Insight

A Decade of Dodd-Frank: The Future of Dodd-Frank

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Executive Summary

– The decade after the enactment of the Dodd-Frank Act has seen a steady shrinking of the law's scope and application, as vast portions of the rule are shown to be unworkable, unconstitutional, or less relevant than its drafters may have hoped.

– While Congress and the federal regulatory agencies have both contributed to the decline of Dodd-Frank, many of the issues covered by Dodd-Frank remain contentious and are still debated today, from the Volcker Rule to the role of the Consumer Financial Protection Bureau.

– The future of what remains of Dodd-Frank will likely be determined by future administrations or financial crises, but the emerging role of fintech in banking is likely to render Dodd-Frank moot by default.

A Rough Decade

The 2007-2008 credit bubble, subprime mortgage crisis, and subsequent run on banks demonstrated structural and systemic weaknesses in the housing and financial market sectors. In June 2009 President Obama proposed a "sweeping overhaul of the United States financial regulatory system, a transformation on a scale not seen since the reforms that followed the Great Depression." So keen was President Obama that the legislative process actually began prior to receiving the report of the Financial Crisis Inquiry Commission (FCIC), which Congress created to investigate the crisis (membership included American Action Forum (AAF) President Doug Holtz-Eakin). Legislation in response to the president's proposal was introduced in the House of Representatives by Congressman Barney Frank and the Senate by Senator Chris Dodd, and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) was enacted on July 21, 2010.

The implications of Dodd-Frank were, and continue to be, enormous, as the law entirely revamped financial regulation in the United States. Dodd-Frank created new government agencies and empowered existing ones, touching on all aspects of financial services regulation as well as several industries wildly unrelated. (Read a section-by-section analysis of the law here.)

This is the last of several research pieces reviewing the implications of Dodd-Frank a decade after it was passed into law, and focuses on the potential future for Dodd-Frank.

Rollbacks and Remaining Flash Points

While no legislation as complex and lengthy as Dodd-Frank will remain ever entirely intact, the rollbacks of this particular law have been noteworthy. It is difficult to find a section of Dodd-Frank that has been strengthened by Congress or the agencies in the decade since it passed.

House Republicans attempted wholesale revision of the law in 2017 with the Financial CHOICE Act, introduced by then-chairman of the House Financial Services Committee Jeb Hensarling. The central vision of the CHOICE Act was a regulatory system that allowed firms to bypass enormous amounts of Dodd-Frank if those organizations chose to be well-capitalized; the more substantial a company's safety net, the more regulatory freedom it would enjoy. The CHOICE Act did not attract enough support in the Senate to get the votes required to pass, but inspired a similar bill from Senate, the Economic Growth, Regulatory Relief, and Consumer Protection Act (known by the more memorable title of S.2155), that was enacted into law in May 2018.

The CHOICE Act proposed an ambitious set of reforms to Dodd-Frank, from repealing the Volcker Rule to restructuring the Consumer Financial Protection Bureau (CFPB). S.2155, by contrast, while still sweeping in coverage, was more targeted in approach. Below is a chart showing the most discussed sections of the Senate bill along with their counterparts in the CHOICE Act (if any).

Federal executive agencies and the Supreme Court have also played a key role in reducing the impact of Dodd-Frank. The role of federal regulators and agencies in diluting Dodd-Frank can be seen from the CFPB's decision to allow the Qualified Mortgage (QM) patch to expire, to the Federal Reserve's (the Fed's) rollback of the Volcker Rule, to the Fed's new approach to stress testing. Even the Supreme Court is involved with its recent decision to find the governance structure of the CFPB unconstitutional – although the agency remains.

These categories remain the sections of Dodd-Frank that invite the most conversation, and they are likely to be central to future discussions around the role of Dodd-Frank. While another round of bipartisan legislation amending Dodd-Frank on such scale seems unlikely in the near term, the variety of activity around the law indicates it has not reached a stable equilibrium.

The Future of Dodd-Frank

Two external factors seem most likely to determine the continued development of Dodd-Frank: the administration and a financial crisis, as, after all, change takes either leadership or a crisis. Credit for the steadily diminishing role of Dodd-Frank should surely be given to Dodd-Frank itself, although the Trump Administration and congressional Republicans have been a midwife to this process. A change of administration would likely result in efforts by congressional Democrats to rebuild Dodd-Frank. Former vice president Joe Biden, the presumptive Democratic presidential nominee, has over the last decade at turns supported and opposed Dodd-Frank in seemingly equal measure. Most recently, however, the Biden-Sanders unity task force called for strengthening Dodd-Frank, in particular calling for more separation of commercial and investment banking activities and the creation of a federal credit reporting bureau at the CFPB.

Outside of a change of administration, a new financial crisis would also likely spur Congress to action and review of Dodd-Frank. The Fed has taken swift and decisive action since the onset of the crisis and has, at multiple points, reduced the impact of the capital requirements of Dodd-Frank on banks with a view to encouraging banks to lend to the greatest degree possible. While the current strength and safety of banking capital reserves is due to the requirements of Dodd-Frank, it is almost cognitive dissonance that the heavy regulatory burdens of Dodd-Frank can be stripped back so readily with no obvious ill effect – and at a time of

crisis. If these capital requirements – which are stifling innovation – are unnecessary in a crisis, why are they necessary in good times?

Perhaps, however, Dodd-Frank will simply be rendered obsolete by time. Dodd-Frank is not a particularly good fit for the traditional banking industry, but it makes even less sense as applied to the emerging fintech and shadow banking industries – industries that Dodd-Frank helped *create* by making traditional banking as difficult and unappetizing as possible. In 2018, the Office for the Comptroller of the Currency (OCC) announced that it would begin accepting applications for national bank charters from non-depository fintech firms. The OCC's proposal is contentious, and remains a proposal, but is viewed by many as the inevitable future of banking – a future to which Dodd-Frank would not apply by default.

Conclusions

The passage of S.2155 in 2018 led many authors to conclude that Dodd-Frank was dead. Many others concluded that reports of the death of Dodd-Frank were greatly exaggerated. These seemingly irreconcilable views show the hold Dodd-Frank has had over financial services for a decade. Perhaps Dodd-Frank is more of a Schrödinger's cat – procedurally Dodd-Frank has had a near-death blow, but in substance the topics it covered remain alive and the same flash points for debate a decade on.