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BACKGROUNDER

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A Comparison of Two Financial Regulatory Reform Approaches

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Abstract
The House passed the 600-page Financial CHOICE Act on a party-line vote in June 2017. The CHOICE Act is a major financial regulation reform bill that would replace large parts of the 2010 Dodd–Frank Act. Although the Republican-led Senate has not yet passed its own reform bill, the Senate Banking Committee has passed the Economic Growth, Regulatory Relief, and Consumer Protection Act, legislation with 12 Democratic co-sponsors. The Senate bill is much less ambitious than the CHOICE Act, but there is considerable overlap between the two bills. In fact, several sections in both bills are nearly identical. Optimally, Congress would enact the types of reforms in the CHOICE Act, but policies in the Senate bill would provide regulatory relief for many financial institutions. This Backgrounder *reviews the main features of the bills, analyzes their key differences and similarities, and offers suggestions for improvements.*

Key Points

- The House-passed CHOICE Act is a comprehensive financial regulatory reform bill that would replace large parts of the 2010 Dodd–Frank Act.
- The CHOICE Act represents an overwhelmingly positive approach to regulatory reform that would help to restore market discipline and reduce regulatory burdens, thus moving the nation's financial markets in the right direction.
- The Senate bill, S. 2155, is a more targeted financial reform bill than the CHOICE Act, but it includes similar versions of approximately 15 CHOICE Act provisions.
- S. 2155 does not provide as extensive regulatory relief as the CHOICE Act, nor does it eliminate many of the existing problems created by Dodd–Frank. It does, however, include several features that would provide significant regulatory relief to many financial institutions. To help the most Americans, Congress should enact as many of these reforms as possible.

In June 2017, the House passed H.R. 10, the Financial CHOICE Act. The CHOICE Act is a comprehensive financial regulatory reform bill that would replace large parts of the 2010 Dodd–Frank Wall Street Reform and Consumer Protection Act. The cornerstone of the CHOICE Act is a regulatory off-ramp, a provision that provides regulatory relief to all banks that choose to maintain a higher equity–capital ratio than currently required. The Financial CHOICE Act represents an overwhelmingly positive approach to regulatory reform that would help to restore market discipline and reduce regulatory burdens, thus moving the nation's financial markets in the right direction.[1]

The Senate has not yet passed its own financial reform bill, but the Senate Banking Committee recently passed the Economic Growth,

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Regulatory Relief, and Consumer Protection Act (S. 2155), a reform bill that includes several CHOICE Act provisions.[2] The Senate bill does not provide as extensive regulatory relief as the CHOICE Act, nor does it eliminate many of the existing problems created by the Dodd–Frank Act. However, there is overlap between the two bills, and the Senate bill includes several features that would provide significant regulatory relief to many financial institutions. To help the most Americans, Members of Congress should enact as many of these reforms as they can agree to.

Main Features of the CHOICE Act

The core elements of H.R. 10, the CHOICE Act, represent a major regulatory improvement because they help restore market discipline while reducing regulatory burdens. The 600-page bill replaces harmful portions of the 2010 Dodd–Frank Act, implements many capital markets regulatory improvements, and makes several major Federal Reserve governance and operational improvements. The reform package in the CHOICE Act represents an overwhelmingly positive step for U.S. financial markets and the broader U.S. economy. The major money and banking components of the CHOICE Act are as follows.

Providing a Regulatory Off-Ramp. The regulatory off-ramp (capital election) in Title VI of the CHOICE Act provides regulatory relief to banks that choose to maintain a higher equity–capital ratio, thus improving their ability to absorb losses and reducing the likelihood of taxpayer bailouts. Section 601 establishes the capital election, such that any bank that chooses to meet the required 10 percent leverage ratio is treated as a "qualifying banking organization for purposes of the regulatory relief described under section 602." The required leverage ratio, as defined in Section 605, is the bank's ratio of tangible equity to leverage exposure.[3]

Section 602 spells out all of the specific regulations of which qualifying banks will be relieved, including any federal law, rule, or regulation addressing capital or liquidity requirements, as well as any federal law, rule, or regulation that allows banking regulators to provide limitations on mergers, consolidations, or acquisitions (to the extent such limitations relate to capital or liquidity). Qualifying banks would also be exempt from the "heightened prudential standards" implemented by section 165 of Dodd–Frank.

Repurposing the Financial Stability Oversight Council (FSOC). Title II of the CHOICE Act takes a major step toward fixing the damage caused by Title I of Dodd–Frank. Title I of Dodd–Frank created the FSOC, a sort of super-regulator tasked with singling out firms for especially stringent regulation. The problem is that these firms, commonly called systemically important financial institutions (SIFIs), are those that regulators believe would damage the broader economy if allowed to file bankruptcy. In other words, Title I of Dodd–Frank charges the FSOC with identifying those firms regulators deem too big to fail.

The CHOICE Act strips the FSOC of its authority to designate non-bank financial firms for more stringent regulations (section 113 of Dodd–Frank), as well as its authority to recommend more stringent regulations for individual financial activities (section 120 of Dodd–Frank). It repeals the FSOC's authority to make recommendations for more stringent regulations to the Federal Reserve Board of Governors for both non-bank financial firms and large bank holding companies (Section 115 of Dodd–Frank). The CHOICE Act also retroactively repeals any previously made FSOC

1. Norbert J. Michel, "Money and Banking Provisions in the Financial CHOICE Act: A Major Step in the Right Direction," Heritage Foundation *Backgrounder* No. 3152, August 31, 2016, http://www.heritage.org/markets-and-finance/report/money-and-banking-provisions-the-financial-choice-act-major-step-the.

2. The committee's 12 Republican Senators voted for the measure along with four of the Democratic members. Jim Puzzanghera, "Senate Committee Advances Bipartisan Measure Rolling Back Some Bank Regulations," *Los Angeles Times*, December 5, 2017, http://beta.latimes.com/business/la-fi-senate-banking-regulations-20171205-story.html (accessed December 12, 2017). Also see news release, "Banking Committee Advances S. 2155, the 'Economic Growth, Regulatory Relief and Consumer Protection Act,'" U.S. Senate Committee on Banking, Housing, and Urban Affairs, December 5, 2017, https://www.banking.senate.gov/public/index.cfm/2017/12/banking-committee-advances-s-2155-the-economic-growth-regulatory-relief-and-consumer-protection-act (accessed December 12, 2017). In 2015, the Senate Banking Committee passed the Financial Regulatory Improvement Act of 2015 on a party-line vote. See Norbert J. Michel, "Senate Financial Reform Bill Anything But a Partisan Effort," The Daily Signal, May 21, 2015, http://dailysignal.com/2015/05/21/senate-financial-reform-bill-anything-but-a-partisan-effort/.

3. Leverage exposure is defined in the supplementary-leverage ratio (SLR) regulations ("total leverage exposure" under section 3.10(c)(4)(ii), 217.10(c)(4), or 324.10(c)(4) of title 12, Code of Federal Regulations).

designations for non-bank financial companies. Finally, section 141 of the CHOICE Act repeals similar FSOC authority for systemically important financial market utilities (SIFMUs) in Title VIII of Dodd–Frank. The CHOICE Act effectively transforms the FSOC into a regulatory council for sharing information.

Replacing Orderly Liquidation with Bankruptcy. Title II of the CHOICE Act repeals Dodd–Frank's orderly liquidation authority (OLA) and amends the bankruptcy code so that large financial firms can credibly use the bankruptcy process. Dodd–Frank's controversial OLA was the 2010 law's alternative to bankruptcy for large financial firms, and it was based on the faulty premise that large financial institutions cannot fail in a judicial bankruptcy proceeding without causing a financial crisis. The OLA gives these large financial companies access to taxpayer-backed funding and creates incentives for management to overleverage and expand their high-risk investments.

Repealing the Volcker Rule. Title IX of the CHOICE Act repeals Section 619 of Dodd–Frank, otherwise known as the Volcker rule. The Volcker rule supposedly protects taxpayers by prohibiting banks from engaging in proprietary trading—that is, making risky investments solely for their own profit. Although it sounds logical to stop banks from making "risky bets" with federally insured deposits, this idea ignores the basic fact that banks make risky investments with federally insured deposits every time they make a loan. Furthermore, long before the 2008 crisis, federal regulators had—and used—the authority to regulate proprietary trading.[4] There is no reason to think that the Volcker rule would have prevented—or even softened—the 2008 crisis.

Protecting Financial Consumers. Title VII of the CHOICE Act converts the Consumer Financial Protection Bureau (CFPB) into an enforcement-only agency, and changes the structure of the agency so that its director would be removable by the President at will. The CHOICE Act places the new agency under congressional appropriations, thus eliminating the CFPB's unusual funding mechanism, and eliminates Dodd–Frank's overly vague "unfair, deceptive, or abusive" concept from consumer financial protection law.[5]

Main Features of the Economic Growth, Regulatory Relief, and Consumer Protection Act

The Senate Banking Committee recently passed S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act. This bill is fewer than 100 pages long and is designed to provide targeted relief in the banking industry rather than to deliver comprehensive financial market reforms. Nonetheless, the Senate bill does include several features that would provide significant regulatory relief, and it includes several provisions that are very similar to sections of the CHOICE Act. The two major components of S. 2155 are as follows.

Relief from Risk-Weighted Capital Rules. S. 2155 does not provide the blanket off-ramp that the CHOICE Act does, but section 201 does include a trimmed down off-ramp. In particular, this section provides relief from risk-weighted capital requirements (as defined in 12 U.S. Code § 5371) for *some small* banks that meet a new leverage ratio. In general, the regulatory relief is for banks with total assets of less than $10 billion. The bill authorizes federal banking regulators to create the new ratio, but it specifies that the new metric must be the ratio of tangible equity to total assets, and must be between 8 percent and 10 percent. Given that there are approximately 5,000 commercial banks in the U.S.,[6] nearly all of which have total assets below $10 billion,[7] S. 2155 potentially provides capital regulation relief for most U.S. banks.[8] However, not all banks under the

4. Norbert J. Michel, "The Volcker Rule Was Misguided and Unnecessary," Heritage Foundation *Issue Brief* No. 4517, June 13, 2017, http://www.heritage.org/markets-and-finance/report/the-volcker-rule-was-misguided-and-unnecessary.

5. The CHOICE Act would also implement many positive Federal Reserve reforms via the Fed Oversight Reform and Modernization (FORM) Act. See Michel, "Money and Banking Provisions in the Financial CHOICE Act: A Major Step in the Right Direction."

6. Federal Deposit Insurance Corporation, "Statistics at a Glance," September 30, 2017, https://www.fdic.gov/bank/statistical/stats/2017sep/industry.pdf (accessed December 13, 2017).

7. Federal Financial Institutions Examination Council, "National Information Center: Holding Companies with Assets Greater than $10 Billion," June 30, 2017, https://www.ffiec.gov/nicpubweb/nicweb/HCSGreaterThan10B.aspx (accessed December 13, 2017). As of June 2017, 121 banks reported consolidated total assets greater than $10 billion.

8. Banks that do qualify are considered to meet all other capital and leverage requirements for such banks, and are also considered well-capitalized as defined in section 38 of the Federal Deposit Insurance Act (12 U.S. Code § 1831o).

$10 billion threshold automatically qualify for an exemption from risk-weighted capital measures even if they meet the new leverage ratio.

Section 201(a)(3)(B) gives federal regulators the authority to disqualify such banks for the capital-regulation relief based on the bank's *risk profile*. Specifically, regulators can disqualify a bank based on regulators' consideration of off-balance-sheet exposures, trading assets and liabilities, total notional derivatives exposure, and "such other factors as the appropriate Federal banking agencies determine appropriate." It is impossible to know in advance how banking regulators will use this discretion, but very few U.S. commercial banks with assets under $10 billion and tier-one equity (a close approximation for tangible equity) to total assets of at least 10 percent report off-balance-sheet and notional-derivative exposures.[9]

Relief from Heightened Standards. Section 401 of S. 2155 tailors Dodd–Frank's enhanced supervision and prudential standards for some banks.[10] In particular, it amends Section 165 of the Dodd–Frank Act (12 U.S. Code 5365), the section that authorized the Federal Reserve Board to impose more stringent regulations on certain non-bank financial companies and bank holding companies with total assets of at least $50 billion.[11] This $50 billion threshold is commonly called the SIFI-designation threshold, though the Fed does not literally designate such banks as SIFIs.[12] The Senate bill changes this threshold to $250 billion, which would apply to only 13 U.S. banks,[13] but with major conditions.

First, Section 401(a) authorizes the Fed to "apply any prudential standard" to "any bank holding company or bank holding companies" with total assets of at least $100 billion. This provision would apply to roughly 40 banks.[14] The Senate bill does require that the Fed apply such regulations *only* if it determines they will "prevent or mitigate risks to the financial stability of the United States," but this condition already exists for applying prudential standards.[15]

Additionally, Section 401(b) ensures that the Fed still has the authority "to tailor or differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate." In other words, the Senate bill lifts the threshold, but it actually raises it from $50 billion to $100 billion, and it still allows the Fed to apply special standards to banks with assets less than $100 billion.[16] Section 401(f) also stipulates that any bank, regardless of asset size, identified as a global systemically important bank holding company is automatically considered, for purposes of these changes, to have assets exceeding $250 billion.

9. This statement is based on the author's calculations using Federal Financial Institutions Examination Council (FFIEC) call report data from 2011 through 2015 (the number of such banks reporting these items was much higher prior to 2011). From 2011 through 2015, the end-of-year mean and median *tier-one-to-total-asset* ratio exceeded 10 percent for banks with assets less than $10 billion. The call report data includes many different variables that capture off-balance-sheet exposures, derivatives, and trading assets, and the author has not yet analyzed all of these variables. However, from 2011 through 2015, no more than 22 small banks with a tier-one-to-total-asset ratio greater than 10 percent reported, for example, off-balance-sheet exposures from open lines of credit secured by residential real estate (variable code RCFD3814) or commitments to fund commercial real estate developments (variable code RCFDF165).
10. Title II of the Senate's Financial Regulatory Improvement Act of 2015 included similar provisions (using a $500 billion threshold) and also made more extensive changes than S. 2155 to the designation process.
11. The Fed is authorized to establish these regulations on its own or under the direction of the Financial Stability Oversight Council (FSOC) (12 U.S. Code 5325).
12. Norbert J. Michel, "The Financial Stability Oversight Council: Helping to Enshrine 'Too Big to Fail,'" Heritage Foundation *Backgrounder* No. 2900, April 1, 2014, http://www.heritage.org/report/the-financial-stability-oversight-council-helping-enshrine-too-big-fail.
13. Federal Financial Institutions Examination Council.
14. Ibid.
15. 12 U.S. Code § 5365(a)(1). The Senate bill also allows the Fed to apply these prudential standards "to promote the safety and soundness of the bank holding company or bank holding companies," and allows the Fed to consider "the bank holding company's or bank holding companies' capital structure, riskiness, complexity, financial activities (including financial activities of subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate."
16. Section 401(e) also requires the Fed to conduct supervisory stress tests on those bank holding companies with total assets between $100 billion and $250 billion.

Similar Provisions in both CHOICE and S. 2155

Overall, the financial regulatory bills take very different approaches, with S. 2155 applying a much more targeted technique. Nonetheless, there is some overlap in the approaches taken in the two bills. Whereas the CHOICE Act would essentially provide capital regulatory relief (and from Dodd–Frank heightened standards) to all banks that meet a new capital standard, S. 2155 would only provide capital regulatory relief to smaller banks that meet a new capital standard, *provided that* federal regulators approve. Several other sections of the two bills take an even more similar approach to providing regulatory relief.

Relief from Ability-to-Repay/QM Rules. Both the Senate and House bills amend the qualified mortgage (QM) definition to provide regulatory relief from the Dodd–Frank ability-to-repay rules. Both bills provide relief to banks that hold residential mortgages on their books instead of selling the loans into the securitization market. However, the CHOICE Act provides broader regulatory relief because S. 2155 (section 101) only provides a QM safe harbor for banks with less than $10 billion in total assets. Section 516 of the CHOICE Act, on the other hand, provides a QM safe harbor for all banks—without reference to the size of the bank—that hold mortgages instead of selling them. The CHOICE Act also gives the same QM safe harbor to *non-bank* mortgage originators, provided that the bank (or other creditor) funding the mortgage agrees to hold the loan on its balance sheet for the life of the loan. The Senate bill does not include this additional protection for non-bank originators.

Furthermore, the Senate bill threshold of $10 billion means that the safe harbor will apply to many banks that typically prefer to sell their loans. Long before Dodd–Frank, many small banks changed their approach to an *originate-and-sell* model, choosing to sell mortgages into the securitization market rather than hold mortgages. In fact, the Independent Community Bankers of America (ICBA) and the National Association of Federally Insured Credit Unions (NAFCU) have made preserving Fannie Mae and Freddie Mac securitization a legislative priority for its members (community banks and credit unions).[17] Regardless, recent bank data suggest that the Senate bill would provide a safe harbor for roughly 25 percent of the mortgage market.[18]

Stress Tests and Living Wills. Section 602(a)(8) of CHOICE ensures that any qualifying bank will be exempt from any federal law, rule, or regulation implementing standards of the type provided for in (among others) subsections (d) and (i) of section 165 of Dodd–Frank. These exemptions mean that any bank choosing to make the capital election would be exempt from Dodd–Frank's living-will requirements and stress-testing requirements, respectively. The CHOICE Act also reforms the stress-test and living-will processes for banks that do not make the qualifying capital election.

Section 151(c) of CHOICE codifies that banking regulators can only request living wills every two years, and section 151(b)(6)(F) requires banking regulators to (1) provide feedback on living wills to banks within six months of the submission; and (2) publicly disclose the assessment framework used to determine if the living will is acceptable. Section 151(b)(6)(J) of the CHOICE Act converts the company-run stress-test process to an annual (rather than semiannual as under current law) occurrence. Section 151(b)(6)(J) also requires the Fed to undertake a formal rulemaking procedure for the stress-testing process, and to develop, within that rulemaking, a process for testing the models and methodologies used to perform stress tests.

17. News release, "ICBA to Congress: Housing Reform Must Preserve Community Bank Access," ICBA, October 25, 2017, https://www.icba.org/news/press-releases/2017/10/25/icba-to-congress-housing-reform-must-preserve-community-bank-access (accessed November 30, 2017); ICBA, "Current Top Issues," Fourth Quarter 2017, https://www.icba.org/docs/default-source/icba/advocacy-documents/current-top-issues-2Q2017.pdf?sfvrsn=14 (accessed November 30, 2017); and Ann Kossachev, "Treasury Addresses Housing Finance Reform at NAFCU's Congressional Caucus," The NAFCU Compliance Blog, September 22, 2017, http://nafcucomplianceblog.typepad.com/nafcu_weblog/2017/09/treasury-addresses-housing-finance-reform-at-nafcus-congressional-caucus.html (accessed November 30, 2017).

18. Fed. Governor Elizabeth Duke recently noted the following: "Smaller community banks account for about 5 percent of the originations annually and larger community banks an additional 13 percent. Credit unions, which are nearly all small, now account for an additional 7 percent of home loan originations. Thus, taken together, community banks and credit unions accounted for one-quarter of the new origination market in 2011." Elizabeth A. Duke, "Community Banks and Mortgage Lending," November 9, 2012, Federal Reserve Board of Governors, Speech At the Community Bankers Symposium, Chicago, Illinois, https://www.federalreserve.gov/newsevents/speech/duke20121109a.htm (accessed November 30, 2017). 2016 call report statistics suggest that the figure remains close to 25 percent.

The Senate bill does not make such extensive changes. Instead, section 401(a)(5) decreases the number of scenarios—from three to two—that must be included in (both Fed-conducted and company-conducted) stress tests, and also changes the frequency for company-run tests, for all non-bank financial companies supervised by the Fed and bank holding companies with more than $250 billion in total assets, from "annual" to "periodic." Section 401(a)(5) also changes the frequency for company-run tests for all federally regulated financial companies with more than $10 billion in total assets from "annual" to "periodic." Separately, section 401(e) requires the Fed to conduct supervisory stress tests on bank holding companies with total assets between $100 billion and $250 billion. The Senate bill makes no changes to the living-will process.

Relief from Home Mortgage Disclosure Act Requirements. Both the Senate and the House bills provide limited regulatory relief from requirements of the Home Mortgage Disclosure Act (HMDA).[19] Section 576 of the CHOICE Act provides an exemption from most HMDA requirements to depository institutions that originate fewer than 100 closed-end mortgages and fewer than 200 open lines of credit in each of the two preceding years.[20] The Senate bill (section 104) creates a HMDA exemption for institutions that originate fewer than 500 closed-end mortgages and fewer than 500 open lines of credit in each of the two preceding years, but it essentially exempts such institutions only from the requirements that dictate how the HMDA loan data must be grouped.[21]

Relief from Mortgage Licensing Impediment. Both the Senate and House bills amend the Secure and Fair Enforcement (SAFE) for Mortgage Licensing Act of 2008[22] so that individuals employed as loan originators can continue working without having to go through a special licensing process when they move from depository institutions to non-depository institutions. Section 106 in the Senate bill and section 556 in CHOICE, respectively, would implement this change, thus placing non-banks and banks on an equal footing with regard to hiring loan originators.[23] There are no material differences in these sections of the two bills.

Access to Manufactured Home Loans. Section 107 of the Senate bill and sections 501 and 502 of CHOICE amend section 103 of the Truth in Lending Act[24] to promote access to manufactured home financing. Both amend the definition of *mortgage originator* to clarify that employees of manufactured retail homes are not automatically considered lenders.[25] The CHOICE Act goes further than the Senate bill by amending the definition of a high-cost mortgage, whereas the Senate bill makes no such change.

Exemption from Certain Escrow Requirements. Section 109 of the Senate bill and Section 531 of CHOICE both amend the Truth in Lending Act[26] to provide an exemption from certain escrow requirements. The CHOICE Act provides a safe harbor to creditors with assets of $10 billion or less who hold the specified loan for three years. The Senate bill provides the safe harbor for creditors with assets of $10 billion or less who, during the preceding year, originated no more than 1,000 residential loans, provided they meet the requirements of several existing escrow account regulations.[27]

Volker Rule Relief. Section 203 of the Senate bill exempts some banks from the Volcker rule, whereas section 901 of the CHOICE Act repeals the Volcker rule. The Senate bill amends Section 13(h) of the Bank Holding Company Act of 1956[28] by allowing an exemption from the Volcker rule for banks with

19. 12 U.S. Code 2803.
20. 12 U.S. Code § 2803(a) and 12 U.S. Code § 2803(b).
21. 12 U.S. Code § 2803(b)(5) and 12 U.S. Code § 2803(b)(6).
22. 12 U.S. Code 5101 et seq.
23. This provision was section 118 of the Senate's Financial Regulatory Improvement Act of 2015.
24. 15 U.S. Code 1602.
25. This provision was section 108 of the Senate's Financial Regulatory Improvement Act of 2015.
26. 15 U.S. Code 1639d.
27. Specifically, Section 109 requires that the "the transaction otherwise satisfies the criteria in sections 1026.35(b)(2)(iii) and 1026.35(b)(2)(v) of title 12, Code of Federal Regulations, or any successor regulation."
28. 12 U.S. Code 1851(h).

assets not exceeding $10 billion *and* with total trading assets and liabilities not exceeding more than 5 percent of their total assets.[29]

Reduced Reporting Burden. Section 205 of the Senate bill and section 566 of the CHOICE Act provide relief to some banks from certain quarterly regulatory reports. The Senate bill authorizes a shortened call report in the first and third quarters, subject to newly issued regulations, for banks with less than $5 billion in assets. The Senate bill explicitly authorizes regulators to require additional criteria for these small banks. The CHOICE Act provides relief (for the first and third quarter reports) to any size bank provided that it is well capitalized, as defined in section 38(b) of the Federal Deposit Insurance Act.[30] The CHOICE Act also explicitly allows regulators to require additional criteria. Holding such regulatory discretion constant, the CHOICE Act provides broader regulatory relief for reporting requirements than the Senate bill.

Federal Savings Charters. Section 206 of the Senate bill and section 551 of the CHOICE Act both fix a chartering issue that arose for federal savings associations after Dodd–Frank eliminated the Office of Thrift Supervision. The two bills take a nearly identical approach, though only the Senate bill includes size restrictions and a grandfather clause for associations with total assets of $15 billion.

Small Bank Holding Company and Savings and Loan Holding Company Policy Statement. The transfer of ownership of small banks often requires the use of acquisition debt, so the Federal Reserve Board of Governors has permitted higher debt levels, in limited cases, than it permits for larger holding companies. The Small Bank Holding Company and Savings and Loan Holding Company Policy Statement sets forth these debt regulations, and the rules currently apply to certain holding companies with less than $1 billion in total assets. Section 207 of the Senate bill and Section 526 of the CHOICE Act both amend the policy statement.[31] The two bills take nearly the same approach, but the CHOICE Act raises this threshold to $10 billion, while the Senate bill raises the threshold to $3 billion.

Extension for Expedited Funds Availability Act. Section 208 of the Senate bill and section 521 of the CHOICE Act amend the Expedited Funds Availability Act,[32] a law that regulates hold periods on deposits made to commercial banks. Both bills amend the act to include American Samoa and the Commonwealth of the Northern Mariana Islands.[33]

Changes to Dividend Waiver Authority for Mutual Holding Companies. Prior to the amendment package agreed to during the Senate markup, section 209 of S. 2155 and section 598 of the CHOICE Act amended the dividend waiver authority for mutual holding companies. The amendment package, however, deletes section 209 from the Senate bill.[34] Currently, the Code of Federal Regulations places certain restrictions on these dividend waivers, and 239.8(d)(2)(iv) requires an affirmation that a majority of holding company members eligible to vote within 12 months of the dividend declaration approve the waiver. The CHOICE Act essentially makes it easier for a mutual holding company to waive the right to receive any dividend declared by one of its subsidiaries. In particular, the CHOICE Act ensures that the Fed will approve such a waiver if it determines the waiver would not harm the safety and soundness of the holding company, and if the holding company board determines the waiver to be consistent with its fiduciary duties. The original version of the Senate bill changes the time period to within 24 months of the dividend declaration, but it makes no other changes to the waiver authority.

Regulatory Parity for National Exchanges. Section 212 of S. 2155 and sections 496 and 456 of the CHOICE Act amend section 18(b)(1) of the Securities Act of 1933[35] so that blue sky law pre-emption (that is, exemptions from separate *state* securities regis-

29. Section 115 of the Senate's Financial Regulatory Improvement Act of 2015 was very similar to section 203 of S. 2155.

30. 12 U.S. Code § 1831o.

31. 12 CFR Appendix C to Part 225.

32. 12 US Code 4001 et seq.

33. Section 120 of the Senate's Financial Regulatory Improvement Act of 2015 implemented the same change.

34. The managers amendment is available at U.S. Senate Committee on Banking, Housing, and Urban Affairs, https://www.banking.senate.gov/public/_cache/files/e5875d62-3543-4efd-b527-f876be165e68/DEAD886D639BBB4CF3CA341929580EED.crapo-manager-s-amdt-2.pdf (accessed December 16, 2017).

35. 15 U.S. Code 77r(b)(1).

tration and qualification requirements) is extended to securities listed on all stock exchanges rather than only the New York Stock Exchange, Amex, and NASDAQ. Currently, the Securities and Exchange Commission has the discretion to extend the blue sky pre-emption to securities on other exchanges. Additionally, section 456(b) amends section 18 of the Securities Act so that venture exchanges are treated as national securities exchanges, thus extending the blue sky pre-emption to securities traded on venture exchanges. S. 2155 uses very similar legislative language regarding the blue sky law pre-emption, but the bill does not contain language creating venture exchanges.

Whistleblower Immunity for Exploitation of Seniors. Section 303 of S. 2155 and sections 491, 492, and 493 of the CHOICE Act make virtually identical changes to the various sections of the U.S. Code that address immunity for financial institutions and their employees. Both bills aim to ensure that (among other things) financial-institution employees are shielded from lawsuits if they disclose the possible financial exploitation of senior citizens.

Federal Insurance Regulation. Both S. 2155 and the CHOICE Act alter the federal government's involvement in insurance regulation, historically a state-regulated industry. As amended in the committee markup, section 212 of S. 2155 seeks to improve transparency (among federal regulators) at any global insurance or international standard-setting regulatory forum. To accomplish this task, it establishes the "Insurance Policy Advisory Committee on International Capital Standards and Other Insurance Issues" at the Federal Board of Governors. The CHOICE Act takes a very different approach.

Section 1101 of the CHOICE Act eliminates the Federal Insurance Office (created by Title V of Dodd–Frank[36]) and creates the Office of the Independent Insurance Advocate in the Treasury Department. Section 1101 also includes an explicit statement that it does not "establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance."

Budget Transparency for the National Credit Union Administration (NCUA). Section 213 of S. 2155 and section 541 of the CHOICE Act amend the Federal Credit Union Act[37] to improve transparency for the NCUA board. The two bills use virtually identical legislative language, and both require a public notice and comment procedure for the NCUA board.

Regulatory Changes Unique to the Senate Bill

Each bill includes several unique provisions that are not included in the other. Because the CHOICE Act has so many more sections than S. 2155, this *Backgrounder* provides a brief summary of the main banking regulation sections unique to S. 2155.[38]

Exception for Reciprocal Deposits. Section 202 implements S. 1500, a bill sponsored by Senator Mark Warner (R–VA).[39] S. 1500 would ultimately expand the use of taxpayer-backed insurance for wholesale funding of bank loans.[40] Under current law, well-capitalized banks can accept and renew brokered deposits without special brokered-deposit restrictions. However, *adequately* capitalized banks can only accept new brokered deposits (or roll over existing brokered deposits) if they receive a waiver from the Federal Deposit Insurance Corporation (FDIC). S. 1500 amends Section 29 of the Federal Deposit Insurance Act[41] so that reciprocal deposits—a type of wholesale funding designed to simplify the process of federally insuring deposits that exceed the FDIC

36. 31 U.S. Code § 313.

37. 12 US Code 1789(b).

38. For additional information on provisions in the CHOICE Act, see Michel, "Money and Banking Provisions in the Financial CHOICE Act: A Major Step in the Right Direction." The Senate bill also includes several sections, such as the Family Self Sufficiency Program (section 306) and Small Public Housing Agencies (210), which are beyond the focus of this *Backgrounder* because they do not directly address financial market regulation.

39. The title of this bill is the Keeping Capital Local for Underserved Communities Act of 2017, and the counterpart bill in the House is H.R. 2403, sponsored by Representative Gwen Moore (D–WI).

40. Norbert J. Michel, "FDIC Insurance and the Brokered Deposit Market: Not a Recipe for Market Discipline," testimony before the Financial Institutions and Consumer Credit Subcommittee, Committee on Financial Services, U.S. House of Representatives, September 27, 2016, http://www.heritage.org/testimony/fdic-insurance-and-the-brokered-deposit-market-not-recipe-market-discipline.

41. 12 U.S. Code 1831f.

coverage limits—are no longer defined as brokered deposits provided that the amount does not exceed the lesser of $10 billion or 20 percent of liabilities.

Credit Freeze. Section 301 of S. 2155 amends section 605A of the Fair Credit Reporting Act[42] to give consumers the right to have a consumer credit reporting agency place a freeze on their credit report. This freeze means that the consumer credit reporting agency cannot release a consumer's credit report without the consumer's express authorization. The goal is to prevent credit, loans, or other financial products and services from being approved in a consumer's name without that individual's consent.

Protections for Veterans' Credit. Section 302 of S. 2155 ensures that when a veteran receives health care services from a non-Veterans Affairs Department (VA) facility, the inevitable delay in the VA's reimbursement to the veteran does not damage the veteran's credit report.

Liquidity Coverage Ratio. Section 403 of S. 2155 amends section 18 of the Federal Deposit Insurance Act[43] so that, for purposes of the liquidity coverage ratio (LCR), municipal bonds will be considered Level 2B high-quality liquid assets (HQLA).[44] This provision essentially forces all federal banking regulators to adopt an approach similar to the Federal Reserve's newest LCR rule. Although all the federal banking regulators issued a joint rule in 2014 that disqualified municipal bonds from any HQLA category,[45] the Fed finalized its own rule in 2016 that qualified investment grade *general obligation* municipal bonds as Level 2B assets.[46] Section 403 of the Senate bill would include these general obligation bonds as Level 2B assets, but it would go further than the Fed rule by allowing certain municipal *revenue* bonds—those with revenue streams tied to specific projects rather than a variety of tax sources—to qualify as Level 2B assets.[47]

Bank Exam Frequency. In 2015, Title LXXXIII of the Fixing America's Surface Transportation (FAST) Act[48] increased the threshold for small banks to qualify for less frequent examinations.[49] As a result, banks with less than $1 billion in assets (increased from $500 million) now qualify for an 18-month examination cycle instead of a 12-month cycle, and approximately 5,000 banks fit this size category. Section 211 of S. 2155 amends section 10(d)(4)(A) of the Federal Deposit Insurance Act[50] to increase this threshold to $3 billion, resulting in relaxed examination requirements for more than 400 additional banks.[51]

Property-Assessed Clean Energy Loans. Section 108 of S. 2155 authorizes the CFPB to promulgate rules for Property-Assessed Clean Energy Loans (PACE) loans.[52] PACE loans are government-backed loans used by private property owners to finance energy efficiency and renewable energy upgrades. PACE loans allow homeowners with little capital or credit history to use government-backed loans to obtain solar panels, new roofs, new heating systems, new windows, etc. Typically, PACE loan programs allow lenders authorized by their state government to finance energy improvement loans that take first priority, meaning they must be paid before borrowers can refinance or sell their property.

42. 15 U.S. Code 1681c–1.
43. 12 U.S. Code 1828.
44. See Federal Reserve Board of Governors, "Liquidity Coverage Ratio: Treatment of U.S. Municipal Securities as High-Quality Liquid Assets," *Federal Register*, Final Rule, Vol. 81, No. 69, (April 11, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-04-11/pdf/2016-07716.pdf (accessed December 2, 2017).
45. Department of the Treasury, "Liquidity Coverage Ratio: Liquidity Risk Measurement Standards," *Federal Register*, Final Rule, Vol. 79, No. 197, (October 10, 2014), https://www.gpo.gov/fdsys/pkg/FR-2014-10-10/pdf/2014-22520.pdf (accessed December 2, 2017).
46. Federal Reserve Board of Governors, "Liquidity Coverage Ratio: Treatment of U.S. Municipal Securities as High-Quality Liquid Assets." General obligation municipal bonds are those that represent general obligations of public-sector entities that are backed by the full faith and credit of these public entities.
47. Regardless of the category, the municipal bonds would have to meet the *investment grade* and *liquid and readily marketable* requirements as defined in the Code of Federal Regulations (Section 1.2 of title 12 CFR and Section 249.3 of title 12 CFR, respectively).
48. Public Law 114–94, div. G, title LXXXIII, § 83001, December 4, 2015, 129 Stat. 1796.
49. This provision was section 109 of the Senate's Financial Regulatory Improvement Act of 2015.
50. 12 U.S. Code 1820(d)(4)(A).
51. These figures are based on the author's calculations using FFIEC 2015 call report data.
52. Section 129C(b)(3) of the Truth in Lending Act, 15 U.S. Code § 1639c.

TABLE 1

Comparing Financial Regulatory Reform Bills (Page 1 of 2)

Provision	House: CHOICE Act	Senate: S. 2155	Heritage Recommendation
Regulatory Off-Ramp	Implements broad off-ramp	Implements limited off-ramp	Provide a broad off-ramp and expand the concept
Risk-Weighted Capital Rules	Broad relief via regulatory off-ramp	Limited relief via regulatory off-ramp	Provide broader relief via regulatory off-ramp
Heightened Prudential Standards	Broad relief via regulatory off-ramp	Limited relief via altered SIFI threshold	Provide broad relief via off-ramp and eliminate SIFI threshold
Volcker Rule	Repeals the Volcker rule	Provides relief to small "traditional" banks	Repeal the Volcker rule
CFPB Reform	Converts CFPB to enforcement-only agency and makes other improvements	No change	Eliminate the CFPB and consolidate enforcement
Ability to Repay/QM	Broad relief for all that hold rather than securitize	Limits relief to banks with less than $10 billion in assets	Provide broad relief for holding mortgages
Stress Tests and Living Wills	Broad relief via off-ramp and limited relief outside of off-ramp	Limited relief via altered SIFI threshold	Eliminate stress tests and living wills
HMDA Relief	Limited relief with *de minimis*	More limited relief with alternate *de minimis*	Provide broad relief via off-ramp
SAFE Act	Levels nonbank/bank employee playing field	Levels nonbank/bank employee playing field	Adopt this policy
Manufactured Home Loan Access	Amends high-cost mortgage and makes one other clarification	Does not amend high-cost mortgage but makes same clarification	Make clarification and eliminate high-cost mortgage concept
Relief from Escrow Requirements	Safe harbor from TILA using $10 billion threshold if loan is held	Safe harbor from TILA using $10 billion and de minimis	Provide broad TILA relief via off-ramp
Reduced Reporting Burden	Lowers burden for all well-capitalized banks	Lowers burden for banks with less than $5 billion in assets	Provide broad reporting relief via off-ramp
Federal Savings Association Charter Fix	Provides blanket fix	Contingent fix with asset threshold and grandfather clause	Provide blanket fix
Small BHC Policy Statement	Raises Fed's threshold to $10 billion	Raises Fed's threshold to $3 billion	Raise threshold to $10 billion
Expedited Funds Act Fix	Adds American Samoa and Mariana Islands	Adds American Samoa and Mariana Islands	Adopt this policy

SOURCE: Heritage Foundation research.

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TABLE 1

Comparing Financial Regulatory Reform Bills (Page 2 of 2)

Provision	House: CHOICE Act	Senate: S. 2155	Heritage Recommendation
Parity for National Exchanges	Extends blue sky pre-emption and includes venture exchanges	Extends blue sky pre-emption but does not include venture exchanges	Extend blue sky pre-emption and include venture exchanges
Alters Federal Involvement in Insurance Regulation	Eliminates FIO, creates new Office at Treasury, protects against usurping state regulation	Creates new Advocacy Committee at the Fed	Eliminate the FIO
Budget Transparency for NCUA	Improves transparency	Improves transparency	Adopt this policy
Exception for Reciprocal Deposits	No change	Amends definition of brokered deposits and implements maximum	Do not amend the definition or implement maximum; improve waiver process
Protections For Veterans' Credit	No change	Protects credit report for vets with delayed VA reimbursement	Protect credit report for vets with delayed VA reimbursement
Muni Bond Change for LCR	No change	Treats all investment-grade muni bonds as Level 2B HQLA	Provide relief via off-ramp
Bank Exam Frequency	No change	Reduces frequency for banks with less than $3 billion in assets	Provide relief via off-ramp
PACE Loan Regulation	No change	Grants rulemaking authority to CFPB	Do not authorize any federal rules regarding PACE loans

SOURCE: Heritage Foundation research.

BG3275 heritage.org

Online Banking Rules. Senate bill Section 214, included in the amendment package during the committee markup, ensures that a bank can use the scanned image of a driver's license to open a customer's bank account or to provide a product or service. The bill also requires the financial institution to delete any electronic image after using the information for the explicitly allowed purpose.

Preferred Policy Options for Congress

The CHOICE Act (H.R. 10) is a far-reaching and comprehensive reform package, while the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155) is a more targeted set of reforms designed to garner bipartisan support in the Senate. Although the Senate bill does not provide as extensive regulatory relief as the CHOICE Act, it includes several policies that would provide significant regulatory relief.

In fact, S. 2155 includes a similar version of more than 15 CHOICE Act provisions. Furthermore, the House has also introduced, and in some cases even passed, several of the provisions in S. 2155 *separately* from the CHOICE Act. Thus, it is currently unclear exactly which, if any, of these measures might ultimately be considered by a conference committee. The following list recommends the best version of (many of) these policies to better reduce the risk of future financial crises and free countless citizens from stifling regulations, thus maximizing Americans' ability to build wealth and create secure financial futures. (Table 1 provides a summary-level overview of many of the respective features in the two bills.)

Providing a Regulatory Off-Ramp. An optional capital election (a regulatory off-ramp) rewards banks by exempting them from onerous regulations only if they choose to meet a higher capital ratio, thus credibly reducing their probability of failure and any consequent taxpayer bailouts. S. 2155 implements a limited off-ramp by restricting its availability to small banks that fit a regulator-approved risk profile. The CHOICE Act, on the other hand, provides a blanket off-ramp to any bank that chooses to meet the higher equity requirement. The restrictions in S. 2155 are not necessary because (1) many small banks do not engage in the so-called risky activities enumerated in section 201 of the Senate bill; and (2) because the ratio used in the CHOICE Act penalizes (it is more difficult to exceed the minimum requirement) banks that engage in these activities. Thus, rather than give the Fed discretion to disqualify banks based on a risk profile, Congress could simply adopt a different leverage ratio to account for off-balance-sheet exposures, proprietary trading, and derivatives exposures. Banks that do not undertake such activities would remain unaffected by using such a metric, while banks that do engage in large amounts of such activities will have a more difficult time meeting the off-ramp requirement. The off-ramp approach in the CHOICE Act is superior to the one used in S. 2155, and it should be expanded to provide additional regulatory relief to banks that choose to meet even higher equity ratio requirements.[53]

Repurposing the Financial Stability Oversight Council (FSOC). The FSOC is a sort of super-regulator tasked with singling out supposedly too-big-to-fail firms for especially stringent regulation. The CHOICE Act effectively transforms the FSOC into a regulatory council for sharing information. Short of eliminating the FSOC, a safer approach would be to explicitly amend the council's authority so that its only responsibility is to provide a mechanism for financial regulators to formally share information.

Replacing Orderly Liquidation with Bankruptcy. Title II of the CHOICE Act repeals Dodd–Frank's orderly liquidation authority (OLA) and amends the bankruptcy code so that large financial firms can credibly use the bankruptcy process. Congress should enact this policy change.

Repealing the Volcker Rule. Title IX of the CHOICE Act repeals the Volcker rule, and S. 2155 essentially provides relief from the rule to banks that the rule never should have applied to in the first place. Because federal banking regulators already had the authority to regulate and limit banks' proprietary trading *prior to Dodd–Frank*, implementing the Volcker rule was an enormous waste of time and resources. Congress should repeal the Volcker rule.

Protecting Financial Consumers. Title VII of the CHOICE Act converts the CFPB into an enforcement-only agency, changes the structure of the agency so that its director would be removable by the President at will, places the agency under congressional appropriations, and eliminates Dodd–Frank's overly vague "unfair, deceptive, or abusive" concept from consumer financial protection law. This approach is extremely positive, but Congress should ultimately eliminate the CFPB and transfer enforcement authority for consumer protection statutes to the Federal Trade Commission, which has a long history of promoting consumer welfare and market competition. If Congress eliminates the CFPB, consumers will be just as protected against unfair, deceptive, and fraudulent practices as they are today.[54]

Relief from Risk-Weighted Capital Rules. The CHOICE Act provides more widespread relief from risk-weighted capital rules by offering all banks a capital

53. Gerald P. Dwyer and Norbert J. Michel, "A New Federal Charter for Financial Institutions," in Norbert J. Michel, ed., *Prosperity Unleashed: Smarter Financial Regulation* (Washington, DC: The Heritage Foundation, February 2017), http://www.heritage.org/markets-and-finance/report/new-federal-charter-financial-institutions.

54. Diane Katz and Norbert J. Michel, "Consumer Protection Predates the Consumer Financial Protection Bureau," Heritage Foundation *Backgrounder* No. 3214, May 11, 2017, http://www.heritage.org/government-regulation/report/consumer-protection-predates-the-consumer-financial-protection-bureau.

election. S. 2155 does not provide the blanket off-ramp that the CHOICE Act does, but it does offer a limited capital election to certain smaller banks. The capital election of the CHOICE Act is the superior approach.

Relief from Heightened Standards. The CHOICE Act provides relief from heightened regulations through its capital election and by eliminating the FSOC's ability to designate firms (and activities) for special regulations. S. 2155 provides more limited relief. It increases the special designation threshold for some financial firms while still allowing the Fed to apply special standards to firms with assets lower than the new threshold. The CHOICE Act approach is superior—Congress should eliminate the FSOC and its designation process.

Relief from Ability-to-Repay/QM Rules. Both the Senate and House amend the qualified mortgage (QM) definition to provide a safe harbor from the ability-to-repay rules. The CHOICE Act provides this regulatory relief to all banks and non-bank mortgage originators for mortgages held on the books rather than sold into the securitization market. S. 2155 provides this type of relief only to banks with less than $10 billion in assets. If Congress cannot eliminate the ability-to-repay rules altogether, the CHOICE Act provides a superior approach.

Stress Tests and Living Wills. The CHOICE Act provides an exemption from Dodd–Frank's living will and stress tests to any bank that chooses to meet the capital-election requirement. The CHOICE Act also improves the living-will and stress-test processes for banks that do not choose the regulatory off-ramp. If Congress will not eliminate these provisions completely, the CHOICE Act is a good approach because banks that absorb the costs of their own financial risks have every incentive to plan for contingencies. Furthermore, there is no reason to think that regulators have superior ability to accurately model the impact of all such contingencies.

Relief from Home Mortgage Disclosure Act Requirements. Both the Senate and the House bills provide limited regulatory relief from requirements of the Home Mortgage Disclosure Act (HMDA) requirements, but the CHOICE Act provides broader relief than S. 2155. Whereas the CHOICE Act relaxes more requirements using a *de minimis* exception, S. 2155 applies a more limited exemption using a higher *de minimis* exception. If Congress does not repeal HMDA, it should provide an exemption as part of an enhanced regulatory off-ramp.

Relief from Mortgage Licensing Impediment. Both the Senate and House bills amend the SAFE Mortgage Licensing Act of 2008 so that non-banks and banks are an equal footing with regard to attracting employees. There is no material difference between the approaches in the CHOICE Act and S. 2155, and Congress should enact this policy.

Protections for Manufactured Home Employees. The CHOICE Act and S. 2155 use essentially the same legislative approach to clarify that employees of manufactured retail homes are not automatically considered lenders. The CHOICE Act goes further than the Senate bill by amending the definition of a high-cost mortgage. Congress should adopt the broader approach to provide as much regulatory relief as possible.

Exemption from Certain Escrow Requirements. Both S. 2155 and the CHOICE Act provide a safe harbor from certain escrow requirements in the Truth in Lending Act (TILA). The CHOICE Act provides the safe harbor to banks with less than $10 billion that hold the loan for at least three years, and the Senate provides the safe harbor to banks with less than $10 billion that meet (among other regulations) a *de minimis* threshold of 1,000 loans. If Congress wants to provide an exemption, rather than eliminate TILA, it should do so in the most straightforward manner possible, such as through an expanded off-ramp or blanket-asset-size threshold.

Reduced Reporting Burden. Both the CHOICE Act and S. 2155 lessen the quarterly reporting burden for some banks in a similar fashion. S. 2155 provides such relief for banks with less than $5 billion in assets, while the CHOICE Act provides such relief to all well-capitalized banks. Congress should adopt the broader approach to give all well-capitalized banks this regulatory relief.

Federal Savings Charters. Both S. 2155 and the CHOICE Act take a similar approach to fixing a chartering issue that arose after Dodd–Frank eliminated the Office of Thrift Supervision, but the Senate bill includes size restrictions and a grandfather clause. Congress should implement the more straightforward approach.

Small Bank Holding Company and Savings and Loan Holding Company Policy Statement. The transfer of ownership of small banks often requires the use of acquisition debt, and both the CHOICE Act and S. 2155 amend the Fed's leverage requirements for such acquisitions. Both bills take nearly the same approach, but the Senate bill raises the threshold to

$3 billion while the CHOICE Act raises it to $10 billion. While any such threshold is arbitrary, Congress should adopt the higher threshold.

Extension for Expedited Funds Availability Act. Both S. 2155 and the CHOICE Act extend the law regulating hold periods on commercial bank deposits to American Samoa and the Commonwealth of the Northern Mariana Islands. Congress should adopt this policy change.

Regulatory Parity for National Exchanges. Both S. 2155 and the CHOICE Act ensure that blue sky pre-emption is extended to securities listed on all exchanges rather than only those listed on the New York Stock Exchange, the AMEX, and the NASDAQ. The CHOICE Act also extends the pre-emption to securities listed on venture exchanges, but S. 2155 does not include language creating such exchanges. Congress should adopt the broader approach that creates (and extends the preemption to) venture exchanges.

Federal Insurance Regulation. Both S. 2155 and the CHOICE Act alter the federal government's involvement in regulation of insurance companies, historically a state-regulated business. The broad goals of the two approaches are similar regarding coordinating federal efforts related to insurance regulation, but the CHOICE Act approach is superior because it eliminates a similar Dodd–Frank office, houses the new agency at the Treasury instead of the Fed, and includes safeguards against usurping state regulation. Optimally, Congress would eliminate the Federal Insurance Office—without which the U.S. has managed for more than 200 years—and do nothing else.

Budget Transparency for the National Credit Union Administration (NCUA). Using virtually identical legislative language, both S. 2155 and the CHOICE Act improve transparency for the NCUA board. Congress should adopt this policy.

Exception for Reciprocal Deposits. Section 202 of S. 2155 redefines reciprocal deposits so that, up to certain statutory thresholds, they are not considered brokered deposits. Congress should not adopt such a change. Instead, Congress can improve the brokered-deposit waiver process by, for example, requiring the FDIC to give or deny adequately capitalized banks a waiver in 24 hours to 48 hours. Alternatively, the waiver requirement could be removed for adequately capitalized banks that merely want to renew—rather than expand—existing brokered or reciprocal deposits.

Protections for Veterans' Credit. S. 2155 ensures that delays in health care reimbursements from the Department of Veterans Affairs cannot impair veterans' credit reports. Congress should adopt this policy.

Liquidity Coverage Ratio. S. 2155 essentially ensures that, for purposes of the LCR, all investment-grade municipal securities will be considered Level 2B HQLA. A more sensible approach, other than eliminating the LCR, would be to align the statute with the Federal Reserve's new rule, so that only certain *general obligation* municipal bonds will qualify as Level 2B assets. Optimally, Congress would eliminate the LCR completely and allow banks to hold securities as they deem appropriate.

Bank Exam Frequency. S. 2155 reduces the frequency of bank examinations from 12 months to 18 months for banks with less than $3 billion, resulting in regulatory relief for approximately 400 banks. Optimally, Congress would shorten the exam frequency for all banks, so any step in that direction should be viewed positively.

Property Assessed Clean Energy (PACE) Loans. Section 108 of S. 2155 authorizes the CFPB to regulate PACE loans. PACE loan programs often allow homeowners with little capital or credit history to use government-backed loans to obtain, for instance, solar panels, new roofs, new heating systems, or new windows. The Federal Housing Administration recently announced that it will stop approving new mortgages on homes encumbered by PACE loan liens because these loans put taxpayers at risk.[55] The only action Congress should take with respect to PACE loans is to ensure that no such federal program exists. Congress should not authorize federal rules that usurp states' authority to implement loan programs, thus further entrenching federal regulation of local lending decisions.

Conclusion

During the 115th Congress, the House passed the Financial CHOICE Act (H.R. 10), a comprehensive financial regulatory reform bill that would replace large parts of the 2010 Dodd–Frank Act. The corner-

55. Brian Collins, "FHA Ceases Approvals of PACE Loans, Citing Taxpayer Risk," *American Banker*, December 7, 2017, https://www.americanbanker.com/news/fha-ceases-approvals-of-pace-loans-citing-taxpayer-risk (accessed December 15, 2017).

stone of the CHOICE Act is a regulatory off-ramp, a provision that provides regulatory relief to all banks that choose to maintain a higher equity–capital ratio than currently required. The Financial CHOICE Act represents an overwhelmingly positive approach to regulatory reform that would help to restore market discipline and reduce regulatory burdens, thus moving the nation's financial markets in the right direction.

The Senate has not yet passed a financial regulatory reform bill, but the Senate Banking Committee recently passed the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155), a financial reform bill that includes several CHOICE Act provisions. The Senate bill does not provide as extensive regulatory relief as the CHOICE Act, nor does it fix the many problems created by the Dodd–Frank Act. Nonetheless, the Senate bill has 12 Democratic cosponsors, indicating that the Senate may be able to pass legislation that provides significant regulatory relief to financial institutions. To help the most Americans, Members of Congress should enact as many of the reforms in these two bills as they can agree to and, where possible, broaden the approach in the Senate bill.

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