Repeal of Dodd-Frank? Is a Material Change Looming for non-bank FIs and the operation of the CFPB?

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Introduction

• The House has passed the Financial Choice Act which is meant, in part, to repeal many provisions of Dodd-Frank

• The Senate has yet to consider the Financial Choice Act or deliberate how it may choose to modify Dodd-Frank

• Speculation as to upcoming structural change to CFPB vis-à-vis Presidential oversight and change of Director

• Speculation as to CFPB Director resigning
Background of Dodd Frank

• 2008 Financial Crisis
  • Bank investments blamed in part for recession
  • Mortgage approvals with limited background checks
  • Intent to make banks more financially secure
  • Too big to fail institutions as the focus
  • No mention of LRCs as part of this crisis

• Regulatory approach
  • FI liquidity minimums raised, new investment restrictions and mortgage standards targeted
  • CFPB created to protect consumer
Dodd-Frank Major Elements

- 2300 pages with 390 new rules mandated
- 3900 pages of proposed and final rules
- Higher capital requirements hardest on smaller FIs
- Criteria for approving mortgages raised
- Compliance costs for FIs (banks and non-banks) rose $36 billion (over 6 yrs)
- Limits the kind of investments that FIs can make
- CFPB created to enforce these controls
- Public complaint site added
- No mention of LRCs as part of crisis or consumer fraud
Dodd-Frank and CFPB primary effects on LRCs

- Pre-receipt added to the transaction process
- Revised and lengthened disclosures required in Receipt
- Added 30 minute delay to transaction process
- Required additional details in Complaint Log
- Required new procedures and written responses to customers in case of “errors”
Provisions in the Financial Choice Act as approved by the House pertinent to industry

• Strips the CFPB of powers to write rules and supervise FIs (and renames it Consumer Law Enforcement Agency)
• Removes authority of regulators to designate large non-bank FIs as systemically important (which eliminates stricter rules on such non-bank FIs)
• Requires financial regulators to do a cost-benefit analysis of all proposed new rules (and prevents the issuance of such new rules that don’t pass such a test)
Congressional Quotes as to Financial Choice Act

• “The Choice Act reins in Dodd-Frank and delivers the regulatory relief small FIs need so desperately”  House Speaker Paul Ryan

• “It destroys nearly all of the important policies we put in place...to prevent another financial crisis and protect consumers” Rep. Maxine Waters

• “This bill is a necessary and important step in moving financial reform through the Congress...This Administration supports curbs on the CFPB and {implementation of} regulatory cost-benefit analysis”  Trump Administration

• “This bill is unlikely to advance in the Senate...but we are working on separate legislation addressing parts of Dodd-Frank” Senate Banking Comm Chairman Mike Crapo (R)

• “To think in a democracy that one unelected individual can functionally decide what credit cards go in our wallets, what mortgages we can have on our home, whether or not we can even have a checking account - I mean that’s just anathema to me and the founding principles of this republic.”  Jeb Hensarling Chrm House Fin Services Comm
Potential Changes and Effects if the Financial Choice Act becomes law

**Changes:**
- Imposes added burden and discipline on regulatory agencies by requiring them to conduct cost-benefit analysis of regulations.
- Subjects the CFPB (renamed CLEA) and its Director to more oversight, making them accountable for its budget and any new regulations to Congress (through the appropriation process).
- Curtails the discretion of the CFPB to regulate an industry (out of existence).
- Banks subject to less regulatory burden (allows broader scope of investments) and lower liquidity/capital reserve requirements.

**Effects:**
- CFPB now subject to Congressional politics due to budget controls and appointment/dismissal of Director simplified.
- Banks lend more (based on reduced liquidity and broader investments).
- Cost-benefit analysis process open to Congressional review and oversight.
Change the CFPB as follows:

- Reduce or eliminate authority of CFPB to examine financial firms on a continuing basis (clarifying purpose of the renamed Consumer Law Enforcement Agency)
- Eliminate the authority of the CFPB to set its own budget
- Single Director vs. multi-member Board left as an open question
- Financial Stability Oversight Council modified with reduction/elimination of “too big to fail” restrictions
- Rule making authority and cost benefit analysis requirements remain open
CFPB Rules Being Re-examined

- **Cost benefit analysis of Pre-Receipt requirement**
  - Extra cost and time for transaction
  - Consumer benefit in comparison to cost and time
- **Cost benefit analysis of lengthier disclosures**
  - Extra cost of ink and paper and time
  - Disclosures benefit to customers in comparison to cost and time
- **Cost benefit analysis of 30 minute right of cancellation**
  - Delay of transactions processing
  - SOPs of LRCs net effect in comparison to rule
- **Cost benefit analysis of Error Complaint Log**
  - Extra cost and time for Industry (written response)
  - Compare how this rule assists or detracts from the customer’s ability to obtain a refund
  - When would an LRC not refund an unpaid transaction?
The CFPB in its Spring 2017 Report noted that the Bureau received approximately 2200 complaints (of which only 1500 were relevant) from money transfer customers in total from April 1, 2016 through March 31, 2017 out of about more than 250,000,000+ remittance transactions.

This equates to the CFPB receiving complaints of less than 0.000009% of transactions processed.

This Report states specifically:
“The most common type of transfer complaint is about fraud or scams. Many of these consumers complained they sent money to a SELLER but did not receive the items they PURCHASED in return.” (emphasis added)

It bears noting that the common complaint of a money transfer customer refers to a purchase and not to a routine family transfer.
Virtual Food for Thought

- House Financial Choice Act coincides with the current Administration’s direction to reduce regulatory burden
- Senate is weighing the regulatory burden imposed by Dodd Frank on banks and FIs
- CFPB independent structure appears to be set for change
- CFPB is using industry comments itself to re-examine its regulations particularly pertaining to non-bank FIs
- Cost Benefit analysis of CFPB regulations will benefit consumers and industry