Testimony of Amias Moore Gerety before the
Maryland Financial Consumer Protection Commission
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Thank you Chairman Gensler for inviting me today and thank you to the members of the Maryland Financial Consumer Protection Commission for the opportunity to be here today and to share my thoughts and answer your questions.

My name is Amias Moore Gerety. I am a Special Adviser to QED Investors, which is a firm that invests in small financial services startups. Prior to this role, I spent eight years working for the U.S. Treasury Department. I was part of the team that designed and worked with Congress to pass the Dodd-Frank Wall Street Reform and Consumer Protection Act. After enactment, I led the Office of the Financial Stability Oversight Council, tasked with building that team, implementing a process for monitoring threats to the financial system, including new designations authorities and the Council's annual report. Financial Stability Oversight Council. In the last two and half years, I was the President's nominee to be the Assistant Secretary for Financial Institutions, where my responsibilities ranged from capital rules to community bank policy, consumer protection to community development, and from insurance regulation to cybersecurity.

My aim in my testimony is two-fold: first, I will outline the pillars of the Wall Street Reform efforts since the financial crisis, and explain how these efforts were both necessary to address the failures of the crisis and remain critical to provide a firmer and more flexible foundation for economic growth through long-term economic cycles. Second, I will outline the efforts to undermine Wall Street Reform, placing them both in the context of how they might affect the hard-won gains of consumers and taxpayers in restoring the balance of power with large financial institutions and how these efforts seek to create procedural and substantive frictions that significantly increase the rigidity and decrease the effectiveness of regulation as the financial marketplace grows and changes.

It is important to emphasize that the workings of the financial system can seem opaque and technical – the particularities of the reform efforts therefore can seem complex. The complexity of the financial system can reduce the public's understanding of what specific oversight needs might be or where regulatory weaknesses might be,, and it is used explicitly by deregulatory and industry advocates to suggest that the Wall Street Reform efforts have gone too far.

Throughout my testimony, I will emphasize that the concepts of Wall Street Reform are fairly straightforward even if the rules implementing are very complex – just as the industrial standards for a seat belt will be written in terms of tensile fiber strength, the dynamics are intuitive to my three small children. Moreover, I will emphasize that the complexity that has been encoded in Wall Street Reform comes from the reality that a dynamic and supportive financial sector naturally reflects a dynamic and complex economy. Just as importantly, the argument that rules are unduly long, and therefore burdensome, largely reflects the legal requirement that any rule written both solicit and respond to criticisms from the public and industry.

What did we learn in the crisis?

Though we are now ten years removed from the first rumblings of the global financial crisis. It is important to remain clear-eyed about the severity of the crisis, the direct causal relationship between the financial crisis and the great recession, and the differences between recessions caused by financial crises and more typical business cycle recessions.

At the height of the crisis in the fall of 2008, six of the world's largest financial institutions failed, were forcibly merged at the brink of failure, or were saved from failure over the course of just a few weeks. As the shockwaves from those failures spread, even the most safe financial markets began to falter and the government began putting in place emergency measures to provide a backstop for huge swaths of the financial system.

Over the course of the fall, the severity of this shock bled into main streets across the country – as businesses big and small struggled to make ends meet without bank lending and without functioning bond markets. By January of 2009, the economy lost more than 700,000 jobs in just one month, and the scale of the economic shock was more severe than the start of the Great Depression. The economy lost the equivalent of a full year of output.

Here it is important to note that throughout history, recessions caused by financial crises function differently than a business cycle. The standard view of a recession is that the economy overheats – meaning that businesses and consumers get too excited about economic potential and take risks like opening a new store or launching a new product line that simply don't pan out. The most extreme version of this model is the dot com bust in the early 2000s – the reality of the internet economy simply wasn't as far along as the hopes, and the economy fell into a recession because of it. In this model, the recovery can often be relatively rapid, as reality catches up. Firms that were overstretched regroup; and businesses that didn't have a viable business model meet their natural fate.

A financial crisis does not work that way. Though financial firms are often maligned in our politics, it remains the case that a dynamic and resilient financial system is necessary for our economy to function. The financial system connects provides options for savers to become investors, and opportunities for small businesses to expand and companies to grow. It also facilitates that most routine of business and personal transactions – meeting payroll while a business waits for a supplier to pay them, locking in a mortgage rate before you make an offer on a house.

In a financial crisis, even these routine functions stop. And the jolt of a sudden stop in the economy affects strong firms and weaker firms alike. It also means that even for businesses that are strong enough to withstand the shock, they cannot get back to business as usual, because the banks take years to recover.

This is why the criticisms arguing that the insufficient recovery from the crisis is a reason to roll back reform are doubly dangerous. First, they are dangerous because they misunderstand the role of a safe and sound financial system in economic growth. Second, they are dangerous, because they misunderstand that for all its pain, the U.S. economy fared much better than any other economy in the world. As Wall Street reform was being implemented, the economy added 15 million net new jobs and $30 trillion in wealth; even as the European economy struggled from economic crisis to crisis and the UK faced a double-dip recession.

Where does Wall Street Reform come from?

The Treasury team began working on Wall Street Reform in January of 2009, at the height of the financial crisis and nearly three months before the lowest point in financial markets (which occurred in March of that year). Unlike other public policy debates that may simmer for decades, the severity of the financial crisis forced all players in the debate to start from a blank sheet of paper.

We began by examining the principles that should guide reform of our financial system and our objectives were to address the failures that had been revealed by the crisis and to create a financial system that would safer, more resilient, and more fair.

In order to understand Wall Street Reform therefore, we need to understand what happened in the crisis and how that relates to the reforms that have been put in place.

First, the most important moments in the financial crisis revolved around the failures, merger, and bailouts of the largest, most complex financial institutions in the world. Many of these firms were banks, but the hardest cases occurred when large nonbank firms failed – these firms were largely unregulated at the Federal level. So there was almost no ability to diagnose or predict what was happening or would happen; and yet these firms were playing central roles in the financial system and global financial markets and their reliance on short-term funding was in many ways even more severe than banks themselves.

In response, Wall Street Reform put in place a system where the toughest standards apply to the riskiest firms – whether they are banks, investment banks, insurance companies, or specialty finance. This means tougher capital standards (putting the firms' owners on the hook for more of the risk), tougher liquidity standards (requiring firms to prove that they can meet their obligations without any new income for at least a month), and tougher oversight overall (requiring firms to plan how they are going survive crisis conditions and plan how they would wind themselves down if they failed – without government assistance.) And because of the flexibility built into Wall Street Reform, this principle can hold even as the financial system inevitably changes.

Second, and relatedly, the crisis unfolded the way it did in large part because the government simply lacked the tools to handle the failure of a firm that wasn't a bank. Lehman Brothers went through bankruptcy and sparked a run on money market funds (where large corporations often park their cash) that led to the withdrawal of more than $300 billion in just days. AIG was bailed out just days later, and taxpayers provided $180 billion dollars to the firm. So without tools, government officials at the Federal Reserve and in the Bush Administration faced the stark choice: bankruptcy or bailout. Neither choice is acceptable.

Wall Street Reform created a new tool that requires any financial firm whose failure could threaten financial stability to be liquidated by the FDIC. This tool was described by former Treasury Secretary Tim Geithner as "bankruptcy for big, dumb banks." Implementing this approach will be difficult. Staff at the FDIC, Federal Reserve, and in the Obama Administration worked to outline its basic strategies, to bring in diverse expertise, and to reach across the Atlantic to begin coordination with the UK and the EU – since almost by definition, any failure that would need this authority will be global in its scope.

Thirdly, in the midst of the financial crisis, regular people across the Country and the globe began to confront the fact that complex, opaque, and highly engineered financial instruments were not only central to the losses in the crisis, but also served to accelerate contagion and panic. Firms like Bear Stearns, AIG, and Lehman Brothers were tied together through their derivatives exposures. Firms like IndyMac or Countrywide worked with Wall Street investment banks to turn poorly underwritten and often abusive mortgages into securitizations; and subsequently securitizations of securitizations, and securitizations of derivatives. These securities were sold to investors around the globe – creating the pathways that brought problems in subprime mortgages to roost in rural Maryland and rural Germany too.

To address these failures, Wall Street Reform brought the over-the-counter derivatives market, which had been statutorily exempt from direct oversight, into a comprehensive regime. Dealers in the market are now required to limit their risk, both at the level of the firm and with each trade. The markets for standardized instruments are required to pass through regulated entities both for trading and to settle. The market as a whole must now meet comprehensive transparency requirements. For securitizations, the Wall Street firms that structure these instruments are now required to eat their own cooking – they must hold a significant portion of each instrument that they create. Securitizations also now must meet comprehensive disclosure requirements, providing transparency about every asset – mortgage or otherwise – that is bundled together in the package.

Fourth, we cannot forget that at the heart of the financial system are consumers trying to navigate banks, auto lenders, financial advisors, and other financial institutions to meet their financial needs. The subprime mortgages that led to such panic and contagion in global financial markets, often began with incentive schemes that paid brokers more for worse loans, deceptive marketing, and other high pressure sales tactics. While mortgages were much more central to the crisis than pay day lending or high cost credit cards, the practices that affect consumers' lives can stretch across products.

Wall Street Reform created a new dedicated regulator to set clear rules for how financial institutions must compete for customers. It leveled the playing field for regulated banks, making clear that nonbank lenders would also be subject to the same set of enforcement, rules, and oversight. The Consumer Financial Protection Bureau (CFPB), has already demonstrated deep responsiveness both to consumers and to financial institutions while forcefully addressing abuses in the financial marketplace for consumers; returning nearly $12B in fines for 29 million consumers. The CFPB has processed over 1.2 million complaints from consumers and 97% of consumers get a timely reply when the Bureau passes those complaints to banks and other financial institutions.[1] And the CFPB has put special emphasis on those most likely at risk, such as service members and the elderly.

Lastly, Wall Street Reform sought to bring more accountability and transparency to the financial executives and to empower shareholders to impose market discipline. Much of the political anger in the wake of the crisis has been fueled by the reality that many of the executives who helped cause the crisis kept their jobs and even collected bonuses after taxpayers were called to support their firms. The continued rise of inequality and the pay gap between senior executives also fueled a call to action, as Americans saw record profits transformed into executive bonuses and cash on corporate balance sheets, but anemic investment and insufficient wage gains.

Wall Street Reform has no direct answer to economic inequality, but it does contain significant provisions to provide more accountability and transparency. For example, it directed the SEC to require disclosure of the ratio between executive and worker's pay at public companies; to register hedge funds and private equity firms; to require additional transparency at credit rating agencies. It required financial regulators to work together on clawback and compensation rules for financial institutions, so that executives would be forced to return pay if their decisions later proved damaging and to bar compensation plans that create incentives for excessive risk taking. Unfortunately, the combination of fierce political push back and uncertainty among regulators meant that many of these rules were not completed during the Obama Administration.

Notwithstanding this unfinished business, the implementation of Wall Street Reform was largely complete by the time that the Obama Administration left office, which means that even without a change in the political attitude towards Wall Street the pace of regulatory change would have slowed significantly. This means that the financial system was showing the strengthening effects of reform (e.g. higher capital, derivatives clearing, and more transparent consumer financial products) and the pace of rulemaking was slowing, even without an Administration and Congress that are highly responsive to the financial services industry's efforts to roll back reforms. Moreover, the Obama Administration had successfully led global consensus on a core set of reforms that matched our approach in the United States. This consensus is critical to avoid a race to the bottom over time, where each jurisdiction competes to lower their regulatory standards in order to attract multi-national financial conglomerates. The Trump Administration's efforts to undermine reform, will not only undermine resilience in the United States, but it breaks those global linkages that underpin U.S. competitiveness and global financial stability.

The past ten months have demonstrated that while important reforms were put in place, dramatic changes in the financial system were evidenced, and millions of Americans were still suffering from effects of the financial crisis almost ten years later – the financial services industry and opponents of reform had not given up their goals to reduce strong oversight, strong prudential requirements, curbs on high-risk activities, and important protections for ordinary Americans. As such, the change in political control, even in absence of comprehensive repeal, has resulted in critical changes undercutting the strength of reform that would have been unimaginable even last year.

[1] www.consumerfinance.gov. For more detail on the successes of the Consumer Financial Protection Bureau, see Michael S. Barr, "Testimony of Michael S. Barr Before the United States House Committee on Financial Services Hearing on the Financial Choice Act of 2017", April 26, 2017; https://financialservices.house.gov/uploadedfiles/hhrg-115-ba00-wstate-mbarr-20170426.pdf

In considering the change in pace and direction of legislative and regulatory policy, it is important to understand where we left financial reform at the end of the second term. The implementation of new reforms was largely complete at the end of 2016, although some rules were phased in over a period of year.

The Trump Administration has laid out a set of proposals and appointments with a pronounced bias towards the interests of the largest financial firms in the United States and the world. While they may argue that these changes are necessitated by a lagging economy, reduced lending or limited market liquidity, these are simply camouflage in a many year battle by industry and other critics to revert to a pre-2010 financial regulatory world. For example, recovery in the banking sector is both broad and deep. Business lending is up, the corporate stock and bond markets continue long-term bull markets, and in the past two years, the largest banks are again recording record profits and returning money to shareholders, and even performance at community banks has rebounded.[2] More can and should be done to revise and tailor the application of bank regulatory rules, including many which pre-date the crisis, in ways that will simplify compliance for community banks. In fact, bipartisan support exists for a sizeable package of targeted revisions to community bank rules, and a number of straightforward changes were signed into law during the Obama Administration. However, provisions targeted at community banks should not be used to argue for rolling back reforms that only affect the largest, most complex institutions. Moreover, the ability to help community banks should not be held up by a desire to help banks with hundreds of billions or even trillions of dollars of assets.

In fact, the largest banks only in the past year came into line with new capital requirements and were able to make satisfactory progress in their planning for their own failures; yet these successes of implementation are now being used as arguments to reduce the standards that firms have just met. Moreover, the purpose of the post-crisis standards is to protect the economy from financial spillovers in a downturn. No economic expansion will last forever, and while we all hope for continued and even stronger growth, the current expansion is no different. It is particularly inappropriate, therefore, to reduce standards just when they may be most important and may be called upon to play their protective role.

Wall Street Reform took most of the last eight years to implement and it is unlikely to be overturned quickly. The Trump Administration clearly understands this and so it is still early to evaluate whether they will effectively undermine the pillars of financial reform. In the remainder of this testimony, I will outline what we know so far about the new Administration's efforts and objectives and ways that their approach – if it is implemented – would significantly increase risk for the U.S. economy and U.S. taxpayers.

There are two main avenues to change our financial regulatory system – first, through direct legislative action, and second, through regulatory actions, whether abandoning rules that are in process, rescinding guidance, rewriting existing rules, or simply choosing not to aggressively enforce laws that exist. The House has already passed legislation, so it is natural to take these proposals seriously. Though most analysts believe that they bear little relevance to an analysis of what may happen because, legislative action on financial regulation will require 60 votes in the

[2] FDIC, "Quarterly Banking Profile: Q4 2016," February 28, 2017. FDIC, Historical Statistics on Banking, 2016.

Senate, except in very narrow circumstances. It remains to be seen, whether any such package, could emerge from the Senate – and no legislative text has been released from the Senate Banking Committee.

The regulatory agenda is likely to be much more far reaching than legislative action, and worryingly, these changes rarely receive the attention and focus that passing legislation attracts. In part this is because the tools to pursue a deregulatory agenda are more varied – below I will focus largely on formal rulemakings, but guidance, policy statements, supervisory approach, and enforcement decisions each have significant impact on the nature of the protections that have been put in place.

The Treasury Department is planning a series of reports on actions that it believes should be changed as part of the financial deregulatory agenda. These reports provide an outline to evaluate potential regulatory actions.

Administration Reports

The Treasury Department has planned a series of reports recommending regulatory and statutory changes that it believes should form the core of the financial deregulatory agenda. Two of those reports, on banking and capital markets have already been released. Two more, on insurance and financial stability are reportedly coming soon.

While the financial industry continues to seek significant changes and significant weakening of Wall Street Reform, it is important to note that the industry largely recognizes the critical importance of financial regulation and the history of volatility, panics and crashes that can characterize poorly regulated or under-regulated financial sectors. Therefore, when the Treasury reports were characterized by both a clear understanding of the way that financial regulatory laws work and of the requests of industry for relief from particular provisions, rather than wholesale repeal of the financial regulatory system; many commentators – even those not in industry – were relieved.[3] To take an example: the Treasury report contrasts with the legislation passed by the House by calling for modifications to (rather than repeal of) the Orderly Liquidation Authority described above.

Nonetheless, taken in their totality, the clear result of the recommendations in these reports would be to undermine the pillars of Wall Street Reform and significantly weaken the architecture of our financial regulatory system.

For example, In the Treasury report on banking, the Department highlights provisions related to stress-testing capital, requiring banks to operate with more liquid assets, and to reduce their exposure to other banks, and calls for each them to be weakened, delayed, reconsidered or

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[3] See for example, Hugh Conroy, Jr. and Patrick Fuller, "A Modest Proposal? Treasury's Report on Bank Regulation," Cleary Gottlieb Steen & Hamilton LLP, on Saturday, June 24, 2017. Available at https://corpgov.law.harvard.edu/2017/06/24/a-modest-proposal-treasurys-report-on-bank-regulation/

eliminated. The cumulative result of the report, therefore, is more extreme than an examination of any one of its recommendations.[4]

The Treasury Department has also released a report on capital markets activity and it follows a similar pattern. For example, while the report was broadly supported by Wall Street firms who sought Administration support for their efforts to remove regulatory oversight of large-scale trading activity, those who take a more dispassionate view gave the report more mixed reviews. For example, Moody's noted that "if those recommendations result in a material decrease in banks' liquid resources or capital levels or a weakening of their funding structures, they would on balance be credit negative, notwithstanding any positive benefits of improved market liquidity."[5]

Another example of the reports efforts to undermine financial reform is its recommendations on cost-benefit analysis. The report argues that cost-benefit analyses should be included as part of the "in the administrative record of the final rule."[6] This seemingly innocuous phrase would mean that the financial industry could sue agencies arguing about flaws the cost-benefit analysis; something that has never been true for analyses conducted within the framework of the Office of Management and Budget. Given the fact that financial firms will react dynamically to these rules, and that markets often find new equilibriums; modeling costs for financial rules is categorically different than modeling deterministic systems like pollution from power plants. The outcome of such a change would significantly shift the balance of power towards financial firms in a rule making process in which industry voices dominate the substantive comments that agencies must consider and respond to.

Regulatory Efforts

While significant legislative action to roll bank Wall Street Reform remains deeply uncertain, and Treasury policy statements are statements of interest and intent, rather than changes to Wall Street Reform, the Federal financial regulators have significant independent authority to weaken, delay or undermine Wall Street Reform.

To date, personnel appointments have slowed the Trump Administration from moving quickly in this area. For example, the two markets regulators, the SEC and CFTC now have confirmed Chairmen appointed by President Trump; whereas both the Federal Reserve and FDIC Chairs continue to serve their statutory terms and the OCC has an acting Comptroller appointed by President Trump, while his permanent nominee awaits confirmation by the Senate.

In some ways, the most important first statements by Trump appointees at the Federal Financial regulators are regarding what they are not planning to do. Each agency is required to publish a quarterly report outlining its upcoming regulatory agenda – highlighting near term, medium term and long term expectations. Examining changes in the SEC's regulatory agenda from late in 2016 to the first quarter of 2017 demonstrates that the new leadership of the SEC does not intend

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[4] For a more in-depth analysis of these recommendations, see Nellie J. Liang, "What Treasury's financial regulation report gets right—and where it goes too far," June 13, 2017. Available at: https://www.brookings.edu/blog/up-front/2017/06/13/what-treasurys-financial-regulation-report-gets-right-and-where-it-goes-too-far/

[5] Moody's, "Mixed credit implications from US Treasury capital markets report," Global Credit Research - 12 Oct 2017. https://www.moodys.com/research/Moodys-Mixed-credit-implications-from-US-Treasury-capital-markets-report--PR_373919

[6] U.S. Treasury Department, "A Financial System That Creates Economic Opportunities: Banks and Credit Unions," p. 63.

to follow through on statutorily required rulemakings from Wall Street Reform. The SEC moved four separate rulemakings intended to reign in excessive executive compensation and increasing the responsiveness of corporations to their investors from their near-term expectations to the long-term bucket. These moves are notable both because of the subject matter and because they demonstrate that inaction by regulators can work to undermine the Wall Street Reform by effectively refusing to set rules that would affect the incentives and governance problems that manifested themselves in the financial crisis.

Another example of the deregulatory efforts was a public notice by the OCC requesting comment on potential changes to the Volcker Rule. The Volcker Rule has been criticized by the financial industry for its complexity, but its statutory intent is quite simple: Banks and their affiliates, who benefit significantly from the presence of deposit insurance and the role of the Federal Reserve in preventing financial panics as a lender of last resort should not use those advantages to engage in speculative trading in the financial markets. Instead, these firms should focus on the core role of financial intermediation – helping buyers and sellers find each other in healthy markets.

Even before the Volcker Rule became law, those in the financial industry (and some outside) argued that the distinction was impossible to make in practice. In the rulemaking process, as five federal regulators worked to address thousands of pages of concerns from the financial industry, they added a series of very detailed provisions that sought to provide clarity along each substantive comment. The natural result was a regulation that was significantly more complex than the simple principle articulated by Paul Volcker.

Into this environment, the Acting Comptroller (the head of the OCC, one of three banking agencies) has unilaterally announced his intention to revise the Volcker Rule. Although, as a matter of law, that the OCC cannot revise the Volcker Rule without the agreement of both the FDIC and the Federal Reserve. OCC's request for information covers all aspects of the rule – seeking comment on everything from the broad impact of the Volcker Rule on financial markets, to the structure of the "rebuttable presumption" (a technical provision that serves as a backstop definition of speculative trading).

Some changes to the Volcker Rule to clarify the status of community banks, which are already functionally exempt, would be welcome. One direct way to do this would be to tie the application of the Volcker rule to existing demarcations in the capital rules that exempt any bank with less than $1B in trading activity from rules governing market risk. Tying this existing standard to the Volcker Rule would significantly simplify compliance for community banks without affecting the impact of the rule at all.

The writing of the Volcker Rule was a multi-year process that is statutorily required to include five federal regulators – importantly, though the rule is currently uniform across all five regulators, there could be as many as 4 different Volcker Rules if the regulators cannot agree to a single text. Beginning a process to revise the rules without consultation and consent is a recipe for breaking the fragile consensus among agencies that led to a fully joint rule. Still, the OCC's request for information are only the first of many opportunities for public comment and those who want to stand for the principles at the heart of the Volcker rule can and should make their voices heard.

Similar patterns and complexities will follow any effort to revise the rules that comprise Wall Street Reform. Rules cannot be changed without public comment and public input; and any rule change must have a reasoned basis to address any concerns raised by the public.

For example, the Department of Labor announced in the spring of this year, that it would delay and seek comment on the rule that requires all those who provide investment advice on retirement to adhere to the standard that they will act in their customers' best interests. The Trump Administration initially signaled that they were going to repeal this rule, before announcing that that the rule would go into effect in June, giving financial firms one year to bring their systems in to compliance. Yet even as they acknowledged that they did not have a legal basis for further delay, they asked for further comment and seem to continue to leave open the possibility of trying to repeal these protections even before they go into place.[7]

A final example of agency action was the decision by the Financial Stability Oversight Council to allow AIG to be removed from Federal Reserve Supervision. As described above, the ability of the financial regulatory system to remain flexible and to supervise firms that become central to the financial system and that take outsize risk is essential helping both reduce the risk of and respond to financial crises. While AIG has significantly downsized its business and restructured since the crisis and since it was brought under Federal Reserve supervision, the decision to rescind was marked by procedural oddities. For example, one of the voting members of the Financial Stability Oversight Council was recused from the decision and three voting members disagreed with the decision – which means that the Council did not actually meet the statutory requirement for a 2/3 majority to take the decision. This suggests an Administration antipathy to the statutory purpose rather than a considered decision based on the evolution of AIG's business model. It is also worth noting that the Treasury has still not yet released its report on financial stability and the use of the designations authority – yet it has already acted to reverse a key decision enacted through those processes.

Legislative Efforts

The House of Representatives has actively sought to pass laws that would undermine the pillars of Wall Street Reform listed above. While there are many individual bills, the focus of House Leadership has been on the CHOICE Act, which passed the House for the second time in the first half of this year. As a practical matter, the structure and approach of the CHOICE Act has not gotten support from the Senate Republican Leadership, and so many analysts discount the CHOICE Act in their assessment of the damage to financial system health and fairness that could be pursued by the Trump Administration. However, the Republican leadership of the Senate Banking Committee has not yet drafted or published a draft bill in this area, so regardless of the legislative odds of CHOICE Act's passage, its central goals, individually or collectively, remain a critical place to focus on the shape of the current debate.

[7] "U.S. Department of Labor Proposes Additional Extension of Transition Rule Period for Fiduciary Rule Exemptions," August 31, 2017. https://www.dol.gov/newsroom/releases/ebsa/ebsa20170831

While many others have published comprehensive reports on the CHOICE Act,[8] it is worth highlighting some of the key provisions.

The drafters of the bill have highlighted a provision in the bill that would give large banks the ability to choose whether to meet a high leverage ratio or to continue to meet Dodd-Frank required standards for the largest, most complex financial firms. Because banks have typically complained about the current leverage ratio, the bill's drafters have suggested that this choice demonstrates their orientation towards being tough on the largest banks. In fact, this provision is at best self-defeating (meaning that no bank would opt to have the new high leverage ratio) and at worst a significant loophole for a massive increase in risk-taking by Wall Street. This is because a leverage ratio is not sensitive to risk – it treats all financial activity the same way, whether holding cash, lending to a small business, or trading exotic derivatives. Therefore, a bank that chooses to opt-in to the leverage ratio approach will both have no capital-based constraint on their risk taking, and will have far lower oversight of their business overall.

The CHOICE Act also directly restores a policy of treating the largest and most complex banks as too big to fail. In the crisis, government officials in the Bush Administration faced a Hobbesian choice, they could either bend the authorities of the Federal Reserve and the FDIC to prevent the failure of the largest financial institutions – which they did for Bear Stearns and AIG; or they could let bankruptcy run its course and ignite a panic in financial markets as happened with Lehman Brothers. Dodd-Frank created a new tool to handle the failure of any large financial institution called Orderly Liquidation Authority, which assures that a firm's shareholders, management, and bondholders will face losses when a financial institution fails, not regular taxpayers. It also includes the extra protection, that if there are losses that go beyond the stakeholders of the failing company, those are paid by the financial industry. The CHOICE Act repeals this new tool, leaving nothing but tweaks to the bankruptcy code[9] in its place; and putting taxpayers back on the hook.

The CHOICE Act also undermines the reforms that seek to constrain risk in derivatives and securitizations markets. To take just one example, the central losses of the financial crisis came from the way that poorly underwritten, and at times fraudulent and abusive mortgages were packaged, sliced and distributed from Wall Street around the world. Dodd-Frank sought to curb these risks with a simple reform that required anyone that created these securitizations to also own 5% of the risk in those assets – this is the simple principle of "eat your own cooking". Importantly, the problems in these securitizations were not limited just to mortgages, in fact the most problematic of these securitizations were created by packaging together derivatives, and packaging together securitizations of securitizations. The CHOICE Act ignores this history entirely and exempts all securitizations from the "eat your own cooking" requirement exempt those that are comprised "wholly of residential mortgages."[10]

[8] See for example: Gregg Gelzinis, Ethan Gurwitz, Sarah Edelman, and Joe Valenti "President Trump's Dangerous CHOICE," Center for American Progress, April 2017.

[9] Ben Bernanke, former Chairman of the Federal Reserve, has pointed out that even with changes to the bankruptcy code; the authorities created in Dodd-Frank are necessary to address the problems experienced in the financial crisis. Ben Bernanke, "Why Dodd-Frank's orderly liquidation authority should be preserved," Brookings Institution, February 28, 2017, available at https://www.brookings.edu/blog/ben-bernanke/2017/02/28/why-dodd-franks-orderly-liquidation-authority-should-be-preserved/. He writes: "It is simply not plausible that judges would be as effective as financial regulators in preparing for a speedy resolution or in managing one during a period of high financial stress."

[10] "Financial CHOICE Act of 2017", Sec. 842(a)(1).

For consumers, the CHOICE Act represents a direct assault on the independence and effectiveness of the Consumer Financial Protection Bureau (CFPB). The CHOICE Act would remove the independence of the Director of the Bureau, making it the only Federal financial regulator who would serve at the pleasure of the President. It would directly undermine the independence, and potentially funding levels, of all the banking agencies by subjecting their budgets to the appropriations process. The CHOICE Act would explicitly exempt payday loans from federal oversight. It would also explicitly prevent the CFPB from making rules regarding mandatory arbitration – a move that would prevent individual consumers from seeking redress through the courts when large financial institutions take abusive actions like opening accounts without their consent or mishandling their private data. Moreover, the CHOICE Act would single out the Consumer Financial Protection Bureau, relative to all financial regulators and prevent it from being able to investigate misbehavior by regulated institutions without review by courts.

These three examples are by no means comprehensive, but they demonstrate the depth to which the CHOICE Act goes to deregulate our financial system back to the outdated and brittle protections that contributed to the global financial crisis in 2008 and to undermine the pillars of reform that have been put in place since the financial crisis.

The other area where legislative actions have been taken to undermine Wall Street Reform efforts is in the Congressional Review Act process. The Congressional Review Act allows for Congress to use expedited processes to pass resolutions of disapproval for regulatory actions within 60 legislative days of those regulatory actions, and if signed by the President those agency actions are vacated.

Just this week, the Senate voted to overturn CFPB’s rules protecting consumers from being coerced into arbitration procedures when they have been harmed by financial institutions. This action came even after it became clear that in both the case of the fake account scandal at Wells Fargo and the data breach at Equifax, those companies continued to try to defend themselves with coercive contracts blocking consumers from banding together to sue them for redress. This report is a clear statement of the Administration’s priorities. They are willing to tip the scales in the favor of large corporations in the face clear consumer harm.

A less noticed example earlier this year should be particularly galling to state governments like Maryland. In an effort to promote retirement savings, particularly for small businesses that may not have the scale to set up and manage pensions or retirement accounts like 401(k)s, a number of states including Oregon had made an effort to give small business employees direct access to retirement savings products. These efforts however, required the Department of Labor, to clarify that these state efforts would not violate federal retirement regulations. In 2016, the Department of Labor finalized a rule making these clarifications. And in April 2017, the House and Senate voted to overturn these rules – directly attacking state-based efforts to promote retirement savings for their citizens and directly undermining retirement security for small business employees across the country.

The Congressional Review Act also remains a threat for three rules recently finalized by the Consumer Financial Protection Bureau:1) rules governing consumer rights and protections for pre-paid debit cards; 2) rules protecting consumers who take out payday loans.

Path Forward

The path of implementing Wall Street reform was not easy, but it has been successful in transforming the rules of the road for wall street creating a financial system that is safer, more resilient, and more fair. As the Trump Administration and the independent regulators that it appoints seek to change these rules in response to concerns by the financial industry, they will have to move slowly and keep a clear view of the laws that govern their work.

Wall street reform has never needed to be a partisan issue, many conservative voices – including some appointed by the Obama Administration believe that financial rules should be tough on Wall Street. Some conservative voices argued that the Obama Administration did not go far enough. Many financial leaders, including retired CEOs of Wall Street banks have joined groups advocating for tough and smart reform. Unfortunately, these voices have not been represented in the leading appointments of the Trump Administration so far.

The role of this Commission therefore is critically important to make sure that ordinary citizens understand both the importance of the work at hand and the critical opportunities to participate and influence the policy development process. The work of groups like this and citizen engagement can help assure that any clarifications and modifications of Wall Street Reform move to make our system stronger, and not to restore the inadequate regime that enabled the global financial crisis and the lost jobs, homes, wealth and opportunities that followed.