THE FINANCIAL SERVICES COMMITTEE
Chairman Spencer Bachus
Vice-Chairman Jeb Hensarling

ONE YEAR LATER:
THE CONSEQUENCES OF THE DODD-FRANK ACT

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Introduction

On July 21, 2010, President Obama signed the "Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010" into law (Public Law 111-203). Drafted in response to the financial crisis of 2008, in which government bailed out large Wall Street firms at taxpayer expense, the Dodd-Frank Act is a sprawling piece of legislation, numbering over 2,300 pages in length and requiring federal regulators to embark on more than 400 rule-makings. The Dodd-Frank Act represents the most ambitious change in the regulation of financial institutions since the Great Depression, and its implementation will affect not only every financial institution that does business in the United States, but many non-financial institutions as well.

The drafters of the Dodd-Frank Act held out the promise that by increasing government control over the economy to an unprecedented degree, the Act would "promote the financial stability of the United States by improving accountability and transparency in the financial system," "end 'too big to fail,'" "protect the American taxpayer by ending bailouts," and "protect consumers from abusive financial services practices." They pledged that the new law would "increase investment and entrepreneurship," and "foster competitiveness, confidence in our financial sector, and robust growth in our economy." Finally, the proponents of Dodd-Frank vowed that their new law would "bring greater economic security to families and businesses across our country."

During congressional debate on financial regulatory reform, Republicans warned that the Democrats' proposals reflected a deeply flawed "command-and-control" approach that would impede economic recovery by limiting access to

REPUBLICAN PREDICTIONS ON EFFECTS OF DODD-FRANK

"Unilateral adoption of the Volcker rule by the U.S. will only undermine our competitive advantage, in my opinion, and therefore is going to undermine the profitability of financial institutions. If it does that, it raises the cost of capital to American businesses, consumers, and home buyers, and it will slow economic activity and job creation."[1]

- Spencer Bachus

"Why would we enact any legislation that would harm the ability of small businesses to access credit in the midst of a credit contraction? How many more jobs have to be lost? Under this bill it is simply inevitable that the big will get bigger, the small will get smaller, the taxpayer will get poorer, and the economy will become more political."[2]

- Jeb Hensarling

[1] House–Senate Joint Conference On H.R. 4173, June 23, 2010, Page 28-30

[2] House–Senate Joint Conference On H.R. 4173, June 10, 2010, Page 36-37

credit for consumers and small businesses and hindering job creation. Republicans argued that rather than ending "too big to fail," the Democrats had succeeded in institutionalizing it, through a process whereby large financial institutions are designated as "systemically important" and made eligible for a "resolution" process that allows government bureaucrats – rather than impartial bankruptcy judges – to determine the treatment of a failed firm's creditors, and to access taxpayer funds to satisfy those creditors' claims. And Republicans questioned the wisdom of commissioning more than 400 new Federal regulations and creating massive new bureaucracies at a time when the economy remains fragile and the American people are demanding a less intrusive federal presence in their daily lives.

The Dodd-Frank Act was signed into law by President Obama on July 21, 2010.

Dodd-Frank saddles American business with hundreds of new job-crushing regulations.

Spencer Bachus & fellow Republicans warned against the devastating effects of Dodd-Frank.

The one-year anniversary of Dodd-Frank's enactment seems an appropriate occasion for evaluating the competing claims of the law's proponents and opponents. The economy's continued sluggishness – characterized by elevated unemployment levels and constrained credit conditions – calls into serious question the claims made by Democrats that Dodd-Frank would increase entrepreneurial activity and investment, trigger robust economic growth, and increase average Americans' economic security. Indeed, the opposite appears to be the case. A pervasive climate of uncertainty about government policies is leading to fewer opportunities and less economic security for American families. Faced with a tsunami of new regulatory mandates from Washington, lenders are reluctant to expand their balance sheets and job creators are deferring plans to purchase inventory and add new employees.

REPUBLICAN PREDICTIONS ON EFFECTS OF DODD-FRANK

"[Under Dodd-Frank], we will continue to foster turf wars among Washington bureaucrats instead of establishing a 21st century, sensible, coherent system. We can't continue with a structure that completely failed the American people." [3]

- Judy Biggert

"Requiring greater margin and capital requirements on companies that never got in trouble leads to fewer jobs. It's going to lead to greater volatility in food and energy prices, and a loss of capital investments." [4]

- Spencer Bachus

[3] House–Senate Joint Conference On H.R. 4173, June 15, 2010, Page 24

[4] Congressional Record, December 10, 2009, Page H14716

Housing market fundamentals have shown little improvement in the past year, and some analysts are predicting a "double dip" that could send home values plummeting further. And the jury remains very much "out" on the question of whether Dodd-Frank has created a more stable banking system or succeeded in eliminating the public perception that the largest and most complex financial institutions will receive taxpayer support when the next financial crisis comes, while those deemed "too small to save" are left to fend for themselves.

Not surprisingly, an increasing number of Americans are asking whether the substantial costs of the regulatory dragnet cast over the U.S. economy by the Dodd-Frank Act outweigh what appear at this juncture to be its fairly negligible benefits. The Federal Reserve Board Chairman's recent acknowledgement that the government is not capable of calculating the effect that the cumulative regulatory burdens imposed over the past year are having on the strength of the U.S. economy only fuels these concerns. With so much remaining uncertain – and with so much at stake for America's small businesses and workers – the one-year anniversary of Dodd-Frank provides an opportunity for a fundamental reexamination of government's approach to economic policy and regulation. The following analysis prepared by the staff of the Financial Services Committee attempts to frame some of the key issues that should inform that much-needed debate.

REPUBLICAN PREDICTIONS ON EFFECTS OF DODD-FRANK

"Mr. Chairman, I would like to respond in two ways. I agree with you about uncertainty. I think that is an enemy of the markets. I will say that passing this legislation is not going to end that uncertainty because we are directing the regulators to come up with over 400 rules and putting tremendous discretion in the hands of...in the [case] of the CFPB, one person. So I think that uncertainty is going to linger for probably some period of time."[5]

- Spencer Bachus

"All of these points in the underlying bill will lead to one thing: a loss of credit and therefore a loss of jobs in America today and in the future as well. The American people have spoken loud and strong: Do not pass any legislation that is going to create hardships for the creation of jobs in this country, and this underlying legislation with its language on derivatives would do just that."[6]

- Scott Garrett

[5] House–Senate Joint Conference On H.R. 4173, June 23, 2010, Page 2-3

[6] Congressional Record, December 10, 2009, Page H14706

Judging Obama Administration's Implementation of Dodd-Frank According to the Geithner "Principles"

In an August 2, 2010 speech, Treasury Secretary Timothy Geithner outlined six "principles" that would guide the Obama Administration's implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203), and by which it should be held accountable by the American people. As the country marks the one-year anniversary of Dodd-Frank, it is both fair and appropriate to ask whether the Administration has lived up to the promises made by Secretary Geithner. The following analysis suggests that in most respects, the Administration has fallen far short of achieving the Secretary's objectives.

1. **Secretary Geithner: "First, we have an obligation of speed. We will move as quickly as possible to bring clarity to the new rules of finance. The rule writing process traditionally has moved at a frustrating, glacial pace. We must change that."**

While Secretary Geithner's commitment to meeting statutory deadlines is commendable, growing evidence suggests that the Administration's "obligation of speed" may be inconsistent with an obligation to promulgate regulations that are rational, workable, and that result from a process that is transparent and inclusive. In a December 15, 2010 letter to congressional leaders, the Committee on Capital Market Regulation warned that "the current rulemaking process is sacrificing quality and fairness for apparent speed," and that "[r]ather than using a prudent deliberative process, sweeping reforms are being quickly pushed forward without providing adequate time for meaningful fact-finding or dialogue."

This warning has proven particularly prescient with regard to the implementation of Dodd-Frank's provisions governing the trading and clearing of derivatives. Forced to operate under Dodd-Frank's extremely tight statutory deadlines — and faced with the daunting prospect of having to promulgate scores of new rules on the treatment of exceedingly complex instruments and markets — the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) have not had sufficient time to perform thorough cost-benefit analyses or to carefully consider the interconnected sequencing and implementation of these rules.[7] Key terms such as "swap," "major swap participant," and "eligible contract participant" remain undefined, making it impossible for interested stakeholders to understand the consequences of proposed rules on their business lines and provide meaningful comment on those rules.

[7] Former Democratic SEC Commissioner Annette Nazareth has stated that the timetables imposed by the reform law are "wildly aggressive" and that – in her words – "these deadlines could actually be systemic-risk raising."

The difficulties regulators are encountering in meeting statutory deadlines imposed by Dodd-Frank extend beyond derivatives to virtually every aspect of the law's implementation. According to an analysis prepared by the Davis Polk law firm, as of May 2011, 62 percent of the 387 sets of rules required by Dodd-Frank have not been proposed. Of the 26 Dodd-Frank-related deadlines that fell in April, not a single one was met. Only 21 rules have been completed to date.

The challenges faced by the agencies are exacerbated by the Administration's failure to fill more than a dozen high-level positions at financial regulatory bodies and at the Treasury Department that are currently vacant, held by acting officials, or occupied by officials whose terms will end this year. Among the posts the President has yet to fill are several created by the Dodd-Frank Act almost a year ago, including a Director of the Consumer Financial Protection Bureau, a Director of the Office of Financial Research, and a Vice Chairman for Supervision at the Federal Reserve Board. In addition, the Office of the Comptroller of the Currency (OCC) has been operating with an acting head since last August. On June 27th, Treasury announced the departure of Under Secretary for Domestic Finance Jeffrey Goldstein, the government official responsible for directing the work of the Financial Stability Oversight Council (FSOC), an inter-agency coordinating body established by Dodd-Frank to monitor and police systemic risk.[8]

> **2. Secretary Geithner: "Second, we will provide full transparency and disclosure. The regulatory agencies will consult broadly as they write new rules. Draft rules will be published. The public will have a chance to comment. And those comments will be available for everyone to see."**

Given the halting progress of the rule-writing process described above, there is arguably not enough of a track record on which to grade the Administration on its transparency in rule-making. But in at least one critical aspect of Dodd-Frank implementation — the designation of certain non-bank financial institutions for heightened prudential supervision by the Federal Reserve — the Administration has failed to meet the Secretary's objective.

The FSOC's Notice of Proposed Rulemaking on these designations, issued on January 26, 2011, was little more than a regurgitation of the relevant statutory language contained in Dodd-Frank. This lack of specificity in the published rule stood in sharp contrast to the analysis contained in an internal FSOC staff memo, the existence of which was first reported by Bloomberg News, which set forth detailed metrics and criteria for designating a firm "systemically significant." Treasury has rejected congressional requests for production of this staff analysis. Given Secretary Geithner's avowed commitment to transparency, the public is entitled to expect that the final rule for designating firms for heightened supervision will be a logical outgrowth of the

[8] In testimony before the Financial Institutions and Consumer Credit Subcommittee on May 26th, FDIC Chairman Sheila Bair expressed "profound concerns" about the multiple vacancies at financial regulatory agencies, and stated that she is "frustrated that there is not greater urgency and prioritization of this issue on the Administration's part as well as the Senate's part."

proposals published for notice and comment. But the vagueness of the proposed rule suggests that this expectation is unlikely to be met.

After bipartisan condemnation of the lack of clarity in the designation process at a recent hearing of the Oversight and Investigations Subcommittee, Treasury Deputy Secretary Neal Wolin announced that FSOC would "provide additional guidance regarding its approach to designation and seek public comment on it." Whether this regulatory "do over" succeeds in curing the serious deficiencies in the rulemaking process described above remains to be seen.

Secretary Geithner's pledge that the public would be afforded a meaningful opportunity for input on draft rules is also belied by the truncated comment periods that have characterized the Dodd-Frank rulewriting process. Standard administrative practice is to provide the public with at least 60 days for comment on all but insubstantial rules, a protocol reflected in the Obama Administration's much-heralded Executive Order 13,563 issued in January. Yet the average comment period for Dodd-Frank rules issued within the first three months of enactment was just over 30 days, and comment periods for most of the rules being written now typically do not exceed 45 days.

> **3. Secretary Geithner: "Third, we will not simply layer new rules on top of old, outdated ones. Everyone that is part of the financial system — the regulated and regulators — knows that we have accumulated layers of rules that can be overwhelming, and these failures of regulation were in some ways as appalling as the failures produced where regulation was absent. So alongside our efforts to strengthen and improve protections for the economy, we will eliminate rules that did not work. Wherever possible, we will streamline and simplify."**

With upwards of 400 new Federal regulations to be promulgated under Dodd-Frank over the next several years, it is hard to place much credence in the Administration's promise to "streamline and simplify" the regulatory framework. Indeed, in interviews conducted recently by the *American Banker* with numerous industry experts, no one could identify a single financial regulation that has been repealed or simplified since the passage of Dodd-Frank almost a year ago. Rather than a "simplified and streamlined" regulatory regime, U.S. financial institutions face a tsunami of new mandates from Washington, the cumulative effect of which is likely to be reduced credit availability and continued economic stagnation.[9] This crushing compliance burden is felt most acutely by smaller, community-based financial institutions, which have neither the personnel nor the financial resources to absorb the costs of the regulatory onslaught unleashed by Dodd-Frank.

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[9] The Davis Polk analysis referenced above found that as of April 28, 2011, proposed rules to effectuate Dodd-Frank's 2,300 pages of legislative text had consumed more than 3,500 pages in the Federal Register, a mountain of paper which, if laid end to end, would be equivalent in height to 21 Statues of Liberty.

4. Secretary Geithner: "Fourth, we will not risk killing the freedom for innovation that is necessary for economic growth. Our system allowed too much freedom for predation, abuse and excess risk, but as we put in place rules to correct for those mistakes, we have to strive to achieve a careful balance and safeguard the freedom, competition and innovation that are essential for growth."

In the short term, the Dodd-Frank Act will suppress innovation simply because companies (both financial and non-financial) will need to devote so much of their time and resources to anticipating, understanding, and complying with the law's broad new mandates. Beyond the short term, some of the rules required by the Dodd-Frank Act have the potential to inhibit innovation by discouraging private capital from reentering certain markets. The "risk retention" regulations recently proposed by the SEC, the Department of Housing and Urban Development, and the federal banking agencies is an example of one such rule.

In an attempt to align the interests of securitizers and investors in asset-backed securities ("ABS"), Section 941 of the Dodd-Frank Act requires securitizers to retain no less than 5% of the credit risk in assets they sell into a securitization. But Section 941 also provides that the risk retention requirements do not apply if the only assets in the pool collateralizing the ABS are "qualified residential mortgages" ("QRMs"). In determining what constitutes a QRM, the regulators are required to consider underwriting and product features that historical loan performance data indicate result in a lower risk of default.

The QRM rule issued for comment in April defines QRMs very narrowly, to cover only mortgages for which borrowers make 20 percent downpayments and that meet other strict underwriting criteria. The proposal has prompted widespread congressional concern that affordable mortgages in the future will be available only to those with perfect credit who are able to bring a substantial amount of funds to the closing table.[10] Moreover, because the rule would automatically exempt mortgages with a federal guarantee from the risk retention requirement, it will likely further entrench the Government Sponsored Enterprises and the Federal Housing Administration (FHA) as the dominant players in the mortgage market. Private-label securitizers will find it difficult to compete with Fannie Mae and Freddie Mac, and private mortgage insurers will face a playing field tilted heavily in FHA's favor. The result will be less innovation and greater exposure for taxpayers, who backstop the GSEs and the FHA insurance fund.[11]

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[10] In a May 27th letter, a bipartisan group of 39 Senators urged the regulators to go back to the drawing board on the QRM proposal: "The extensive additional requirements for QRMs in the proposed rule swing the pendulum too far and reduce the availability of affordable mortgage capital for otherwise qualified consumers. Many borrowers would simply be forced to pay much higher rates and fees for safe loans that nevertheless did not meet the exceedingly narrow QRM criteria. Sadly, in many cases, some creditworthy borrowers may not be able to get a mortgage at all." A letter making many of the same points garnered over 250 signatures from House Members.

[11] On June 6th, the Federal regulators announced they were extending the deadline for public comment on the risk retention rule from June 10 to August 1, 2011.

5. Secretary Geithner: "Fifth, we will make sure we have a more level playing field — not just between banks and non-banks here in the United States — but also between our financial institutions and those in Europe, Japan, China, and emerging markets who are all competing to finance global growth and development. We will do this by setting high global standards and blocking a 'race to the bottom' from taking place outside the United States."

Secretary Geithner has made the need to achieve international harmonization of financial regulatory rules a central theme of the Administration's economic policy.[12] Yet Members of Congress on both sides of the aisle have expressed increasing alarm that regulations implementing Dodd-Frank are being drafted without adequate consideration of their effect on the competitiveness of the U.S. financial sector.

Both before and after Dodd-Frank's enactment, Chairman Bachus has highlighted the potential competitive harm that could be inflicted upon U.S. firms from unilateral implementation of the Volcker Rule, which bans proprietary trading and investments in hedge funds and private equity by bank holding companies. Almost eleven months after Dodd-Frank was passed, no other country has imposed similar limitations on its financial firms, despite assurances from the Obama Administration and congressional Democrats at the time the Volcker Rule was debated in Congress that other countries would be likely to follow the U.S. lead.[13]

Reforms in the derivatives market are also proceeding at an uneven pace globally. In a May 17th letter, a bipartisan cross-section of the New York congressional delegation warned federal regulators that derivatives regulations being implemented pursuant to Dodd-Frank "will result in significant competitive disadvantages for U.S. firms operating globally," and that "absent harmonization between new rules here and abroad, disparate treatment of U.S. firms will only encourage participants in the derivatives markets to do business with non-U.S. firms."[14] In short, the lack of international consensus on the Volcker Rule and derivatives regulation risks precisely the kind of regulatory "race to the bottom" that the Administration purports to be committed to preventing.

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[12] The Secretary's most recent plea for other countries to resist the temptation to engage in a regulatory "race to the bottom" by lowering their standards came in a June 6th speech in Atlanta.
http://www.treasury.gov/press-center/press-releases/Pages/tg1202.aspx

[13] When then-Ranking Member Bachus raised concerns during the Dodd-Frank conference committee that the U.S. was proceeding unilaterally on the Volcker Rule, then-Chairman Frank replied that in a recent visit to Davos, Switzerland, he had "talked to many of the European leaders who were supportive of the Volcker rule and wanted to move in that direction." As noted above, there has been no discernible "movement" – in Europe or anywhere else for that matter – in the direction of adopting the Volcker rule since Rep. Frank uttered those words.

[14] These concerns were echoed by CFTC Commissioner Jill Sommers in congressional testimony on May 25th, in which she stated that there are "substantive differences between the U.S. and other jurisdictions [on derivatives regulation] that may harm the competitiveness of U.S. business."

6. Secretary Geithner: "Finally, we will bring more order and coordination to the regulatory process, so that the agencies responsible for building these reforms are working together not against each other. This requires us to look carefully at the overall interaction of regulations designed by different regulators and assess the overall burden they present relative to the benefits they offer."

Persuading Federal bureaucracies to set aside long-standing jurisdictional rivalries is a herculean task, so it is perhaps not surprising that that there has been little tangible progress toward Secretary Geithner's goal of bringing "more order" to the regulatory process. The body charged under Dodd-Frank with coordinating regulatory policy — the Financial Stability Oversight Council, which the Secretary chairs — is off to a slow start, having met only five times since the law's enactment almost a year ago, and to very little effect. There is no evidence that regulatory efforts are being coordinated to a greater extent than before; indeed, the failure of the SEC and CFTC to harmonize the rules implementing the derivatives provisions of Dodd-Frank and the confusion surrounding government initiatives to address irregularities in the mortgage servicing industry suggest that cooperation among agencies remains as elusive as ever.

Dodd-Frank's failure to streamline the balkanized federal regulatory structure contributes to the problem. Instead of bringing much-needed coherence to the alphabet soup of federal financial agencies, Dodd-Frank layered new bureaucracies on top of the old ones, guaranteeing that inter-agency tensions and turf battles would remain a feature of the regulatory landscape. In his June 6th speech in Atlanta, Secretary Geithner implicitly acknowledged the legitimacy of this critique, referring to the post-Dodd-Frank regime as "a very complicated regulatory structure with multiple agencies, with closely related and sometimes overlapping missions and roles." And in recent comments to the *American Banker*, Acting Comptroller of the Currency John Walsh warned of the potential consequences of Dodd-Frank's failure to rationalize the fragmented regulatory system:

> *"The struggle we are going to face in the next three to five years is going to be trying to work out sensible working relationships with the other agencies that don't have us falling over each other and doing things three or four times. We already see some evidence of that. It will be really silly if we just wind up doing the same work multiple times and second-guessing one another."*

The Administration has failed to provide full transparency and disclosure.

Dodd-Frank inhibits innovation by discouraging private capital from reentering markets.

Dodd-Frank adds new layers of red tape & a crushing compliance burden from Washington.

Dodd Frank: Promised Benefits, Real Costs

1. Budget / Tax Cost

So far, the benefits of the Dodd-Frank are largely speculative, but the costs on the American economy have been quite real. During a period of economic uncertainty and staggering debt and deficits, the Government Accountability Office (GAO) has estimated that by this time next year the budgetary cost for Dodd-Frank will exceed $1.25 billion, which has the effect of siphoning off resources that might otherwise have gone toward deficit reduction or private sector job creation.[15] Moreover, the Congressional Budget Office has estimated that over the next ten years, the Dodd-Frank Act will take $27 billion directly from the economy in new fees and assessments on lenders and other financial companies.[16]

GAO likewise estimates that Dodd-Frank will create more than 2,800 new jobs[17]—government jobs that is. According to agency submissions and the President's own budget, the Dodd-Frank Act will add 2,849 new government positions. These are positions in agencies where six figure salaries are common. The SEC, FHFA and CFTC have the highest average salaries in the federal workforce according to the Congressional Research Service.[18] The average salary at the Securities Exchange Commission is $147,595. The FDIC has the seventh highest average salary.

And Dodd-Frank has been a boon for lawyers, who have seen demand for their services explode as companies seek assistance in understanding and complying with the Act's 2,000-plus pages and the more than 400 federal regulations mandated by the Act. The lobbyists have also done quite well, as companies seek help in influencing Congress and the regulators charged with implementing the hundreds of the Act's regulations.

But outside the Beltway, there is no evidence that the Dodd-Frank Act has created any private sector jobs. In fact, as the June unemployment numbers starkly demonstrate, job creation as a general matter remains anemic, despite the claims of Dodd-Frank's proponents at the time the law was enacted that it would foster "robust growth in our economy." According to the

[15] United States Government Accountability Office Prepared Testimony before the Subcommittee on Oversight and Investigations, Committee on Financial Services, July 14, 2011.

[16] Statement of Douglas W. Elmendorf, Director, Review of CBO's Cost Estimate for the Dodd-Frank Wall Street Reform and Consumer Protection Act before the Subcommittee on Oversight and Investigations Committee on Financial Services U.S. House of Representatives, March 30, 2011.

[17] See note 15.

[18] "The Federal Workforce: Characteristics and Trends," Congressional Research Service, April 19, 2011

Economic Research Division of the Federal Reserve Bank of St. Louis, the last year the ratio of employed civilians to the population was lower than it is presently—58.24%—was in 1983.[19]

At a time when the economy is faltering and Americans are struggling to make ends meet, the Dodd-Frank Act takes money out of the pockets of American workers to fund expanded government bureaucracy.

Operating the Consumer Financial Protection Bureau (CFPB), a brand new agency created by the Dodd-Frank Act, will cost $329,045,000 for 2012 alone.[20] This amounts to all of the income and payroll taxes paid by 26,000 average American workers.[21] That means 26,000 Americans will work all year to offset the cost of this new government bureaucracy.

Year over Year Funding and Staff Increases for Consumer Financial Protection Bureau

	FY 2010	FY 2011	FY 2012	Change FY10 to FY12
	Actual	Estimated	Estimated	% Change
Total Budget	$9.2M	$142.825M	**$329.045M**	130%
Total FTE		342	1,225	**258%**

The Dodd-Frank Act also creates the Financial Stability Oversight Council (FSOC) and the Office of Financial Research, which together will add 142 government employees to the federal payroll at a cost of $82,353,000 in FY 2012.[22] After July 21, 2012, the Office of Financial Research will fund itself and the FSOC through assessments on "financial companies" and there is no limit on the amount of money it can take in.[23] The bulk of these costs will be passed on to consumers in the form of higher fees and/or fewer services.

[19] Available at http://research.stlouisfed.org/fred2/graph/?s%5b1%5d%5bid%5d=EMRATIO

[20] FY 2012 President's Budget and Performance Plan.

[21] Based on 2008 Treasury and Social Security Administration data, the average American worker paid $12,631 in income (not including capital gains) and payroll taxes.

[22] See note 19.

[23] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (PL 111-203) Section 118; 155(c)-(d).

Year over Year Funding and Staff Increases for
Financial Stability Oversight Council and Office of Financial Research

	FY 2010	FY 2011	FY 2012	Change FY10 to FY12
	Actual	Estimated	Estimated	% Change
Total Budget	$9,515,944	$41.325M	**$82.353M**	99%
Total FTE		50	192	**284%**

The Commodity Futures Trading Commission (CFTC) will expand its staff by nearly 50% to implement the Dodd-Frank Act. At the start of FY 2011, the CFTC had a staff of 680. The FY 2012 President's Budget adds 308 additional full-time employees.[24]

THE NUMBERS:

Overall Budget Cost of Dodd-Frank through FY 2012:	***$ 1,251,578,000***
Equivalent of all federal tax paid by full time workers to fund Dodd-Frank initiatives:	***$ 97,021***
Number of government positions created (projected for 2012):	***2,849***

The costs of Dodd-Frank are clear. Because of the Dodd-Frank Act, every single American worker will have a portion of his or her hard-earned tax dollars go to funding expanded bureaucracy and increasing wealth and prosperity in Washington rather than on Main Street.

2. Compliance Cost

> ***"Has anybody done a comprehensive analysis of the impact on [credit markets, businesses, and job creation]? I can't pretend that anybody really has. You know, it's just too complicated. We don't really have the quantitative tools to do that."***
>
> *- Ben Bernanke, Chairman of the Federal Reserve System Board, answering a question from a bank CEO in Atlanta, GA.*

[24] FY 2012 President's Budget and Performance Plan.

While Chairman Bernanke might not believe that it is possible to calculate the impact of the Dodd-Frank Act on credit markets and job creation, the compliance costs of Dodd-Frank rulemaking are beginning to become clear. The Dodd-Frank Act will require small community and mid-sized regional banks to spend thousands of man-hours on regulatory compliance, leaving them less time for focusing on the needs of their customers. The Administration's rulemaking agenda covering the last 12 months listed thirty new rules written to implement the Dodd-Frank Act [25] — less than 10% of the over 400 rules required by the law.[26] A survey of the Federal Register shows that complying with these new rules will require an estimated 2,260,631 labor hours every year.[27] This number is likely understated because these estimates come directly from the agencies that created these rules.[28] To put this number in perspective, to meet the burden of only 10% of the new rules required by the Dodd-Frank Act, it will take 56,516 work weeks devoted solely to this administrative burden, or more than 1,100 work years. If 1,000 Americans worked full time all year, every year, with no vacations or holidays, they would still be unable to complete all the work that the rules require.

If the remaining Dodd-Frank rules create a similar burden, and there is no reason to assume that they won't, then even 10,000 workers working full-time all year, every year, will not be able to comply with all the new rules created by the law. Community-based banks and credit unions will be forced to spend a large portion of their budgets trying to comply with the Dodd-Frank rules rather than lending to small businesses and American consumers.

3. Economic Cost

In addition to costs to the government and compliance costs, the Dodd-Frank Act will impose a substantial cost on the economy. For example, the Office of Comptroller of the Currency reported that proposed Dodd-Frank margin rules on derivatives trades may require U.S. banks to set aside $2 trillion in collateral – $2 trillion that cannot be used to make loans in support of job creation.

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[25] Fall 2010 Unified Agenda available at www.reginfo.gov. The Administration has recently published its most current rulemaking agenda, which adds an additional 80 Dodd-Frank rules not included in the Fall 2010 Agenda.

[26] Congressional Research Service Report R41611, "Upcoming Rules Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act" available at http://www.crs.gov/pages/Reports.aspx?PRODCODE=R41611&Source=search

[27] Aggregate of the estimated work hours estimated to be required to comply with Dodd-Frank rulemaking through January 26, 2011.

[28] For example, the SEC dramatically underestimated the compliance costs of section 404 of the Sarbanes-Oxley Act, which was enacted in 2002 to address accounting scandals at Enron, WorldCom, and other U.S. corporations. Although the SEC estimated that compliance costs would average $91,000 per company, a 2006 study by the Committee on Capital Markets Regulation found that compliance costs for each firm were $3.5 million.

THE NUMBERS:

Annual labor hours required to comply with current new rules (10% of total rules) mandated by Dodd-Frank:	*2,260,631*
Number of work weeks required to meet the burden of only 10% of the new rules required by Dodd-Frank:	*56,516*
Number of Americans who will have to work *all* year, *every* year, solely on compliance with Dodd-Frank rules (estimated number for all Dodd-Frank rules)	*Over 10,000*

More broadly, the President's Executive Order of January 18, 2011, urged independent agencies to "propose… a regulation only upon a reasoned determination that its benefits justify its costs."[29] But Inspectors General from the CFTC, SEC, FDIC and OCC found that these agencies failed to conduct rigorous, cost-benefit analyses that considered the effect of agency regulations on economic growth, job creation, or international competitiveness. In fact one report found that within the CFTC, the Office of General Counsel appeared to have a greater say in the proposed cost-benefit analyses than the Office of Chief Economist.

Dodd-Frank has been a boon for lawyers & lobbyists inside the Beltway.

In just one year, Dodd-Frank has fundamentally altered the size and scope of Washington.

American taxpayers are on the hook for billions of dollars as a result of Dodd-Frank's mandates.

[29] E.O. 13,563.

The Dodd-Frank Act, the Persistence of "Too Big to Fail," and the Institutionalization of Government Bailouts

Of all the claims made by the proponents of the Dodd-Frank Act, the most important are these: that the Dodd-Frank Act ends "too big to fail" and that it protects the American taxpayer "by ending bailouts." In light of the disastrous events of 2008, in which Americans saw their government rescue first Bear Stearns, then AIG, Citigroup, and Bank of America — among others — and when the only regret voiced by those who orchestrated the bailouts was that they couldn't bail out Lehman Brothers because it, too, was "too big to fail," the promises to end "too big to fail" and "end bailouts" are at the heart of the Dodd-Frank Act. The Dodd-Frank Act can be judged to succeed or fail on whether it makes good on these two claims.

Democrats' False Claims On Dodd-Frank Ending Bailouts:

"This legislation makes common-sense reforms that end the era of taxpayer bailouts and 'too-big-to-fail' financial firms."

- Rep. Nancy Pelosi
floor remarks, 6/30/10

"Because Of This Reform, The American People Will Never Again Be Asked To Foot The Bill For Wall Street's Mistakes. There Will Be No More Taxpayer-Funded Bailouts - Period."

- President Obama
remarks on passage of regulatory reform, 7/15/10

"Let Me Say That Again Because It Is One Of The Most Important Parts Of This Bill: No More Bailouts Because No Bank Is Too Big To Fail."

- Senator Harry Reid

But if we judge the Dodd-Frank Act on whether it "ends too big to fail" and whether it "ends bailouts," we have no choice but to conclude that the Dodd-Frank Act is a failure. The largest financial institutions in America remain "too big to fail"; in fact, they are even bigger now than they were at the height of the crisis. And the Dodd-Frank Act most certainly did not end bailouts; instead, it institutionalized them and made them permanent in the form of the "Orderly Liquidation Authority" set forth in Title II of the Act. American taxpayers are no better protected against bailouts than they were in 2008: if anything, they are even more exposed

to the danger that government bureaucrats will pick their pockets to bail out the creditors of the next "too big to fail" institution that finds itself on the brink of failure.

The Persistence of Too Big to Fail

Anyone who looks at the rationale offered for the bailouts of 2008 — that certain financial institutions were "too big to fail" and therefore had to be rescued at taxpayer expense, no matter how incompetently run they were or how big the risks they took—has to be puzzled at the structure of the financial services industry in 2011. Surely, if the problem was that these institutions were "too big to fail," the solution cannot be to make these institutions . . . even bigger. Yet that is exactly what has resulted from the bailouts, the misguided policies adopted by panicked regulators, and the implicit subsidies that the Dodd-Frank Act offers to behemoth financial institutions to stay as large as they possibly can.

When the financial crisis struck the nation in 2008, officials pumped hundreds of billions of dollars into the country's biggest financial institutions because these officials feared that their failure would crash the entire financial system. But in 2011, the country's financial system is far more concentrated and less competitive than it has ever been. The five largest financial institutions control more than half of the industry's assets, which is equal to almost 60 percent of GDP. The largest 20 institutions control 80 percent of the industry's assets, which amounts to about 86 percent of GDP. Common sense says that "if they are too big to fail, make them smaller." No one can say with a straight face "if they are too big to fail, make them even bigger." Yet that is exactly what has resulted from misguided government policies and the Dodd-Frank Act.

The proponents of the Dodd-Frank Act will tell you that the Act bans bailouts. That government will never again come to the rescue of a large financial firm that finds itself in trouble. That taxpayers will never again be on the hook for paying off the creditors of an AIG or a Bear Stearns. There's just one small problem with that assertion: no one believes it. Not the creditors of these giant firms: they continue to lend to the too-big-to-fail firms—and they continue to lend more cheaply to these giant firms than they do smaller, less risky banks—because they continue to believe that when push comes to shove, government officials will intervene, no matter how much they say they hate bailouts and want to protect the taxpayer. Not the credit rating agencies: although the credit rating agencies make noises about possibly downgrading the too-big-to-fail firms in light of the Dodd-Frank Act, those noises are not a downgrade. Moody's, for example, has said that it will not likely withdraw its assumption that government will support a too-big-to-fail firm from its ratings for these firms. And Standard & Poor's has made it quite clear: they don't believe that the Dodd-Frank Act ends too-big-to-fail. As they explained, the government's "when in doubt, bail it out" policy trumps whatever good intentions the drafters of the Act may have had in mind. On July 12, S&P wrote that "We believe that under certain circumstances and with selected systemically important financial institutions, future extraordinary government support is still possible." To put it slightly differently, S&P has said that gov-

ernment still has the motive and the means to commit another bailout; the only thing that's missing is opportunity, and that will come soon enough.

And a higher rating makes it cheaper for a too-big-to-fail firm to borrow, which makes it even bigger. We've all see this picture before. The difference is that the proponents of the Dodd-Frank Act think that it will end differently this time around. The American people know better.

But the most frightening fact of all: not even the Secretary of the Treasury, Timothy Geithner, believes that the Dodd-Frank Act ended "too big to fail." When asked about the multiple rescues of Citigroup and whether the Dodd-Frank Act ended "too big to fail" by the Special Inspector General for the Troubled Asset Relief Program, the Secretary Geithner said out loud what everyone already knows to be the truth: "In the future we may have to do exceptional things again if we face a shock that large." But the Dodd-Frank Act was supposed to save government officials from doing "exceptional things"; that is the reason for its existence. If the Dodd-Frank Act means that "in the future we may have to do exceptional things," then the Dodd-Frank Act cannot credibly be said to have ended "too big to fail."

Treasury Secretary, Timothy Geithner acknowledges Dodd-Frank does not end bailouts.

Proponents of Dodd-Frank say it ends taxpayer-funded bailouts, but facts are stubborn things.

American taxpayers are still very much at risk for potential future Wall Street bailouts.

You Say You Want a Resolution?

But the proponents of the Dodd-Frank Act point to Title II of the Act — the "resolution authority" that gives the Federal Deposit Insurance Corporation the ability and the wherewithal to wind down in an orderly way a "too big to fail" firm. The reasoning that the supporters of the Dodd-Frank Act offer us is this: the FDIC can wind down a small bank with no problem at all; therefore, the FDIC can wind down a behemoth, multinational, complex financial institution, no problem at all. It doesn't matter how big, how complex, how international the firm is: the FDIC can "resolve" it. And this "resolution" can be done without costing the taxpayers a single dime. After all — the Dodd-Frank Act banned bailouts.

But the Dodd-Frank's "resolution authority" has a couple of problems that its supporters would rather you did not notice. The first is that it simply won't work for the largest, most complex financial institutions. Remember how the supporters of the "resolution authority" told

you not to worry, because this was just like "resolving" a small bank? Let's take that claim seriously. This is how the FDIC resolves a "small bank," according to a 2009 article in the *Economist* magazine:

> If the FDIC agents had tear gas rather than briefcases, we'd understand them to be a SWAT team. Eighty of them flew into Clark County, checked into hotels under assumed names, gave false reasons for their visit, and around 6 P.M. on that Friday, walked in and assumed control of the bank. By all accounts—including those of the employees at the Bank of Clark County—the FDIC was almost startlingly competent, professional, and sophisticated. Even the workers who were seeing their labor dismantled and their jobs destroyed sound impressed by the cool efficiency of the Feds.

That sounds pretty good. In on Friday, out by Monday. There's just one small problem:

> The Bank of Clark County had 100 employees and assets of $440 million which, if you're not used to bank numbers, is a really small bank. But it took 80 FDIC agents, 50 bank employees, and 100 employees [from the neighboring bank that assumed control] working round-the-clock for three days to take it over and have it reopen for business.
>
> Most of the largest banks in trouble right now—Citibank, Bank of America—are about 6,000 times the size of Bank of Clark County, not to mention much, much more complicated.
>
> For those who don't have calculators handy 80 multiplied by 6,000 is 480,000. On the bright side, that's one hell of a stimulus opportunity.[30]

But let's leave aside, for the moment, the "you and whose army" problem that the "resolution authority" poses. Let's look at the "you and whose money" problem. That one is easy to answer: whose money? The American taxpayers', that's whose.

Those who believe in the "resolution authority" are fond of telling you that it won't cost you a dime: the Dodd-Frank Act bans bailouts, and it mandates that no taxpayer funds be used in resolving a financial institution. But remember Secretary Geithner and the "exceptional things" that "we" may have to do? That "we" means regulators and government officials (they decide) and you (more specifically, your dollars). Here is how it works.

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[30] "Scenes from a nationalization," *The Economist,* April 8, 2009, at http://www.economist.com/blogs/freeexchange/2009/04/scenes_from_a_nationalisation .

FACT BOX: HOW DODD-FRANK CONTINUES AIG-STYLE BAILOUTS

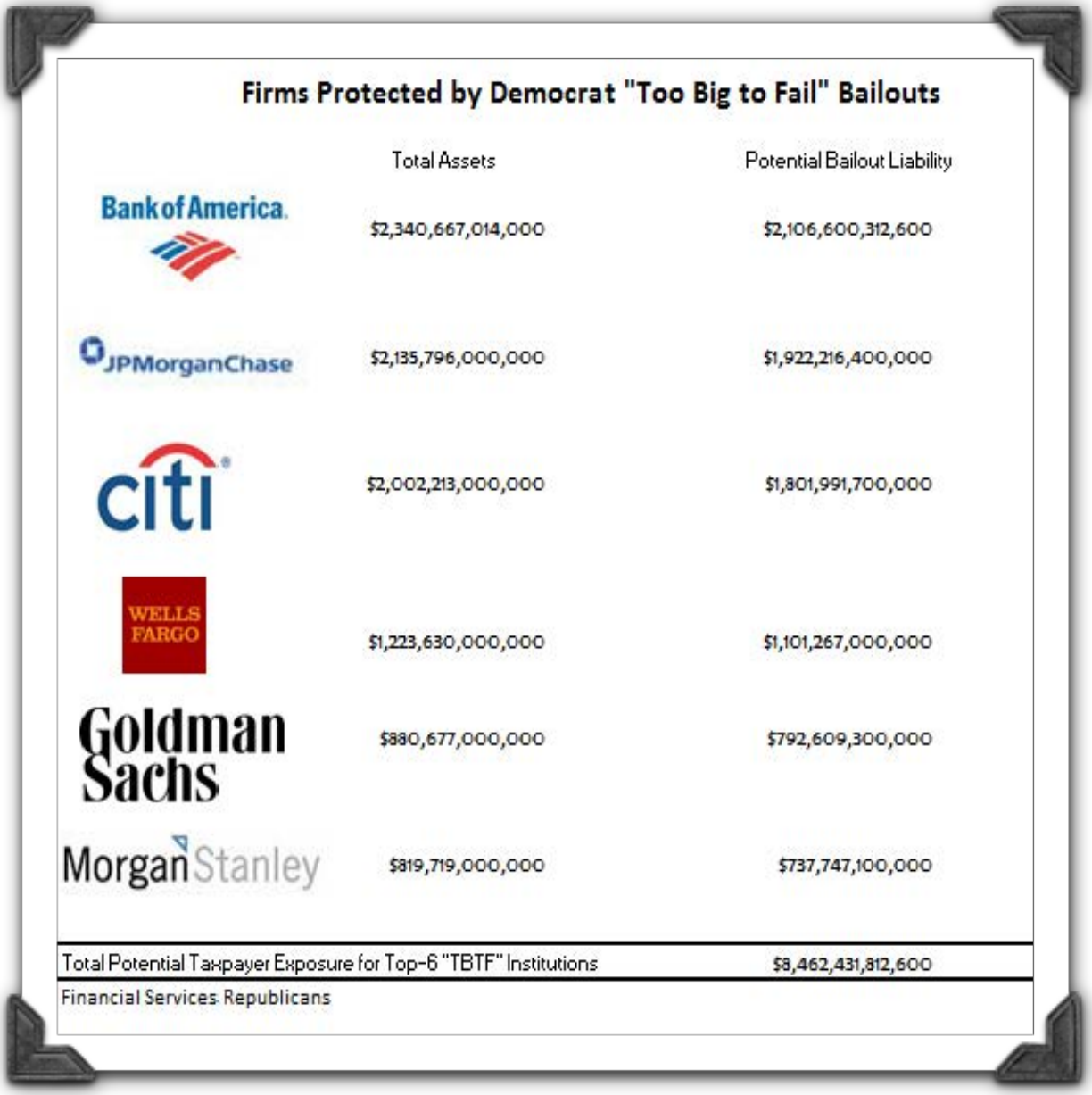
- **Section 204** of the Dodd-Frank Act permits the FDIC to lend to a failing firm; purchase the assets of a failing firm; guarantee the obligations of a failing firm; take a security interest in the assets of a failing firm; and/or sell or transfer assets that the FDIC has acquired from the failing firm.
- **Section 210** authorizes the FDIC to borrow up to 10% of the book value of the failed firm's total consolidated assets in the 30 days immediately following its appointment as receiver. After those 30 days, the FDIC is authorized to borrow up to 90% of the fair value of the failed firm's total consolidated assets. For Bank of America, that's $2 trillion in bailout authority alone, to be paid for by the taxpayer.

Among other things, the "resolution authority" gives the FDIC the power to lend to a failing firm; purchase its assets; guarantee its obligations; and — most important — *pay off its creditors*. The "resolution authority" also gives the FDIC the authority to borrow money from the Treasury. Lots of it. How much? The FDIC can borrow up to 10% of the book value of the failed firm's total consolidated assets in the 30 days immediately following its appointment as receiver. After those 30 days, the FDIC can borrow up to 90% of the fair value of the failed firm's total consolidated assets.

"The [Dodd-Frank Act] claimed to end the era of "too-big-to-fail" institutions and sought to address the fundamental structural weaknesses and conflicts within the financial system. To falsely declare an end to Too Big to Fail without actually accomplishing that end is more damaging to the credibility of U.S. markets than a failure to act at all... In fact, Dodd-Frank reinforces the market perception that a small and elite group of large firms are different from the rest."

- Josh Rosner,
Managing Director of Graham Fisher & Co

Maybe if we look at the asset sizes of the too-big-to-fail firms, we can get a sense of just how much the FDIC can borrow:



Firms Protected by Democrat "Too Big to Fail" Bailouts

	Total Assets	Potential Bailout Liability
Bank of America	$2,340,667,014,000	$2,106,600,312,600
JPMorganChase	$2,135,796,000,000	$1,922,216,400,000
citi	$2,002,213,000,000	$1,801,991,700,000
WELLS FARGO	$1,223,630,000,000	$1,101,267,000,000
Goldman Sachs	$880,677,000,000	$792,609,300,000
Morgan Stanley	$819,719,000,000	$737,747,100,000
Total Potential Taxpayer Exposure for Top-6 "TBTF" Institutions		$8,462,431,812,600

Financial Services Republicans

So for Bank of America, for example, if "we" had to do "an exceptional thing," it could cost us about $2 trillion. Same for JP Morgan Chase. And Citigroup. And make no mistake: that's *your* money. The FDIC can borrow it from the Treasury, and the Treasury is you. The proponents of the Dodd-Frank Act say that you will be paid back. Let's hope that you are. But the bottom line is that it is *your* money, and you bear the risk.

But what is the money going to be used for? This is where it gets interesting. Remember how the proponents of the Dodd-Frank Act said that the Act ended bailouts? Well, they are about 7% right: the shareholders of the failed institution don't get a dime.[31] The management

[31] The new Basel Standards mandate a capital buffer of 7% for financial institutions, so that's why the supporters of the Dodd-Frank Act are 7% right and 93% wrong when they say that it ends bailouts. Shareholders — the 7% — may well get nothing; it's the other 93% — the institution's creditors — that are the problem.

may well be fired. But the creditors of a highly-leveraged institution are going to get paid off. That's the point. That's how you make the resolution of a "too big to fail" institution "orderly." That's how you keep financial markets from panicking when a "too big to fail" institution . . . fails. You pay off everyone in sight.

> *"What the orderly liquidation authority does allow [the government] to do . . . is bail out the counterparties to [a failed] financial institution, so not unlike the treatment that Goldman Sachs got with regard to AIG."*
>
> **- Stephen J. Lubben**
> Daniel J. Moore Professor of Law, Seton Hall University School of Law
> Hearing of the Subcommittee on Financial Institutions and Consumer Credit
> June 14, 2011

Lest you think this is an unfair characterization, consider the bailouts of Bear Stearns and of AIG. The Bear Stearns shareholders got very little — first $2 a share, and then $10, but dollars that came by way of the Federal Reserve did not end up in shareholder pockets. Instead, those dollars were used to guarantee toxic assets in order to entice someone else (in this case, JP Morgan Chase) to buy up Bear Stearns. Bear Stearns shareholders got little; JP Morgan Chase got both a bargain and even bigger; and you got all the risk. The AIG shareholders also got wiped out. But the AIG counterparties got paid off 100 cents on the dollar, and you got an interest in an off-balance sheet vehicle of the Federal Reserve Bank of New York. Pay close attention: these are how the non-bailout bailouts are going to work. You will front the dollars; you will take the risk. If it works out, you may not lose very much. But you aren't going to get any of the profit. That's going to go to others.

> *"Instead of breaking up banks, Dodd-Frank separates banks with more than $50 billion in assets and certain other large financial institutions into a class of 'systemically important' entities — too big to fail by another name...Inevitably, 'systemically important' will come to mean 'protected by Uncle Sam.'"*
>
> - **Eric Schurenberg,**
> Fiscal Times

Maybe it is worth stepping back to figure out what is wrong with this picture. Republicans argued strongly for an enhanced bankruptcy regime that would force the creditors of large, complex financial institutions to bear the consequences if the firms to which they extended credit failed. That's what bankruptcy does: it spreads the losses among the shareholders of a firm and its creditors. The United States Treasury — and thus the taxpayer — is not involved. But Rep. Frank objected to this, and tried to change the subject, asking on the House floor: "If Republicans are so in favor of bankruptcy, why don't they want it for banks?"

That's a good question. But a better question would have been this: "Why did Democrats want to extend deposit insurance to the creditors of 'too big to fail' institutions?" Banks — and their depositors — are protected by deposit insurance. Banks and their depositors pay for it, and it makes sense: we don't expect small, unsophisticated retail bank depositors to thoroughly scrutinize their bank's balance sheets and quiz the bank's employees about how the bank is using their deposits.

But for the creditors of "too big to fail" institutions (who are often themselves "too big to fail"), we do — and we should — expect more. We expect them to be careful about their decisions to lend millions and billions to large financial institutions. We want them to analyze the risks they are taking on, rather than expecting that the FDIC will step in to pay them off if things get bad enough. It is, after all, the analysis of risk (rather than relying on an implicit government guarantee or an FDIC-provided backstop) that is necessary to allocate capital efficiently in our economy. Without an efficient allocation of capital, our economy cannot grow. Instead, by subsidizing "too big to fail" institutions and insuring the creditors of these institutions against the consequences of their poor decisions, the Dodd-Frank Act all but ensures that capital will continue to be misallocated while our economy continues to founder.

> *In the future we may have to do exceptional things again if we face a shock that large.*
>
> **– Obama Administration Treasury Secretary Timothy Geithner**
> December, 2010

> *"It was apparent to SIGTARP from the context of the interview, including the reference to doing something exceptional "again" in the face of a future financial crisis, that Secretary Geithner was referring to the possibility of future bailouts."*
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> - **Office of the Special Inspector General of the Troubled Asset Relief Program**
> January 26, 2011

Effect of Dodd-Frank on Small Banks

Senior Obama Administration officials have repeatedly claimed that the Dodd-Frank Act will ultimately benefit small community banks, by placing them on a more equal footing with their big bank and non-bank competitors, and by exempting them from some of the law's more onerous provisions. Indeed, in recent comments to the *New York Times*, Deputy Treasury Secretary Neal Wolin was dismissive of concerns expressed by small community banks over the new regulatory burdens imposed by Dodd-Frank: "If you sit down with 20 small banks, you'll find there's a lot of anxiety there. But if you ask them to focus that criticism in concrete ways, there's not much there."[32]

One can only imagine the disbelief with which those comments were met by community bankers across the country struggling to deal with the regulatory blitzkrieg unleashed by Dodd-Frank's more than 400 new Federal rules. It is beyond dispute that the burden of these hundreds of new mandates will fall disproportionately on small institutions, which do not have the luxury that mega-banks have of hiring hundreds of employees to analyze (and ensure compliance with) the blizzard of red tape emanating from Washington, DC. It is equally undeniable that the costs of compliance will reduce the ability of smaller institutions to meet the credit needs of their communities. In recent testimony before the Senate Banking Committee, Jennifer Kelly, senior deputy comptroller for midsize and community bank supervision for the Office of the Comptroller of the Currency (OCC), stated that "regardless of how well community banks adapt to Dodd-Frank Act reforms in the long term, in the near-to-medium term these new requirements will raise costs and possibly reduce revenue for community institutions."

As for the much-heralded "exemptions" afforded smaller institutions from various Dodd-Frank requirements, they have been shown in several instances to be more illusory than real. Perhaps the most notable example of this phenomenon was the carve-out for institutions with less than $10 billion assets from new rules capping the amount of interchange fees that banks can charge on debit card transactions. Both FDIC Chairman Sheila Bair and Federal Reserve Chairman Ben Bernanke expressed deep skepticism that the exemption would work as intended to protect community banks, with Chairman Bernanke going so far as to warn that the rule "could result in some smaller banks being less profitable or even failing."[33] Similarly, while exempting institutions with less than $10 billion in assets from examinations by the new Consumer Financial Protection Bureau provides some modicum of relief, the fact remains that the new agency's regulations – and they are expected to be legion – will generally apply with equal force to large and small institutions alike, and are likely to be a source of major new compliance burdens for community banks and credit unions.

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[32] "Small banks mobilize to block U.S. rules," New York Times, May 24, 2011

[33] "Bernanke: Debit Card Fee Rule May Result In Some Small Banks Failing," Dow Jones Newswires. May 12, 2011

Moreover, as detailed elsewhere in this report, by institutionalizing a government policy of "too big to fail," Dodd-Frank further skews the competitive landscape in favor of large complex financial institutions at the expense of those institutions that have been deemed "too small to save." In the words of Thomas Hoenig, the highly respected outgoing President of the Federal Reserve Bank of Kansas City: "Because the market perceived the largest banks as being too big to fail, they have had the advantage of running their business with a much greater level of leverage and a consistently lower cost of capital and debt. Despite the provisions of the Dodd-Frank Act to end too-big-to-fail, community banks will continue to face higher costs of capital and deposits until investors are convinced it has ended."[34] One year after Dodd-Frank supposedly ended "too big to fail," the sizable funding advantage that the largest institutions continue to enjoy over their small bank counterparts suggests that investors and depositors remain decidedly unconvinced.

But far more compelling even than the skeptical views of Deputy Secretary Wolin's fellow regulators on the purported benefits of Dodd-Frank for small institutions is the testimony of countless community bankers and credit union executives from across the country, who have spoken loudly and clearly about the damaging effect that Dodd-Frank will have on their ability to serve the credit needs of their individual and small business customers. A sampling of that commentary follows:

Community Banks On The Record Regarding Dodd-Frank Impact:

Greg Ohlendorf, President of First Community Bank and Trust: "What we have to understand is we're already overburdened with regulation. We have significant numbers of regs that we need to comply with today, and it seems like just one more isn't going to change the deck a whole lot, but the consistent piling on of additional regulation is very, very stunning. It's punishing."

Jim MacPhee, CEO of Kalamazoo County State Bank (Michigan): "We weren't part of the subprime (mortgage) meltdown. Why throw more regulations at us?"

Leslie Andersen, president of Nebraska's Bank of Bennington: "Big banks have whole departments that focus on compliance. Small banks can't afford to do that."

Tommy Whittaker, president of The Farmers Bank (Tennessee): "The cumulative burden of hundreds of new or revised regulations may be a weight too great for many smaller banks to bear."

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[34] "Hoenig: Big banks may still threaten their smaller rivals; Despite Dodd-Frank Act, community banks face 'higher costs of capital," MarketWatch. August 23, 2010

Albert Kelly, Jr, CEO, SpiritBank: "This new bureaucracy[the Consumer Financial Protection Bureau]--expected to hire over 1,200 new staff--will certainly impose new obligations on community banks--banks that had nothing to do with the financial crisis and already have a long history of serving consumers fairly in a competitive environment. Thus, the new legislation will result in new compliance burdens for community banks and a new regulator looking over their shoulders."

Daryl Byrd, president and chief executive, IberiaBank: "I think you're going to see a lot of consolidation."

Guy Williams, chairman, Gulf Coast Bank & Trust: "There are some banks that don't have enough employees to read the bill. If you assigned everyone a chapter, it would never get read….We want to help local businesses succeed. That's why we're in the business. We love doing it. We're going to continue doing what we're doing."

Wes Sturges, chief executive, Charlotte's Bank of Commerce: "The other thing we'll have to deal with - and we're not sure how - is the Dodd-Frank bill. For a little bank like ours with 19 people, that could be a full-time job for somebody to make sure we comply with the provisions of the bill. Hopefully it will be simpler than that, but we're not sure yet."

Thomas Boyle, Vice Chairman, State Bank of Countryside (Illinois): "Each new regulation…adds another layer of complexity and cost of doing business. The Dodd-Frank Act will add an additional, enormous burden, has stimulated an environment of uncertainty, and has added new risks that will inevitably translate into fewer loans to small businesses."

Brad Quade, regional president, Johnson Bank (Milwaukee branch): "We are going to have to invest a lot more money into people and resources to manage the heavier compliance load. Right now it's requiring a great deal of additional resources to get our arms around what the expense will be going forward."

Steve Steiner, senior vice president, North Shore Bank: "Obviously, the smaller you are, the larger the burden that places on you. We will have to take some combination of actions to compensate for this loss of revenue. It will mean we are losing money on every transaction that a customer of ours does with a debit card. Through some combination of pricing and cost reduction, we will have to offset that somehow."

Greg Ohlendorf, President and CEO, First Community Bank and Trust (Illinois): "Many community banks complain that the required capital level goalpost is unpredictable and regulators simply keep moving it further, making it nearly impossible to satisfy capital demands in a difficult economy and capital market place. As a result, bankers are forced to pull in their horns and pass up sound loan opportunities in order to preserve capital. This is not helpful for their communities and for overall economic growth."

Mark Sekula, Executive Vice President, Chief Lending Officer, Randolph-Brooks Federal Credit Union (Texas): "With a slew of new regulation emerging from the Dodd-Frank Act, such relief from unnecessary or outdated regulation is needed now more than ever by credit unions. Further, while we acknowledge that taken on its own, Section 1071 [requiring banks to collect additional data from small business borrowers] is a well-intentioned provision, when added with other laws and regulations, this new compliance burden is just another drop in the new and growing overall cost of compliance bucket emerging for credit unions from Dodd-Frank."

Thomas Boyle, Vice Chairman, State Bank of Countryside (Illinois): "We strongly believe that our communities cannot reach their full potential without the local presence of a bank – a bank that understands the financial and credit needs of its citizens, business, and government. However, I am deeply concerned that this model will collapse under the massive weight of new rules and regulations."

"Banks are working every day to make credit and financial services available. Those efforts, however, are made more difficult by regulatory costs and second-guessing by bank examiners. Combined with the hundreds of new regulations expected from the Dodd-Frank Act, these pressures are slowly but surely strangling traditional community banks, handicapping our ability to meet the credit needs of our communities. The consequences are real. Costs are rising, access to capital is limited, and revenue sources have been severely cut. It means that fewer loans get made. It means a weaker economy. It means slower job growth."

Across America, Dodd-Frank will have damaging effects on community banks' ability to serve the credit needs of their individual and small business customers.

The Dodd-Frank Act and Housing: The Debacle Continues

The financial crisis of 2008 began with housing: after decades of misguided government policy based on the mistaken idea that everyone should own a house — and that government should do everything within its power to make homeownership possible, even if the homeowner couldn't afford to pay the mortgage — credit markets seized up as people began to realize that when you lend money to those who are not creditworthy, who may have fudged their credit applications, against inflated home prices, you might not get repaid. Rather than let the market find its own equilibrium, government rushed in with bailouts and programs to stave off the inevitable write-offs and fall in housing prices and succeeded only in making matters worse.

The government's policy was, at all costs, to keep the market from finding its bottom in order to re-inflate the housing bubble: prop housing prices up, in order to rescue homeowners who had borrowed too much and financial institutions who had loaned too much. The government's strategy of immunizing financial institutions from the consequences of their poor lending decisions through bailouts and government subsidies, and offering homeowners false hope through poorly designed foreclosure mitigation programs, has been a singular failure.

The Dodd-Frank Act compounds the government's disastrous foray into housing policy. First, the Dodd-Frank Act simply overlooks the proximate cause of the financial crisis: the government's efforts to support an affordable housing policy through the government sponsored enterprises Fannie Mae and Freddie Mac. Hundreds of billions of dollars into the GSE bailout without end, there is nary a word about the GSEs in the two-thousand plus pages of the Dodd-Frank Act.

So while the Dodd-Frank Act goes to great lengths to regulate every single facet of the financial system, including many things that had nothing to do with the financial crisis, the single biggest contributor to the collapse of the financial system went unaddressed. The GSEs continue as wards of the state, underwriting virtually all of the mortgages in the United States: Fannie Mae, Freddie Mac and Ginnie Mae account for 97% of mortgage-backed securities issuance in the United States. As the *Financial Times* columnist Gillian Tett put it on July 1, "By the time you read this column today, a fascinating shift will almost certainly have occurred in the nature of US finance: for the first time the government will be the biggest source of outstanding home mortgage and consumer credit loans in the US, eclipsing private sector banks or investors." And yet, the Dodd-Frank Act trains its 2,000 pages and hundreds of rule-makings and studies not on the government, but on the private sector.

While government becomes the biggest source of consumer credit in the United States, the Dodd-Frank Act hobbles the private mortgage market through onerous regulations with unintended consequences, thereby ensuring that housing will remain in limbo for some time to

come, as investors, securitizers, and lenders try to navigate its cumbersome and unworkable rules.

The negative consequences of the Dodd-Frank Act on housing markets could not come at a worse time. As home prices continue to fall, the only hope for a sustained recovery is if creditworthy borrowers can take advantage of lower housing prices and the large inventory of foreclosed properties on the market. When this happens, housing starts will begin again, and a recovery in the housing market will power a broader economic recovery, as it always has. Given the tremendous importance of the housing industry to the U.S. economy, a broader economic recovery will not take place until the housing industry stabilizes.

Of the hundreds of new requirements contained in the Dodd-Frank Act, perhaps none is more cumbersome than the "risk retention rule" and the exception to that rule for "qualified residential mortgages." Because most mortgages will fail to meet the overly stringent standards to qualify as a "qualified residential mortgage," most mortgages will fail to qualify for the exception. As a result, thousands — if not millions — of qualified borrowers may find themselves shut out of the mortgage market, which means that housing prices will continue to fall and the overhang of unsold and foreclosed properties will persist.

Although the requirement that securitizers retain some of the risk of the loans they bundle and sell off seems relatively straightforward, the Federal Reserve found in a study that the issue is anything but straightforward. As the Federal Reserve put it, "simple credit risk retention rules, applied uniformly across assets of all types, are unlikely . . . to improve the asset-backed securitization process and protect investors from losses associated with poorly underwritten loans." The risk-retention requirement thus has a lot in common with the rest of the Dodd-Frank Act: a complex rule, pressed into the service of a benefit that is unlikely to materialize, all with a cost to consumers, homeowners, the financial services industry, and the broader economy. As foreclosures mount, home prices continue to plummet, and the government has all but taken control over the issuance of mortgage credit in the United States, it is time to step back and think about whether the Dodd-Frank Act has put us on the wrong track.

Along with other GSEs, Fannie Mae accounts for 97% of US mortgage backed securities.

The 2008 financial crisis began with housing, yet Dodd-Frank completely overlooks this.

America's economic recovery will not occur until we fix problems in the housing industry.