

Reining in the Regulators: Title VI of the Financial CHOICE Act

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Title VI of the Financial CHOICE Act, which broadly addresses financial regulatory processes and structures, is a reaction to what the drafters perceive as the excesses of the Dodd-Frank Act and the misguided actions of financial regulators both before and since the passage of Dodd-Frank. Although the drafters express a laudable desire to improve the quality of financial regulation, it appears that they also want generally to slow the processes of regulation and reduce the overall burden of regulation through the broad changes that are encompassed in Title VI. In this essay, we address four components of the CHOICE Act's Title VI: (i) requiring cost-benefit analyses of all financial regulatory proposals; (ii) requiring that Congress approve all major financial regulations; (iii) eliminating the "Chevron deference" to regulatory agencies; and (iv) requiring multi-person governing boards instead of single-heads of agencies.

We agree that the processes and structures of financial regulation can be improved. However, the provisions of Title VI should be restructured and more narrowly focused, to achieve those improvements more effectively. Specifically, we favor broad use of cost-benefit analysis but worry that requiring it will stand in the way of regulation that would likely be beneficial, even if the case for such benefit rests on relatively sparse evidence. A requirement, suggested by the CHOICE Act, that major financial regulations take effect only if approved by a joint resolution of Congress and by the President, would be an impediment not only to detrimental rules, but also to beneficial ones, and would misdirect the use of Congress's scarce time and resources. We recommend that the Chevron deference be retained in judicial review of financial agency regulation. In our view, such deference is a sensible mechanism for economizing on scarce judicial resources and as a means of encouraging an integrated strategy of statutory application. And on the final point, although we take no general position on the wisdom of structuring a financial regulatory agency as a single-headed organization or as an entity that is headed by a multi-person board, we note that any such transition would likely be accompanied by organizational disarray, as is the case during any transition.