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FACT SHEET

The Senate's Bipartisan Dodd-Frank Rollback Bill

By Gregg Gelzinis and Joe Valenti February 28, 2018

In the coming weeks, the U.S. Senate will likely vote on the Economic Growth, Regulatory Relief, and Consumer Protection Act, or S. 2155.[1] This piece of legislation, which is supported by the Senate Republican Conference and 13 members of the Senate Democratic Caucus, has been touted as a community bank bill.[2] Make no mistake, S. 2155 is the second part of a massive corporate giveaway. The corporate tax cuts passed in December 2017 were a windfall for big banks—and big banks are again winners in this legislation.[3] The bill would deregulate 25 of the largest 38 banks in the United States and would undermine some key protections for homeowners and homebuyers, while offering crumbs for consumers.[4] The devastating effects of the financial crisis were felt in every state, so it is hard to believe that the Senate would vote to undo critical postcrisis protections.[5]

If enacted, the bill would make the U.S. financial system—and key regional economies—more vulnerable to another financial crisis, potentially putting taxpayers back on the hook to bail out the same banks once again. The failure of several of these banks during a period of significant stress in the financial sector could threaten financial stability and starve the economy of the credit and financial intermediation it needs to thrive. Moreover, this bill is a solution in search of a problem. Bank profits and lending are both at all-time highs.[6] There is absolutely no reason to deregulate a large swath of the banking sector, especially while the Trump administration is already dismantling financial regulatory tools from within.[7]

Banking provisions

- This bill raises the Dodd-Frank Wall Street Reform and Consumer Protection Act's threshold for enhanced regulatory standards from $50 billion to $250 billion, meaning 25 of the 38 largest banks in the United States would no longer be subject to stronger capital and liquidity rules, enhanced risk management standards, living-will requirements, some stress testing requirements, and more.[8] These rules are vital tools to protect the safety and soundness of banks and the stability of the financial sector.

- These 25 banks collectively hold $3.5 trillion in assets, or roughly one-sixth of the assets in the entire banking sector.[9]

- These banks took $47 billion in Troubled Asset Relief Program (TARP) bailout funds during the 2007–2008 financial crisis.[10]

- Even more stunning, the bill is not just about regional banks. The 25 banks deregulated include the U.S. holding companies of massive, scandal-plagued foreign banks—such as Deutsche Bank, BNP Paribas, UBS, and Credit Suisse—the last banks on earth that should be deregulated.[11]

- The bill also lowers the loss-absorbing capital cushions at two of the eight most systemically important banks in the United States, State Street Corp. and The Bank of New York Mellon Corp., which play a systemic role in the plumbing of the financial sector—holding a combined $60 trillion in assets under custody and administration.[12] Lower capital cushions make these banks less resilient and more vulnerable to a financial shock.

- The bill exempts from the Volcker Rule all banks with less than $10 billion in assets that also have limited trading assets. That means these banks can engage in risky, speculative activities with taxpayer-insured deposits. Although most of these banks do not trade for their own profit, the bill would allow them to invest in hedge funds and private equity funds—putting local economies that depend on these banks at risk.[13]

Housing provisions

- Despite the central role of the housing market leading up to the financial crisis[14] and the Great Recession, a number of the bill's so-called community bank relief measures would reintroduce risk to the housing market at a time when the national homeownership rate is at decades-long lows.[15] These provisions would only increase risk to consumers and taxpayers, rather than sustainably expanding ownership.

- By permitting steering by manufactured-home companies to their affiliated lenders—in other words, directing borrowers toward the company's preferred lender—the bill makes a laughingstock of Congress' commitment to rural Americans, especially those of modest means. As a particular carveout for the manufactured-home industry regardless of the size of the lender, it increases the costs and risk to borrowers who are already often lower-income and more financially vulnerable.[16] Minimal consumer protections included in the bill are less than what exists today, which means they are not strong enough.

- The bill also eliminates escrow requirements for higher-cost mortgages made by banks and credit unions with assets of up to $10 billion, up from $2 billion currently.[17] Escrow is an essential borrower protection, an arrangement that prominently identifies the full cost of a mortgage loan for a prospective homebuyer and prevents the likelihood of losing a home due to an unpaid tax lien or subjection to expensive force-placed insurance, in which the lender, not the borrower, picks the insurance on the home.[18]

- Rather than being packaged and sold to investors in the secondary market, some of the riskiest mortgage loans made prior to the financial crisis were held in portfolio—in other words, kept on the lender's books.[19] Yet for banks and credit unions that have from $2 billion to $10 billion in assets, the bill would newly exempt loans held in portfolio from requirements under the Qualified Mortgage rule,[20] in which lenders ordinarily must assess the borrower's ability to repay. This dramatically expands what was a carveout for the smallest lenders, as well as gives lenders a major safe harbor for nontraditional underwriting practices reminiscent of those that caused the crisis.

- For more than 40 years, the Home Mortgage Disclosure Act (HMDA) has been at the center of fair lending research and enforcement.[21] Dodd-Frank requires mortgage lenders to collect new data points about borrowers, including age, credit score, and detailed racial and ethnic breakdowns, in order to better monitor discriminatory or predatory practices.[22] Yet S. 2155 would exempt approximately 85 percent of lenders from these reporting requirements, taking away an essential tool to ensure that homebuyers are not unfairly denied or overcharged.[23]

- The bill also rolls back appraisal requirements for higher-risk mortgages in rural areas, further risking dangerous mortgage practices. This and many other provisions ignore the causes of the crisis and are solutions in search of a problem. Instead of narrowly tailoring rules to address specific concerns in the marketplace, the bill creates massive new risks in the housing market.

Consumer protection provisions

- As a whole, the bill violates a core tenet of the Dodd-Frank Act and its consumer-facing regulations—regulating financial products not based merely on who offers them but on what the products do. For a homebuyer, the size of the originating bank should not determine whether he or she obtains a fair deal and a safe mortgage.

- There are some modest consumer provisions in the bill, including the right to free credit freezes and protections for veterans' medical debt. On balance, however, these are mere crumbs relative to the rewards given to large and small banks under this bill.

- The bill does nothing to address the Wells Fargo and Equifax scandals[24] that brought needless costs and risk to the American people, nor does it address the nation's nearly $1.5 trillion[25] in student debt.

- These so-called protections are largely inconsequential in light of the major deregulation efforts underway by Trump appointees at federal financial regulators. For instance, the Office of the Comptroller of the Currency has weakened bank assessments under the Community Reinvestment Act[26] and blessed a form of payday lending by banks,[27] while the Consumer Financial Protection Bureau (CFPB) has delayed a long-awaited rule on high-cost payday loans.[28] The CFPB recently dropped its investigation into the Equifax scandal[29] and also dropped an investigation into a payday lender charging 950 percent interest that donated to Acting CFPB Director Mick Mulvaney's 2014 and 2016 congressional campaigns.[30]

- If Congress truly wanted to support consumer protections, it would expand its oversight of these and other regulators and direct them to take action on key consumer concerns.[31] It would also expand private rights of action and end the practice of forced arbitration, so that victims could seek justice in the courts should financial regulators fail to protect them.[32] Instead, President Donald Trump and Congress overturned the CFPB's arbitration rule, which would have restored consumers' right to band together to take financial companies to court.[33]

Rebutting key claims made by S. 2155 supporters

Supporters of S. 2155 have advanced several arguments as to why progressive critiques of the bill are off base. These arguments, however, fall short. Here is a closer look at why some arguments in support of the bill miss the mark.

Claim: The bill only increases Dodd-Frank's $50 billion threshold to $100 billion

Bill supporters claim that because the Federal Reserve retains the authority to reapply Dodd-Frank's enhanced prudential standards to banks with from $100 billion to $250 billion in assets, the legislation essentially only increases the threshold from $50 billion to $100 billion. It is highly irresponsible to trust that Trump-appointed financial regulators keen on financial deregulation will aggressively use the Federal Reserve's authority to reapply these enhanced regulatory standards to banks with from $100 billion to $250 billion in assets. If anything, Federal Reserve Vice Chair for Supervision Randal Quarles has signaled that he wants to go even further in easing regulations for the biggest banks.[34]

Claim: Banks with from $50 billion to $250 billion in assets should not be regulated like the largest banks

The current regulatory regime already sensibly tailors the enhanced regulations based on the size and risk profiles of different banks. The $50 billion threshold is simply a clear and straightforward way to identify the 40 largest banks in the United States that merit heightened scrutiny. It is not a one-size-fits-all threshold. Banks with from $50 billion to $250 billion in assets are not subject to at least nine enhanced regulations to which the largest banks must adhere. A $50 billion bank faces far less stringent regulations than the most systemically important banks in the United States that have trillions of dollars in assets. Banks with between $50 billion and $250 billion in assets should, however, face a minimum level of heighted regulations that includes enhanced capital and liquidity requirements, stress testing, and a requirement to plan for their orderly failure through living wills.

Claim: The bill focuses on community and regional banks and does not affect the regulation of the largest Wall Street banks

While significantly rolling back regulations for 25 of the 38 largest banks in the United States, which include the U.S. holding companies of foreign megabanks, the bill also weakens some regulations for the largest Wall Street banks. The bill eliminates one of the two stress testing scenarios, potentially undermining how severe future stress test scenarios will be. The bill also places a new requirement on the Federal Reserve to tailor the enhanced regulations—beyond the latitude Dodd-Frank already gives regulators to tailor these regulations sensibly—opening the door for the Federal Reserve to water down rules for the largest Wall Street banks under the guise of tailoring. Finally, by changing the calculation of the supplementary leverage ratio (SLR), the bill lowers the required loss-absorbing capital cushions for two of the eight most systemically important banks in the United States.

Claim: Consumers would benefit from expanded access to credit and new protections

Most of the types of lending permitted by the bill based on a desire to expand access are potentially predatory in nature,[35] such as manufactured-housing loans with indirect kickbacks, mortgage loans not requiring a determination of the borrower's ability to repay, and loans outside of escrow in which borrowers may be confronted with costly tax liens or force-placed insurance. This is the wrong kind of access and would only introduce new risk to consumers and taxpayers, ignoring the lessons of the financial crisis.[36] Meanwhile, the new proposed protections fail to address the many real harms consumers face in the marketplace.

Conclusion

If enacted, the Economic Growth, Regulatory Relief, and Consumer Protection Act would represent the most significant rollback of financial reform since Dodd-Frank was passed in the wake of the 2007–2008 financial crisis. At a time when the banking sector is thriving—and just received a massive windfall through the recent corporate tax cut giveaway—it makes no sense to loosen the regulations on the largest banks in the country or to weaken important protections for homebuyers and homeowners. History makes clear that bankers and policymakers are not the ones who bear the immense burdens of a financial crisis. That cost inevitably falls on the shoulders of everyday workers and families, some of whom still have not fully recovered from the previous crisis. Policymakers should keep that in mind before supporting this misguided legislation.

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Endnotes

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