



FINANCIAL SERVICES COMMITTEE

DEMOCRATIC STAFF REPORT

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

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.