

Principles of Financial Opportunity Reforms

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by Representative Jeb Hensarling

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The Financial Services Committee of the House of Representatives has a plan to offer reforms as a pro-growth, pro-consumer alternative to the Dodd-Frank Act, which is harming the economy and consumers.



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Dodd-Frank Is a Burden on the U.S. Economy. I need not tell you that we continue to suffer from the slowest, weakest, most tepid recovery in our nation's history. Some would say a lot of this has to do with our inefficient tax code, and it does. But beyond the tax burden that entrepreneurs face, there is a larger burden known as the regulatory burden — the sheer weight, volume, complexity and uncertainty of a needless avalanche of Washington regulations — much of which has come from Dodd-Frank. So, hear me well: On behalf of all hardworking, struggling Americans, I will not rest — and my Republican colleagues on the House Financial Services Committee will not rest — until we toss Dodd-Frank onto the trash heap of history.

Dodd-Frank stands as a monument to the arrogance and hubris of man in that its answer to incomprehensible complexity and government control is even more incomprehensible complexity and government control. It is a modern day Tower of Babel: 2,300-plus pages; 400 new regulations, spawning tens of thousands of pages of red tape. And its foundation very much rests on a false premise: that somehow deregulation was the root cause of the crisis. But it was not deregulation. In fact, in the decade leading up to the financial crisis, regulatory restrictions in the financial sector actually increased. It was not deregulation; but it was dumb regulation. And there was no dumber regulation than the affordable housing goals of Fannie Mae and Freddie Mac that incited, cajoled and mandated financial institutions to loan money to people to buy homes that they could not afford to keep. Add to this the Federal Reserve's monetary policy that held interest rates too low for too long and we had a housing bubble that inevitably burst. As the current mayor of Chicago once infamously said, "never let a serious crisis go to waste." They didn't, and Dodd-Frank was born of the crisis.

Dodd-Frank Entrenched Too Big to Fail. Now when they voted for it, supporters of Dodd-Frank said it would promote financial stability, end too big to fail and lift the economy. None of this has come to pass. Instead, five-and-a-half years later, it has become evident that our society has become less stable, less prosperous and most ominously, less free.

With respect to stability, Dodd-Frank codified too big to fail and taxpayer-funded bailouts into law. Title I dangerously allows the federal government

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to designate too big to fail firms as systemically important financial institutions (SIFIs). In turn, Title II creates a taxpayer-funded bailout system called the Orderly Liquidation Authority, which the nonpartisan Congressional Budget Office estimates will cost billions and billions of dollars — and I think they have lowballed the figure. This is bad policy and worse economics. It erodes market discipline and risks even further bailouts. It becomes a self-fulfilling prophecy, helping make firms bigger and riskier than they otherwise would be. When private investors, depositors and counterparties expect a bailout, their incentives to monitor risk clearly wane. Regulatory micromanagement clearly is not, and never will be, a substitute for market discipline. By this measure, Dodd-Frank has clearly made our financial system riskier, and I haven't even mentioned the turmoil in the corporate bond markets brought about by the international Basel Accords and by Dodd-Frank.

Dodd-Frank Hurts Economic Growth. Instead of lifting our economy, Dodd-Frank has also made us less prosperous. There has not been a single year when economic growth has reached even 3 percent, and our most recent 0.5 percent gross domestic product (GDP) growth punctuates the matter. One published report on this failure noted, “There is no parallel for this since the end of World War II, maybe not since the beginning of the Republic.” Working Americans know that this economy is not working for them. Ladies and gentlemen, Dodd-Frank is a large reason it is not. Working Americans have seen their paychecks shrink by \$1,600, on average. It is no wonder 72 percent of them still believe the country is still in a recession — because their families are in a recession.

But I don't need polls to tell me this — that the economy is not working — because every week I receive some poignant communication, email or snail mail. Like Carla from Mesquite, Texas, who wrote, “We are struggling to make ends meet. My husband had temporary work for three months the last two years. He is been looking for work but not finding any.” Billy from the City of Garland tells me, “We are small business owners and we did employ our son. We had to let him go because we could no longer pay him.” It is just heartbreaking. The painful truth is, in this hyper-controlled economy, working Americans are falling behind.

Dodd-Frank has killed off a benefit that many once

took for granted: free checking. Before it became law, 75 percent of all banks offered free checking. Just two years later, roughly half do so. Furthermore, as account fees rise due to Dodd-Frank, so do the number of low and moderate income households that are unbanked or underbanked. That number now stands at 34 million, according to the Federal Deposit Insurance Corporation (FDIC). When you think about Dodd-Frank's Qualified Mortgage Rule, roughly 20 percent of the people who qualified for a mortgage in 2010 will no longer be able to qualify due to its rigid debt-to-income ratio. There are 15 percent fewer credit cards, and they cost 200 basis points more — and the list of economic harm of Dodd-Frank continues.

Questions of Constitutionality. But perhaps even more ominous than how Dodd-Frank has harmed our economic prosperity is how it has harmed our freedom. We are losing not only our economic freedom, but our constitutionally protected freedoms as well. As a Member of Congress, I have no more important job than upholding the Constitution. Yet never do I recall in my lifetime a moment when the Constitution was under greater assault than it is today. The sheer genius of our Constitution — its framework of checks and balances, limited government and coequal branches of government — secured our fundamental rights and gave rise to the greatest Republic the world has ever known. But instead of a government operating from a clearly defined enumeration of powers, today we have a leviathan \$19 trillion in debt — dominating virtually every corner of our lives and work. Instead of checks and balances, we have the president's infamous pen and phone. Instead of three coequal branches of government, we have seen the rise of an unaccountable fourth branch of government, well represented in Dodd-Frank. This is a branch of government which is unelected and unaccountable.

Much of this has happened under the authority of those who call themselves “Progressive.” And Progressives believe that only a certain class of people — a class to which they, of course, belong — have the proper authority and responsibility to hold political power, and the rest of us must yield to their expert management for our own good. Because, as one architect of Obamacare cynically noted, the rest of us are just too stupid to know what health care to use. So how could we possibly know what credit cards or checking accounts are best for us, or what mortgage we need?

Herbert Croly, a leading voice of the early Progressive movement, said as much when he stated that the Progressive vision of government “legislates, but without being...a legislator. It administers, but without being...an executive. It adjudicates, but without any power of attaching final construction to the law. It is simply a convenient means of consolidating the divided activities of the government for certain practical social purposes.” Our Founding Father, James Madison, in Federalist No. 47, had a decisively different take on the notion. He wrote, “The accumulation of all powers, legislative, executive, and judiciary, in the same hands...may justly be pronounced the very definition of tyranny.”

Dodd-Frank Established Unaccountable Organizations. Dodd-Frank has turned the Orwellian-named Consumer Financial Protection Bureau, not to mention the Financial Stability Oversight Council, into tyrants. With respect to the CFPB, it is a case study in the overreach and pathologies of the unaccountable, administrative state run amok. At almost every opportunity, the Bureau abuses and exceeds its statutory authority, which is already immense. The Bureau operates with such secrecy, unaccountability and bureaucratic tyranny it would make a Soviet Commissar blush. It acts as judge, jury and executioner, all without accountability and all without due process. This should alarm every American, because as we become less governed by the rule of law and more governed by the whims of Washington regulators, fear, doubt, uncertainty and pessimism are sown.

With respect to the Financial Stability Oversight Council, an amalgamation of regulators who largely were negligent in preventing the financial crisis in the first place — notwithstanding the fact that they had the regulatory authority to do so — has been empowered to define vague statutory terms, and by doing so designate firms as being too big to fail. And they are granted the ability, ultimately, once they place them into the heightened prudential supervision of the Fed, to break them up and restrict their activities. Ladies and gentlemen, under Dodd-Frank, we may one day wake up to discover our central bankers have instead become our central planners.

The Threat to Small Business. But the true cost of Dodd-Frank cannot be measured in terms of just dollars and cents. The true cost includes all the small businesses that were not started, the innovative products not produced, the workers not hired, the homes not

purchased, and the dreams of financial independence and economic security unfulfilled. But there is good news: It does not have to be this way. We can do better. It will not be an easy task, but as Teddy Roosevelt once said, we must “dare mighty things” because “knowing what’s right doesn’t mean much, unless you do what’s right.”

The Plan to Fix the Problem. So you will see Republicans on the House Financial Services Committee, which I have the responsibility and honor to chair, do the right thing. You will see us offer our vision of banking, and capital markets, and financial opportunity which will effectively repeal and replace Dodd-Frank. For our sputtering economy and for all those who are struggling, help is on the way.

The Republican plan will be based on the following principles: (1) economic growth must be restored through competitive, transparent and innovative capital markets; (2) every American must have the opportunity to achieve financial independence; (3) consumers must not only be viciously protected from force, fraud and deception, but also from the loss of economic liberty; (4) taxpayer bailouts of financial institutions must end, and no company can remain too big to fail; (5) systemic risk must be reduced through market discipline; (6) simplicity must replace complexity, because complexity can be gamed by the well-connected and abused by Washington bureaucrats. Both Wall Street and Washington must be held accountable.

We will demand accountability from Wall Street. We will toughen penalties for those who engage in wrongdoing and actually defraud customers. Washington will be held accountable. Agencies will be subject to the Regulations From the Executive in Need of Scrutiny Act (or REINS Act), which many of you are familiar with, so that it is Congress — not the unelected and unaccountable — who will have the opportunity to pass significant rules that impact our economy. There will be significant due-process reforms for every American who feels that they have been the recipient of a government shakedown. We will ensure that most financial regulators are subject to the appropriations process so that Congress — the elected representatives of “We the People” — can exercise proper oversight.

The most important feature of our plan, the essential core of our plan, will be to provide vast regulatory relief from Washington micromanagement in exchange

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for banks who choose to meet high but simple capital requirements. It will be an election they can choose to make, and it will essentially be the functional equivalent of a Dodd-Frank off-ramp. If financial institutions elect to hold strong, Tier I capital, they will gain strong regulatory relief from both Dodd-Frank and Basel's burdensome regulations and capital standards. In a nutshell, if a bank chooses to have a fortress balance sheet that protects taxpayers and minimizes systemic risk, then bankers ought to be allowed to be bankers and grow our economy. It is that simple. In addition, as I said in our principles, we will end taxpayer bailouts and repeal Titles I and II of Dodd-Frank.

Reforming the Federal Reserve. Another important part of our plan will be Federal Reserve reform. Our committee has already acted on the Fed Oversight Reform and Modernization Act. And again, separate and apart from monetary policy, what we see today is a Fed that functionally can control every major corner of the financial services sector of our economy. And it can do so as part of a shadow regulatory system that is neither transparent nor accountable to the American people. This must end. We will protect the American people from Fed overreach and again, the provisions of the FORM Act will be included in our reform legislation. We will also, as part of that, ensure that there will be public notice and comment on the Fed's stress test scenarios and the Fed will be required to disclose a summary of all the stress test results if financial institutions have to resubmit them.

The Unaccountable Will Be Accountable. In addition, we will have very, very significant changes for the Consumer Financial Protection Bureau to ensure that ultimately it is there to protect consumers and not take away their economic liberties. This will include putting them on budget, creating a bipartisan commission, and ensuring that their rule-making authority is subject to the REINS Act.

Changing the Vision for the U.S. Economy. Let us remember ultimately though that this is not a debate about deregulation or regulation. It is really a debate over the future of the economy, and the hopes and dreams of millions. On one side are those who believe ultimately in the Progressive vision of a ruling elite who ultimately can decide for the rest of us about our credit cards, our checking accounts, our mortgages, because they are smarter than us. The rest of us still passionately believe that the true source of our prosperity is not to be found in

Washington. It is to be found in freedom and free markets and free enterprise. We believe that well-functioning, transparent, and efficient capital markets will provide a ladder of opportunity. When all Americas have greater opportunities, the economy will rise with them. So it is a choice between two different futures and two different visions.

Stay tuned. In the weeks to come, we on the committee look forward to unveiling this legislation, receiving your feedback, and ultimately earning your support. Because this is a fight for America's future, and I'm more confident than ever it is a fight we can win.

Representative Jeb Hensarling (R-Texas) is the Chairman of the House Financial Services Committee. He delivered these remarks at the National Center for Policy Analysis Financial Crisis Summit on May 12, 2016, on Capitol Hill in Washington, D.C.