

# Key Provisions of the Financial CHOICE Act

July 2016

**Contact:**

**Alan Keller**

Vice President, Legislative Policy

[alan.keller@icba.org](mailto:alan.keller@icba.org)



INDEPENDENT COMMUNITY  
BANKERS *of* AMERICA®

[www.icba.org](http://www.icba.org)

# Key Provisions of the Financial CHOICE Act

---

## "Off-Ramp" for Highly Capitalized Banks

- Banks that maintain a simple leverage ratio of at least 10 percent and, at the time of the election, have a composite CAMELS rating of 1 or 2 may elect to be a "qualifying banking organization."
- A qualifying banking organization is exempt from the Dodd-Frank Act provisions that concern SIFIs, the Basel III capital and liquidity standards, and a number of other regulatory restrictions that pre-date Dodd-Frank.
- (See Large Bank/Too Big to Fail Provisions below for additional provisions that apply to qualifying banking organizations.)
- Any bank that fails to maintain the specified, non-risk weighted leverage ratio will face restrictions on distributions and be required to submit a capital restoration plan. If the bank does not restore its leverage ratio within one year, it will lose its status as a qualifying banking organization and lose the regulatory relief described above.
- Qualifying banking organizations would be subject to agency stress tests, but the stress tests could not be used to limit capital distributions. (It is not clear whether the current law asset threshold on stress tests would continue to apply.) Stress test "conditions" to be made public and subject to notice and comment period.

## Community Bank Regulatory Relief Provisions

(provisions requested by ICBA and/or included in our Plan for Prosperity are noted by an asterisk)

### **Debit Interchange**

- Full repeal of "Durbin Amendment" price controls on debit interchange.

### **Mortgage**

- Automatic QM status for mortgages held in portfolio by a bank or credit union of any asset size.\* (Plan for Prosperity supports portfolio QM for banks with assets of less than \$10 billion.)
- Exemption from escrow requirements for mortgages held in portfolio by a bank with less than \$10 billion in assets.\*
- Any depository institution that has originated 100 or fewer closed-end mortgages in each of the two preceding years would be exempt from HMDA collection and reporting on closed-end mortgages. In addition, any depository institution that has originated 200 or fewer open-end lines of credit in each of the two preceding years would be exempt from HMDA collection and reporting on open-end loans.\*

## **Exams and Call Reports**

- Require timely release of exam reports.
- Create a mechanism for institutions to appeal exam findings without fear of bureaucratic retaliation.\*
- Allow well-capitalized community institutions to file short-form call reports in the first and third quarters of each year.\*

## **Other Community Bank Provisions**

- Repeal of Dodd-Frank small business data collection requirements (which have not yet gone into effect).\*
- Exempt from SOX 404(b) reporting and attestation requirements banks with assets of \$1 billion or less.\*
- Raise threshold for Federal Reserve Small Bank Holding Company Policy Statement from \$1 billion to \$5 billion.\*
- Require financial regulators to tailor regulations so they fit a bank or credit union's business model and risk profile.\*
- Repeal of the Volcker Rule for all banks.\* (Plan for Prosperity calls for Volcker Rule exemption for non-SIFI banks.)
- Expand the definition of accredited investor.\*
- Anti-Choke Point provision. Prohibits a federal banking agency from formally or informally suggesting, requesting, or ordering a depository institution to terminate either a specific customer account, or group of customer accounts, or otherwise restrict or discourage it from entering into or maintaining a banking relationship with a specific customer or group of customers.\*
- Allow a thrift to elect to be regulated as a Covered Savings Association (CSA) with authority to exercise the full range of national bank powers.\*
- Require shareholder vote on executive compensation only when a company has made a material change in the executive compensation package, rather than once every three years.

## **CFPB Provisions**

- Change the name of the CFPB to the "Consumer Financial Opportunity Commission" (CFOC).
- Convert the CFPB (and other single director financial regulatory agencies) into a bipartisan commission.\*
- Increase threshold for Commission bank supervision from \$10 billion to \$50 billion.\*
- Task the agency with a dual mission of consumer protection and competitive markets.
- Cost benefit analysis of CFPB rules performed by the Office of Economic Analysis.
- Establish an independent, Senate-confirmed Inspector General.
- Repeal agency authority to ban bank products deemed "abusive" and authority to prohibit arbitration.
- Repeal indirect auto lending guidance.
- Repeal authority to prohibit arbitration clauses in financial services contracts.

## Large Bank / Too Big to Fail Provisions

- No Federal rule establishing “heightened prudential standards” of the type provided for in Dodd-Frank (Title I) would apply to qualifying banking organizations, including the living will requirement.
- “Bankruptcy, not bailouts.” Repeal Title II of DFA (orderly liquidation authority) and create a new subchapter of the Bankruptcy Code tailored to specifically address the failure of a large, complex financial institution.
- Prohibit the use of Treasury’s Exchange Stabilization Fund to bail out a financial firm or its creditors, and impose significant, new and real constraints on the Federal Reserve’s emergency lending authority.
- Discount window borrowing limited to solvent banks with good collateral at high rates.
- Banks that have made the qualifying capital election are exempt from any limitations on mergers, consolidations or acquisitions that relate to capital, liquidity or concentration of assets or deposits. (Thus, 10 percent deposit concentration limit and 10 percent total liabilities limit do not apply).
- Regulators may not consider systemic risk as a factor when reviewing merger or activities applications from banks that have made the qualifying capital election.
- Repeal FSOC’s authority to designate non-bank Systemically Important Financial Institutions (SIFIs) and retroactively repeals FSOC’s previous SIFI designations.
- Repeal Title VIII of Dodd-Frank, which gives the FSOC authority to designate certain payments and clearing organizations as systemically important financial market utilities with access to the Federal Reserve discount window and retroactively repeal all previous financial market utility designations.

## Agencies and Rulemaking

- Every financial regulation must pass a cost-benefit test.\*
- Place all the financial regulatory agencies on budget and subject to the appropriations process.
- Protect the Federal Reserve’s independence in conducting monetary policy by leaving that function off-budget.
- Convert all financial regulatory agencies presently headed by single directors (the Office of Comptroller of the Currency, and the Federal Housing Finance Agency), plus CFPB, into bipartisan commissions.\*
- Require all major financial regulations to be approved by Congress before they take effect.
- Repeal the Chevron doctrine requiring the judiciary to give deference to financial regulatory agencies’ interpretation of the law.

## Enforcement Provisions

- Double the cap for the most serious securities law violations and allow for triple monetary fines when penalties are tied to illegal profits.
- Give the SEC new authority to impose sanctions more closely linked to investor losses – and increase punishments even more for repeat offenders.
- Increases the maximum criminal fines for both individuals and firms that engage in insider trading.
- Create an immediate right of removal to federal court for respondents in administrative proceedings.
- Ensure that disciplinary proceedings are public and that all fines imposed by regulatory agencies are sent to the Treasury for deficit reduction.

## Monetary Policy

- Require the Federal Open Markets Committee to adopt a rule-based approach to monetary policy, subject to audit by the GAO and review by Congress.
- Increase the Federal Open Market Committee membership from 5 to 6 representatives of the Federal Reserve Board and revise the selection process to provide more balanced voting representation from the different Federal Reserve banks.

## Other Provisions

- Exempt all asset classes except residential mortgages from mandatory risk retention.
- Eliminate certain Dodd-Frank disclosures such as pay ratios.
- Modernize the Business Development Company regulatory regime so BDCs can invest more in small and middle market companies.
- Give the SEC the authority to register venture exchanges so JOBS Act companies can list on an exchange that is tailored to the needs of smaller issuers.
- Provide broker-dealers with the legal certainty to issue research on exchange traded funds.
- Abolish the Office of Financial Research.
- Provide whistle blower protection for financial services employees who report their own firms for potential elder abuse. Require that firms train employees who have contact with elderly consumers.