

Introduction

By Thomas F. Cooley

The financial crisis of 2007-2009 and the accompanying contraction in the global economy made it clear that the safety of the world financial system was seriously impaired. The Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 was enacted to address these regulatory failures, outlining a new regulatory architecture for financial markets. The Financial CHOICE Act, proposed by the House Committee on Financial Services, is seemingly aimed at dismembering much of the Dodd-Frank regulation and offers financial market participants an enticing path to escape its more onerous aspects.

In this White Paper, we offer a critical assessment of the Financial CHOICE Act as it relates to bank capital, systemic risk, resolution, the Federal Reserve, and consumer financial protection, among other topics. While we agree that the overly complex regulations that have emerged in the wake of Dodd-Frank should be streamlined and pruned, the CHOICE Act has some serious drawbacks. In our view, the most glaring shortcoming of the CHOICE Act is that it does not recognize the central role of systemic risk. Indeed, the CHOICE Act would exacerbate the too-big-to-fail problem by eliminating both the designation of systemically important financial institutions (SIFIs) and financial market utilities (FMUs), and by prohibiting temporary government lending for resolving failed SIFIs. We are equally concerned about the issues that the CHOICE Act does not address at all: housing finance, *de facto* (shadow) banking, the complex structure of U.S. regulators, and cross-border regulatory issues.

We conclude that the CHOICE Act shows a lack of understanding of the sources of the crisis. And while there is much to criticize in Dodd-Frank, especially with the advantage of a few more years of experience, to its credit, it did recognize the importance and pernicious nature of systemic risk in the U.S. financial system. The CHOICE Act represents a potential step backward in the establishment of a prudential regulatory system that would ensure a safer and better functioning financial sector. We note, however, that because the Financial CHOICE Act is still at the stage of proposed legislation, there is adequate time and opportunity for its drafters to reach a better understanding of these issues. We hope that the essays in this White Paper will help in that process.