Congress.[49]

The Majority's actions represent an abuse of its investigatory and oversight powers. Federal financial services agencies have been forced to redirect staff efforts and spend countless additional hours responding to each of the previously mentioned Republican demands. Any resources allocated to these tasks are resources that cannot be spent fully implementing the necessary provisions of Dodd-Frank and fulfilling the agencies' multifaceted missions. Fully aware of this fact and, perhaps more accurately, because of it, Republicans have continued to intentionally bombard the agencies with overly-broad, time-intensive requests while criticizing the agencies for a perceived inability to fulfill their mission and to fully enact provisions required under Dodd-Frank. Moreover, while failing to acknowledge the constraints that these tactics have imposed on the agencies, Republicans often ironically suggest that any agency delays in Dodd-Frank implementation demonstrate flaws within the legislation itself.

While it is undeniable that substantive oversight is an important function of Congress, a regime in which tens of thousands of pages of documents are demanded – and in certain cases, never even reviewed – cannot be considered substantive. It is clear that this type of oversight is only meant to frustrate the ability of the agencies to effectively carry out their missions to oversee financial institutions and markets, to preserve macroeconomic stability, and to protect American consumers from predatory or abusive financial practices. Republican attempts to obstruct such implementation through burdensome oversight activity only serves to harm taxpayers, and reduce certainty in the financial sector – both outcomes which they rightfully

---

Hochberg, Chairman and President, U.S. Export Import Bank (Mar. 10, 2015); Letter from Sean Duffy to Jacob Lew, Secretary, U.S. Department of the Treasury (May 19, 2015).

[47] This belies the Republican contention that the various agencies under the Obama Administration have used tactics to stonewall Members of Congress and Republican led investigations.

[48] *E.g.*, On June 9, 2015, The U.S. Department of the Treasury made available over 1,400 pages of documents relating to the Financial Stability Oversight Council's deliberative processes; on Oct. 24, 2014 the Bureau of Consumer Financial Protection offered several hundreds of pages of materials related to an employee's hiring. As of July 6, 2015 no Republican Members or staff have attempted to review these documents.

[49] Director of Office of Equal Employment Opportunity, Bureau of Consumer Financial Protection (Jun. 23, 2014).

decry. The Committee Republicans' strategy for fighting the Dodd-Frank Act through its new authorities is clear: delay, obstruct and frustrate at every opportunity.

Republican Oversight of Dodd-Frank

Since the beginning of the 112th Congress, the partisan character of the Committee's oversight has dramatically increased. Indeed, during this period, the Committee held no fewer than 130 Full- or Subcommittee hearings that analyzed and criticized Dodd-Frank and its newly created entities. Moreover, the Committee held 20 separate hearings relating to the CFPB alone – including the required semi-annual testimony by the CFPB Director. These hearings were political in nature, and often were titled in a manner that presupposed the proper answer to the questions raised in the hearing,[50] leaving little room for meaningful investigation into these issues.

Table 1: Republican Hearing Oversight 2011 – July 2015[51]

Hearing Topic	2011	2012	2013	2014	2015	Total
Dodd-Frank	34	34	23	26	13	130
Housing	15	6	9	1	7	38
Income Inequality	0	0	0	0	0	0
Poverty	0	0	0	0	0	0
Homelessness	1	1	0	0	0	2

The Republicans' focus on discrediting Dodd-Frank has caused equally important issues to be ignored by the Committee. For example, the Committee has held no hearings on poverty, even though this hearing was requested by Democrats.

Improving Financial Reform: Tasks for Regulators and Congress

This report has demonstrated that Dodd-Frank has stabilized financial markets, brought

[50] *See e.g.,* "*Examining How the Dodd-Frank Act Hampers Home Ownership*", before the H. COMM. ON FINANCIAL SERVICES, SUBCOMM. ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT (Jun. 18, 2013); *see also,* "*Examining Constitutional Deficiencies and Legal Uncertainties in the Dodd-Frank Act*", before the H. COMM. ON FINANCAL SERVICES, SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS (Jul. 2, 2013); *and*, "*How Prospective and Current Homeowners Will Be Harmed by the CFPB's Qualified Mortgage Rule*", before the H. COMM. ON FINANCIAL SERVICES, SUBCOMM. ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT (Jan. 14, 2014).

[51] Committee staff estimates.

transparency to once-opaque sectors of the market, strengthened accountability in the financial industry, and provided consumers with a strong advocate in the form of the CFPB. Despite these achievements, regulators and Congress should consider actions to strengthen reform so that Dodd-Frank remains effective.

Tasks for Regulators

Dodd-Frank represented the largest and most comprehensive financial reform since the Great Depression. According to one analysis, as of March 31st, almost five years after enactment, 60 percent of the regulations required by Dodd-Frank have been completed.[52] The most important action regulators can take to strengthen financial reform is to complete all of the outstanding Dodd-Frank regulations. These regulations are an important part of financial reform. Of note, the SEC has yet to propose rules to harmonize the standard of care between broker-dealers and investment advisors. But perhaps most troubling, is the fact that the SEC has made little progress in establishing the regulatory framework for certain derivatives it regulates, including credit default swaps, which were a contributing factor to the 2008 financial crisis.

Dodd-Frank provided regulators with tools to prevent another crisis. However, if regulators opt not to use those tools, the financial system won't be any safer than it was before the crisis. Regulators have to hold financial institutions to a high standard in reviewing their activities. They should also not be afraid to proactively use the Dodd-Frank "toolkit" to fix problems before they emerge. Regulators can and should push banks away from overly complicated deals and transactions and encourage simplification wherever possible. For example, the Federal Reserve recently announced plans to revise the merchant banking exemption that allows some banks to own physical commodities. Consistent with the intent of the Volcker Rule, reining in the merchant banking exemption is a good example of how regulators can and should bring banks back to the business of banking.

Regulators should also take a close look at the living wills financial institutions submit as part of Title I of Dodd-Frank to ensure that the documents are credible and usable. Regulators need to firmly enforce this provision by requiring megabanks to either provide adequate plans to resolve their complex organizations in bankruptcy or to simplify their structures through divestment of assets.

Strengthen Enforcement

According to an analysis by the Congressional Research Service, from January 1, 2008 through May 31, 2015, there were 29 settlements of over $500 million or more between financial

[52] Davis Polk, DODD-FRANK PROGRESS REPORT (Mar. 31, 2015), http://www.davispolk.com/Dodd-Frank-Rulemaking-Progress-Report

institutions and their regulators or the Department of Justice. This ultimately totaled $167 billion in bank fines and penalties over this time period, with the average settlement reaching $5.7 billion. A description of these settlements can be found in Appendix D. Despite these fines, individual accountability for wrongdoing seems to be lacking. In fact, no high-level executives have been prosecuted for their wrongdoing related to the financial crisis. And while five financial institutions recently pleaded guilty to felonies related to rigging of the foreign exchange market, those charges were brought at the BHC level.[53]

The lack of individual prosecutions, to date, coupled with the expiration of the statutes of limitations for financial crimes does little to dispel the sentiment that no one will ever be brought to justice. The Justice Department has argued that it is difficult to prosecute individuals for financial crimes because of the challenges in proving fraudulent intent.[54] And while it has relied on deferred prosecution agreements with the financial institutions instead, it doesn't appear that this approach is working. For example, UBS has been the subject of three DOJ criminal investigations within the last 6 years.[55]

One way to effectuate change in bank culture while also eliminating recidivism is for banking regulators to enforce the discretion they have to punish bad actors for their acts. At least 18 provisions under the jurisdiction of the Financial Services Committee that are designed to give regulators the ability to ensure that bad actors are held accountable for their transgressions (and consumers and taxpayers are protected) by excluding them from certain privileges, benefits, and programs. For example, the New York Fed can terminate an institution's status as a primary dealer and the SEC can revoke an institution's safe harbor from liability for forward looking statements or its status as a Well-Known Seasoned Issuer (WKSI). This is a partial listing of the ways in which Congress required regulators to hold bad actors accountable. A more complete list of these collateral consequences can be found in Appendix E.

However, despite these tools, banking regulators have been reluctant to use them. For example, in her written dissent from the SEC's order granting a WKSI waiver to Deutsche Bank, Commissioner Kara Stein noted that since August 2013, the Commission had granted 12 such waivers, all of which went to large financial institutions.[56] According to media reports, the five banks that recently pleaded guilty to felony antitrust violations related to their collective manipulation of the foreign exchange markets made their guilty pleas conditional on the

[53] Press Release, Department of Justice, Five Major Banks Agree to Parent-Level Guilty Pleas (May 20, 2015), http://www.justice.gov/opa/pr/five-major-banks-agree-parent-level-guilty-pleas
[54] Jason M. Breslow, Watchdog Calls Out DOJ For Mortgage Fraud Response, PBS, March 13, 2014, http://www.pbs.org/wgbh/pages/frontline/business-economy-financial-crisis/untouchables/watchdog-calls-out-doj-for-mortgage-fraud-response/
[55] Leslie R. Caldwell, Assistant Attorney General, Department of Justice, Remarks at a Press Conference on Foreign Exchange Spot Market Manipulation (May 20, 2015), http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-delivers-remarks-press-conference-foreign
[56] Kara M. Stein, Commissioner, Securities and Exchange Commission, Dissenting Statement in the Matter of Deutsche Bank AG, Regarding WKSI, May 4, 2015, http://www.sec.gov/news/statement/dissenting-statement-deutsche-bank-ag-wksi.html

provision of waivers from the SEC.[57] The waivers were duly granted in a closed door meeting with no opportunity for public comment.[58] The Department of Labor, which has the ability to hold public hearings on waiver applications, notably held a hearing on Credit Suisse's waiver request related to its tax evasion conviction. This transparency not only gave the public the ability to weigh in on the waiver but also showed the bank that there may be a meaningful business consequence to its actions.

Neither banks nor their customers are well-served when regulators rubber-stamp their requests for waivers. Until bad actors in the banking industry have to deal with the collateral consequences of their actions, it is unrealistic to expect bad actors to behave any better.

Address Regulatory Capture

Last year, a former bank examiner at the Federal Reserve Bank of New York, Carmen Segarra, alleged as part of a wrongful termination lawsuit, that the New York Fed had been captured by one of the entities it regulates. Ms. Segarra secretly recorded roughly 46 hours of meetings and conversations between herself and her colleagues at the New York Fed.[59] The tapes appear to show Ms. Segarra's superiors pushing back against her findings, minimizing her conclusions, demanding consensus, or tempering their own interactions with and recommendations to the institution.

In response to the publication of the audiotapes, the New York Fed released a statement, stating in part that "the New York Fed categorically rejects the allegations being made about the integrity of its supervision of financial institutions. The New York Fed works diligently to execute its supervisory authority in a manner that is most effective in promoting the safety and soundness of the financial institutions it is charged with supervising."[60]

Ms. Segarra's story, though anecdotal in nature, was bolstered by the findings of a 2009 report commissioned by the New York Fed in the wake of the crisis. The report, by Columbia University finance professor David Beim, found that the New York Fed needed to do a better job of requiring that its examiners and their supervisors maintain a "more distanced, high-level and

[57] Karen Freifeld, Sarah N. Lynch and Soyoung Kim, *SEC a stumbling block in banks' forex guilty pleas: sources*, Reuters, May 14, 2015, http://www.reuters.com/article/2015/05/15/us-forex-rigging-pleas-idUSKBN0NZ2FZ20150515

[58] David Michaels, *Five Guilty Banks Said Granted SEC Waivers After FX Pleas*, Bloomberg, May 20, 2015, http://www.bloomberg.com/news/articles/2015-05-20/five-guilty-banks-said-granted-sec-waivers-to-continue-business

[59] Jake Bernstein, *Inside the New York Fed: Secret Recordings and a Culture Clash*, ProPublica, Sep. 26, 2014, http://www.propublica.org/article/carmen-segarras-secret-recordings-from-inside-new-york-fed

[60] Statement, Federal Reserve Bank of New York, Statement Regarding New York Fed Supervision (Sept. 26, 2014), http://www.newyorkfed.org/newsevents/statements/2014/0926_2014.html

skeptical view" of how the banks they oversee operate.[61] Further, a culture of "consensus" at the New York Fed often discouraged robust debate over the best regulatory approaches.[62]

The veracity of Ms. Segarra's claims notwithstanding, the prudential regulators should not only ensure that they not only protect the safety and soundness of the financial system but also take steps to ensure they are not giving any appearances to the contrary.

Consistent with Beim's recommendations, the New York Fed, and other Reserve Banks, should recruit candidates for examination positions that have a demonstrated inclination to be skeptical, and should institutionalize policies that reward robust debate among employees. Additionally, the Federal Reserve System should create more formalized ways for front-line examiners to document their disagreements over supervisory decisions when they reach a different conclusion than their supervisor. Regulatory agencies should also consider bolstering their policies that prevent employees from going through the "revolving door."

Prevent Evasion

Regulators have to be vigilant in rooting out attempts by the industry to evade or avoid the requirements of Dodd-Frank. Last year, regulators were alerted to the practice of "deguaranteeing"—whereby some financial institutions tried to free their overseas derivatives trades from new Dodd-Frank rules by removing any language in swaps agreements to indicate that the U.S. bank would guarantee the trade, leaving the risk, at least on paper, with the foreign subsidiary.

The CFTC recently proposed rules on cross-border swaps; however, the rules don't fully address this type of evasion. In fact, in certain instances, the proposed rules appear to explicitly allow "deguaranteeing" and the importation of the risk from overseas derivatives trades back to the U.S. By ignoring this type of evasion, the CFTC may be approving practices that make our markets less safe.

Rein in Excessive Executive Compensation

Many academics have come to believe that excessive executive compensation, including incentive-based compensation, resulted in the kind of risk taking that led to the financial collapse and the Great Recession. For example, just prior to the financial crisis, CEOs from Bear Stearns,

[61] David Beim, *FRBNY Report on Systemic Risk and Bank Supervision*, 2009, http://www.propublica.org/documents/item/1303305-2009-08-18-frbny-report-on-systemic-risk-and.html
[62] *Id.*

Lehman Brothers, Countrywide, and Merrill Lynch were some of the highest paid CEOs on Wall Street.[63]

However, large executive compensation packages show no signs of shrinking. According to an analysis by the Economic Policy Institute, executive compensation rose 997 percent from 1978 to 2014, with the average CEO earning $16.3 million a year in 2014.[64]

In a speech on bank culture, Fed NY Chair Dudley identified compensation as an "important tool for enhancing culture, promoting financial stability and rebuilding the public trust in the financial industry."[65] To address the role of compensation in bank culture, Dudley suggests deferred compensation, requiring performance bonds of management, and impacting the future earnings of wrongdoers by banning them from the industry for life.[66]

Given the importance of compensation in the decisions and behaviors of banks, Dodd-Frank included provisions requiring the SEC to issue rules on disclosure, to empower investors to veto excessive compensation packages, and to require institutions to recover compensation that had already been awarded. The SEC has finalized rules to provide investors with a Say-on-Pay (Sec. 951), to require compliance with compensation committee requirements (Sec. 952), and to prohibit brokers from voting uninstructed shares on compensation matters (Sec. 957).

However, the SEC has been slow in promulgating other rules related to compensation. Just this year, the SEC finally proposed rules on how companies should disclose executive pay and how companies must "clawback" or recover incentive-based compensation in the event of any erroneous financial statements filed by the institution. It's important that the SEC quickly finalize these long-awaited rules and others required under Dodd-Frank, such as the CEO-employee pay ratio.

Ensure Diversity

The increasing racial and ethnic diversity of the country's population underscores the social and economic importance of heightening awareness about the need to improve and support workforce diversity across the public and private sectors. The persistent lack of diversity in the financial services sector prompted Democratic Members of the House of Representatives

[63] Michael Corkery, *Executive Pay and the Financial Crisis: A Refresher Course*, Wall Street Journal, Sep. 18, 2009, http://blogs.wsj.com/deals/2009/09/18/executive-pay-and-the-financial-crisis-a-refresher-course/
[64] Lawrence Mishel and Alyssa Davis, Economic Policy Institute, *CEO Pay has Grown 90 Times Faster than Typical Worker Pay Since 1978*, July 1, 2015, http://www.epi.org/publication/ceo-pay-has-grown-90-times-faster-than-typical-worker-pay-since-1978/
[65] William C. Dudley, President and Chief Executive Officer, Federal Reserve Bank of New York, Remarks at the Workshop on Reforming Culture and Behavior in the Financial Services Industry: Enhancing Financial Stability by Improving Culture in the Financial Services Industry (Oct. 20, 2014), http://www.newyorkfed.org/newsevents/speeches/2014/dud141020a.html
[66] *Id.*

Committee on Financial Services to author Section 1116 of the *Housing and Economic Recovery Act*, and Section 342 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, which directed the federal financial regulatory agencies (the Agencies) to seek diversity in their workforces. Specifically, Section 342 established an Office of Minority and Women Inclusion (OMWI) with a senior-level Director who is responsible for encouraging and supporting workforce and supplier diversity.

Five years later, a Committee staff analysis of the audits by the Inspectors General of each of the financial services agencies found that across all agencies, women and minorities remain underrepresented; women and minorities are significantly underrepresented at the senior management level in proportion to their overall participation rates; and, African-American employees received lower performance management review scores than white employees.

These findings are treated more comprehensively in a forthcoming Committee staff report, in which Committee staff concluded that the Agencies still have substantial work to do with respect to coming into full compliance with the law, as well as with respect to the creation of a substantially diverse and inclusive workplace. The Agencies' failure to meet, in certain circumstances, the letter and spirit of the law demands greater efforts by the Agencies to achieve meaningful workforce diversity and increased scrutiny by Congress as to the implementation of the relevant diversity statutes.

A Task for Congress: SEC Self-Funding

Congress should consider legislation to reform the funding structure of the Securities and Exchange Commission, which has been chronically underfunded. Unlike other, similar banking regulators– including the Federal Reserve, the Office of Comptroller of Currency, and the Federal Deposit Insurance Corporation – that finance themselves through the fees they assess on the entities they regulate, the Securities and Exchange Commission receives an appropriation from Congress. The inclusion of this regulator in the appropriations process has led to chronic under-funding which has severely hampered the SEC's ability to keep pace with an increasingly sophisticated financial marketplace.

Since the enactment of Dodd-Frank, the amount of funding the SEC receives has failed to keep pace with the amount it needs. For example in 2015, the SEC received 88 percent of its request. Table 2 compares the SEC's funding need against the funding it has received from appropriators since the enactment of Dodd-Frank.

Table 2: SEC Funding

Fiscal Year	Requested ($)[1]	Appropriated ($)[2]	% of Request Appropriated
2008	905,330,000	906,000,000	100.07
2009[3]	913,000,000	953,000,000	104.38
2010	1,026,000,000	1,111,000,000	108.28
2011[4]	1,234,000,000	1,185,000,000	96.03
2012	1,407,483,130	1,321,000,000	93.86
2013[5]	1,566,000,000	1,321,000,000	84.36
2014	1,674,000,000	1,350,000,000	80.65
2015	1,700,000,000	1,500,000,000	88.24
2016	1,722,000,000	1,500,000,000[6]	87.11[7]

[1] Source: http://www.gpo.gov/fdsys/browse/collectionGPO.action?collectionCode=BUDGET
[2] Source: http://thomas.loc.gov/home/approp/index.html
[3] FY 2009 appropriation includes $10,000,000 supplemental funding.
[4] FY 2011 request does not include request for $24,000,000 contingent on the enactment of authorizing legislation of new or enhanced financial regulation activities.
[5] FY 2013 amount appropriated does not include $66,050,000 sequestration reduction.
[6] H.R. 2995, 114th Cong. (2015) (as introduced).
[7] Projected.

The SEC-regulated securities market consistently dwarfs the Commission's resources, where less than 900 staff are responsible for its examination program. Indeed, the Commission oversees nearly 11,500 investment advisers, over 800 investment company complexes managing over 10,000 mutual funds and Exchange Traded Funds, 4,400 broker-dealers, 450 transfer agents, 18 national securities exchanges, 87 alternative trading systems, 10 registered clearing agencies, the security futures product exchanges, the National Futures Association, the Securities Information Processors, the Public Company Accounting Oversight Board, the Financial Industry Regulatory Authority, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, and the Financial Accounting Standards Board. The SEC also reviews the disclosures and financial statements of approximately 9,000 public companies. Proper oversight cannot be accomplished without the adequate SEC resources necessary to ensure fair, orderly, and efficient markets that facilitate capital formation.

Subjecting this regulator to the whims of the appropriations process has hampered its ability to make additional hires to bolster investigations and enforcement. To protect investors and preserve the integrity of the markets, the SEC must keep pace with market developments. For example, over the last decade the number of registered investment advisers has increased by more than 40 percent, while the assets under management increased more than two-fold, to almost $55 trillion. Yet, the resources available to the SEC to examine investment advisors have

severely lagged the number and sophistication of these advisors, which led to staff only being able to examine 10 percent of investment advisers in last year.

During the debate on Dodd-Frank, six former Chairmen of the Securities and Exchange Commission – Breeden, Donaldson, Pitt, Levitt, Hills, and Ruder – who spanned the years 1975 to 2005 and represent both political parties signed a letter stating in part that self-funding is worthy of "unqualified support." Unfortunately, due to the impact self-funding would have on the priorities of appropriators, this important change was not made.

Independent funding will assist the SEC in meeting its mission to protect investors by promoting agency independence and reducing the gap in resources between the Commission and the institutions it regulates.

In the absence of self-funding, one simple change Congress can make to provide the SEC with the resources it needs is to pass legislation to allow the Commission to assess a user fee to cover the costs of its exams of investment advisors. Such a fee would allow the SEC to increase examinations of investment advisors. Currently, the SEC is only able to examine 10 percent of the nation's 11,500 investment advisors each year (as noted above).

Bridging the Recovery Gap: The Next Phase of Reform

While the economy has made strides since the 2008 financial crisis, not all sectors of society have benefitted from the recovery. Middle- and low-income households continue to struggle. According to one analysis, from 2000 to 2013, the middle class in each of the 50 states actually shrank.[67] During this same period, more families experienced higher housing cost burdens, with a higher percentage of households paying 30 percent or more of their income in rent.[68]

Wealth is the difference between a household's assets and its debts. The wealth gap—the difference in wealth between high, middle and low-income households or between white and minority households—is currently at its widest level in 30 years.[69] The median wealth of the nation's high-income households being 6.6 times higher than the median wealth of middle-income households and nearly 70 times that of the nation's low-income households.[70] However, the wealth gap is felt most acutely by racial and ethnic minorities. The average wealth level for white households is $134,000 – as compared to $91,000 for Asians, $14,000 for Latinos and $11,000 for African-Americans, which translates to a median wealth of white households 13

[67] Tim Henderson, *The Shrinking Middle Class, Mapped State by State,* The Pew Charitable Trust, Mar. 19, 2015, http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/3/19/the-shrinking-middle-class-mapped-state-by-state
[68] *Id.*
[69] Rakesh Kochhar and Richard Fry, *America's Wealth Gap Between Middle-Income and Upper-Income Families is Widest on Record*, Pew Research Center, Dec. 17, 2014, http://www.pewresearch.org/fact-tank/2014/12/17/wealth-gap-upper-middle-income/
[70] *Id.*

times the median wealth of Black households and more than 10 times the median wealth of Hispanic households.[71]

While Dodd-Frank's main focus was on the financial crisis and protecting consumers, the drafters of the legislation also were concerned about the impacts of the financial crisis on families and communities. Two provisions were included to specifically provide financial resources to families in need of foreclosure prevention assistance and to communities dealing with the blight of abandoned and foreclosed properties. The Homeowners Emergency Loan Program provided zero-interest loans to families struggling to make mortgage payments. The Neighborhood Stabilization Program (NSP) provided $1 billion to communities dealing with foreclosed residential properties. Following the passage of Dodd-Frank, the Treasury Department authorized the Hardest Hit Program, to allow the use of unspent Troubled Asset Relief Program (TARP) funds to provide funding to states to help homeowners and communities struggling with foreclosures.

Given the Congressional interest in using Dodd-Frank to help struggling communities, and the creativity of the Treasury Department to use TARP funds to help homeowners, regulators and Congress should consider prioritizing creative solutions for helping the communities that have been left behind by the economic recovery and who are dealing with the widening wealth gap. For example, the CFPB, which has used the disparate impact legal theory to target discriminatory lending, has yet to issue regulations on small business lending data collection, as required under the Dodd-Frank Act. Much like data collected through the Home Mortgage Data Act (HMDA), this data could be used to illustrate patterns and trends on the provision of business loans to minorities. And even though new funding for NSP is unlikely, the Department of Housing and Urban Development (HUD) has an underutilized program, the FHA 203(k) loan program, which provides loans to cover the cost of home purchases and rehabilitation. If HUD is able to address the program's underutilization, it could be an important tool in helping distressed communities, just as NSP has been.

However, given the challenge of the wealth gap, regulators and Congress must focus in on the issues that are exacerbating it. High levels of student loan debt, abusive debt collection practices, foreclosures, lack of access to credit, and underinvestment in distressed communities must be addressed in order to shrink the wealth gap.

Student Loan Debt

Due to huge increases in the cost of tuition, student loan debt has grown to gargantuan proportions. Since 1994, the total amount of outstanding student loan debt increased tenfold from $100 billion to over $1 trillion. According to some studies, the amount of debt students carry

[71] Pew Research Center, *supra* note 16.

today is affecting them in ways previous generations have not encountered. For example, young people with student loans are less likely to take out a mortgage or have a car loan, but they are more likely to have lower credit scores.[72] For some students, the amount of the payments is the equivalent of a mortgage.[73] Currently one in 5 borrowers is in default on their student loans.[74]

The Fed's 2013 Survey of Consumer Finances offers an in-depth look at the student loan debt accumulated by young families (those families headed by someone under 40). The survey reveals that both the proportion of such families with student debt and the amount they've incurred have nearly doubled since 2001, while most forms of other debt are in decline.[75]

The report finds that the fraction of such families with education debt grew to 38.8 percent in 2013 from 22.4 percent in 2001, and that the mean debt amount grew to $29,800 from $16,900.[76] While the majority of young families with education debt owed less than $25,000 in both 2001 and in 2013, the proportions of young families with debt over $50,000 and over $100,000 have increased significantly, reaching 13.2 percent of families with student loans, up from 5.6 percent in 2001 (and 5.6 percent have student loan debt over $100,000, up from 0.6 percent in 2001).[77]

The CFPB has documented abuses among student loan servicers. According to a 2014 report by the Bureau, student loan servicers have engaged in illegal practices like structuring student payments in order to maximize late fees, misleading students about bankruptcy protections, and making illegal calls.[78] Servicers retained by the Department of Education also engaged in these practices.[79] While the CFPB now oversees 70 percent of nonbank student loan servicers, in the interests of consistent regulation and in light of the Department of Education's problems in regulating its servicers, it's clear that the Bureau should have jurisdiction over all student loan servicers. Likewise, the Bureau, rather than the Education Department, should have the authority to oversee the student loan complaint system.

The CFPB had indicated that it is concerned that the same kinds of tactics that unscrupulous mortgage servicers and credit card companies used to deceive homeowners and

---

[72] Floyd Norris, *The Hefty Yoke of Student Loan Debt*, New York Times, Feb. 20, 2014, http://www.nytimes.com/2014/02/20/business/economy/the-hefty-yoke-of-student-loan-debt.html

[73] Vickie Elmer, *Dealing with Student Debt*, New York Times, Apr. 26, 2012, http://www.nytimes.com/2012/04/29/realestate/mortgages-dealing-with-student-debt.html?_r=0

[74] Shahien Nasiripour, *CFPB Begins Probe of Student Loan Servicers, Signaling Stronger Rules*, Huffington Post, May 14, 2015, http://www.huffingtonpost.com/2015/05/14/cfpb-student-loan-servicing_n_7280002.html

[75] Board of Governors of the Federal Reserve System, Federal Reserve Bulletin, Changes in U.S. Family Finances From 2010 to 2013: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin, Sept. 2014, http://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf

[76] *Id.*

[77] *Id.*

[78] Consumer Financial Protection Bureau, SUPERVISORY HIGHLIGHTS, Fall 2014, http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf

[79] Huffington Post, *supra* note 74.

borrowers could be prevalent among student loan servicers.[80] It's clear that student loan borrowers need additional protections. As a start, Congress should pass legislation such as the Court Legal Access and Student Support Act (or the "CLASS Act;" H.R. 2079 and S.1122) which would prohibit any school receiving student aid from the Department of Education from including any restrictions on students' ability to pursue legal claims, individually or with others, against higher education institutions that they believe defrauded them.

Debt Collection

The Fair Debt Collection Practices Act (FDCPA), which was enacted in 1977, is ripe for comprehensive legislative and regulatory reform, as technological advances and the debt collection industry have changed significantly since passage of the law. In 2014, debt collection was the leading source of consumer complaints collected by the Bureau.[81]

While regulators aggressively used their supervisory and enforcement powers to protect consumers from abusive practices and ensure debt collectors are complying with the law, the staggering 88,300 debt collection complaints handled by the Bureau last year is a strong indicator that the entire debt collection system is broken and more needs to be done.[82]

In 2012, the Bureau exercised its larger participant authority to supervise certain debt collection firms. It currently supervises about 175 debt collection firms, which account for over 60 percent of the industry's annual receipts in the consumer debt collection market. The Bureau and the Federal Trade Commission have also successfully worked together to enforce debt collectors are complying with the law. Nevertheless, the only way that all consumers will be protected is if the entire debt collection industry, and all actors conducting debt collection activities, are under the same robust supervision.

Finally, under Dodd Frank, the Bureau has general rulemaking authority over the FDCPA. In November 2013, the Bureau issued an Advanced Notice of Public Rulemaking about the possibility of developing debt collection rules, which received over 23,000 comment letters. However, there are other debt collection problems that may warrant statutory changes, such as increasing the maximum amount of statutory damages to ensure the amount keeps up with inflation and eliminating some of the onerous requirements consumers must follow in order to exercise their rights to relief from abusive and deceptive practices by bad actors in the industry.

[80] *Id.*
[81] Consumer Financial Protection Bureau, FAIR DEBT COLLECTION PRACTICES ACT: CFPB ANNUAL REPORT 2015, Mar. 2015, http://files.consumerfinance.gov/f/201503_cfpb-fair-debt-collection-practices-act.pdf
[82] *Id.*

Foreclosures and Mortgage Servicing

While the worst of the foreclosure crisis is over, the housing market still hasn't recovered from the effects of the Great Recession. An estimated, 16.9 percent of mortgaged residential properties are still underwater—with the borrower owing more on the home than its worth.[83]

Programs like the Home Affordable Modification Program (HAMP) and the Home Affordable Refinance Program (HARP) have had some success in helping families to achieve loan modifications or to refinance underwater mortgages. According to the Department of Treasury, as of March 2015 more than 1.3 million homeowners have received a permanent modification through HAMP who otherwise may not have been able to keep their home.[84] Aggregate payment savings to homeowners who received HAMP first-lien permanent modifications are estimated at approximately $34.8 billion, program-to-date, compared with unmodified mortgage obligations.[85] And 3.3 million households have refinanced through HARP.[86]

However, challenges may be looming for borrowers currently benefiting from these crisis-era programs. For example, approximately 320,000 rate resets under the Home Affordable Mortgage Program (HAMP) will be triggered in 2015,[87] with the Treasury Department estimating that the cumulative impact of the various rate increases will amount to an increase of $200 per month for the average borrower.[88] All told, the firm Black Knight estimates that two million modified mortgages (both those modified by HAMP and under proprietary programs) may face interest rate resets this year, with 40 percent of such loans currently still underwater.[89]

Additionally, with the Federal Reserve poised to raise interest rates, other homeowners with adjustable rate mortgages may experience rate increases and higher mortgage payments. In addition, upcoming resets on home equity lines of credit (which will force borrowers with these loans to pay principal for the first time, resulting in higher mortgage payments) may present payment challenges for borrowers. And sudden economic challenges, such as job loss and

[83] Svenja Gudell, *Even as Home Values Rise, Negative Equity Rate Flattens*, Zillow, Mar. 19, 2015, http://www.zillow.com/research/negative-equity-2014-q4-9223/
[84] Department of Treasury, MAKING HOME AFFORDABLE PROGRAM PERFORMANCE REPORT, June 6, 2015, http://www.treasury.gov/initiatives/financial-stability/reports/Pages/Making-Home-Affordable-Program-Performance-Report.aspx
[85] *Id.*
[86] Federal Housing Finance Administration, REFINANCE REPORT, Nov. 26, 2014, http://www.fhfa.gov/AboutUs/Reports/Pages/Refinance-Report-April-2015.aspx
[87] Laurie Goodman and Jun Zhu, Urban Institute, *HAMP Modifications: Is Rest Risk and Issue?*, May 2014, http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413125%20-%20HAMP-Modifications-Is-Reset-Risk-an-Issue-.pdf
[88] Mark McArdle, *HAMP Rate Reset: Just the Facts*, Mar. 12, 2014 http://www.treasury.gov/connect/blog/Pages/HAMP-Rate-Reset.aspx
[89] Brena Swan, *Black Knight: 2 million borrowers face rate resets*, Housingwire, June 2, 2014, http://www.housingwire.com/articles/30161

medical debt, will continue to present problems for homeowners attempting to remain current on their mortgages.

Homeowners enrolled in HAMP, those in proprietary modifications, and others with unmodified loans will continue to need relief from unsustainable mortgage payments. With the Congressional Budget Office (CBO) projecting that approximately $9 billion in TARP-related housing programs will go unobligated, Congress should seriously consider legislation redirecting such funds to meet other, pressing housing needs.[90] Additionally, the Ability-to-Repay standard in Dodd-Frank will ensure, prospectively, that homeowners won't fall into the same kinds of predatory traps that were prevalent during the subprime meltdown, programs are still needed to help existing homeowners obtain and preserve sustainable loan modifications. The CFPB should revise its mortgage servicing rules to require loan modifications in all cases, and those rules should include better protections against dual-tracking as well as consideration of principal reduction in the loss mitigation waterfall. As foreclosures don't just affect the families who lose their homes but also the communities in which the homes are located, it's critical that the government limit foreclosures to the greatest extent possible.

Consumers' Credit Reports and Credit Scores

The nationwide consumer reporting agencies (NCRAs) maintain credit files for over 220 million adults. The Bureau estimates that the NCRAs generated U.S. revenues of about $4 billion by 2011.

Consumers are increasingly aware that credit reports and scores are frequently used by creditors to determine whether to extend credit to them and under what terms. Unfortunately, according to a Bureau report entitled, "Consumer Voices on Credit Reports and Scores," issued in February 2015, many consumers express confusion, frustration, and uncertainty related to their credit reports and scores, including about how to check their reports and scores, what information these include, and how to improve them.[91]

Consumers may also not realize the significant impact that their credit reports can have on their lives. Under the Fair Credit Reporting Act, credit reports may be used for many different non-credit purposes, including eligibility determinations for homeowners and auto insurance, tenant screening, and employment decisions.

Many businesses are also increasingly using credit reports to screen potential job applicants and to determine whether to retain or promote existing employees. This practice can result in the rejection of qualified job applicants solely on the basis of their credit reports. A

[90] Congressional Budget Office, REPORT ON THE TROUBLED ASSET RELIEF PROGRAM — MARCH 2015 (Mar. 18, 2015), https://www.cbo.gov/sites/default/files/cbofiles/attachments/50034-TARP.pdf

[91] Consumer Financial Protection Bureau, CONSUMER VOICES ON CREDIT REPORTS AND SCORES (FEB. 19, 2015), http://www.consumerfinance.gov/reports/consumer-voices-on-credit-reports-and-scores/

survey in 2010 by the Society for Human Resource Management found that 47 percent of firms used credit checks for select job candidates and 13 percent used them for all job candidates.[92]

In a report entitled, "Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job," Demos found, among job applicants with blemished credit histories, one in seven has been advised that they were not being hired because of their credit history.[93] Demos argues that, because Latino and African-Americans households tend to have worse credit, on average, than white households, credit checks may disproportionately screen minorities out of jobs, leading to discriminatory hiring.

Under FCRA, employers are required to obtain written permission before reviewing a person's credit report for a hiring decision and to notify the job applicant or employee if adverse action is taken, in whole or in part, because of the person's credit. Yet, job applicants who refuse to authorize a credit report may legally be excluded from consideration for a position. As such, the use of credit checks for employment may create a true "catch-22" problem—for those consumers who have been unemployed for an extended period of time and whose credit suffered as they fell behind on bills, the use of credit reports in the hiring process can increase their financial distress and make it more difficult for them to improve their impaired credit. Another problem, beyond the inaccuracies and incomplete information that exist on many credit reports, is that many job applicants, whose credit reports negatively impact their employment, are not even given the opportunity to explain the adverse information contained on their credit report. A 2012 SHRM survey found that 8 percent of prospective employers did not give applicants an opportunity to explain their negative credit reports, and 28 percent only allowed applicants to offer an explanation after the hiring decision had already been made.[94]

Demos also argues that employers' compliance with the minimal consumer protections under FCRA are difficult to monitor and enforce. Several jurisdictions, including New York City, California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, Washington, and Chicago, have enacted legislation restricting the use of credit for hiring and personnel decisions and imposing heightened notice and disclosure obligations on employers who use them.

Because of the growing significance of credit reports on consumers' lives, some public policymakers have raised concerns about the appropriateness of allowing certain types of adverse information to remain on a person's credit report such as paid or settled medical debts. With

---

[92] Society for Human Resource Management, BACKGROUND CHECKING — THE USE OF CREDIT BACKGROUND CHECKS IN HIRING DECISIONS (Sept. 22, 2010), http://www.shrm.org/research/surveyfindings/articles/pages/backgroundcheckingimplications.aspx

[93] Amy Traub, *Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job*, Demos, Mar. 4, 2013, http://www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job

[94] Society for Human Resource Management, BACKGROUND CHECKING — THE USE OF CREDIT BACKGROUND CHECKS IN HIRING DECISIONS (JULY 19, 2012), http://www.shrm.org/research/surveyfindings/articles/pages/creditbackgroundchecks.aspx

certain exceptions, most adverse information may remain on a credit report for at least seven years, even if the predictive value of this information diminishes in a shorter time period.

As early as 2009, many Financial Services Committee Democratic Members recognized that medical debt is unique and therefore argued that it should not be treated in the same manner as other consumer debt for credit reporting purposes. According to The Commonwealth Fund, medical bill problems or accrued medical debt affects roughly 73 million working-age adults in this country.[95]

In May 2014, the CFPB released a report that confirms the view that that the presence of paid medical debts on a person's credit reports overly penalized consumers' credit scores.[96] In reviewing the de-identified credit records for a representative sample of consumer, the Bureau found that consumers with paid medical collections were less likely to be delinquent than other consumers with the same credit score.[97]

In December 2014, the Bureau issued another report further demonstrating the devastating and widespread impact on consumers from medical debt information on their credit reports. The Bureau found that about 19.5 percent of credit reports—almost one in five—contain one or more medical debt collection items.[98] Unfortunately, medical debt collections may frequently stem from consumers' confusion and uncertainty about their medical bills, which results in consumers not knowing what they owe, to whom, when, or for what.

In August 2014, FICO announced that its new credit scoring model—FICO 09—that will lessen the impact of medical debt collections on credit scores.[99] About 77 million people in this country have some debt in collection on their credit report, according to a study by the Urban Institute and Encore Capital Group. If creditors and lenders adopt and use the new credit scoring formula, a credit score of 711 should rise 25 points for people with medical debts but no other serious derogatory items on their credit record.

---

[95] S. R. Collins, M. M. Doty, R. Robertson and T. Garber, *Help on the Horizon: How the Recession Has Left Millions of Workers Without Health Insurance, and How Health Reform Will Bring Relief—Findings from The Commonwealth Fund Biennial Health Insurance Survey of 2010,* The Commonwealth Fund, March 2011, http://www.commonwealthfund.org/Publications/Fund-Reports/2011/Mar/Help-on-the-Horizon.aspx

[96] Consumer Financial Protection Bureau, DATA POINT: MEDICAL DEBT AND CREDIT SCORES, May 20, 2014, http://www.consumerfinance.gov/reports/data-point-medical-debt-and-credit-scores/

[97] *Id.*

[98] Consumer Financial Protection Bureau, CONSUMER CREDIT REPORTS: A STUDY OF MEDICAL AND NON-MEDICAL COLLECTIONS (Dec. 2014), http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf

[99] Press Release, FICO, FICO Score 9 Introduces Refined Analysis of Medical Collections (Aug. 7, 2014), http://www.fico.com/en/newsroom/fico-score-9-introduces-refined-analysis-of-medical-collections

In April 2015, FICO announced it will begin testing a new credit scoring model based on alternative data.[100] This is intended to benefit those consumers who currently do not have sufficient credit history or "thin files" for FICO to be able to generate a traditional credit score.

Unfortunately, creditors are not required to use the latest credit scoring models for determining a person's creditworthiness. Newer credit scoring models are more likely to be adopted by credit card companies and auto lenders. However, for most mortgages, older versions of FICO scores are likely to continue to be used, which means that paid or unpaid collections of any kind will still be factored into the risk determinations for mortgage borrowers. This occurs because most mortgage lenders use the standards set forth in the GSE seller servicing guidelines, which references much older FICO scoring models. Absent legislation that prohibits the reporting of fully paid or settled medical debts, it is unclear what percentage of the industry will choose to purchase and adopt the latest FICO model, or similar scoring models that exclude fully paid and settled medical debts in their scores, which means many consumers are likely not to benefit from the creation of newer credit scoring models that are based on the most recent research about the actual predictive value of certain types of information.

Comprehensive reform of our country's credit reporting system and the use of credit reports and credit scores is needed. In particular, Congress should pass legislation to end the unreasonably long time periods that most adverse information can remain on a person's credit report, give consumers the tools to truly verify the accuracy and completeness of their credit reports, remove fully paid or settled debt from credit reports, give distressed private education loan borrowers the same chance to repair their credit as federal student loan borrowers, restrict the use of credit reports for employment purposes, and provide consumers with free credit scores actually used by creditors.

Community Reinvestment Act

The Community Reinvestment Act (CRA) was enacted in 1977 and requires banks and savings associations to lend, invest, and provide services to the communities from which they take deposits, consistent with banks' safety and soundness requirements.

Republican rhetoric has frequently pointed to it as the root cause of the Great Recession. In doing so, Republicans have inaccurately claimed that the law pushed financial institutions to undertake high-risk lending. In March 2009, the Federal Reserve Bank of Minneapolis concluded that only a small portion of subprime loans were related to CRA and that CRA-related loans appeared to perform comparably to other types of subprime loans. As such, the economists

[100] Press Release, FICO, FICO, LexisNexis Risk Solutions & Equifax Joining to Generate Trusted Alternative Data Scores for Millions More Americans (Apr. 2, 2015), http://www.fico.com/en/newsroom/fico-lexisnexis-risk-solutions-and-equifax-joining-to-generate-trusted-alternative-data-scores-for-millions-more-americans-04-02-2015

concluded that "available evidence seems to run counter to the contention that the CRA contributed in any substantive way to the current mortgage crisis."[101]

This early finding has subsequently been validated by other research. In January 2011, The Final Report on the National Commission on the Causes of the Financial and Economic Crisis in the United States also found that "the CRA was not a significant factor in subprime lending or the crisis."[102]

CRA was enacted to reaffirm the obligation of federally chartered or insured institutions to serve the convenience and needs of their service areas and to encourage these institutions to help meet the credit needs of the local communities in which they are chartered consistent with their safe and sound operation. The OCC, the Federal Reserve Board, and FDIC implement the CRA through Regulation BB and Interagency Questions and Answers Regarding Community Reinvestment (QandAs). In doing so, regulators apply up to three tests, depending on the size of the institution, reviewing lending, investment, and services. While Regulation BB has been revised over the years, most recently, the agencies have tried to ensure that the CRA achieves its statutory purposes through updating and clarifying the QandAs.

In 2013, for example, the finalized QandAs addressed community development issues. In 2014, the proposed QandAs are intended to address: (1) alternative systems for delivering retail banking services due to technological advancements and changes in the financial market; (2) additional examples of innovative or flexible lending practices; (3) community development-related issues; and (4) how examiners will evaluate the responsiveness and innovativeness of an institution's loans, qualified investments, and community development services.

Agencies' changes to their CRA guidance to try to appropriately promote and incentivize institutions to provide meaningful, effective, and responsive efforts to serve underserved communities and populations are helpful. The final and proposed QandAs are a good first step in recognizing that, as the financial industry evolves, the CRA must also continue to evolve.

Federal Reserve Board Chair Yellen recently indicated that a review of the CRA is needed to address views that the law may be too lax. It is past time for the agencies to conduct a robust and comprehensive review of the CRA to determine what is and what is not working, with input from external stakeholders, and amend Regulation BB, as necessary.

One ongoing problem with achieving a strong CRA remains the lack of enforcement of the CRA. Regulators review CRA ratings as *a factor* when lenders seek to engage in certain activities such as merging or acquiring another institution or moving offices. However, institutions that do not want to expand or change their operations have little incentive to comply

[101] Neil Bhutta and Glenn B. Canner, *Did the CRA cause the mortgage market meltdown*, Federal Reserve Bank of Minneapolis, March 1, 2009, https://www.minneapolisfed.org/publications/community-dividend/did-the-cra-cause-the-mortgage-market-meltdown
[102] FCIC, *supra* note 21, at xxvii.

with the CRA. Even though CRA ratings are reviewed at a time of an institution's request to merge or acquire another, advocacy groups still have minimal leverage during this period to encourage institutions to commit to a quality community development plan because these institutions are not held accountable for failure to abide by these commitments. It is no surprise, therefore, that institutions rarely fail a CRA exam.[103] According to a 2015 report by the Congressional Research Service, almost all banks receive satisfactory or better performance ratings on their CRA examinations, which some may consider indicative of weak enforcement.[104] This pattern has been seen most recently in OCC's release of its CRA evaluations for 21 national banks and savings associations on July 7, 2105, in which eight were rated outstanding, twelve rated satisfactory, one rated needs to improve, and none rated substantial noncompliance.

Nevertheless, CRA has been influential in increasing access to credit, services, and investments in previously underserved communities, and regulators can encourage more CRA-related economic activities in more communities. Regardless of the existence of CRA, many Americans continue to lack access to affordable banking products and services and a large number of communities still suffer from disinvestment.

Congress should consider reform of CRA that strengthens the program for the 21st century. Potential reforms should expand the number of assessment areas so that CRA exams would scrutinize the great majority of a bank's loans; require CRA exams to consider lending, investment, and services to minorities and communities of color; apply CRA to a wide variety of non-bank financial institutions; and, include consequences for low ratings to provide incentives for compliance.

Regulatory Relief for Community Banks and Credit Unions

Community banks and credit unions, which did not cause the crisis, bore the brunt of it. From 2008 to 2010, 322 banks failed. The overwhelming majority of those institutions, 313, had assets of less than $10 billion. Since the passage of Dodd-Frank, the closures of community banks has greatly slowed. In each year following the enactment of Dodd-Frank, fewer banks closed their doors. Table 3 shows the decreases in bank failures before and after the enactment of Dodd-Frank.

[103] There are five CRA ratings: outstanding, high satisfactory, low satisfactory, needs to improve, and substantial noncompliance.
[104] Darryl E. Getter, *The Effectiveness of the Community Reinvestment Act,* Congressional Research Service, Jan. 7, 2015, http://fas.org/sgp/crs/misc/R43661.pdf

Table 3: Bank Failures[1] January 2007 – July 2015[2]

Asset Size	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
Assets > $10B	0	3	5	1	0	0	0	0	0	9
Assets < $10B	3	22	135	156	92	51	24	18	6	507
Total Failures	3	25	140	157	92	51	24	18	6	516

[1] This analysis does not include consolidations.
[2] Note: Bank failure data was obtained from the FDIC's Historical Statistics on Banking > Failure and Assistance Transactions. https://www2.fdic.gov/hsob/SelectRpt.asp?EntryTyp=30&Header=1
Source: Congressional Research Service

Community banks and credit unions did not cause the financial crisis. In many parts of the country, these institutions provide banking services to areas that are not served by larger financial institutions. However, some regulations aren't sized for community banks and credit unions. Due to their small size and their business model predicated on "relationship" lending, Democrats believe that community banks and credit unions deserve a break. Appendix F of this report describes the many ways in which Democrats and regulators have provided substantial exemptions and relief for community banks and credit unions from many provisions in Dodd-Frank. However, in order to provide additional relief to community banks and credit unions, Democrats on the House Financial Services and Senate Banking Committees drafted legislation—H.R. 2642 and S. 1491, the Community Lender Regulatory Relief and Consumer Protection Act—to provide community banks and credit unions with targeted regulatory relief. The bills strike the right balance between relief and consumer protection.

Among other reforms, the bills would reduce the frequency of examination cycles and allow very small community banks and credit unions to obtain an exemption from the qualified mortgage rule if their loans are held in portfolio. Given the overwhelming support in the House for regulatory relief for these important institutions, both Houses of Congress should pass this legislation.

Housing Finance Reform

Given the importance of a properly functioning secondary mortgage market to our economy, opportunity, and household wealth creation, it's important that housing finance reform does not happen in a vacuum, but rather with a full appreciation for and understanding of the wealth gap. Housing finance reform should shrink the wealth gap, not exacerbate it. Democrats have demonstrated an understanding of this dynamic.

In July 2013, Committee Democrats released principles for housing finance reform. These principles included maintaining the 30-year fixed rate mortgage, protecting taxpayers, ensuring transparency, stability and liquidity within a new market, and preventing disruptions to

the U.S. housing market during a transition to a new finance system. Moreover, the principles note the need to maintain access to the housing market for all qualified borrowers that can sustain homeownership and that all creditworthy borrowers should be served regardless of their geography, housing type, or racial or ethnic background. Additionally, the principles also discuss the need to ensure access to affordable rental housing.

Unlike Republicans, Democrats have recognized that in order to make sure that homeownership remains a reality for Americans, the government must continue to have a role in the housing finance system. Since unveiling those principles, Democrats have proposed legislative initiatives to reform the nation's housing finance system. Ranking Member Waters has proposed legislation to comprehensively reform the GSEs by creating a new lender-owned cooperative structure to securitize and guarantee responsibly-underwritten mortgages. And Reps. Carney, Himes, and Delaney have introduced legislation to expand the role of private "first-loss" capital while enabling Ginnie Mae to act as a reinsurer.

While Fannie Mae and Freddie Mac remain profitable, returning approximately $40 billion more in cumulative dividends to the Treasury than what was invested in the companies since the start of their conservatorship, this conservatorship cannot continue indefinitely.

Conclusion

Five years later, the wide-ranging reforms in the Dodd-Frank Act have improved transparency in capital markets, stabilized the banking system, ensured protections for investors, and provided relief for consumers. Despite its successes, opponents of reform remain committed to undoing key sections of the law or to undermining the regulators charged with implementing it. With the more robust financial market that has been provided by Dodd-Frank, the current struggle over financial reform may seem incomprehensible to future generations. However, the promise of Dodd-Frank to those generations is that they will live in a country where systemic risk is monitored, where consumers are protected, and where unregulated swaps can't bring down the economy. It's the duty of Congress and regulators to make sure, by defending and properly implementing the law, that promise is kept.

APPENDIX A

Summary of Dodd-Frank Wall Street Reform and Consumer Protection Act

In General

Consumer Protections with Authority and Independence: Created a new independent watchdog, the Consumer Financial Protection Bureau (CFPB), with the authority to ensure American consumers get the clear, accurate information they need to shop for mortgages, credit cards, and other financial products, and protects them from hidden fees, abusive terms, and deceptive practices through strong enforcement of consumer protection laws. To date, the CFPB has returned $4.6 billion to consumers subject to such practices.

Provided Tools Necessary to End "Too Big To Fail": Required large banks to detail a "living will," helping eliminate complexity; created a safe way to liquidate failed financial firms; imposed new capital and leverage requirements that make it undesirable to get too big; updated the Fed's authority to allow system-wide support but no longer prop up individual firms; and established rigorous standards and supervision to protect the economy and American consumers, investors, and businesses.

Advanced Warning System: Created the Financial Stability Oversight Council (FSOC) to identify and address systemic risks posed by large, complex companies, products, and activities before they threaten the stability of the economy; the council provides for cooperation and information sharing between agencies to research and correct threats before they become crises.

Transparency & Accountability for Exotic Instruments: Eliminated loopholes that allow risky and abusive practices to go on unnoticed and unregulated—including loopholes for over-the-counter derivatives, asset-backed securities, hedge funds, complex predatory mortgages, and unfair payday loan products.

Executive Compensation and Corporate Governance: Provided shareholders a "say-onpay"—with a non-binding vote on executive compensation and golden parachutes; ensured that executives responsible for firm failures will be held accountable and removed from office; and required boards of banks and systemic non-financial firms to establish strong, independent risk committees.

Protects Investors: Provided tough new rules for transparency and accountability for credit rating agencies to protect investors and businesses; created an Office of the Investor Advocate at the SEC to represent investors' perspectives to the Commission.

Enforces Regulations on the Books: Strengthened oversight and empowered regulators to aggressively pursue financial fraud, conflicts of interest, and manipulation of the system that benefits special interests at the expense of American families and businesses.

Strong Consumer Financial Protection Watchdog

- Independent Head: Led by an independent director appointed by the President and confirmed by the Senate.
- Independent Budget: Dedicated budget drawn from the Federal Reserve System.
- Independent Rule Writing: Able to autonomously write rules for consumer protections governing all financial institutions—banks and non-banks—offering consumer financial services or products.
- Examination and Enforcement: Authority to examine and enforce regulations for banks and credit unions with assets of over $10 billion and all mortgage-related businesses (lenders, servicers, mortgage brokers, and foreclosure scam operators), payday lenders, and student lenders, as well as other non-bank financial companies that are large, such as debt collectors and consumer reporting agencies. Banks and credit unions with assets of $10 billion or less continue to be examined by the appropriate regulator.
- Consumer Protections: Consolidated and strengthened consumer protection responsibilities previously handled by the Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Federal Reserve, National Credit Union Administration, the Department of Housing and Urban Development, and Federal Trade Commission. The Bureau oversees the enforcement of federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for individuals and communities.
- Able to Act Fast: With this Bureau on the lookout for unfair, deceptive, or abusive practices and schemes, consumers don't have to wait for Congress to pass a law to be protected from bad business practices.
- Educates: Created a new Office of Financial Literacy.
- Consumer Hotline: Created a national consumer complaint and advice hotline so consumers will have, for the first time, a single toll-free number to report problems with financial products and services, ask questions about their mortgages, student loans, and credit cards, and receive advice on locating housing counselors or fixing their credit score.
- Consumer Complaint Database: Takes input directly from consumers who experience problems and works with financial companies to address issues— providing transparency and encouraging quick resolution of consumer complaints.
- Accountability: Made one office accountable for consumer protections. Prior to Dodd-Frank, it was hard to know who was responsible for what, and emerging problems fell through the cracks because no one regulator bore sole responsibility.

- Works with Bank Regulators: Coordinates with other regulators when examining banks to prevent undue regulatory burden. Consults with regulators before a proposal is issued and regulators can appeal regulations they believe would put the safety and soundness of the banking system or the stability of the financial system at risk.
- Responsive to Small Business Needs: Works with small banks and businesses through the Office of Financial Institutions and Business Liaison and by consulting with small businesses prior to rulemakings.

Looking Out For the Next Big Problem: Addressing Systemic Risks

- Expert Members: Composed of 10 voting members that include the federal financial regulators, an independent member, and 5 nonvoting members, the Financial Stability Oversight Council is charged with identifying and responding to emerging risks throughout the financial system. The Council is chaired by the Treasury Secretary and includes the Federal Reserve Board, SEC, CFTC, OCC, FDIC, FHFA, NCUA, CFPB, and an independent appointee with insurance expertise. The 5 nonvoting members include the Office of Financial Research, the Federal Office of Insurance, and state banking, insurance, and securities regulators.
- Tools to Reduce Bank Size and Complexity: The Council makes recommendations to the Federal Reserve for increasingly strict rules for capital, leverage, liquidity, risk management, and other requirements as companies grow in size and complexity, with significant requirements on companies that pose risks to the financial system.
- Regulates Nonbank Financial Companies: Authorized the Council to require, with a 2/3 vote and vote of the chair, that a nonbank financial company be regulated by the Federal Reserve if the Council believes there would be negative effects on the financial system if the company failed or its activities pose a risk to the financial stability of the U.S.
- Break Up Large, Complex Companies: Council is able to approve, with a 2/3 vote and vote of the chair, a Federal Reserve decision to require a large, complex company, to divest some of its holdings if those activities pose a grave threat to the financial stability of the United States—but only as a last resort.
- Technical Expertise: Created a new Office of Financial Research within Treasury to be staffed with a highly sophisticated staff of economists, accountants, lawyers, former supervisors, and other specialists to support the Council's work by collecting financial data from all government regulators and conducting economic analysis.
- Make Risks Transparent: Through the Office of Financial Research and member agencies the Council collects and analyzes data to identify and monitor emerging risks to the economy and makes this information public in periodic reports and testimony to Congress every year.
- Preventing Evasion: Large bank holding companies that have received TARP funds are not able to avoid Federal Reserve supervision by simply dropping their banks (the "Hotel California" provision).
- Capital Standards: Establishes a floor for capital that cannot be lower than the standards in effect as of 2010, and authorizes the Council to impose a 15:1 leverage requirement at a company if necessary to mitigate a grave threat to the financial system.

Limiting Large, Complex Financial Companies and Preventing Future Bailouts

- No Taxpayer-Funded Bailouts: Clearly states taxpayers are not on the hook to save a failing financial company or to cover the cost of its liquidation, requiring instead that large, systemically important firms are responsible for the costs of failures, thereby discouraging creation of new systemically risky financial companies.
- Discourage Excessive Growth & Complexity: The Financial Stability Oversight Council monitors systemic risk and makes recommendations to the Federal Reserve for increasingly strict rules for capital, leverage, liquidity, risk management, and other requirements as companies grow in size and complexity, with significant requirements on companies that pose risks to the financial system.
- Volcker Rule: For financial institutions that receive government assistance, limits proprietary trading, investment in and sponsorship of hedge funds and private equity funds, and limits relationships with hedge funds and private equity funds. Nonbank financial institutions supervised by the Fed also have restrictions on proprietary trading and hedge fund and private equity investments.
- Extends Oversight Of All Large Financial Institutions: The Council can require nonbank financial companies that pose a risk to the financial stability of the United States to submit to supervision by the Federal Reserve, ensuring that one regulator is responsible for regulating all institutions that may threaten financial stability.
- Payment, Clearing, and Settlement Regulation: Provides a specific framework for promoting uniform risk-management standards for systemically important financial market utilities and systemically important payment, clearing, and settlement activities conducted by financial institutions.
- Living Wills: Requires large, complex financial companies to periodically submit plans for their rapid and orderly shutdown should the company go under. Companies can be charged with higher capital requirements and be subject to restrictions on growth and activities, as well as divestment, if they fail to submit acceptable plans. Plans help regulators understand the structure of the companies they oversee and serve as a roadmap for shutting them down without government intervention if the company fails. Significant costs for failing to produce a credible plan create incentives for firms to eliminate structures or operations that cannot be unwound easily.
- Liquidation: Creates an emergency orderly liquidation mechanism for FDIC to unwind failing systemically significant financial companies. If the FDIC is forced to intervene, shareholders and unsecured creditors bear losses and management and culpable directors are removed.
- Liquidation Procedure: Requires that Treasury, the FDIC, and the Federal Reserve all agree to put a company into the orderly liquidation process to mitigate serious adverse effects on financial stability, with up front judicial review.
- Costs to Financial Firms, Not Taxpayers: Taxpayers bear no cost for liquidating large, interconnected financial companies. FDIC can borrow only the amount of funds to liquidate a company that it expects to be repaid from the assets of the company being liquidated. The government will be first in line for repayment. Funds not repaid from the sale of the company's assets will be repaid first through the clawback of any payments to creditors that exceeded liquidation value, and then assessments on large

financial companies, with the riskiest paying more based on considerations included in a risk matrix.

- Federal Reserve Emergency Lending: Significantly alters the Federal Reserve's 13(3) emergency lending authority to prohibit bailing out an individual company. The Treasury Secretary must approve any lending program, and such programs must be broad-based and not aid a failing financial company. Collateral must be sufficient to protect taxpayers from losses.
- Bankruptcy: Large financial companies are required to prove that they can be resolved through ordinary bankruptcy without government assistance before they get into trouble.
- Limits on Debt Guarantees: To prevent bank runs, the FDIC can guarantee debt of solvent insured banks, but only after meeting serious requirements: 2/3 majority of the Federal Reserve Board and the FDIC board must determine that there is a threat to financial stability; the Treasury Secretary must approve the terms and conditions and set a cap on overall guarantee amounts; the President then activates an expedited process for Congressional approval.

Reforming the Federal Reserve

- Federal Reserve Emergency Lending: Limits the Federal Reserve's 13(3) emergency lending authority by prohibiting emergency lending to an individual entity. The Treasury Secretary must approve any lending program, programs must be broad-based, and loans cannot be made to insolvent firms. Collateral must be sufficient to protect taxpayers from losses.
- Audit of the Federal Reserve: GAO conducted a one-time audit of all Federal Reserve 13(3) emergency lending that took place during the financial crisis. Details on all lending were published on the Federal Reserve website. In the future GAO has on-going authority to audit 13(3), emergency lending, discount window lending, and open market transactions.
- Transparency & Disclosure: Requires the Federal Reserve to disclose counterparties and information about amounts, terms and conditions of 13(3) emergency lending, discount window lending, and open market transactions on an on-going basis, with specified time delays.
- Supervisory Accountability: Creates a Vice Chairman for Supervision, a member of the Board of Governors of the Federal Reserve designated by the President, who will develop policy recommendations regarding supervision and regulation for the Board, and will report to Congress semi-annually on Board supervision and regulation efforts.
- Federal Reserve Bank Governance: GAO conducted a study of the current system for appointing Federal Reserve Bank directors, to examine whether the current system effectively represents the public, and whether there are actual or potential conflicts of interest. GAO examined the establishment and operation of emergency lending facilities during the crisis and the Federal Reserve banks involved therein. The GAO identified measures that would improve Reserve Bank governance.

- Election of Federal Reserve Bank Presidents: Presidents of the Federal Reserve Banks are elected by class B directors—elected by district member banks to represent the public—and class C directors—appointed by the Board of Governors to represent the public. Class A directors—elected by member banks to represent member banks—can no longer vote for presidents of the Federal Reserve Banks.
- Limits on Debt Guarantees: To prevent bank runs, the FDIC may guarantee debt of solvent insured banks, but only after meeting serious requirements: 2/3 majority of the Federal Reserve Board and the FDIC board determine there is a threat to financial stability; the Treasury Secretary approves terms and conditions and sets a cap on overall guarantee amounts; the President initiates an expedited process for Congressional approval.

Creating Transparency and Accountability for Derivatives

- Closes Regulatory Gaps: Provides the SEC and CFTC with authority to regulate over-the-counter derivatives so that irresponsible practices and excessive risktaking can no longer escape regulatory oversight.
- Central Clearing and Exchange Trading: Requires central clearing and exchange trading for swaps that can be cleared and provides a role for both regulators and clearing houses to determine which contracts should be cleared.
- Market Transparency: Requires data collection and publication through clearing houses or swap repositories to improve market transparency and price discovery, and provided regulators important tools for monitoring and responding to risks.
- Financial Safeguards: Adds safeguards to system by ensuring dealers and major swap participants have adequate financial resources to meet responsibilities. Provided regulators the authority to impose capital and margin requirements on swap dealers and major swap participants, not end users.
- Higher Standard of Conduct: Establishes a code of conduct for all registered swap dealers and major swap participants when advising a swap entity. When acting as counterparties to a pension fund, endowment fund, or state or local government, dealers are to have a reasonable basis to believe that the fund or governmental entity has an independent representative advising them.

New Offices of Minority and Women Inclusion

- Established an Office of Minority and Women Inclusion at federal financial regulators to address employment and contracting diversity matters. The offices also coordinate technical assistance to minority-owned and women-owned businesses, and seek diversity in the workforce of the regulators.

Mortgage Reform

- Requires Lenders Ensure a Borrower's Ability to Repay: Established a simple federal standard for all home loans: institutions must ensure that borrowers can repay the loans they are sold.

- Prohibits Unfair Lending Practices: Prohibits the financial incentives for subprime loans that encourage lenders to steer borrowers into more costly loans, including the kickbacks known as "yield spread premiums" that lenders pay to brokers to sell riskier loans to borrowers, especially minorities, who qualified for better deals. Prohibits pre-payment penalties that trapped so many borrowers into unaffordable loans.
- Establishes Accountability for Irresponsible Lending: Lenders and mortgage brokers who don't comply with new standards can now be held accountable by consumers for as much as three years of interest payments and damages plus attorney's fees (if any). Protects borrowers against foreclosure for violations of these standards.
- Expands Consumer Protections for High-Cost Mortgages: Expands the protections available under federal rules on high-cost loans—lowering the interest rate and the points and fee triggers that define high-cost loans.
- Requires Additional Disclosures for Consumers on Mortgages: Lenders must disclose the maximum a consumer could pay on a variable rate mortgage, and include a warning that payments will vary based on interest rate changes.
- Housing Counseling: Established an Office of Housing Counseling within HUD to boost homeownership and rental housing counseling.

Raising Standards and Regulating Hedge Funds

- Fills Regulatory Gaps: Reins in the "shadow" financial system by requiring hedge fund and private equity fund advisers to register with the SEC as investment advisers and provide information about their trades and portfolios necessary to assess systemic risk. This data is shared with the Council, and the SEC reports to Congress annually on how it uses this data to protect investors and market integrity.
- Greater State Supervision: Raises the assets threshold for federal regulation of investment advisers from $30 million to $100 million, a move expected to significantly increase the number of advisers under state supervision. States have proven to be strong regulators in this area.

New Requirements and Oversight Of Credit Rating Agencies

- New Office, New Focus at SEC: Created an Office of Credit Ratings at the SEC with expertise and its own compliance staff and the authority to fine agencies. The SEC now examines Nationally Recognized Statistical Ratings Organizations (NRSRO) at least once a year and makes key findings public.
- Disclosure: Requires NRSROs to disclose their methodologies, their use of third parties for due diligence efforts, and their ratings track record.
- Independent Information: Requires agencies to consider in their ratings any information that comes to their attention from a source other than the organizations being rated, if they find the information credible.
- Conflicts of Interest: Prohibits compliance officers from simultaneously working on ratings, methodologies, or sales; installs a new requirement for NRSROs to conduct a one-year look-back review when an NRSRO employee goes to work for an obligor or underwriter of a security or money market instrument subject to a rating by that

NRSRO; and mandates a report to the SEC when certain employees of the NRSRO go to work for an entity that the NRSRO has rated in the previous twelve months.

- Liability: Investors can bring private rights of action against ratings agencies for a knowing or reckless failure to conduct a reasonable investigation of the facts or to obtain analysis from an independent source.
- Right to Deregister: Gives the SEC the authority to deregister an agency for providing bad ratings over time.
- Education: Requires ratings analysts to pass qualifying exams and have continuing education.
- Eliminates Statutory and Regulatory Requirements to Use NRSRO Ratings: Reduces over-reliance on ratings and encourages investors to conduct their own analysis.
- Independent Boards: Requires at least half the members of an NRSRO board to be independent, with no financial stake in credit ratings.
- Ends Shopping for Ratings: The SEC must create a new mechanism to prevent issuers of asset backed-securities from picking the agency they think will give the highest rating, after conducting a study and submitting it to Congress.

Gives Shareholders a Say on Pay and Creates Greater Accountability

- Votes on Executive Pay and Golden Parachutes: Gave shareholders a "Say-on-Pay" with the right to a non-binding vote on executive pay and golden parachutes. This gives shareholders a powerful opportunity to hold accountable executives of the companies they own, and a chance to disapprove where they see the kind of misguided incentive schemes that threatened individual companies and in turn the broader economy.
- Discourages Excessive Compensation: Requires companies to disclose the CEO's compensation, the median employee compensation, and a ratio of the two.
- Nominating Directors: Gives the SEC authority to grant shareholders proxy access to nominate directors. These requirements can help shift management's focus from short-term profits to long-term growth and stability.
- Independent Compensation Committees: Standards for listing on an exchange now require that compensation committees include only independent directors and have authority to hire compensation consultants in order to strengthen their independence from the executives they are rewarding or punishing.
- No Compensation for Inaccurate Statements: Requires that public companies set policies to take back executive compensation if it was based on inaccurate financial statements that don't comply with accounting standards.
- SEC Review: Directs the SEC to clarify disclosures relating to compensation, including requiring companies to provide charts that compare their executive compensation with stock performance over a five-year period.
- Enhanced Compensation Oversight for Financial Industry: Requires Federal financial regulators to issue and enforce joint compensation rules specifically applicable to financial institutions with a Federal regulator.
- Risk Advisory Committees: Requires systemically important firms to establish independent risk advisory committees on their boards to assess risks across all operations of the firm.

Improvements to Bank and Thrift Regulations

- Abolished the Office of Thrift Supervision: Shut down this dysfunctional regulator and transferred authorities mainly to the Office of the Comptroller of the Currency, but preserves the thrift charter.
- Loss Absorbing Capital: Requires banks be funded by a minimum amount of shareholder equity to prevent risk-taking with excessive debt
- Stronger Lending Limits: Adds credit exposure from derivative transactions to banks' lending limits.
- Improves Supervision of Holding Company Subsidiaries: Requires the Federal Reserve to examine non-bank subsidiaries that are engaged in activities that the bank can do (e.g., mortgage lending) on the same schedule and in the same manner as bank exams. Provides the primary federal bank regulator backup authority if that does not occur.
- Intermediate Holding Companies: Allows use of intermediate holding companies by commercial firms that control grandfathered unitary thrift holding companies to better regulate the financial activities, but not the commercial activities.
- Interest on Business Checking: Repeals the prohibition on banks paying interest on demand deposits.
- Charter Conversions: Removes a regulatory arbitrage opportunity by prohibiting a bank from converting its charter (unless both the old regulator and new regulator do not object) in order to get out from under an enforcement action.

Insurance

- Federal Insurance Office: Created the first-ever office in the Federal government focused on insurance. The Office, as established in the Treasury, gathers information about the insurance industry, including access to affordable insurance products by minorities, low- and moderate-income persons and underserved communities. The Office also monitors the insurance industry for systemic risk purposes.
- International Presence: The Office serves as a uniform, national voice on insurance matters for the United States on the international stage.
- Streamlines regulation of surplus lines insurance and reinsurance through state-based reforms.
- Federal Supervision of Complex Insurance Companies: Provided the Federal Reserve the ability to oversee large, complex insurers to prevent the need to bail out another firm like AIG.

Credit Score Protection

- Monitor Personal Credit Rating: Allows consumers free access to their credit score if their score negatively affects them in a financial transaction or a hiring decision. Gives consumers access to credit score disclosures as part of an adverse action and risk-based pricing notice.

SEC and Improving Investor Protections

- Fiduciary Duty: Gives SEC the authority to impose a fiduciary duty on brokers who give investment advice so that the advice is in the best interest of their customers.
- Encouraging Whistleblowers: Creates a program within the SEC to encourage people to report securities violations, creating rewards of up to 30 percent of funds recovered for information provided.
- SEC Management Reform: Mandated a comprehensive outside consultant study of the SEC, an annual assessment of the SEC's internal supervisory controls, and GAO review of SEC management.
- New Advocates for Investors: Created the Investment Advisory Committee, a committee of investors to advise the SEC on its regulatory priorities and practices; the Office of the Investor Advocate in the SEC, to identify areas where investors have significant problems dealing with the SEC and provide them assistance; and an ombudsman to handle investor complaints.
- SEC Funding: Authorized more resources to the chronically underfunded agency to carry out its new and expanded duties.

Reducing Risks Posed by Securities

- Skin in the Game: Required companies that sell products like mortgage-backed securities to retain at least 5 percent of the credit risk, unless the underlying loans meet standards that reduce riskiness. That way, if the investment doesn't pan out, the company that packaged and sold the investment would lose out right along with the people to whom they sold it.
- Better Disclosure: Requires issuers to disclose more information about the underlying assets and to analyze the quality of the underlying assets.

Better Oversight of Municipal Securities Industry

- Registers Municipal Advisors: Requires registration of municipal advisors and subjects them to rules written by the Municipal Securities Rulemaking Board (MSRB) and enforced by the SEC.
- Puts the Public First on the MSRB Board: Ensures that at all times, the MSRB must have a majority of independent members, to ensure that the public interest is better protected in the regulation of municipal securities.
- Fiduciary Duty: Imposes a fiduciary duty on advisors to ensure that they adhere to the highest standard of care when advising municipal issuers.

Rebuilding in the Aftermath of the Foreclosure Crisis

- Neighborhood Stabilization Program: Provided $1 billion to States and localities to combat the ugly impacts on neighborhoods of the foreclosure crisis—such as falling property values and increased crime—by providing funds for states and localities to rehabilitate, redevelop, and reuse abandoned and foreclosed properties.

- Emergency Mortgage Relief: Building on a successful Pennsylvania program, provided $1 billion for bridge loans to qualified unemployed homeowners with reasonable prospects for reemployment to help cover mortgage payments until they are reemployed.
- Foreclosure Legal Assistance: Authorized a HUD-administered program for making grants to provide foreclosure legal assistance to low- and moderate-income homeowners and tenants related to homeownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.

Transparency for the Extraction Industry

- Public Disclosure: Requires public disclosure to the SEC of payments made to the U.S. and foreign governments relating to the commercial development of oil, natural gas, and minerals.
- SEC Filing Disclosure: Requires those engaged in the commercial development of oil, natural gas, or minerals to include information about payments they or their subsidiaries, partners or affiliates have made to the U.S. or a foreign government for such development in an annual report and post this information online.

Congo Conflict Minerals

- Manufacturers' Disclosure: Requires those who file with the SEC and use minerals originating in the Democratic Republic of Congo in manufacturing to disclose measures taken to exercise due diligence on the source and chain of custody of the materials and the products manufactured.
- Illicit Minerals Trade Strategy: Requires the State Department to submit a strategy to address the illicit minerals trade in the region and a map to address links between conflict minerals and armed groups and establish a baseline against which to judge effectiveness.

International Monetary Fund

- Restricts U.S. Funds for Foreign Governments: Requires the Administration to evaluate proposed loans by the IMF to a middle-income country if that country's public debt exceeds its annual Gross Domestic Product, and oppose loans unlikely to be repaid.

APPENDIX B

Examples of Notable Litigation Related to Dodd-Frank

	Summary
State National Bank of Big Spring et al. v. Lew et al.	Plaintiffs State National Bank of Big Spring , the 60 Plus Association, the Competitive Enterprise Institute, and eleven states challenged the constitutionality of Titles I, II, and X of Dodd-Frank, as well as the constitutionality of Richard Cordray's appointment as director of the CFPB. The trial court found that plaintiffs did not have standing to bring their claims and they did not show they would suffer financial injury as a result of the action.
Morgan Drexen, Inc., et al. v. CFPB	Plaintiffs alleged that Title X of Dodd-Frank, which created the CFPB, is unconstitutional as a violation of separation of powers principles. The trial court dismissed the complaint, which the court of appeals affirmed.
NACS et al. v. Board of Governors of the Federal Reserve System	Plaintiffs sued to overturn the Durbin Amendment rule promulgated under Section 1075 of Dodd-Frank which set the debit card interchange transaction fees and network exclusivity prohibitions. The trial court invalidated the Federal Reserve's rule stating it did not do enough to bring fees down. The court of appeals reversed, siding with the Federal Reserve.
Int'l Swaps & Derivatives Ass'n et al. v. CFTC	Plaintiffs challenged CFTC's rule that set position limits on derivatives tied to physical commodities. The trial court vacated the rule because the Commission did not first determine that position limits were necessary.
Investment Company Institute et al. v. CFTC	The CFTC adopted regulations to require mutual funds and other registered investment companies that exceed certain position levels in commodity futures and options to register with the CFTC, in addition to registration with the SEC. Plaintiffs claimed the regulations were flawed because they would impose duplicative and unnecessary burdens and costs on the funds industry and on fund investors. The court of appeals affirmed the lower court's decision upholding the CFTC's rule.

Summary	
Bloomberg L.P. v. CFTC	Plaintiff challenged a regulation that set minimum liquidation times for swaps and futures contracts. The trial ourt held that the plaintiff lacked standing to challenge CFTC's regulation and it did not make a showing of imminent and irreparable harm sufficient to warrant a preliminary injunction.
DTCC Data Repository (U.S) LLC et al. v. CFTC	Plaintiffs challenged the CFTC's decision to permit CME, DTCC's competitor, to require cleared swap data be reported to its affiliated swap data repository pursuant to the CFTC's new swaps regulation. Plaintiff operates its own data repository and claims the CFTC's decision is anticompetitive.
Securities Industry and Financial Markets Association et al v. CFTC	The trial court dismissed plaintiff's arguments that U.S. swaps regulators overstepped their authority in issuing new rules and guidance related to overseas swaps transactions. A new rulemaking is pending.
Business Roundtable and Chamber of Commerce of the United States of America v. SEC	Plaintiffs challenge a SEC rule that requires public companies to provide shareholders with information about, and their ability to vote for, shareholder-nominated candidates for the board of directors. They claimed the SEC failed to consider the rule's effect upon efficiency, competition, and capital formation. The court of appeals agreed with the plaintiffs and vacated the proxy access rule.
American Petroleum Institute et al. v. SEC	Plaintiffs filed suit to strike down Section 1504 of the Dodd-Frank Act and overturn its regulations, which require oil, gas, and mining companies to disclose the payments that they make to governments for all extractive projects. Plaintiffs argued that the SEC conducted inadequate economic analysis and failed to minimize competitive burdens, and that mandatory disclosures are unconstitutional violations of companies' First Amendment rights. The court vacated the rule and remanded it back to the SEC with instructions to revise the rule with a more thorough articulation of the analysis undertaken in reaching its conclusions.

Summary	
National Association of Manufacturers et al. v. SEC, et al.	Plaintiffs challenged an SEC rule implementing Section 1502 of Dodd-Frank that requires U.S.-listed companies to carry out due diligence on "conflict minerals" sourced from the DRC and neighboring countries and to publish information about whether they have funded armed groups. Plaintiffs challenged the rule on procedural ground and also claimed that the disclosures required by the SEC and by Congress violate the First Amendment. The court rejected industry claims that the regulation was 'arbitrary and capricious' and unanimously upheld a majority of the rule, though it found the regulation's requirement that issuers describe their products as 'DRC conflict' or 'DRC conflict-free' to be a violation of the First Amendment's right to free speech.
National Auto. Dealers Association v. FTC	The FTC and the Federal Reserve jointly issued amendments requiring "disclosure of credit scores and information relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit." Plaintiff claimed that the interpretation of "uses a consumer report" was arbitrary and capricious. The plaintiff's claim was dismissed.
American Bankers Association et al. v. FDIC	Plaintiffs challenged a provision in the Volker Rule requiring banks to divest holdings of TruPS-backed CDOs, but voluntarily dismissed the complaint after the regulators issued regulatory relief.
Chicago Mercantile Exchange Inc. v. CFTC	Plaintiff sought review of the CFTC's Swap Data Recordkeeping and Reporting Requirements, which require CFTC-registered derivatives clearing organizations to provide nonpublic regulatory reports of cleared swap transactions to a swap data repository. The suit was voluntarily dismissed by CME after the CFTC granted certain no action relief.
Metlife, Inc. v. Financial Stability Oversight Council	Plaintiff challenged its designation by FSOC as a nonbank SIFI subject to enhanced prudential standards and supervision by the Federal Reserve. The suit is pending.
The Loan Syndications and Trading Association v. SEC	Plaintiff claimed the credit risk retention rules, promulgated under Section 941 of Dodd-Frank, are arbitrary and capricious and should be vacated. The suit is pending.

APPENDIX C

Ongoing Republican Investigations

Consumer Financial Protection Bureau
Investigations: 16

Department of Homeland Security
Investigations: 1

Department of Justice
Investigations: 5

Department of State
Investigations: 1

Department of Treasury
Investigations: 11

Export-Import Bank
Investigations: 14

Federal Deposit Insurance Corporation
Investigations: 3

Federal Reserve Bank of New York
Investigations: 2

Federal Reserve Board of Governors
Investigations: 6

Federal Housing Finance Agency
Investigations: 2

Financial Stability Oversight Committee
Investigations: 1

Housing and Urban Development
Investigations: 5

National Credit Union Association
Investigations: 2

Office of the Comptroller of the Currency
Investigations: 4

Securities and Exchange Commission
Investigations: 4

White House
Investigations: 1

Total Ongoing Investigations: 78

APPENDIX D

Selected Financial-Related Legal Settlements & Administrative Enforcement Actions

This table, provided by CRS, provides information regarding certain financial-related legal settlements and administrative enforcement actions that:

1. Involved at least one federal agency, program, or actor;
2. Resulted in private parties providing $500 million or more in monetary relief to federal and state entities or individuals; and
3. Were announced sometime between January 1, 2008 and May 31, 2015.

The settlements/actions listed in the table, which were identified through searches on regulatory websites and trade newsletters, among other websites, are not intended to be an exhaustive list of all settlements/actions that meet the aforementioned parameters. The table is intended to be for summary, illustrative, and comparative purposes. To further those objectives, the table only lists the common name of the parent financial institution associated with the settlement/action, rather than the potentially numerous specific subsidiaries and/or affiliates that might be named to each settlement/action. The table also might not mention certain nonmonetary remedial measures (e.g., corrective action) that parties might be required to provide as part of a particular settlement/action. Additionally, the monetary values provided in the table may at times be rounded or approximated. The official settlement and enforcement documents, which can be found at the links provided in the table's footnotes, should be consulted to understand the specific details of a particular settlement/action. A key of defined terms is provided at the end of the memorandum.

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
7/15/10	Goldman Sachs[a]	SEC	Securities fraud	$550	• $300 million civil penalty remitted to Treasury's General fund • $250 million remitted to harmed investors pursuant to the Fair Funds provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002[b]
4/2011 - 7/2014	American Servicing Company Aurora Loan Services Bank of America Beneficial JPMorgan Chase Citigroup EMC Mortgage Corporation EverBank/EverHome Mortgage Company GMAC Goldman Sachs HFC HSBC MetLife Morgan Stanley National City Mortgage PNC Sovereign Bank SunTrust U.S. Bank Washington Mutual Wells Fargo Willshire Credit Corporation[c]	OCC FRB	Mortgage servicing (Independent Foreclosure Review Payment Agreement)	$9,300	• $3.6 billion in cash payments to borrowers • $5.7 billion in consumer mortgage related relief, such as principal reductions and mortgage modifications

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
3/12/12	Ally (formerly GMAC) Bank of America Citigroup JPMorgan Chase Wells Fargo[d]	DOJ	Mortgage servicing (National Mortgage Settlement)	$56,500[e]	• $50 billion in consumer mortgage related relief, such as principal reductions and mortgage modifications • $1.5 billion in remedial relief to individual borrowers • $684 million combined to the VA's Veteran Housing Benefit Program Fund, FHA Capital Reserve Account, and the Rural Housing Service, which is administered by the Department of Agriculture • $227.7 million to resolve several federal *qui tam* claims brought pursuant to the False Claims Act • $4 billion to 49[f] state parties and the District of Columbia • $65 million to the Conference of State Bank Supervisors "to establish the 'State Financial Regulation Fund'..." and to state financial regulators that signed on to the National Mortgage Settlement agreement • $15 million to the National Association of Attorneys General's Financial Services and Consumer Protection Enforcement, Education and Training Fund • $10 million to the States Attorneys General of Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Iowa, Massachusetts, North Carolina, Ohio, Tennessee, Texas, and Washington, and the Maryland Department of Labor, Licensing and Regulation and the Ameriquest Financial Services Fund "for reimbursement of costs and attorneys fees incurred during the investigation of this case and the settlement of negotiations and for subsequent expenditures as authorized by the Attorney General"

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
12/19/12	UBS	CFTC DOJ	Manipulation of LIBOR and other benchmark rates	$1,250	• $700 million civil money penalty to the CFTC remitted to Treasury's General Fund[g] • $500 million criminal money penalty[h] to DOJ's Crime Victim's Fund[i]
1/7/13	Bank of America[j]	Fannie Mae	Representation and warranties associated with mortgages sold to Fannie Mae; transfer of servicing rights; mortgage servicing	$10,300	• $3.55 billion to Fannie Mae related to settling repurchase/warranty concerns • $6.75 billion to repurchase approximately 30,000 mortgages sold to Fannie Mae • $1.3 billion compensatory penalty related to servicing practices • Transfer of mortgage servicing rights associated with 941,000 Fannie Mae owned/guaranteed mortgages
3/25/13	Bank of America[k]	FHFA	Securities laws associated with residential mortgage-backed securities owned or guaranteed by Fannie Mae and Freddie Mac	$9,334	• $9.334 billion to FHFA as conservator of Fannie Mae and Freddie Mac (it is unclear how the money was allocated between Fannie Mae and Freddie Mac)[l]
7/1/13	Citigroup[m]	Fannie Mae	Representation and warranties associated with mortgages sold to Fannie Mae	$968	• $968 million to Fannie Mae.
7/25/13	UBS[n]	FHFA	Securities laws associated with residential mortgage-backed securities owned or guaranteed by Fannie Mae and Freddie Mac	$885	• $885 million to FHFA as conservator of Fannie Mae and Freddie Mac ($470 million to Freddie Mac; $415 million to Fannie Mae)
10/1/13	Wells Fargo[o]	Freddie Mac	Representation and warranties associated with mortgages sold Freddie Mac	$869	• $869 million to Freddie Mac.
10/25/13	JPMorgan Chase[p]	FHFA	Representation and warranties associated with mortgages sold to Fannie Mae and Freddie Mac	$1,100	• $1.1 billion to FHFA as conservator of Fannie Mae and Freddie Mac ($480 million to Freddie Mac; $670 million to Fannie Mae)

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
11/19/13	JPMorgan Chase[q]	DOJ	Residential mortgage-backed securities – marketing, sale, securitization	$13,000	• $2 billion FIRREA civil money penalty, remitted to Treasury's General Fund • $1.417 billion to NCUA as liquidating agent for multiple failed credit unions • $4 billion to FHFA as conservator of Fannie Mae and Freddie Mac ($2.74 billion to Freddie Mac and $1.26 billion to Fannie Mae) • $515.4 million to FDIC as receiver for multiple failed depository institutions • $4 billion in mortgage-, foreclosure-, community development-, neighborhood stabilization-related consumer relief • $1.07 billion to state parties ($298 million to California; $19.7 million to Delaware; $100 million to Illinois; $34.4 million to Massachusetts; $613 million to New York)
12/20/13	Deutsche Bank[r]	FHFA	Securities laws associated with residential mortgage-backed securities owned or guaranteed by Fannie Mae and Freddie Mac	$1,925	• $ 1.925 billion to FHFA as conservator of Fannie Mae and Freddie Mac ($1.628 billion to Freddie Mac; $300 million to Fannie Mae).
12/30/13	Wells Fargo[s]	Fannie Mae	Representation and warranties associated with mortgages sold to Freddie Mac	$591	• $591 million to Fannie Mae.

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
2/4/14	JPMorgan Chase[t]	DOJ	Underwriting and originating VA-guaranteed and FHA-insured mortgages	$614	• $63.9 million to the False Claims Act relator ($56.4 million associated with the FHA insurance program and $7.4 million associated with the VA-guarantee program)[u] • $336 million to FHA insurance fund • $172.2 million (associated with FHA insurance program) "remitted to other Federal entities...."[v] • $42 million associated with the VA-guarantee program (in addition to the $7.4 million that went to the relator); it is unclear exactly how this was distributed
2/7/14	Morgan Stanley[w]	FHFA	Securities laws associated with residential mortgage-backed securities owned or guaranteed by Fannie Mae and Freddie Mac	$1,250	• $1.25 billion to FHFA as conservator of Fannie Mae and Freddie Mac ($625 million to Freddie Mac; $625 million to Fannie Mae).
2/26/14	Ocwen[x]	CFPB	Mortgage servicing	$2,125	• $2 billion in mortgage principal reductions for consumers • $125 million in payments to consumers whose homes were foreclosed upon
3/21/14	Credit Suisse[y]	FHFA	Securities laws associated with residential mortgage-backed securities owned or guaranteed by Fannie Mae and Freddie Mac	$885	• $885 million to FHFA as conservator of Fannie Mae and Freddie Mac ($651 million to Freddie Mac; $234 million to Fannie Mae).
4/17/14	Bank of America[z]	CFPB	Credit card add-on products for identity and credit products	$747	• $20 million civil penalty to CFPB Civil Penalty Fund[aa] • Estimated $727 million (but no less than $215 million) in consumer redress/restitution/refunds

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
5/19/14	Credit Suisse	DOJ FRB SEC	Tax evasion	$2,600	• $1.8 billion to DOJ ($666.5 million in restitution to the IRS; $1.14 billion in criminal money penalties remitted to DOJ's Crime Victim's Fund[bb])[cc] • $100 million to the FRB remitted to Treasury's General Fund[dd] • $196 million in penalties, disgorgement, and interest to the SEC remitted to Treasury's General Fund[ee] • $715 million to NY DFS[ff]
6/30/14	BNP Paribas	DOJ	Providing financial services to countries subject to U.S. sanctions	$11,640	• $8.83 billion in forfeiture to DOJ's Asset Forfeiture Fund[gg] • $140 million in criminal money penalties to DOJ's Crime Victim's Fund[hh] • $508 million to the FRB remitted to Treasury's General Fund[ii] • $2.24 billion to NY DFS[jj]
7/14/14	Citigroup[kk]	DOJ	Residential mortgage-backed securities – marketing, sale, securitization	$7,000	• $4 billion FIRREA civil money penalty, remitted to Treasury's General Fund • $2.5 billion in mortgage-, foreclosure-, community development-, neighborhood stabilization-related consumer relief • $208.25 million to FDIC as receiver for multiple failed depository institutions • $391.75 million to state parties ($102.7 million to California; $7.35 million to Delaware; $44 million to Illinois; $45.7 million to Massachusetts; $92 million to New York)

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
8/21/14	Bank of America[ll]	DOJ	Residential mortgage-backed securities – marketing, sale, securitization	$16,650	• $5 billion FIRREA civil money penalty, remitted to Treasury's General Fund • $7 billion in mortgage-, foreclosure-, community development-, neighborhood stabilization-related consumer relief • $245 million to SEC in the form of civil penalties ($129 million), disgorgement ($110 million), and interest ($6.62 million) "may be distributed pursuant to the Fair Funds provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002";[mm] this means that the money potentially could be distributed to investors harmed by securities law violations; any or all of the $245 million that are not distributed pursuant to the Fair Funds provisions will be remitted to the Treasury's General Fund in accordance with the miscellaneous receipts statute.[nn] • $1.3 billion to FDIC as receiver for multiple failed depository institutions • $1.05 billion in payments to settle several sealed lawsuits; it is unclear where these funds were distributed • $490 million, which has been deposited in an escrow account, in compliance with IRS regulation 26 C.F.R. §1.468B-1, will be distributed by an independent monitor to the IRS on behalf of any consumer who has federal tax liabilities as a result of receiving foreclosure- or mortgage-related relief under the Consumer Relief portion of the Legal Settlement • $943 million to state parties ($300 million to California; $45 million to Delaware; $23 million to Kentucky; $200 million to Illinois; $75 million to Maryland; $300 million to New York)

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
8/22/14	Goldman Sachs[oo]	FHFA	Securities laws associated with residential mortgage-backed securities owned or guaranteed by Fannie Mae and Freddie Mac	$3,150	• $3.15 billion to FHFA as conservator of Fannie Mae and Freddie Mac ($2.15 billion to Freddie Mac; $1 billion to Fannie Mae).
9/12/14	HSBC[pp]	FHFA	Securities laws associated with residential mortgage-backed securities owned or guaranteed by Fannie Mae and Freddie Mac	$550	• $550 million to FHFA as conservator of Fannie Mae and Freddie Mac ($374 million to Freddie Mac; $176 million to Fannie Mae).
9/30/14	SunTrust[qq]	DOJ	Mortgage servicing and underwriting	$968	• $418.27 million ($418 million plus $271,986 in interest) to DOJ remitted to Treasury's General Fund • $10 million combined to the VA's Veteran Housing Benefit Program Fund, FHA Capital Reserve Account, and the Rural Housing Service, which is administered by the Department of Agriculture • $40 million to approximately 48,000 individuals in DC and 49 states (all but Oklahoma) whose homes were foreclosed or sold by SunTrust between 1/1/2008 and 12/31/2013 • $500 million in mortgage-, foreclosure-, community development-, neighborhood stabilization-related consumer relief

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
2/3/15	S&P[rr]	DOJ	Ratings of residential mortgage-backed securities and collateralized debt obligations	$1,375	• $687.5 million FIRREA civil money penalty, remitted to Treasury's General Fund • $687.5 million to 19 states, DC, and the National Association of Attorneys General ($21.5 million to Arizona; $21.5 million to Arkansas; $210 million to California; $21.5 million to Colorado; $36 million to Connecticut; $25 million to Delaware; $21.5 million to DC; $21.5 million to Idaho; $52.5 million to Illinois; $21.5 million to Indiana; $21.5 million to Iowa; $21.5 million to Maine; $33 million to Mississippi; $21.5 million to Missouri; $21.5 million to New Jersey; $21.5 million to North Carolina; $21.5 million to Pennsylvania; $21.5 million to South Carolina; $25 million to Tennessee; $21.5 million to Washington; $4.5 million to the National Association of Attorneys General Financial Services and Consumer Protection, Enforcement, Education and Training Fund)
4/23/15	Deutsche Bank	DOJ CFTC	Manipulation of LIBOR and other benchmark rates	$2,175	• $775 million criminal money penalty[ss] to DOJ's Crime Victim's Fund[i] • $800 million civil money penalty to the CFTC remitted to Treasury's General Fund[tt] • $600 million to NY DFS[uu]
5/11/15	Nomura/RBS[vv]	FHFA	Representation and warranties associated with mortgages sold to Fannie Mae and Freddie Mac	$806	• $779.4 million to Freddie Mac and $26.6 million to Fannie Mae (order and judgment are subject to judicial appeal)

Date	Financial Institution	Lead Agency(ies)	Focus of Action/ Allegations	Approximate Total Value (Millions)	Monetary Relief
5/20/15	Barclays Bank of America Citigroup HSBC JPMorgan Chase RBS UBS	DOJ CFTC FRB OCC	Manipulation of foreign exchange market	$7,500	• $2.78 billion in criminal money penalties remitted to DOJ's Crime Victim's Fund[bb] (Barclays - $710 million; Citicorp - $925 million; JPMorgan - $550 million; RBS - $395 million; and UBS - $203 million)[ww] • $1.9 billion in civil money penalties to the CFTC remitted to Treasury's General Fund (Barclays - $400 million;[xx] Citibank - $310 million; HSBC - $275 million; JPMorgan Chase Bank - $310 million; RBS - $290 million; and UBS - $290 million)[yy] • $1.85 billion in civil money penalties to the FRB remitted to Treasury's General Fund (BOA - $205 million; Barclays - $342 million; Citicorp - $342 million; JPMorgan - $342 million; RBS - $274 million; and UBS - $342 million)[zz] • $950 million in civil money penalties to the OCC remitted to Treasury's General Fund (Bank of America - $250 million; Citibank - $350 million; JPMorgan Chase Bank - $350 million)[aaa] • $485 million to the NY DFS (Barclays - $485 million)[bbb]

Source: CRS compilation from footnoted sources.

a. *Goldman Sachs to Pay Record $550 Million to Settle SEC Charges Related to Subprime Mortgage CDO*, Sec. and Exch. Comm'n, Press Release, Jul. 15, 2010, available at https://www.sec.gov/news/press/2010/2010-123.htm.

b. 15 U.S.C. §7246.

c. *What You Need to Know: Independent Foreclosure Review*, Bd. of Governors of the Fed. Reserve Sys., available at http://www.federalreserve.gov/consumerinfo/independent-foreclosure-review.htm.

d. *National Mortgage Settlement*, available at http://www.nationalmortgagesettlement.com/national-mortgage-settlement. See also CRS Report R42919, *Oversight and Legal Enforcement of the National Mortgage Settlement*, by David H. Carpenter.

e. Covered servicers "ended up providing over $50 billion in gross relief which translated into $20.7 billion in credit relief under the terms of the settlement." *About the Settlement*, available at http://www.nationalmortgagesettlement.com/about.

f. The Oklahoma attorney general entered into a separate settlement agreement. *Oklahoma Mortgage Settlement Information*, Okla. Office of the Attorney Gen., available at http://www.oag.ok.gov/oagweb.nsf/mortgageinfo.html.

g. CFTC Docket No. 13-09, *Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Finding and Imposing Remedial Sanctions*, Commodity Futures Trading Comm'n, Press Release, Dec. 19, 2012, available at http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfubsorder121912.pdf.

h. *UBS Securities Japan Co. Ltd. to Plead Guilty to Felony Wire Fraud for Long-running Manipulation of LIBOR Benchmark Interest Rates*, Dep't of Justice, Press Release, Dec. 19, 2012, available at http://www.justice.gov/opa/pr/ubs-securities-japan-co-ltd-plead-guilty-felony-wire-fraud-long-running-manipulation-libor.

i. 42 U.S.C §10601.

j. Bank of America Announces Settlement with Fannie Mae to Resolve Agency Mortgage Repurchase Claims on Loans Originated and Sold Directly to Fannie Mae Through December 31, 2008, Bank of America Press Release, Jan. 7, 2013, available at http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-newsArticle&ID=1771565#fbid=TUqyHh0FAIx.

k. Legal Settlement, Fed. Hous. Fin. Agency v. Bank of America (2013), available at http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/FHFABACSettlementAgreement.pdf.

l. *Fannie Mae Reaches Comprehensive Resolution with Bank of America, Yielding Positive Outcome for Taxpayers*, Fannie Mae Press Release, Jan. 7, 2013, available at http://www.fanniemae.com/portal/about-us/media/financial-news/2013/5910.html; *Bank of America Announces Settlement With Federal Housing Finance Agency (FHFA) and New York Attorney General*, Bank of America Press Release, Mar. 26, 2014, available at https://www.sec.gov/Archives/edgar/data/70858/000070858140000036/bac-exhibit9910326141.htm (Bank of America also announced the transfer of mortgage servicing rights to a total of approximately 2 million mortgages; 941,000 from Fannie Mae owned/guaranteed mortgages and the remaining from Freddie Mac and Ginnie Mae owned/guaranteed mortgages).

m. *Citigroup Announces Agreement with Fannie Mae to Resolve Potential Future Mortgage Repurchase Claims*, Citigroup Press Release, July 1, 2013, available at https://www.sec.gov/Archives/edgar/data/831001/000114420413037349/v348921_ex99-1.htm; *FHFA Announces $5.1 Billion in Settlements with J.P. Morgan Chase & Co.*, Fed. Hous. Fin. Agency Press Release, Oct. 25, 2013, available at http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-$5-1-Billion-in-Settlements.aspx.

n. *FHFA Announces Settlement with UBS*, Fed. Hous. Fin. Agency Press Release, July 25, 2013, available at http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Settlement-with-UBS.aspx.

o. *Freddie Mac Announces Settlements Totaling More Than $1.3 Billion With Major Financial Institutions*, Freddie Mac Press Release, Oct. 1, 2013, available at http://freddiemac.mwnewsroom.com/press-releases/freddie-mac-announces-settlements-totaling-more-th-otcqb-fmcc-1055926.

p. *FHFA Announces $5.1 Billion in Settlements with J.P. Morgan Chase & Co.*, Fed. Hous. Fin. Agency Press Release, Oct. 25, 2013, available at http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-$5-1-Billion-in-Settlements.aspx.

q. *Justice Department, Federal and State Partners Secure Record $13 Billion Global Settlement with JPMorgan for Misleading Investors About Securities Containing Toxic Mortgages*, Dept. of Justice Press Release, Nov. 19, 2013, available at http://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-13-billion-global-settlement.

r. *FHFA Announces $1.9 Billion Settlement With Deutsche Bank*, FHFA Press Release, Dec. 20, 2013, available at http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-$1-9-Billion-Settlement-With-Deutsche-Bank.aspx.

s. *Fannie Mae Reaches $591 Million Repurchase Agreement with Wells Fargo*, Fannie Mae Press Release, Dec. 30, 2013, available at http://www.fanniemae.com/portal/about-us/media/corporate-news/2013/6059.html.

t. *JP Morgan Chase to Pay $614 Million for Submitting False Claims for FHA-insured and VA-guaranteed Mortgage Loans*, Dept. of Justice Press Release Feb. 4, 2014, available at http://www.justice.gov/opa/pr/jpmorgan-chase-pay-614-million-submitting-false-claims-fha-insured-and-va-guaranteed-mortgage.

u. *Final Civil Action: JPMorgan Chase Settled Allegations of Failing To Comply With HUD's FHA Loan Requirements*, Dept. of Housing and Urban Dev. Office of Inspector Gen., Sep. 2, 2014, n. 3, available at http://www.hudoig.gov/sites/default/files/documents/JPMorgan%20Chase%20-%20Final%20Civil%20Action%20Memo%20-%20issued%209-2-14.pdf (stating: "The Department of Justice (DOJ) will remit to the FHA insurance fund that portion of a False Claims Act recovery that equals single damages (i.e., FHA's actual damages), to compensate FHA for its losses. DOJ will retain up to 3 percent of the total amount recovered pursuant to 28 U.S.C. §527. The FHA fund retains single damages less the DOJ retained portion. DOJ remits the balance of the damages into the general fund of the U.S. Treasury as miscellaneous receipts. If the lawsuit is a qui tam, the Court may award the relator a share of the False Claim Act award, based on the contributions the relator made to the investigation.). For additional information about the False Claims Act, see CRS Report R40785, *Qui Tam: The False Claims Act and Related Federal Statutes*, by Charles Doyle.

v. Edwards v. JPMorgan Chase , *Stipulation and Order of Settlement and Dismissal* (D.C.N.Y. 2014), available at http://www.infobytesblog.com/wp-content/uploads/2014/03/JP-Morgan-whistleblower-award-SDNY-3-7-14.pdf.

w. *FHFA Announces $1.25 Billion Settlement With Morgan Stanley*, Fed. Hous. Fin. Agency Press Release, Feb. 7, 2014, available at http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-$1-25-Billion-Settlement-With-Morgan-Stanley.aspx.

x. *Ocwen National Servicing Settlement*, available at https://nationalocwensettlement.com/.

y. *FHFA Announces $885 Million Settlement With Credit Suisse*, Fed. Hous. Fin. Agency Press Release, Mar. 21, 2014, available at http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-$885-Million-Settlement-With-Credit-Suisse.aspx.

z. *In the Matter of* Bank of America, N.A.; and FIA Card Services, N.A., Consumer Fin. Protection Bureau Admin. Proceeding File No. 2014-CFPB-0004, Apr. 7, 2014, available at http://files.consumerfinance.gov/f/201404_cfpb_bankofamerica_consent-order.pdf.

aa. 12 U.S.C. §5497. For more information on the CFPB's Civil Penalty Fund, see http://www.consumerfinance.gov/budget/civil-penalty-fund/.

bb. 42 U.S.C §10601.

cc. *Credit Suisse Pleads Guilty to Conspiracy to Aid and Assist U.S. Taxpayers in Filing False Returns*, Dept. of Justice, Press Release, May 19, 2014, available at http://www.justice.gov/opa/pr/credit-suisse-pleads-guilty-conspiracy-aid-and-assist-us-taxpayers-filing-false-returns.

dd. Bd. of Governors of the Fed. Reserve Sys., Press Release, May 19, 2014, available at http://www.federalreserve.gov/newsevents/press/enforcement/20140519a.htm.

ee. *Credit Suisse Agrees to Pay $196 Million and Admits Wrongdoing in Providing Unregistered Services to Clients*, Sec. and Exchange Comm'n, Press Release, Feb. 21, 2014, available at http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540816517.

ff. *Consent Order Pursuant to Banking Law § 44-a*, N.Y. Dept. of Fin. Serv., *In the Matter of* Credit Suisse AG, May 19, 2014, available at http://www.dfs.ny.gov/about/ea/ea140519.pdf.

gg. *BNP Paribas Agrees to Plead Guilty and Pay $8.9 Billion for Illegally Processing Financial Transactions for Countries Subject to U.S. Economic Sanctions*, Dept. of Justice, Press Release, Jun. 30, 2014, available at http://www.justice.gov/opa/pr/bnp-paribas-agrees-plead-guilty-and-pay-89-billion-illegally-processing-financial.

xx. *Barclays to Pay $400 Million Penalty to Settle CFTC Charges of Attempted Manipulation and False Reporting of Foreign Exchange Benchmark Rates*, Commodity Futures Trading Comm'n, Press Release, May 20, 2015, available at http://www.cftc.gov/PressRoom/PressReleases/pr7181-15.

yy. *CFTC Orders Five Banks to Pay over $1.4 Billion in Penalties for Attempted Manipulation of Foreign Exchange Benchmark Rates*, Commodity Futures Trading Comm'n, Press Release, Nov. 12, 2014, available at http://www.cftc.gov/PressRoom/PressReleases/pr7056-14.

zz. Bd. of Governors of the Fed. Reserve Sys., Press Release, May 20, 2015, available at http://www.federalreserve.gov/newsevents/press/enforcement/20150520a.htm.

aaa. *OCC Fines Three Banks $950 Million for FX Trading Improprieties*, Office of the Comptroller of the Currency, Press Release, Nov. 12, 2014, available at http://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-157.html.

bbb. *NYDFS Announces Barclays to Pay $2.4 Billion, Terminate Employees for Conspiring to Manipulate Spot FX Trading Market*, N.Y. Dept. of Fin. Serv., Press Release, May 20, 2015, available at http://www.dfs.ny.gov/about/press/pr1505201.htm.

APPENDIX E

Examples of Collateral Consequences for Bad Actors

Status or Exemption	Agency	Disqualification Trigger	Source
Well-Known Seasoned Issuer	Securities and Exchange Commission	Conviction, within a three-year period, for any felony or misdemeanor (i) involving the purchase or sale of securities, (ii) arising out of the conduct of an entity or affiliated person (e.g., bank, insurance company, broker, dealer), or (iii) involving monetary theft or fraud (e.g., theft, embezzlement, misappropriation of funds).	17 C.F.R. §230.405
Private offering exemptions under Rule 505 and 506 of Regulation D	Securities and Exchange Commission	Conviction, within a ten-year period, of a felony or misdemeanor (i) in connection with purchase or sale of securities, (ii) involving a false filing with the Commission, or (iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment advisor or paid solicitor.	17 C.F.R. §230.505, 17 C.F.R. §230.506
Private offering exemptions under Rule 262 of Regulation A	Securities and Exchange Commission	Conviction, within a ten-year period, of a felony or misdemeanor (i) in connection with purchase or sale of securities, (ii) involving a false filing with the Commission, or (iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment advisor or paid solicitor.	17 C.F.R. §230.262

Status or Exemption	Agency	Disqualification Trigger	Source
Small offering exemption for business development corporations (BDCs) and small business investment companies (SBICs)	Securities and Exchange Commission	Conviction, within a five-year period, of any crime or offense involving the purchase or sale of securities.	17 C.F.R. §230.602
Safe harbor from liability for forward looking statements made in public company filings	Securities and Exchange Commission	Conviction, within a three-year period, for any felony or misdemeanor (i) involving the purchase or sale of securities, (ii) arising out of the conduct of a entity or affiliated person (e.g., bank, insurance company, broker, dealer), or (iii) involving monetary theft or fraud (e.g., theft, embezzlement, misappropriation of funds).	15 U.S.C. §77z-2, 15 U.S.C. §78u-5
Pay a cash referral fee to an unregistered person for soliciting clients	Securities and Exchange Commission	Conviction, within a ten-year period, for any felony or misdemeanor (i) involving the purchase or sale of a security, (ii) arising out of the conduct of a entity or affiliated person (e.g., bank, insurance company, broker, dealer), or (iii) involving monetary theft or fraud (e.g., theft, embezzlement, misappropriation of funds).	17 C.F.R. §275.206(4)-3
Serve in specified capacities for certain investment companies, such as acting as an investment adviser for a registered investment company	Securities and Exchange Commission	Conviction of any person, within a ten-year period, of any felony or misdemeanor (i) involving the purchase or sale of any security or (ii) arising out of the conduct of an entity or affiliated person (e.g., bank, broker, dealer).	15 U.S.C. §80a-9(a)

Status or Exemption	Agency	Disqualification Trigger	Source
Registration as a commodity dealer or associated persons	Commodities Futures Trading Commission	Conviction for a felony, within a ten-year period, (i) that involves any transaction or advice concerning any contract of sale of a commodity for future delivery, (ii) arises out of the conduct of the business of a broker, trader, investment adviser, or an affiliated entity, (iii) involves theft of fraud or violation of sections under Title 18 or Title 26, such as evasion of taxes or embezzlement.	7 U.S.C. §12a(2)(D)
Status as an insured depository institution	Federal Deposit Insurance Corporation	(i) Directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution; (ii) insured depository institution is in an unsafe or unsound condition; or (III) insured depository institution or the directors or trustees of the insured institution have violated any applicable law, regulation, order, condition imposed in writing by the Corporation in connection with the approval of any application or other request by the insured depository institution, or written agreement entered into between the insured depository institution and the Corporation.	12 U.S.C. §1818, 12 C.F.R. §263.70, 12 C.F.R. §308.161
Contractor	Federal Deposit Insurance Corporation	(i) Conviction for a felony, (ii) prohibition from participating in the affairs of an insured depository institution; (iii) demonstrates a pattern of defalcation; or (iv) responsible for a substantial loss to the Deposit Insurance Fund.	12 C.F.R. §366

Status or Exemption	Agency	Disqualification Trigger	Source
Status as an insured credit union	National Credit Union Administration	Credit union is engaging or has engaged in unsafe or unsound practices in conducting the business of such credit union, or is violating or has violated an applicable law, rule, regulation, order, or any condition imposed in writing by the Board in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party.	12 U.S.C. §1786(b)(1)
Institution affiliated party[1]	National Credit Union Administration	Charged in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or a criminal violation of sections in Title 18, and continued participation by such party poses a threat to the interests of the credit union's members or threatens to impair public confidence. (Removal is required for certain fraud or money laundering offenses under Title 18 or Title 31 of the U.S. Code.)	12 U.S.C. §1786[2]
Entity-affiliated party[3]	Federal Housing Finance Authority	Charged in any information, indictment, or complaint with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law.	12 U.S.C. §4636a
Licensed and registered loan originator	Consumer Financial Protection Bureau	Conviction of applicant or guilty plea to a felony, within a seven-year period, if such felony involved an act of fraud, dishonesty or a breach of trust, or money laundering.[4]	12 U.S.C. §5104, 12 C.F.R. §1008.105, 12 C.F.R. §1026.36

Status or Exemption	Agency	Disqualification Trigger	Source
Status as a chartered bank	Office of the Comptroller of the Currency	Conviction for certain offenses under Title 18 (e.g., money laundering) and Title 31 (e.g., structuring transactions to evade reporting requirements) of the U.S. Code.[5]	12 U.S.C. §93(d)
Institution affiliated party[6]	Multiple Agencies	Conviction for any criminal offense involving dishonesty or a breach of trust or money laundering, within a ten-year period. Removal or suspension can be waived, unless the offense is an offense under Title 18 of the U.S. Code.	12 U.S.C. §1829[7]
Practitioner in disciplinary hearings	Multiple Agencies	Conviction for a felony, within a ten-year period or disbarment or suspension from practice as an attorney.	31 C.F.R. §10.82 (IRS), 12 CFR §263.94 (Federal Reserve), 12 CFR §19.196 (OCC), 12 CFR §308.109 (FDIC), 12 CFR §1209.75 (FHFA)

Status or Exemption	Agency	Disqualification Trigger	Source
FHA loan-level certification	Federal Housing Administration	Lenders cannot submit loans to FHA for approval if, within a three-year period, they have been convicted of or had a civil judgement rendered against them for (a) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; (b) violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (3) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (G)(2) of this certification; and (4) have not, within a three-year period preceding tis application/proposal, had one or more public transactions (Federal, State or local) terminated for cause of default.	Form HUD-92900-A; HUD currently is proposing to remove these certifications via Docket No. FR-5835-N-06; lender-level certifications also required on an annual basis (these certifications relate to general fitness and non-indictment or conviction for real estate and mortgage-related offenses)

Status or Exemption	Agency	Disqualification Trigger	Source
Primary Dealer	Federal Reserve Bank of New York	The New York Fed will not designate as a primary dealer any firm that is, or recently has been (within the last year) subject to litigation or regulatory action or investigation that the New York Fed determines material or otherwise relevant to the potential primary dealer relationship. In addition, with regard to existing primary dealers, the New York Fed may limit access to any or all of the primary dealer facilities or operations, and may suspend or terminate a primary dealer relationship if a primary dealer becomes the subject of, or involved with, regulatory or legal proceedings that, in the judgment of the New York Fed, unfavorably impacts the primary dealer relationship.	New York Fed Operating Policy for the Administration of Relationships with Primary Dealers

1. Institution-affiliated party means (12 U.S.C. §1786(r)):
(1) any committee member, director, officer, or employee of, or agent for, an insured credit union;
(2) any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of an insured credit union;
and (3) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in— (A) any violation of any law or regulation;
(B) any breach of fiduciary duty; or (C) any unsafe or unsound practice,
which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union.

2. For procedures applicable to suspensions and prohibitions where a felony is charged see 12 C.F.R. 747.311 (NCUA).

3. Entity-affiliated party means (12 U.S.C. §4502):
(A) any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;
(B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank;
(C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—
(i) the independent contractor knowingly or recklessly participates in— (I) any violation of any law or regulation; (II) any breach of fiduciary duty; or (III) any unsafe or unsound practice; and
(ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;
(D) any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and
(E) the Office of Finance.

4. Applies to loan originators required to be licensed by states (12 C.F.R. 1008.105) and to loan originators not required to be licensed by states (12 C.F.R. 1026.36).

5. Relevant sections of Title 18 and Title 31 are: 18 U.S.C. §152 (concealment of assets; false oaths and claims; bribery), §215 (receipt of commissions or gifts for procuring loans), §656 (theft, embezzlement, or misapplication by bank officer or employee), §657 (lending, credit and insurance institutions), §1005 (bank entries, reports and transactions), §1006 (federal credit institution entries, reports and transactions), §1007 (Federal Deposit Insurance Corporation transactions), §1014 (loan and credit applications generally; renewals and discounts; crop insurance), §1032 (concealment of assets from conservator, receiver, or liquidating agent), §1344 (bank fraud), §1517 (obstructing examination of financial institution), §1956 (laundering of monetary instruments), §1957 (engaging in monetary transactions in property derived from specified unlawful activity), §1960 (prohibition of unlicensed money transmitting businesses), §1341 (frauds and swindles), §1342 (fictitious name or address), §1343 (fraud by wire, radio, or television), and 31 U.S.C. §5324 (structuring transactions to evade reporting requirement prohibited).

6. Institution-affiliated party means (12 U.S.C. §1813):
(1) any director, officer, employee, or controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an insured depository institution;
(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 1817(j) of this title;
(3) any shareholder (other than a bank holding company or savings and loan holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and (4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in— (A) any violation of any law or regulation; (B) any breach of fiduciary duty; or (C) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

7. For rules and procedures applicable to proceedings relating to suspension, removal, and prohibition where a felony is charged see 12 CFR 263.70 (Federal Reserve System), 12 CFR 109.1 (OCC), 12 CFR 308.161 (FDIC).

APPENDIX F

How Dodd-Frank Helps Community Banks and Small Businesses

While reining in the risky activities of the largest Wall Street banks that caused the 2008 financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act also minimized the regulatory burdens on community financial institutions and took steps to support job creation at small businesses. Democrats and financial regulators have also taken actions during the 112th and 113th Congresses to support small banks, credit unions, and small businesses.

Strengthening Deposit Insurance

- Changed the formula for deposit insurance assessments so community banks will pay significantly less in premiums. The new formula better reflects the risk an institution poses to the Deposit Insurance Fund (DIF); using total consolidated assets minus tangible equity, rather than simply domestic deposits, will ensure that larger institutions engaged in riskier activities pay more. [Section 331]

- Increased the minimum level of the DIF to provide a better cushion in difficult financial times, but protects community banks against footing the bill for the increase. [Section 334]

- Made the $250,000 deposit insurance limit permanent, increasing public confidence and helping community banks continue to serve their communities. Provides equal treatment for the Credit Union Share Insurance Fund so that credit unions benefit in the same way. [Section 335]

- Provided comparable share insurance coverage for Credit Unions for Interest on Lawyer Trust and similar accounts. [HR 3468]

Reducing Systemic Risk and Improving Financial Market Stability

- Toughened supervision of large, interconnected financial companies. Large bank holding companies and systemically important nonbank financial companies will have heightened scrutiny over their financial activities; increased risk-based capital requirements; and enhanced leverage, liquidity, and other prudential standards. [Title I, Subtitle A; Title VI]

- Provided Regulators the tools to end "Too Big To Fail" Bailouts. Establishes a mechanism through which the FDIC and Fed can review firms' ability to be resolved under normal bankruptcy proceedings and enforce higher capital requirements or limit activities to ensure no firm is "too big to fail." [Title I, Section 165]

- Increased stability in the financial system by giving regulators the ability to identify and coordinate responses to systemic threats through the Financial Stability Oversight Council, as well as the necessary authority to resolve complex institutions without damaging the economy under the Orderly Liquidation Authority. [Title II]

- Increased capital requirements for large bank holding companies, but protects smaller bank holding companies' ability to count existing trust-preferred securities (TruPS) toward the requirements. TruPS issued before May 19, 2010 by a depository institution holding company with total consolidated assets of less than $15 billion as of December 31, 2009, or any mutual holding company will not be forced to take any capital deductions on these instruments. [Section 171]

- Regulators honored Dodd-Frank treatment of community bank issued TruPS in their follow up guidance to the issuance of the Volcker Rule, providing relief to community banks that hold TruPS backed CDOs. [http://www.gpo.gov/fdsys/pkg/FR-2014-01-31/pdf/2014-02019.pdf]

- Exempted banks under $250 billion in consolidated assets from Liquidity Coverage Ratio and Supplemental Leverage Ratio requirements, increasing stability at the largest firms while minimizing regulatory burden. [http://www.occ.gov/news-issuances/bulletins/2013/bulletin-2013-35.html]

- Regulators modified stress tests so that banks would not have to take into consideration new Basel III requirements until January 2016. [http://www.fdic.gov/news/news/press/2014/pr14046a.pdf]

- Funded the FSOC and OFR. Both the FSOC and OFR are funded by fees on only banks with more than $50 billion in assets and non-bank financial institutions designated by the Council.

<u>Common Sense Regulation of Securities and Derivatives</u>

- SEC and CFTC used discretion to exempt community banks providing swaps as an accommodation to customers from treatment as a swap dealer, and provided SEC and CFTC authority to exempt other smaller entities from regulation under derivatives rules. [Sections 721(a) and 761]

- Excluded commercial end users of derivatives from clearing and execution requirements under derivatives rules. [Sections 723(f) and 764]

- Excluded venture capital firms and hedge funds with assets of less than $150 million, which are important sources of capital for start-up business, from registration requirements for investment advisors. [Sections 407 and 408]

- Permanently exempted public companies with less than $75 million in market capitalization from auditor attestation requirements of section 404 of Sarbanes Oxley. [989G]

- Regulators provided for a temporary transition period to companies, in which they are allowed to use the category "DRC Conflict Undeterminable" to describe their products in their Conflict Minerals Report. The transition period for smaller entities is four years, while larger companies have two years.

- Extended compliance period for swap dealers with between $3-7 billion in notional swaps for registration with CFTC. [http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_1_Registration/index.htm]

- Exempted non-financial end-users from swap clearing requirements. [Section 723]

- Exempted non-financial end-users from swap margin requirements. [HR 634]

- Transferred oversight of small investment advisers (<$100 million in assets under management) from SEC to state securities regulators. [Section 410]

- Supported small business growth by providing regulatory relief from SEC registration by Merger and Acquisition Brokers. [H.R. 2274]

- Supported liquidity in small and medium public companies by directing the SECto study larger tick increments for trading in their stocks. [H.R. 3448]

<u>Other Items of Interest for Community Banks and Credit Unions</u>

- Preserved the federal thrift charter as an option for smaller institutions that want to remain housing-focused. [Section 324; Title III, Subtitle A]

- Exempted small banks and credit unions from provisions regulating interchange fees. [Section 1075]

- Made it more difficult for the largest banks to acquire other banks by including thrift deposits in the calculation of 10 percent nationwide deposit cap, limiting the merger ability of the largest institutions. [Section 622]

- Reduced capital standards at traditional community lenders by increasing the number of banks eligible for Small Bank Holding Company Policy Statement. [3329]

- Eliminated burdensome paper privacy disclosure requirements and replaced them with electronic notifications. [H.R. 749]

- Allowed Savings and Loan Holding Companies to take advantage of relief for community banks provided in the JOBS Act. [H.R. 801]