Testimony of

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Field Hearing on

"An Examination of the Challenges Facing Community Financial Institutions in Texas"

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Chairwoman Capito, Ranking Member Maloney and members of the Subcommittee. I am Lester Leonidas Parker, Chairman, President and Chief Executive Officer of United Bank of El Paso del Norte. United Bank is a $177 million Minority Community Bank with three banking offices and one under construction, all in El Paso, Texas. The Bank is almost eleven years old and focuses exclusively on serving the financial needs of El Paso small businesses and professional practices. For the past seven consecutive years, it has been the largest SBA lender in the local SBA District and has also built a solid reputation as the principal small business loan provider in our far West Texas area. We do little consumer banking business and, indeed, have never advertised for the sale of consumer banking services. The Bank is owned by just under 500 El Paso shareholders from all economic sectors of our community, ranging from low income to wealthy, and we are the first commercial bank in El Paso history to claim that honor.

You may be familiar with the fact that El Paso is in very far West Texas, midway between Houston, Texas and Los Angeles, California with an area population of nearly 900,000 souls that is predominantly Hispanic in composition. It is contiguous with Juarez, Chihuahua, Mexico which suffers from great notoriety and violence; however our city is considered one of, if not, the safest in the Nation. El Paso does suffer from very low per capita income and is said to be the fourth poorest city in the United States. As a matter of note, we also sadly lay claim to having the poorest zip code area in the country. El Paso has a relatively diverse economy that is buffered by our proximity to Mexico and enhanced by the major U.S. military installation of Fort Bliss, by the University of Texas at El Paso, and by the new Texas Tech University Paul O. Foster School of Medicine located in a developing Medical Center of the Americas.

I started in commercial banking in 1962, nearly 50 years ago. Since then, I worked my way through school obtaining a BBA in Finance, an MBA in Economics, and a graduate certificate in Marketing. I was a Captain in the Army during the Vietnam conflict and have helped start and have operated three successful businesses -- two micro enterprises and one small business partnership. I have started three successful banks in El Paso (beginning in 1979) and have cleaned up a fourth bank that regulators were threatening with closure. I have taught both economics and finance on a university level, have served on a Federal Reserve Bank branch board for two terms, have been a two-term Director of the Texas Bankers Association, am in my third term as a proud Director of the Independent Bankers Association of Texas, and am presently in my third term on the Minority Bank Council of the Independent Community Bankers of America. Like most in this room, I have also served on community boards too numerous to name and have been blessed with walls and closets too full of awards for service to my community and profession.

I am honored to be before your Committee because I believe that you have the means to help insure that communities across America are able to retain one of the major facilitators of their economic prosperity: their local community banks. The business model of community banks focuses principally on the communities in which they are headquartered and where their owners, Directors and employees live. The fortunes of these often small banks rise or fall with the economic prosperity of the small towns and communities that they serve, and there is a strong sense of duty, obligation and commitment among those bankers to those friends, neighbors and fellow citizens living there. Contrast this with the other major commercial banking business model of the large money center banks (with too big to fail status) which focus instead on national and international markets, striving for the economies of scale, size and financial performance that will result in dominance throughout financial sectors nationwide or around the globe. These two vastly different business models serve similar but distinctly different, important purposes in our National Economy and both now greatly need different regulatory approaches in order to serve this Nation's public good in the future. Should this not occur, you will see the numbers of community banks continue to dwindle as they sell out to flee what has become the almost unbearable regulatory financial burden and business risk now emanating from Washington, D.C.

To illustrate, our Bank maintains good ratings with the regulatory agencies and has very clean portfolios of loans and investments, with very few non-performing or past-due items. We are diligent about running a very good Bank that is a genuine service and resource to our community, and have received a number of accolades attesting to that in the past. We are a simple, non-complex organization, yet the direct compliance costs in the bank have increased 240 % over the last five years, far exceeding the growth of the Bank, its loans, investments or deposits. That compliance cost figure includes only the expense of managers while working on regulatory compliance, the new cost of a skilled Compliance Officer, and the costs of myriad outside, third party auditors and reviewers to insure that our compliance efforts are adequate. It does not include the other staff costs, to include compliance implementation, ongoing costs and training for all employees throughout each year, nor does it include assessments from state or federal governmental entities or the FDIC's tremendous increases in costs over the same term. Nevertheless, it is still more than one fifth of the after tax profit earned by my stockholders last year....their direct cost (beyond taxes) of doing business in the U.S.A., perhaps.

When we were examined by the Federal Reserve during the Fall of last year, the examination preparation commenced in July as we began to provide huge amounts of data and files to the federal examiners by electronic transmission. Most of our files are electronic, to include loan and investment portfolios, so the transmission while voluminous was still relatively simple. We have fewer than 800 loans and less than 3000 accounts of any type in the Bank, have very low fees and utilize simple yet efficient operations. When the examiners rolled in, there were 16 of them and they stayed for two weeks. Despite a thorough review of our files in their home office, they nevertheless set about diligently to find fault. They assessed our performance against requirements of not only federal law and regulation, but also against regulatory agency "Guidance", SR Letters (supervisory letters from Washington headquarters to the agency's regional offices) and agency commentary regarding the regulations. The burden of all requirements with which we were inundated, to include incredible minutiae, prompted us to seriously consider adding a much larger compliance staff in order to just keep up. During the exam's exit meeting with our Board of Directors, the "violations" were so insignificant and had so little to do with the safety and soundness purpose of the examination that our Directors were clearly baffled by the report's relevance. I have been told by examiners from several regulatory agencies that they worked very hard to find anything that could possibly be cited even if the bank being examined was well managed. They and their supervisors feared their Washington headquarters and were criticized if they turned in reports that were too clean. Does this strong, central control from

Washington then ignore local, perhaps even regional, differences important in the operation of our economy? I have reports from my fellow minority bankers and others indicating that this is in fact happening and is causing problems in areas already sorely stressed from the lingering recession. Our own experiences at United Bank helping small businesses survive the poor economy bears out these observations as well.

The bank regulatory system has become far too large and far too complex while trying to effectively administer laws involving financial institutions. Regulations which have been written may apply to all, but the practical application of the regulation itself often falls far short of the meaning and intent of the law for which it was written to implement. "Guidances", SR Letters and the like do little to improve matters, if at all. Major money center banks have far different risk profiles than those of community banks, particularly those that do not meet the definition of a "big" or a "complex" bank. When regulators try to apply the same basic standards to all, common sense flies out the window and it is invariably the community banks (and the communities that they serve) which suffer. Dodd-Frank mandates that smaller banks be treated differently than larger banks, but that is not happening today. Regulators, for example, have expressed their belief that community banks should have increased capital standards much like those of major money center banks and are tacitly enforcing those standards in their examinations. Dodd-Frank indicates clearly that smaller banks should not be held to such standards, but rather to the current requirements for well capitalized institutions. Is this an overreaction on the part of regulators or simply an "unintended consequence" to be overlooked? Leaving unintended consequences as a natural byproduct of today's over regulation by bureaucrats who, for the most part, have little or no experience in the private sector where making a profit in order to survive is critical, is a serious threat to small community banks which cannot survive many such "unintended consequences" of serious nature.

If regulators strive to eliminate all risk in community banks, then the banks will not survive unless directly supported by the government. Finance in capitalism demands that risks be taken in order to reap profits. However, we do train our successful bankers to avoid unnecessary risks while preserving assets and our depositors' money. The individuals fail if they cannot do this, a fate enforced by banks' stockholders and Boards of Directors. Yet, this seems to be very foreign to bank regulators of every stripe. The Federal Reserve, in describing proposed incentive compensation guidance, wrote: "Because of the presence of the federal safety net (FDIC? Too Big To Fail?), shareholders of a banking organization may be willing to tolerate a degree of risk that is inconsistent with the organization's safety and soundness." An astounding statement, indeed! Since stockholders of failed banks rarely, if ever, recover their investment in the bank, why would they allow any degree of risk that would likely lead to failure, much less any loss? It is only when those in the regulatory bureaucracy believe themselves to understand in depth not only business and capitalist markets, but also consumer actions, perceptions and desires that we see justification for the micro-managing direction that present banking regulation has taken.

You should be aware that community bankers quake when they learn of an impending Consumer Compliance Examination. Such exams are fraught with uncertainty and fear. This is because the consumer examiners make no secret of the fact that they will be "compelled" to refer the bank to the U.S. Department of Justice should any evidence of discriminatory or disparate treatment of a "protected class" be uncovered. All well and good, but their methods often do not follow the norms of everyday commerce, nor the reality of how consumers or the average individual (regardless of income, credit score, race, color, creed, national origin, disability, etc.) behaves in a business transaction or negotiation. Real life situations are infinitely variable and the human beings with whom we deal in banking financial transactions usually abhor efforts to categorize them or to restrict what they wish to do simply because a regulator knows better than they how their life should go forward. Consequently, it is very difficult to accommodate the desires of both regulators and the consumers. And since we have seen a number of our community banks become expensively ensnared with the Justice Department because of being reported by a consumer compliance examiner, many of us simply do not advertise or do particular loans. It is just much too hard and too risky to try to accommodate our customers or any other local consumers with their consumer credit requests when we will second guessed (almost to death) by some eager examiner who MUST find something wrong somewhere in order to justify their presence.

We very often refer such consumer credit requests to area credit unions. In fact, the second largest institution in our city is a $1.7 Billion credit union (#2 after a major money center bank branch) which tries hard to take over our commercial small business market for accounts and loans. Credit unions can easily beat our loan rates because of their tax free status and we observe that their underwriting of loans is very often less stringent than ours. In frustration over their tax free status one day, I researched the enabling legislation when Congress created credit unions back in 1933 or so. The intent of the Congress then was excellent. Many people, particularly "those of modest means" (today's low-to-moderate income), had no good access to credit or even financial institutions. Therefore, charters for credit unions were to be allowed so that they could serve the people of modest means who enjoy a common bond. In return for such service, credit unions were granted an exemption from income tax – a great benefit! In fact, as I run the numbers, credit unions today make over 60% more net profit on each dollar of (pretax) income than we do as a community bank that, I might mention, is charged under the Community Reinvestment Act with serving the same entirety of our local market, including those of "modest means".

The competition between community banks and credit unions seems to be more than just a tad unfair. The unbridled expansion of community and common bond credit unions is of tremendous concern to us and to every community banker. These are tax-exempt de facto banks competing head on with us, but unburdened by the commensurate regulation or tax costs. Their pressing for further advantage with H.R. 1418 and the companion S. 509 seeking increased commercial lending authority is simply unacceptable to other community based financial providers such as we, given all the other negative regulatory and economic factors presently impacting community banks. At some point, this disparate (perhaps even discriminatory) treatment of community banks merits Congressional action.

In closing, I wish to thank this Committee for holding this hearing and for its attention to my and to the other comments here today. I have attached several articles and documents that may be of interest or assistance in understanding the current frustration (leading to even anger) not only among community bankers, but also among our customers and other fellow citizens. The good intent of the Congress as it works to meet the needs of the Nation and the what must seem like unending calls for action from constituents, is being drowned and swept under by the swollen flood of regulatory exuberance and excess overseen by many Administrations. It is a situation that cannot continue if we are to pass on the promise of America to our grandchildren and to our world.

Over-regulated America

The home of laissez-faire is being suffocated by excessive and badly written regulation

AMERICANS love to laugh at ridiculous regulations. A Florida law requires vending-machine labels to urge the public to file a report if the label is not there. The Federal Railroad Administration insists that all trains must be painted with an "F" at the front, so you can tell which end is which. Bureaucratic busybodies in Bethesda, Maryland, have shut down children's lemonade stands because the enterprising young moppets did not have trading licences. The list goes hilariously on.

But red tape in America is no laughing matter. The problem is not the rules that are self-evidently absurd. It is the ones that sound reasonable on their own but impose a huge burden collectively. America is meant to be the home of laissez-faire. Unlike Europeans, whose lives have long been circumscribed by meddling governments and diktats from Brussels, Americans are supposed to be free to choose, for better or for worse. Yet for some time America has been straying from this ideal.

Consider the Dodd-Frank law of 2010. Its aim was noble: to prevent another financial crisis. Its strategy was sensible, too: improve transparency, stop banks from taking excessive risks, prevent abusive financial practices and end "too big to fail" by authorising regulators to seize any big, tottering financial firm and wind it down. This newspaper supported these goals at the time, and we still do. But Dodd-Frank is far too complex, and becoming more so. At 848 pages, it is 23 times longer than Glass-Steagall, the reform that followed the Wall Street crash of 1929. Worse, every other page demands that regulators fill in further detail. Some of these clarifications are hundreds of pages long. Just one bit, the "Volcker rule", which aims to curb risky proprietary trading by banks, includes 383 questions that break down into 1,420 subquestions.

Hardly anyone has actually read Dodd-Frank, besides the Chinese government and our correspondent in New York (see pages 22-24). Those who have struggle to make sense of it, not least because so much detail has yet to be filled in: of the 400 rules it mandates, only 93 have been finalised. So financial firms in America must prepare to comply with a law that is partly unintelligible and partly unknowable.

Flaming water-skis

Dodd-Frank is part of a wider trend. Governments of both parties keep adding stacks of rules, few of which are ever rescinded. Republicans write rules to thwart terrorists, which make flying in America an ordeal and prompt legions of brainy migrants to move to Canada instead. Democrats write rules to expand the welfare state. Barack Obama's health-care reform of 2010 had many virtues, especially its attempt to make health insurance universal. But it does little to reduce the system's staggering and increasing complexity. Every hour spent treating a patient in America creates at least 30 minutes of paperwork, and often a whole hour. Next year the number of federally mandated categories of illness and injury for which hospitals may claim reimbursement will rise from 18,000 to 140,000. There are nine codes relating to injuries caused by parrots, and three relating to burns from flaming water-skis.

Two forces make American laws too complex. One is hubris. Many lawmakers seem to believe that they can lay down rules to govern every eventuality. Examples range from the merely annoying (eg, a proposed code for nurseries in Colorado that specifies how many crayons each box must contain) to the delusional (eg, the conceit of Dodd-Frank that you can anticipate and ban every nasty trick financiers will dream up in the future). Far from preventing abuses, complexity creates loopholes that the shrewd can abuse with impunity.

The other force that makes American laws complex is lobbying. The government's drive to micromanage so many activities creates a huge incentive for interest groups to push for special favours. When a bill is hundreds of pages long, it is not hard for congressmen to slip in clauses that benefit their chums and campaign donors. The health-care bill included tons of favours for the pushy. Congress's last, failed attempt to regulate greenhouse gases was even worse.

Complexity costs money. Sarbanes-Oxley, a law aimed at preventing Enron-style frauds, has made it so difficult to list shares on an American stockmarket that firms increasingly look elsewhere or stay private. America's share of initial public offerings fell from 67% in 2002 (when Sarbox passed) to 16% last year, despite some benign tweaks to the law. A study for the Small Business Administration, a government body, found that regulations in general add $10,585 in costs per employee. It's a wonder the jobless rate isn't even higher than it is.

A plea for simplicity

Democrats pay lip service to the need to slim the rulebook—Mr Obama's regulations tsar is supposed to ensure that new rules are cost-effective. But the administration has a bias towards overstating benefits and underestimating costs (see page 77). Republicans bluster that they will repeal Obamacare and Dodd-Frank and abolish whole government agencies, but give only a sketchy idea of what should replace them.

America needs a smarter approach to regulation. First, all important rules should be subjected to cost-benefit analysis by an independent watchdog. The results should be made public before the rule is enacted. All big regulations should also come with sunset clauses, so that they expire after, say, ten years unless Congress explicitly re-authorises them.

More important, rules need to be much simpler. When regulators try to write an all-purpose instruction manual, the truly important dos and don'ts are lost in an ocean of verbiage. Far better to lay down broad goals and prescribe only what is strictly necessary to achieve them. Legislators should pass simple rules, and leave regulators to enforce them.

Would this hand too much power to unelected bureaucrats? Not if they are made more accountable. Unreasonable judgments should be subject to swift appeal. Regulators who make bad decisions should be easily sackable. None of this will resolve the inevitable difficulties of regulating a complex modern society. But it would mitigate a real danger: that regulation may crush the life out of America's economy. ■

Too big not to fail

NEW YORK

Flaws in the confused, bloated law passed in the aftermath of America's financial crisis become ever more apparent

SECTIONS 404 and 406 of the Dodd-Frank law of July 2010 add up to just a couple of pages. On October 31st last year two of the agencies overseeing America's financial system turned those few pages into a form to be filled out by hedge funds and some other firms; that form ran to 192 pages. The cost of filling it out, according to an informal survey of hedge-fund managers, will be \$100,000-150,000 for each firm the first time it does it. After having done it once, those costs might drop to \$40,000 in every later year.

Hedge funds command little pity these days. But their bureaucratic task is but one example of the demands for fees and paperwork with which Dodd-Frank will blanket a vast segment of America's economy. After the crisis of 2008, finance plainly needed better regulation. Lots of institutions had turned out to enjoy the backing of the taxpayer because they were too big to fail. Huge derivatives exposures had gone unnoticed. Supervisory responsibilities were too fragmented. Dodd-Frank, named after its co-sponsors, Senator Chris Dodd and Congressman Barney Frank, attempted to address these issues (section 404 is one of those aimed at excessive risk exposure). But there is an ever-more-apparent risk that the harm done by the massive cost and complexity of its regulations, and the effects of its internal inconsistencies, will outweigh what good may yet come from it.

The law that set up America's banking system in 1864 ran to 29 pages; the Federal Reserve Act of 1913 went to 32 pages; the Banking Act that transformed American finance after the Wall Street Crash, commonly known as the Glass-Steagall act, spread out to 37 pages. Dodd-Frank is 848 pages long. Voracious Chinese officials, who pay close attention to regulatory developments elsewhere, have remarked that the mammoth law, let alone its appended rules, seems to have been fully read by no one outside Beijing (your correspondent is a tired-eyed exception to this rule). And the size is only the beginning. The scope and structure of Dodd-Frank are different to those of its precursor laws, notes Jonathan Macey of Yale Law School: "Laws classically provide people with rules. Dodd-Frank is not directed at people. It is an outline directed at bureaucrats and it instructs them to make still more regulations and to create more bureaucracies." Like the Hydra of Greek myth, Dodd-Frank can grow new heads as needed.

Take the transformation of 11 pages of Dodd-Frank into the so-called "Volcker rule", which is intended to reduce banks' ability to take excessive risks by restricting proprietary trading and investments in hedge funds and private equity (Paul Volcker, a former chairman of the Federal Reserve, has argued that such activity contributed to the crisis). In November four of the five federal agencies charged with enacting this rule jointly put forward a 298-page proposal which is, in the words of a banker publicly supportive of Dodd-Frank, "unintelligible any way you read it". It includes 383 explicit questions for firms which, if read closely, break down into 1,420 subquestions, according to Davis Polk, a law firm. The interactive Volcker "rule map" Davis Polk has produced for its clients has 355 distinct steps.

Boom time for lawyers

"I fear that the recently proposed regulation to implement the Volcker rule is extraordinarily complex and tries too hard," Sheila Bair, a former head of the Federal Deposit Insurance Company (FDIC), told Congress in December. A notable pre-crisis critic of regulatory gaps, she now believes that in this case "regulators should think hard about starting over again with a simple rule." Her comments were made before the Commodity Futures Trading Commission (CFTC), the fifth federal agency involved, issued its own proposal on proprietary trading on January 17th. That one is 489 pages long.

When Dodd-Frank was passed, its supporters suggested that tying up its loose ▸▸

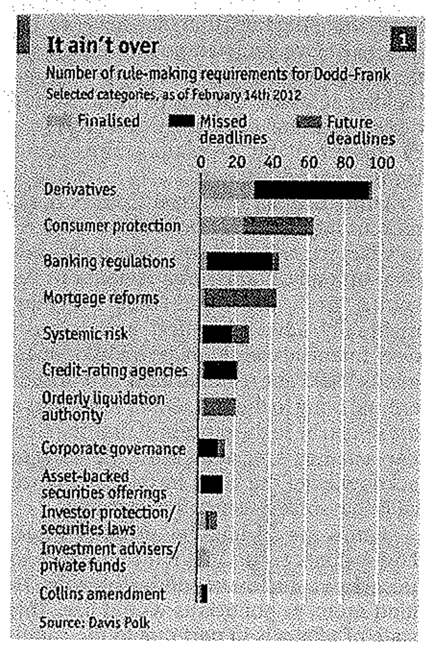
ends would take 12-18 months. Eighteen months on, those predictions look hopelessly naive. Politicians and officials responsible for Dodd-Frank are upbeat about their progress and the system's prospects, at least when speaking publicly. But one banker immersed in the issue speaks for many when he predicts a decade of grind, with constant disputes in courts and legislatures, finally producing a regime riddled with exceptions and nuances that may, because of its complexity, exacerbate systemic risks rather than mitigate them.

For the same reasons that bankers are worried, lawyers are rubbing their hands. For many of America's most prominent law firms helping companies to cope with Dodd-Frank is a vital service to clients, a lubricant for the American economy and a great new business. Daily updates on Dodd-Frank from Davis Polk and Morrison & Foerster have become as important to many on Wall Street as newspapers. Their popularity looks set to endure: according to Davis Polk only 93 of the 400 rule-making requirements mandated by Dodd-Frank have been finalised. Deadlines have been missed for 164 (see chart 1). And litigation is just beginning.

On July 22nd 2011 the United States Court of Appeals for the District of Columbia upheld a challenge by two trade groups to a Dodd-Frank-related rule on shareholder voting put forward by the Securities and Exchange Commission (SEC); the court found that the rule was backed by insufficient or faulty economic analysis of costs and benefits. On December 2nd, another case on similar grounds was filed in a Washington, DC, district court by two securities-industry trade groups, this time against the CFTC, concerning restrictions on derivative holdings. If that court, too, finds for the plaintiffs expect a deluge of further suits.

Along with requiring oodles of contestable rules, Dodd-Frank mandates 87 studies on big and small issues, ranging from the impact of drywall on mortgage defaults to the causes of the financial crisis. Once again, deadlines have been missed and progress is limited: 37 studies have yet to be completed. The ones that have been finished have received little public attention; trying to drink from the rule-making fire hose leaves little time for absorbing the output of the reporting one. Some of the reports seem to reach odd conclusions. A report from the FDIC contends that had Dodd-Frank been in effect four years ago, Lehman Brothers' creditors would have received 97 cents on the dollar; one expert on the case calls this ludicrous. The problem is not that the reports are necessarily wrong, but that no one is scrutinising them.

Another product of Dodd-Frank is a plethora of new government powers and agencies (see chart 2) with authority over areas of the American financial system



It ain't over 1
Number of rule-making requirements for Dodd-Frank
Selected categories, as of February 14th 2012
Source: Davis Polk

and economy affecting veterans, students, the elderly, minorities, investor advocacy and education, whistle-blowers, credit-rating agencies, municipal securities, the entire commodity supply chain of industrial companies, and more. Quite a lot have tasks already done by others—frustrating the act's worthwhile objective of consolidating fragmented pre-crisis supervision. A new office within the Treasury department is intended to forecast and head off disasters—already a goal of research groups at the 12 regional Federal Reserve Banks, the Federal Reserve Board, the president's Council of Economic Advisers and numerous federal agencies, not to mention universities, think-tanks and private firms.

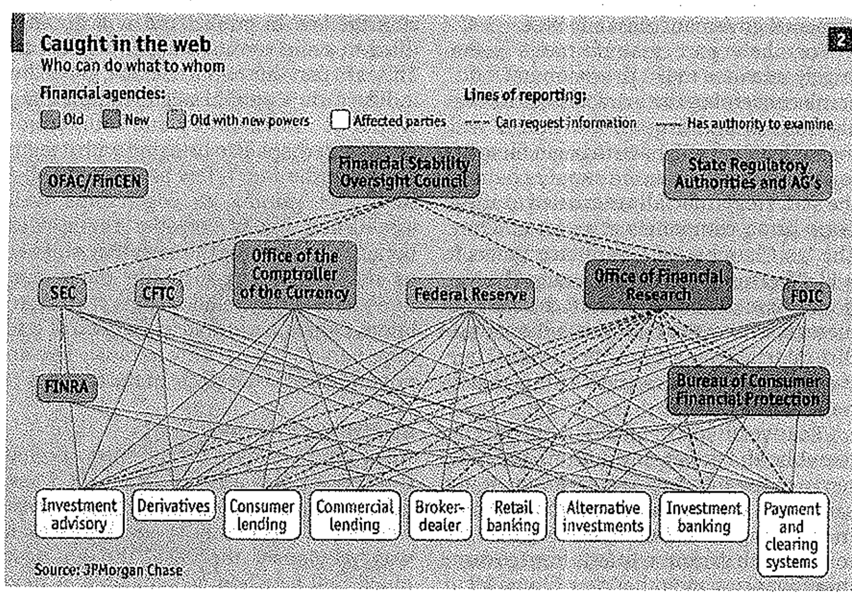
If the roles of many of these Dodd-Frank entities are overly familiar, their funding—which often skirts constitutional requirements for congressional approval—is more exotic. The new research bureau in the Treasury will be entitled to the proceeds of a new tax on banks. The new Consumer Financial Protection Bureau (CFPB) will be funded by the Fed.

But the really big issue that Dodd-Frank raises isn't about the institutions it creates, how they operate, how much they cost or how they are funded. It is the risk that they and other parts of the Dodd-Frank apparatus will smother financial institutions in so much red tape that innovation is stifled and America's economy suffers. Officials are being given the power to regulate more intrusively and to make arbitrary or capricious rulings. The lack of clarity which follows from the sheer complexity of the scheme will sometimes, perhaps often, provide cover for such capriciousness.

For example, the new CFPB will have latitude to determine what type of financial products can be provided to which consumers and at what cost, as well as the right to pursue institutions for acting in an "abusive" fashion (a term with no legal definition). Requirements for "living wills" that encompass hypothetical business plans have to be pored over by regulators; "stress tests" insert government assumptions deep into the decisions banks make about their capital. Such tests are not new to Dodd Frank. But the befuddling form the act gives such ideas unintentionally opens a path to much more state interference.

Dodd-Frankenstein's monsters

Another problem with complexity is that it encourages efforts to game the system by exploiting the loopholes it inevitably creates. Take the simple matter of nomenclature. Anticipating the Volcker rule, bank departments previously using the word "proprietary" have been dropped, re-



Caught in the web 2
Who can do what to whom
Source: JPMorgan Chase

named or quietly shifted to sheltered corners. The shadow banking system existed before the crisis, but expect it to grow as some financiers decamp to companies that evade Dodd-Frank's definitions.

The fees banks can charge for debit cards are being sharply reduced, but other retailers with similar products have received a waiver, courtesy of the so-called Durbin amendment (named after a Democratic senator, Dick Durbin). Consequently the payment industry may be in the early stages of a rule-driven and otherwise unlooked-for transformation with no rationale in efficiency or safety. The bank-remittance business, which was also selectively hit with new rules, is facing a similar shake-up. The governments of Japan, Canada and the European Union have had their hackles raised by the fact that American federal and municipal bonds will be exempt from the Volcker rule, however it is put into practice, whereas their own bonds will not. Goldman Sachs's chief financial officer, David Viniar, has said that inefficiencies in the market resulting from Volcker could make trading more profitable—which was hardly the point.

Paying up

There could well be unintended consequences at the level of the employee, too. Last August the SEC opened an office mandated by Dodd-Frank that is dedicated to examining whistle-blower complaints. It collected 334 reports in its first seven weeks; no one will say how many have come forth since, but many more are expected the better known the office gets. This may sound welcome. But Dodd-Frank's provisions for massive payments to the whistle-blowers—of up to 30% of any monetary sanctions collected on the basis of their report—will make the SEC route more attractive than using companies' own processes, and may thus make corporate governance less effective.

For their part manufacturers seem largely unaware that a provision in Dodd-Frank concerning the extraction of minerals from in and around the Congo will mean that they will have to begin filing information on their entire supply chain to the SEC. This is officially estimated to affect 1,000-5,000 companies at a cost of $71m. The US Chamber of Commerce thinks it will affect hundreds of thousands. The National Association of Manufacturers estimates it will cost $9 billion-16 billion. Conflict minerals are a disturbing issue. They were not one of the causes of the global financial crisis.

The overall cost of all this—both directly to public and private institutions and indirectly to the markets—is staggering. At the same time as banks are sacking employees in operating roles, they are adding swarms to cope with various requests from government agencies and other new filings, all to avoid violating rules that may never come into existence and temporary measures that may be rescinded. That is without looking at losses in terms of business not done. Loans that might not fit into a category favoured by regulators are being trimmed or withdrawn.

Jamie Dimon, JPMorgan Chase's boss, reckons the direct costs to his bank, America's largest, will be $400 billion-600 billion annually. "Additional regulations resulting from the Dodd-Frank act may materially adversely affect BB&T's business, financial condition or results of operations," said one regional bank in its recent annual filing to the SEC. Other institutions are said to be in the process of drafting similar statements, or, at the least, planning to acknowledge the costs in the conference calls that surround quarterly earnings.

Banks are trading below book value. Low valuations make it hard for banks to raise the capital that would allow them to lend more, as politicians would like. This state of affairs is in part due to the condition of the economy. And the reasonable goal of restricting banks from taking private risks with socialised consequences may in some cases reduce their value. But it is hard to find a banker or analyst who doesn't privately attribute a lot of the low valuation to the unnecessarily harsh impact of current regulations.

Inevitably, banks themselves are adding to the costs with a vast lobbying effort. SIFMA, a financial industry trade association, says it has 5,490 people dealing with various subcommittees, almost all devoted to Dodd-Frankery. And there are quieter attempts to blunt the act's provisions or redirect them to the advantage of one set of financial institutions or another. The Occupy Wall Street crowd, with its emphasis on government-business collusion, would be enraged if it knew.

But most bankers are reluctant to discuss the law in public, and will do anything to avoid commenting on regulators. This is in part due to the risk that, given the industry's low public esteem, complaining would be inflammatory and counterproductive, perhaps also bringing with it regulatory retribution. A few also see the possibility of gaining an edge: some well established banks consider themselves better able to handle the costs than smaller or newer ones, particularly those that don't have cushy relationships with regulators. Others, according to the head of one large bank, are quiet only because they do not understand the scope of the changes.

Back to the drawing board

All of which leads to the question of what Dodd-Frank has actually achieved. More information on America's derivatives markets will be available to regulators than was previously the case, though how much will be useful is debatable. A new (untested) insolvency procedure is now in place for firms like AIG, which lacked an alternative to bankruptcy or bail-out before the crisis. But the heavy lifting on higher capital requirements for banks is being done internationally via the Basel 3 process. And Dodd-Frank has hardly touched Fannie Mae and Freddie Mac, the two big government-sponsored lending entities that received the largest bail-outs in 2008, and which are more important in the housing markets than ever.

The muddle stands in sharp contrast to the aftermath of earlier legislation. The banking-reform act of 1864 consolidated America's fragmented currency system and enabled Abraham Lincoln to finance the civil war. The period of reregulation between 1933 and 1940 reserved a safe harbour for commercial banks, which were backed by federal deposit insurance but didn't attract speculative capital because of caps on the rate of interest that could be paid. Risk was left to investment banks and asset-management firms, tempered by abundant requirements for disclosure and a shift in where the burden of proof lay in litigation, from plaintiffs to defendants.

Even Dodd-Frank's creators can bring no similar clarity to its intentions. In 2009 Mr Frank attempted to frame the new law's goals under four heads: securitisation, compensation, liquidation and systemic risk. But in a single speech his ambitions overflowed to consumer protection and the reform of ratings agencies, too. Ambition is often welcome; but in this case it is leaving the roots of the financial crisis under-addressed—and more or less everything else in finance overwhelmed. ■

United States House of Representatives

Committee on Financial Services

"Truth in Testimony" Disclosure Form

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Lester Leonidas Parker	United Bank of El Paso del Norte El Paso, Texas

3. Business Address and telephone number:

[redacted]

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☒ No	☐ Yes ☒ No

6. If you answered .yes. to either Item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

7. Signature:

Please attach a copy of this form to your written testimony.