



Brief Review of CHOICE Act 2.0*

Jim Sivon

April, 2017

In preparation for a presentation, I read some (but not all) of the provisions of the CHOICE Act. The following are some of the highlights of that over 500 page bill as released prior to the Committee consideration of the bill.

Prudential Regulation and Supervision

Off-Ramp – Creates an off-ramp for banking organizations with 10% leverage ratio; organizations that exercise this option would not be subject to any other capital requirements, any liquidity requirements, and any of the enhanced prudential standards in section 165 of the Dodd-Frank Act.

Resolution Plans – Puts resolution planning on a 2-year cycle, requires feedback on resolution plans within 6 months, and requires disclosure of framework for assessing plans.

CCAR and Stress Testing – Puts CCAR on a 2-year cycle, eliminates objections based upon qualitative grounds.

Operational Risk – A capital charge for operational risk must be based upon current activities and a forward looking assessment of potential losses.

Reputational Risk – A regulator cannot require a bank to terminate an account or discourage a banking relationship solely on the basis of reputation risk.

Loan Classifications – Establishes standards for loan classifications.

Tailor Act – Includes H.R. 1116, the TAILOR Act, which requires regulations and guidance to be based upon an institution's risk profile and business model, not asset size.

CLEAR Act – Includes provisions from H.R. 2133, the CLEAR Act: (1) Increases asset threshold for small bank holding company (BHC) policy statement to \$10 billion; (2) Repeals Basel III treatment of mortgage servicing rights; and (3) Mortgages held in portfolio treated as "Qualified Mortgages."

*The information contained in this newsletter does not constitute legal advice. This newsletter is intended for educational and informational purposes only.

Systemic Risk

Bankruptcy – Repeals OLA and amends chapter 11 of the federal bankruptcy code to cover BHCs and large financial organizations.

Guarantees and Liquidity Support – Eliminates FDIC's emergency guarantee authority for solvent and insolvent institutions, narrows the Federal Reserve Board (FRB)'s 13(3) authority, and requires discount window loans to be fully secured.

FSOC Designations – Repeals FSOC's authority to designate nonbank financial companies and financial market utilities for FRB supervision.

Risky Activities and Practices – Repeals FSOC's authority to recommend activities or practices for regulation.

Agency Reorganization

FSOC – Restructures agency participation in FSOC; permits members of Congress to attend meetings.

OFR – Abolishes the Office of Financial Research.

CFPB – Restructures CFPB to be a law enforcement agency that has a mandate to enforce consumer financial law, increase competition and enhance consumer choice; the agency would retain rulemaking authority for federal consumer laws, but would have no examination powers; the president may remove the director at will; the president must appoint the deputy director; OMB given authority over CFPB rules like non-independent agencies.

FIO – Elevates the Federal Insurance Office and consolidates that position with the Independent Member of FSOC with Insurance Expertise.

Examinations – Creates an Independent Office of Examination Review.

Funding – Subjects federal financial regulatory agencies, including FSOC, to Congressional appropriations (FRB monetary policy operations exempted).

Rulemaking

Cost/Benefit Analysis – Requires that new rules be subject to a cost benefit analysis and a rule cannot be issued if costs exceed benefits.

Chief Economist Council – Requires each agency to designate a chief economist to oversee cost/benefit analysis.

Major Rules – Major rules (\$100 million or more impact) are subject to Congressional review and approval before effective.

Deference – Prohibits judicial deference on agency actions 2 years after enactment.

International Negotiations – Imposes transparency requirements around international supervisory negotiations by U.S. financial regulators.

Federal Reserve System

GAO Audit – Authorizes GAO audit of all aspects of FRB operations, including the Reserve Banks.

Monetary Policy – Requires FRB to compare monetary policy against a reference rule.

FOMC – Restructures the Federal Open Market Committee to include 6 Reserve Banks (Boston, Philadelphia, Richmond, Chicago, Minneapolis and Dallas in odd years; New York, Cleveland, Atlanta, St. Louis, Kansas City and San Francisco in even years); requires meetings to be recorded and made public; and restricts communications during blackout period.

Congressional Testimony – Requires quarterly testimony by FRB Chairman and Vice Chair for Supervision.

Personnel – Subjects FRB governors and employees to prohibitions on financial interest and transactions applicable to SEC¹ and to certain ethics standards;² requires public disclosure of salaries for governors and senior staff; authorizes staff for each governor.

Commission – Establishes a Commission to review monetary policy.

Repeals:

Volcker Rule;

DOL fiduciary rule;

Durbin amendment;

Franken amendment;

UDAAP (banking agencies can enforce UDAP);

Incentive-based compensation rule;

Pay ratio disclosure rule;

Conflict minerals disclosure requirement;

Risk retention rule for asset-backed securitizations other than mortgages;

CFPB authority to regulate small dollar loans and arbitration agreements; and

CFPB indirect auto financing guidance (any new guidance must be subject to notice and comment).

*Jim Sivon is a partner with the law firm of **Barnett Sivon & Natter, P.C.***

¹See 5 CFR §§4401.102 and 4401.103(c).

²17 CFR pt. 200, Subparts C and M, and 5 CFR pt. 735.