

**United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515**

M E M O R A N D U M

To: Members of the Committee on Financial Services

From: Financial Services Committee Majority Staff

Date: September 8, 2016

Subject: September 13, 2016, Full Committee Markup

The Committee on Financial Services will meet to mark up the following measure at 10:00 a.m. on Tuesday, September 13, 2016, and subsequent days if necessary, in room 2128 of the Rayburn House Office Building:

H.R. ___, The Financial CHOICE Act of 2016

The following summary provides background on the Financial CHOICE Act of 2016 as introduced by Chairman Hensarling.

PROVIDE FOR ELECTION TO BE A STRONGLY CAPITALIZED, WELL MANAGED FINANCIAL INSTITUTION

A banking organization¹ may elect to become eligible for certain relief from current regulatory requirements and will be deemed to be well-capitalized for purposes of all prompt corrective action laws if (1) the banking organization maintains a leverage ratio of at least 10 percent and (2) the insured depository institution has a composite CAMELS rating² of a 1 or a 2 at the time the banking organization makes the election.³ Such a banking organization will be exempt from the following laws, rules, and regulations:

¹ A “banking organization” will be defined to include (1) insured depository institutions (IDIs); (2) bank holding companies (BHCs) and savings and loan holding companies (SLHCs); (3) all companies that are treated as bank holding companies under the International Banking Act; and (4) U.S. intermediate holding companies established by a foreign banking organization.

² The CAMELS rating is a supervisory rating system to classify an IDI’s overall condition. The components of a bank’s condition that are assessed are (1) capital adequacy; (2) asset quality; (3) management capability; (4) earnings; (5) liquidity; and (6) sensitivity to market risk. An overall CAMELS score of 3, 4 or 5 can expose an IDI to any of the informal and formal enforcement actions available to the banking agencies. These regulatory tools include memorandums of understanding, consent orders, cease and desist orders, written agreements and prompt corrective action directives, imposed in an escalating manner if an institution’s CAMELS ratings do not improve or continue to deteriorate.

³ In the case of a banking organization that is a newly-chartered insured depository institution or a banking organization that becomes a banking organization because it controls a newly-chartered insured depository institution, such banking organization may be treated as a qualifying banking organization immediately upon becoming a banking organization, if (1) an election to be treated as a qualifying banking organization was included in the application filed with the appropriate Federal banking agency in connection with becoming a banking organization; and (2) as of the

- Those addressing capital requirements, standards, or regulation (including all capital standards developed by the Basel Committee);
- Those addressing liquidity requirements, standards or regulation (including all liquidity standards developed by the Basel Committee);
- Those permitting a banking agency⁴ to block a banking organization from making capital distributions to its shareholders;
- Those permitting a banking agency to consider risk “to the stability of the United States banking or financial system,” added to various federal banking laws by Section 604 of the Dodd-Frank Act, when reviewing an application to consummate a transaction or commence an activity if, after consummating the proposed transaction or commencing the proposed activity, the banking organization maintains a 10 percent leverage ratio;
- Those providing limitations on mergers, consolidations, or acquisitions of assets or control, to the extent the limitations relate to capital or liquidity standards or concentrations of deposits or assets, provided that after the transaction the surviving banking organization maintains a 10 percent leverage ratio; and
- To the extent not already provided for by the foregoing clauses, those contained in the final rule implementing Section 165 of Dodd-Frank and any other rule implementing standards of the type provided for in Section 165 of Dodd-Frank⁵, including, among other requirements:
 - The requirement to comply with the so-called “G-SIB surcharge”;
 - The requirement to maintain “total loss absorbing capacity”;
 - The requirement to comply with the “liquidity coverage ratio” and “net stable funding ratio”; and
 - The requirement to submit “living wills.”

Notwithstanding the foregoing, the banking agencies will be permitted to conduct stress tests (but not limit capital distributions) of a banking organization that has made a qualifying capital election. A qualifying banking organization with total consolidated assets of more than \$10,000,000,000 and less than \$50,000,000,000 will not be required to conduct annual stress tests required under Section 165(i)(2)(A) of the Dodd-Frank Act.

date the banking organization becomes a banking organization, the banking organization’s tangible equity divided by the banking organization’s leverage exposure, expressed as a percentage, is at least 10 percent.

⁴ A “banking agency” will be defined to include: (1) the Board of Governors of the Federal Reserve System (Board of Governors); (2) the Federal Deposit Insurance Corporation (FDIC); (3) the National Credit Union Administration (NCUA); and (4) the Office of the Comptroller of the Currency (OCC).

⁵ Banking agencies will be permitted to establish regulations implementing a standard of the type provided for in Section 165(f) of Dodd-Frank. Section 165(f) of Dodd-Frank permits the Board of Governors to prescribe, by regulation, periodic public disclosures in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities of certain banking organizations.

The leverage ratio referenced above will be defined as the ratio of (1) “tangible equity” to (2) “leverage exposure.”⁶

The numerator of the leverage ratio, or “tangible equity,” will be composed of (1) all “common equity tier 1 capital” (as defined in the OCC’s, FDIC’s, and the Board of Governors’ existing capital rules) *plus* (2) existing⁷ “additional tier 1 capital” (as defined in the banking agencies’ existing capital rules). Common equity tier 1 capital generally consists of total shareholders’ equity less goodwill, identifiable intangible assets, and deferred tax assets dependent on future taxable income. Additional tier 1 capital generally consists of noncumulative perpetual preferred stock. In addition, banking organizations that can treat certain trust preferred securities as tier 1 capital under the banking agencies’ existing capital rules will be permitted to include such securities in the definition of “tangible equity.” For credit unions, “tangible equity” will be defined as “net worth” as that term is defined in 12 C.F.R. 702.2.

The denominator of the leverage ratio, or “leverage exposure,” for banking organizations that are not “traditional banking organizations”⁸ or credit unions will be the same as the denominator in the final rules establishing a “supplementary leverage ratio” issued by the banking agencies on September 3, 2014. Generally, leverage exposure includes both (1) on-balance sheet assets and (2) asset-equivalents of certain off-balance sheet exposures. For traditional banking organizations, “leverage exposure” will be defined to mean total assets (minus any items deducted from common equity tier 1 capital) as calculated in accordance with generally accepted accounting principles and as reported on the traditional banking organization’s applicable regulatory filing with the banking organization’s appropriate Federal banking agency. For credit unions, “leverage exposure” will be defined as “total assets” as that term is defined in 12 C.F.R. 702.2.

If a banking organization that has made a qualifying capital election fails to maintain a 10 percent leverage ratio, then the banking organization will be (1) prohibited from making a capital distribution if its primary federal regulator objects to such distribution; (2) required to submit a capital restoration plan to its primary federal regulator (and any applicable State bank supervisor that regulates the banking organization) within three months after the date that such banking organization’s leverage ratio falls below 10 percent; and (3) required to restore its leverage ratio to at least 10 percent within one year after the date that its leverage ratio fell below 10 percent. If a banking organization fails to restore its leverage

⁶ For purposes of a banking organization’s qualifying capital election, its leverage ratio will be calculated based on the average of its leverage ratio as calculated for each of the four most recently completed calendar quarter end-dates prior to the filing date of the notice of election. A banking organization may make a qualifying capital election by filing with its appropriate banking agency (and any applicable State bank supervisor that regulates the banking organization) a notice of election that sets forth its leverage ratio (and that of its affiliated IDIs and BHC, as appropriate) as of each of the four most recently completed quarter end-dates and the average of its leverage ratio for such dates. A banking organization’s qualifying capital election shall become effective on the 30th day after receipt by the appropriate banking agency unless such banking agency notifies the banking organization (and any applicable State bank supervisor that regulates the banking organization) that its qualifying capital election is deficient because (1) it fails to demonstrate that the banking organization’s leverage ratio satisfies the 10 percent test or (2) in the case of an IDI, its composite CAMELS rating at the date the appropriate banking agency received its qualifying capital election was less than 1 or 2.

⁷ As of June 1, 2016.

⁸ A traditional banking organization will be defined to include a banking organization that (1) has zero trading assets and zero trading liabilities; (2) does not engage in swaps or security-based swaps, other than swaps or security-based swaps referencing interest rates or foreign exchange swaps; and (3) has a total notional exposure of swaps and security-based swaps of not more than \$8,000,000,000.

ratio to at least 10 percent within one year, then the banking organization will lose all regulatory relief. In addition, if a banking organization that has made a qualifying capital election fails to maintain a 6 percent leverage ratio, then the banking organization will immediately lose all regulatory relief. A banking organization that loses regulatory relief but subsequently maintains a 10 percent leverage ratio for 8 consecutive calendar quarters may make a subsequent qualifying capital election.

Each banking agency will be required to conduct public hearings and deliver a report to Congress explaining how it would design a requirement that large banking organizations issue contingent capital with a market-based conversion trigger.

To address deficiencies in the prompt corrective action regime exposed by the financial crisis, the Government Accountability Office (GAO) will be directed to conduct a study and report to Congress on the pros and cons of replacing the prompt corrective action regulatory capital ratios with an objective measure based upon a bank's level of non-performing assets.

END “TOO BIG TO FAIL” AND BANK BAILOUTS

- Repeal the authority of the Financial Stability Oversight Council (FSOC) to designate non-bank financial companies as systematically important financial institutions (SIFIs), and retroactively repeal its previous designations of non-bank financial companies.
- Repeal the FSOC’s authority to designate particular financial activities for heightened prudential standards, which includes the power to mandate that an activity be conducted in a certain way or be prohibited altogether.
- Implement reforms requiring greater transparency in the FSOC’s deliberations, broader participation by non-agency heads, and funding through the appropriations process.⁹
- Repeal Title II of Dodd-Frank and substitute a new chapter of the Bankruptcy Code designed to accommodate the failure of a large, complex financial institution (House-passed H.R. 2947, the Financial Institution Bankruptcy Act of 2016).
- Prohibit the use of the Exchange Stabilization Fund to bail out a financial firm or its creditors.
- Repeal the FDIC’s authority to (1) bail out creditors of “solvent” banks, and (2) bail out creditors other than insured depositors of “insolvent” banks that are in receivership.
- Repeal Title VIII of Dodd-Frank, which gives the FSOC authority to designate certain payments and clearing organizations as systemically important “financial market utilities” with access to the Federal Reserve discount window, and retroactively repeal all previous financial market utility designations.
- Repeal Section 117(b) of Dodd-Frank, the so-called “Hotel California” provision, which provides that any bank holding company SIFI that received TARP funds that “de-banks”

⁹ Under the Financial CHOICE Act, the FSOC would continue to serve as an inter-agency forum for: (1) monitoring market developments; (2) facilitating information-sharing and regulatory coordination; and (3) reporting to Congress on potential threats to financial stability.

will be treated automatically as a non-bank SIFI. Amend the Bank Holding Company Act to prohibit the Federal Reserve from waiving an application for a company to become a bank holding company in an emergency situation (except in the limited situation where a company is acquiring a failing bank).

EMPOWER AMERICANS TO ACHIEVE FINANCIAL INDEPENDENCE BY FUNDAMENTALLY REFORMING THE CONSUMER FINANCIAL PROTECTION BUREAU AND PROTECTING INVESTORS

- Re-establish CFPB as an independent agency outside of the Federal Reserve led by a bipartisan, five-member “Consumer Financial Opportunity Commission.”
- Establish funding for the Commission through congressional appropriations.
- Establish an independent, Senate-confirmed Inspector General for the Commission.
- Provide the Commission with a dual mission of protecting consumers by enforcing the law and promoting market competition, with assessment of proposed rules, performed by an Office of Economic Analysis.
- Give defendants in administrative actions the right to remove cases to federal court and clarify that Dodd-Frank’s three-year statute of limitations applies to such actions.
- Allow motions to set aside civil investigative demands (CIDs) to be filed in federal court, and create a reasonable timeline for CID recipients to meet and confer with investigators.
- Repeal requirement that reviewing courts defer to CFPB statutory interpretations where in conflict with statutory interpretations of other agencies.
- Create a small business advisory board.
- Create an advisory opinion process.
- Create segregated accounts for civil penalty assessments.
- Compensate employees on the General Services scale.
- Create Chinese wall between market monitoring and enforcement functions.
- Require verification of the accuracy of complaint data before posting complaints publicly on its database.
- Require enhanced transparency in research reports.
- Increase threshold for bank supervision from \$10 billion to \$50 billion.
- To better focus OCC and CFPB on their core missions and deter misuse of federal funds, put the General Services Administration (GSA) in charge of managing the federal building space CFPB currently occupies for its headquarters.

- Require the Commission to obtain permission before collecting personally identifiable information on consumers.
- Repeal the FSOC's authority to set aside CFPB rules, and require the Commission to consider the safety-and-soundness of financial institutions when promulgating new rules.
- Permit states and tribes to request an unconditional 5-year waiver from CFPB regulation governing short-term, small-dollar credit.
- Repeal CFPB's indirect auto lending guidance.
- Repeal authority to ban products or services it deems "abusive."
- Repeal authority to prohibit arbitration clauses in financial services contracts.
- Repeal Durbin amendment on debit interchange fees.
- Turn the Treasury Department's one-time Fannie Mae/Freddie Mac privatization study into annual report/testimony.

DEMAND ACCOUNTABILITY FROM FINANCIAL REGULATORS AND DEVOLVE POWER AWAY FROM WASHINGTON

- Repeal specific command-and-control powers conferred on federal regulators by Dodd-Frank:
 - Repeal the FSOC's authority to break up large financial institutions upon the recommendation of the Federal Reserve;
 - Abolish the Office of Financial Research (OFR); and
 - Repeal the "Franken Amendment," giving government a role in assigning credit ratings to private firms.
- Reauthorize the Securities and Exchange Commission (SEC) for a period of five years, with the following reforms:
 - Rationalize the agency's balkanized and unwieldy bureaucratic structure by:
 - Requiring the SEC to implement the remaining direct recommendations of the 2011 report from the Boston Consulting Group, and report to Congress if the SEC lacks the authority to fully implement such recommendations;
 - Aligning the SEC's Investor Advisory Committee with the creation of the SEC's Small Business Capital Formation Advisory Committee;
 - Reestablishing the Office of Credit Ratings and the Office of Municipal Securities in their pre-Dodd-Frank homes in the SEC's Division of Trading and Markets to reduce two direct reports of the SEC Chairman;
 - Repealing the mandate to disperse examiners;
 - Converting the Ombudsman, who currently reports to the Investor Advocate, to an independent office that reports to the five SEC Commissioners;

- Requiring the SEC and its Division of Economic and Risk Analysis to develop comprehensive internal risk control mechanisms to safeguard market data; and
- Prohibiting the SEC from issuing policy statements, guidance, interpretive rules, or other procedural rules that have the ultimate effect of law, without providing the public the notice and the opportunity to comment as required in the Administrative Procedure Act.
- Streamline SEC enforcement authorities to ensure that individuals and registered entities receive fair treatment during the course of SEC investigations by:
 - Instituting a formalized/expedited process for closing cases (vs. leaving them open in perpetuity);
 - Establishing an Enforcement Ombudsman to review and evaluate complaints about the Enforcement process and behavior of Enforcement staff;
 - Prohibiting the use of unproven legal theories (i.e., “collective scienter”) to overstep existing legal boundaries;
 - Allowing certain defendants to appear before the SEC staff and interested Commissioners or their staff after receiving a Wells Notice (before Commission votes to bring an action);
 - Requiring the SEC to approve and publish an updated Enforcement Manual to ensure transparency and uniform application;
 - Requiring the SEC to publish an annual plan for SEC enforcement and examination priorities with an opportunity for public comment; and
 - Ensuring that every Commissioner has a seat at the table to approve the renewal of omnibus orders of investigation that authorize the issuance of subpoenas;
- Establish a regular schedule of authorized funding for the SEC over the next five fiscal years:
 - FY 2017 \$1.555 billion;
 - FY 2018 \$1.605 billion;
 - FY 2019 \$1.655 billion;
 - FY 2020 \$1.705 billion; and
 - FY 2021 \$1.755 billion;
- At the end of each fiscal year, require the SEC to issue a detailed report to Congress stating the amount of unspent funds;
- Eliminate the SEC Reserve Fund;
- Amend the SEC's funding offsets to include pre-Dodd-Frank transaction and registration fee sources;
- Require the SEC – in connection with voting to approve a civil money penalty against an issuer – to make written findings, supported by an analysis of the Division of Economic and Risk Analysis and certified by the Chief Economist, and which shall be made part of the publicly available order of the Commission, that the alleged violation(s) resulted in direct economic benefit to the issuer and that the penalties imposed do not harm the issuer's shareholders;

- Amend federal securities laws to ensure that the SEC has greater discretion in applying certain disqualifications, so as to uncouple automatic disqualifications from enforcement actions and settlements;
 - Consistent with H.R. 3798, the Due Process Restoration Act, provide an immediate right of removal to federal court for respondents in SEC administrative proceedings;
 - Eliminate the authority of the SEC to obtain officer and director bars in administrative proceedings; and
 - Require GAO to submit a report to the Committee on Financial Services and the Committee on Banking, Housing and Urban Affairs on the SEC use of its authority to impose or obtain civil monetary penalties for violations of the securities laws beginning on June 1, 2010.
- Incorporate legislation drafted by the Committee on Agriculture to reform the Commodity Futures Trading Commission (CFTC), which received broad new powers over the derivatives markets in Dodd-Frank (House-passed H.R. 2289, the Commodity End-User Relief Act). Specific reforms include:
 - Make the CFTC's division directors answerable to the entire Commission, not just the Chairman's office;
 - Enhance the CFTC staff procedures governing the issuance of "no-action" letters to improve Commissioners' oversight of activities happening outside the official rulemaking process;
 - Require the CFTC to develop a strategic technology plan every five years focused on market surveillance and risk detection, which must also include a detailed accounting of how funds provided for technology will be used;
 - Require the CFTC and its Office of the Chief Economist to develop comprehensive internal risk control mechanisms to safeguard market data;
 - Ensure that every Commissioner has a seat at the table in approving the renewal of omnibus orders of investigation that authorize the issuance of subpoenas;
 - Prohibit the CFTC from issuing policy statements, guidance, interpretive rules, or other procedural rules that have the ultimate effect of law, without providing the public the notice and the opportunity to comment as required in the Administrative Procedure Act;
 - Create a judicial review process similar to that of the SEC for rulemakings to ensure the two regulators charged with overseeing the derivatives markets have similar procedures in place to allow market participants to challenge their rules; and
 - Require the CFTC to finally put in place a comprehensive plan for how to address the international nature of swaps trading and to determine how to share regulatory obligations over transactions that cross international boundaries.

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- Require the SEC and CFTC to harmonize, where applicable, rulemakings, guidance, and other interpretive orders required by Title VII of Dodd-Frank to simplify compliance burdens and improve oversight.
- Demand greater accountability and transparency from the Federal Reserve, both in its conduct of monetary policy and its prudential regulatory activity (House-passed H.R. 3189, the Fed Oversight Reform and Modernization (FORM) Act) by:
 - Providing for a more transparent and disciplined monetary policy by requiring the Federal Reserve's Federal Open Market Committee (FOMC) to describe how FOMC policy rate decisions compare to a well-known standard;
 - Establishing a more balanced rotation of the Federal Reserve's twelve District Bank Presidents who formally vote during each FOMC meeting (with every President continuing to contribute his or her views during each meeting);
 - Requiring the Board of Governors' Chair to testify before the House Financial Services Committee and the Senate Banking Committee on a quarterly basis (rather than semi-annually as provided under current law);
 - In instances when the Board of Governors does not have a Senate-confirmed Vice-Chair for Supervision, requiring the Board's Vice-Chair to testify on supervisory matters before Congress on a semi-annual basis, as contemplated by Dodd-Frank; and
 - Providing for an annual audit of the Board of Governors and the Federal Reserve banks by GAO.
- Streamline federal resources by combining the Treasury Department's Federal Insurance Office (FIO) and the FSOC Independent Member with insurance expertise to create one independent office that is both more accountable and more capable of effectively defending U.S. interests in international insurance negotiations.
- Create greater transparency for financial regulators by requiring them to release for notice and comment a public disclosure of any positions they plan to take as part of international regulatory negotiations, and provide a public report to Congress on the negotiations at their conclusion.
- Impose an across-the-board requirement on all of the financial regulators that they conduct detailed cost-benefit analysis, with limited exemptions for Self-Regulatory Organizations in certain circumstances, when promulgating regulations and perform a retrospective review of those regulations against a pre-defined set of metrics to evaluate success or failure every five years.
- Increase oversight of all of the financial regulatory agencies to by subjecting them to the annual appropriations process. For the Federal Reserve, subject prudential regulatory and financial supervision activities to appropriations, while leaving monetary policy off-budget.
- Harmonize the bureaucratic structures of federal financial regulatory agencies so they all reflect multiple, bipartisan viewpoints with independent members by:

- Converting regulatory agencies currently headed by single directors – CFPB, the OCC, and the Federal Housing Finance Agency (FHFA) – into bipartisan, five-member commissions;
- Increasing the NCUA’s board membership from three to five; and
- Modifying the composition of the FDIC’s five-member board by replacing the CFPB Director and the Comptroller of the Currency with two independent members.
- Require that all major financial regulations (those likely to result in (1) an annual economic impact of more than \$100 million, (2) a major increase in prices for consumers or costs for businesses, or (3) significant adverse effects on competition, employment, investment, productivity or innovation, or international competitiveness) receive affirmative congressional approval before becoming effective (House-passed H.R. 427, Regulations from the Executive in Need of Scrutiny (REINS) Act).
- Repeal the *Chevron* doctrine requiring judicial deference to agency interpretations by altering the standard of judicial review in the Administrative Procedure Act as it relates to financial regulatory agencies.
- Overhaul the current regime for stress testing banks, by implementing the following reforms that require the banking agencies to:
 - Issue regulations, after providing for notice and comment, that provide for at least three different sets of conditions – baseline, adverse, and severely adverse – under which the evaluation required by Section 165 of Dodd-Frank or under the banking agencies’ rules implementing stress testing requirements will be conducted and the methodologies employed, including models to estimate losses on certain assets;
 - Provide copies of such regulations to GAO and the Panel of Economic Advisors of the Congressional Budget Office before publishing such regulation; and
 - Publish a summary of all stress test results.
- Overhaul the current “living will” regime outlined in Section 165 of Dodd-Frank, by requiring that banking agencies:
 - Can only request a “living will” once every two years from a banking organization;
 - Must provide feedback on “living wills” to banking organizations within six months of their submission; and
 - Must publicly disclose their assessment frameworks.
- Create a credit union advisory council at the NCUA.

DEMAND ACCOUNTABILITY FROM WALL STREET THROUGH ENHANCED PENALTIES FOR FRAUD AND DECEPTION

- Impose enhanced penalties for financial fraud and self-dealing, and promote greater transparency and accountability in the civil enforcement process:
 - Double the statutory cap for the most serious securities law violations to \$300,000 per violation for individuals and \$1.45 million for companies;
 - Allow the SEC to triple the monetary fines sought in both administrative and civil actions in certain cases where the penalties are tied to the defendant's illegal profits. (Currently, securities laws allow the SEC to calculate penalties equal to a defendant's "gross amount of pecuniary gain.");
 - Give the SEC new authority to impose sanctions equal to investor losses in cases involving "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" where the loss, risk of loss, or pecuniary gain is significant;
 - Within five years of a prior criminal conviction or civil judgment or order regarding securities fraud, subject repeat offenders to triple damages by creating a new "fourth tier" of penalties that the SEC may impose;
 - Increase the civil penalties that the Public Company Accounting Oversight Board (PCAOB) may impose on a registered public accounting firm from \$2 million to \$4,000,000, and from \$100,000 to \$200,000 for an individual associated with such a firm; and from \$15,000,000 to \$20,000,000 and \$750,000 to \$1,000,000 for firms and individuals, respectively, engaged in intentional or knowing violations;
 - Increase the maximum criminal fines for individuals specified in Section 32(a) of the Securities Exchange Act of 1934, for such violations as insider trading, from \$5 million to \$7 million;
 - Increase statutory criminal penalties for prohibited foreign trade practices that constitute willful violations of the Foreign Corrupt Practices Act of 1977 from \$2 million \$4 million for issuers and from \$100,000 to \$250,000 for individuals;
 - Increase statutory civil penalties for violations of the Foreign Corrupt Practices Act, from \$10,000 to \$50,000 for issuers and individuals;
 - Double the civil penalty that the SEC may impose on any person who, at the time of an insider trading violation, directly or indirectly controlled the person who committed such violation, from \$1 million to \$2 million;
 - Provide that any monetary sanctions required to be paid pursuant to an SEC enforcement action, including any interest, may be added to and become part of a distribution fund for injured investors;
 - Provide the SEC with the ability to maintain the confidentiality of records obtained from foreign law enforcement and foreign securities authorities;

- Amend Section 105 of the Sarbanes-Oxley Act to ensure that the PCAOB is fully responsive and accountable to Congress;
- Amend Section 109(c) of the Sarbanes-Oxley Act to require that all fines collected by the PCAOB be remitted to Treasury for deficit reduction;
- Require that all fines that would otherwise be remitted to the Municipal Securities Rulemaking Board (MSRB) go to Treasury for deficit reduction; and
- Increase the maximum civil and criminal penalty amounts that can be assessed under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 for violations involving financial institutions from \$1 million to \$1,500,000.

UNLEASH OPPORTUNITIES FOR SMALL BUSINESSES, INNOVATORS AND JOB CREATORS BY FACILITATING CAPITAL FORMATION

- Repeal the Volcker Rule;
- Repeal Dodd-Frank's registration and examination requirements on advisers to private equity funds, align all record-keeping requirements with those for advisers to venture capital funds, and maintain existing exemption for advisers to venture capital funds and for all other advisers;
- Replace Dodd-Frank Section 412 by revising the definition of an "accredited investor" consistent with the House-passed H.R. 2187, the Fair Investment Opportunities for Professional Experts Act;
- Repeal specialized public company disclosures for conflict minerals, extractive industries and mine safety;
- Exempt all non-residential mortgage asset classes from Dodd-Frank's risk retention requirements for asset-backed securities;
- Expand the Sarbanes-Oxley Act Section 404(b) exemption for non-accelerated filers to include issuers with up to \$250 million in market capitalization (up from the current threshold of \$75 million) or \$1 billion in assets for banks;
- Repeal the burdensome mandate that publicly traded companies disclose the ratio of median vs. CEO pay;
- Repeal the SEC's authority to both prospectively and retroactively eliminate or restrict securities arbitration;
- Repeal the SEC's authority to further restrict the ability to engage in legitimate securities short selling;
- Repeal or amend provisions that increase credit rating agency civil liability and serve as barriers to entry for new market participants;

- Provide the SEC with the authority to perform risk-based examinations of credit rating agencies;
- Amend Section 15E of the Securities Exchange Act, as amended by Dodd-Frank, to provide the SEC with clear exemptive authority if the SEC determines that any rules relating to credit rating agencies creates a barrier to entry into the credit rating agency market or impedes competition among credit rating agencies;
- Amend the mandate on public companies to provide shareholders with a vote on executive compensation to occur only when the company has made a material change to the executive compensation package;
- In the event of certain financial restatements, hold bad actors responsible by limiting “clawbacks” of compensation to the current or former executive officers of a public company who had control or authority over the company’s financial reporting;
- To reduce the burdens on emerging growth and smaller reporting companies, repeal the reporting requirement for public companies regarding employee or board member hedging of equity securities granted as compensation;
- Repeal federal financial regulators’ ability to prohibit types and features of incentive-based compensation arrangements;
- Repeal the SEC’s authority to issue rules on proxy access;
- Repeal the SEC’s authority to issue rules to require disclosures regarding Chairman and CEO structures;
- Clarify that municipal issuers do not have to retain a “municipal advisor” prior to the issuance of securities under the Securities Exchange Act of 1934;
- Repeal the requirement imposed on national securities associations to establish an accounting support fee for their members (i.e. broker-dealers) to fund the Governmental Accounting Standards Board; and
- Repeal CFPB’s ability to give grants to the North American Securities Administrators Association (the state securities regulator trade association) to create programs regarding false designations. Repealing this provision also eliminates a lapsed authorization of appropriations of \$40 million for FY 2011-2015 (\$8 million each year).
- Incorporate the following Committee- or House-passed¹⁰ capital formation bills:
 - ***H.R. 686, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act (Rep. Huizenga)***
Amends Section 15(b) of the Securities Exchange Act of 1934 to create a simplified SEC registration system for firms known as M&A brokers that perform services in connection with the transfer of ownership of smaller privately held companies.

¹⁰ Italicized bills have already passed the House; underlined bills have passed Committee, but not the House.

- ***H.R. 1090, the Retail Investor Protection Act (Rep. Wagner)***
Repeals the Department of Labor's (DOL's) fiduciary rule and restricts DOL from promulgating similar regulations until after the SEC exercises its authority under Section 913 of Dodd-Frank. Requires that before the SEC issues a final rule to implement Section 913 of Dodd-Frank, it must first engage in a complete analysis of the rule's impacts the availability of retirement product and access to retirement advice for retail investors.
- ***H.R. 1675, the Encouraging Employee Ownership Act (Rep. Hultgren)***
Amends SEC Rule 701, originally adopted in 1988 under Section 3(b) of the Securities Act of 1933 (Securities Act) and last updated in 1999. The legislation requires the SEC to increase that threshold from \$5 million to \$10 million and index the amount for inflation every five years.
- ***H.R. 1965, the Small Company Disclosure Simplification Act (Rep. Hurt)***
Provides a voluntary exemption for all Emerging Growth Companies and other issuers with annual gross revenues under \$250 million from the SEC requirements to file financial statements in an interactive data format known as eXtensible Business Reporting Language (XBRL).
- **H.R. 1975, the Securities and Exchange Commission Overpayment Credit Act (Rep. Meeks)**
Authorizes the SEC to refund overpayments of fees made by national securities exchanges and other self-regulatory organizations under Section 31 of the Exchange Act. The SEC has refused to refund these overpayments because it believes it lacks the authority to do so under current law.
- ***H.R. 2187, the Fair Investment Opportunities for Professional Experts Act (Rep. Schweikert)***
Amends the definition of accredited investor under the Securities Act to expand the pool of eligible investors in private securities offerings.
- ***H.R. 2357 the Accelerating Access to Capital Act (Rep. Wagner)***
Amends the SEC's Form S-3 registration statement (a simplified registration form for companies that have met prior reporting requirements) for smaller reporting companies that have a class of common equity securities listed and registered on a national securities exchange.
- ***H.R. 3784, the SEC Small Business Advocate Act (Rep. Carney)***
Establishes the Office for Small Business Capital Formation (OSBCF) and the Small Business Capital Formation Advisory Committee within the SEC. The OSBCF is led by the Advocate for Small Business Capital Formation, who is appointed by and reports to the SEC.
- **H.R. 3798, the Due Process Restoration Act (Rep. Garrett)**
Responds to the increased use of administrative proceedings by the SEC and ensures fairness and protects the due process rights of defendants in SEC enforcement matters.
- **H.R. 3868, the Small Business Credit Availability Act (Rep. Mulvaney)**

Amends the Investment Company Act of 1940 to modernize the regulatory regime for Business Development Companies, which are investment vehicles designed to facilitate capital formation for small and middle-market companies.

- ***H.R. 4139, the Fostering Innovation Act (Rep. Sinema)***
Extends the time period in which Emerging Growth Companies must comply with Section 404(b) of the Sarbanes-Oxley Act (SOX). Section 404 requires the management of a company to assess the effectiveness of the company's internal controls for financial reporting and mandates that a public company's auditor attest to, and report on, the management's assessment. The significant compliance costs associated with Section 404(b) disproportionately harm small companies, diverting resources from growth to regulatory costs.
- ***H.R. 4168, the Small Business Capital Formation Enhancement Act (Rep. Poliquin)***
Requires the SEC to respond to any findings and recommendations, within its jurisdiction, put forth by the SEC's annual Government-Business Forum on Small Business Capital Formation.
- ***H.R. 4498, the Helping Angels Lead Our Startups (HALOS) Act (Reps. Chabot-Hurt-Sinema)***
Defines an angel investor for purposes of federal securities laws and clarifies the definition of general solicitation contained in the Securities Act to ensure that startups have the opportunity to discuss their products and business plans at certain events, known as "demo days" where there is no specific investment offering.
- ***H.R. 4538, the Senior\$afe Act (Rep. Sinema)***
Protects banks, credit unions, investment advisers, and broker-dealers and their employees from civil liability, as long as employees receive training in how to spot and report predatory activity against senior citizens and reports of such activity are made in good faith and with reasonable care to appropriate regulatory or law enforcement authorities.
- ***H.R. 4638, the Main Street Growth Act (Rep. Garrett)***
Amends the Securities Exchange Act of 1934 to create SEC-registered venture exchanges, which are a new class of stock exchanges that can provide enhanced liquidity and capital access to smaller issuers.
- ***H.R. 4850, the Micro Offering Safe Harbor Act (Rep. Emmer)***
Amends the Securities Act to exempt certain small or "micro-offerings" from the Act's registration requirements and allow small businesses to operate with confidence that they are not in violation of the law if a non-public securities offering meets the following three requirements: (1) a purchaser has a pre-existing relationship with an officer, director or shareholder with 10 percent or more of the shares of the issuer; (2) the issuer reasonably believes that there are no more than 35 purchasers of securities from the issuer that are sold during the 12-month period preceding the transaction; and (3) the aggregate amount of all securities sold by the issuer does not exceed \$500,000 over a 12-month period.
- ***H.R. 4852, the Private Placement Improvement Act (Rep. Garrett)***

Prohibits the SEC from issuing regulations that would frustrate Title II of the JOBS Act, which lifted the ban on general solicitation or advertising for Reg D Rule 506 private offerings.

- ***H.R. 4854, the Supporting America's Innovators Act (Rep. McHenry)***
Amends the Investment Company Act of 1940 to expand the exemption from SEC registration from 100 to 250 investors for a qualifying venture capital fund, defined as any venture capital fund that has up to \$10 million in invested capital, adjusted for inflation.
- ***H.R. 4855, the Fix Crowdfunding Act (Rep. McHenry)***
Amends Title III of the JOBS Act to exempt crowdfunding securities from the requirements of Section 12(g) of Securities Exchange Act of 1934 and permits single purpose funds to participate in the sale and offer of crowdfunding securities.
- ***H.R. 5019, the Fair Access to Investment Research Act (Rep. Hill)***
Directs the SEC to provide a safe harbor for research reports that cover Exchange Traded Funds (ETFs) so that these reports are not considered “offers” under Section 5 of the Securities Act.
- **H.R.5311, the Corporate Governance Reform and Transparency Act of 2016 (Rep. Duffy)**
Defines a proxy advisory firm for purposes of federal securities laws and requires such firms to register with the SEC.
- ***H.R. 5421, the National Securities Exchange Regulatory Parity Act of 2016, (Rep. Royce)***
Amends Section 18 of the Securities Act of 1933 to provide a “blue sky” exemption for any security listed on a “national securities exchange” that is registered with and whose listing standards are approved by the SEC.

REGULATORY RELIEF FOR MAIN STREET AND COMMUNITY FINANCIAL INSTITUTIONS

- Incorporate the following Committee- or House-passed¹¹ regulatory relief bills:
 - ***H.R. 650, the Preserving Access to Manufactured Housing Act (Rep. Fincher)***
Clarifies that a retailer of a manufactured home is not a “mortgage originator” for purposes of the Truth in Lending Act unless such person receives compensation, and amends the definition of a “high cost” mortgage under the Home Ownership and Equity Protection Act (HOEPA) by modifying the interest rate and points and fees cap in order to preserve access to mortgage credit for low and moderate-income consumers who are seeking to buy a manufactured home.
 - ***H.R. 685, the Mortgage Choice Act (Rep. Huizenga)***
Changes the way points and fees are calculated for purposes of complying with the Ability-to-Repay/Qualified Mortgage rule by excluding fees paid for affiliated title charges and escrow charges for insurance and taxes.

¹¹ Italicized bills have already passed the House; underlined bills have passed Committee, but not the House.

- ***H.R. 766, the Financial Institution Customer Protection Act (Rep. Luetkemeyer)***
Ends “Operation Choke Point” by placing conditions on agency customer account termination and requests and subpoenas.
- ***H.R. 1210, the Portfolio Lending and Mortgage Access Act (Rep. Barr)***
Create a legal safe harbor from ability-to-repay requirements for mortgage loans that are kept on a depository institution’s balance sheet.
- ***H.R. 1367, application of Expedited Funds Availability Act to Northern Marianas Islands and American Samoa (Rep. Radewagen)***
Clarifies that the time periods within which banks must clear checks and make funds available to their customers that currently apply to Hawaii, Alaska, Puerto Rico and the Virgin Islands shall also apply to banks located in American Samoa and the Northern Mariana Islands.
- ***H.R. 3791, small bank holding company policy statement (Rep. Love)***
Requires the Federal Reserve Board to apply its Small Bank Holding Company Policy Statement to bank and savings and loan holding companies with pro forma consolidated assets of less than \$5 billion, permitting such smaller institutions to temporarily use debt to finance the acquisition of banks or other companies.
- **H.R. 1529, the Community Financial Institution Mortgage Relief Act (Rep. Sherman)**
Creates a legal safe harbor from escrow requirements for community financial institutions holding loans in portfolio for 3 years, and exempts small firms that annually service 20,000 or fewer mortgage loans from certain escrow requirements, in order to reduce regulatory burdens while appropriately balancing consumer protections.
- **H.R. 1941, the Financial Institutions Examination Fairness and Reform Act (Rep. Westmoreland)**
Reforms the examination process for financial institutions by requiring regulatory agencies to issue timely final examination reports, and gives financial institutions the right to obtain an independent review of an agency’s material supervisory determination.
- **H.R. 2287, the National Credit Union Administration Budget Transparency Act (Rep. Mulvaney)**
Requires the NCUA to hold annual open hearings regarding its budget.
- **H.R. 2896, the Taking Account of Institutions with Low Operational Risk Act (Rep. Tipton)**
Requires federal financial regulatory agencies to appropriately tailor regulations to fit an institution’s business model and risk profile.
- **H.R. 1660, the Federal Savings Association Charter Flexibility Act (Rep. Rothfus)**
Allows covered federal savings associations to operate subject to supervision by the OCC with the rights and duties of a national bank.

- **H.R. 2121, the SAFE Transitional Licensing Act (Rep. Stivers)**
Grants registered loan originators temporary authority to originate loans if they transition to a non-bank mortgage company or move to another state while their application for a state-issued mortgage loan originator license is pending.
- **H.R. 1766, the Right to Lend Act (Rep. Pittenger)**
Repeals burdensome small business loan data collection requirements under Section 1071 of Dodd-Frank.
- **H.R. 4500, the Community Bank Reporting Relief Act (Rep. Hultgren)**
Permits highly rated and well capitalized banks to file a short form call report in the first and third quarters of each year.
- **H.R. 4993, the Homeowner Information Privacy Protection Act (Rep. Hultgren)**
Requires GAO to study whether the additional mortgage data required to be collected and reported by CFPB rule exposes consumers to identity theft or the loss of sensitive personal financial information.
- **H.R. 4997, the Home Mortgage Disclosure Adjustment Act (Rep. Emmer)**
Exempts small depository institutions from the Home Mortgage Disclosure Act's (HMDA's) reporting and recordkeeping requirements.
- **H.R. 5419, the Credit Union Examination Reform Act of 2016 (Rep. Guinta)**
Makes certain well-capitalized and well-managed credit unions eligible for an extended examination cycle of 18 months or longer.
- **H.R. 5869, a bill to amend the Federal Credit Union Act to require the National Credit Union Administration to provide a rationale for any amounts the Board proposes to use from the National Credit Union Share Insurance Fund (Rep. Mulvaney)**
Requires the NCUA Board of Directors to accompany each annual budget with a public report detailing the NCUA's "overhead transfer rate" and providing a rationale for any proposed use of funds.