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# DODD-FRANK TURNS 15: LESSONS LEARNED AND THE ROAD AHEAD

## HEARING

BEFORE THE

## COMMITTEE ON FINANCIAL SERVICES U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINETEENTH CONGRESS

FIRST SESSION

JULY 15, 2025

**Serial No. 119–33**

Printed for the use of the Committee on Financial Services

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# DODD-FRANK TURNS 15: LESSONS LEARNED AND THE ROAD AHEAD

**Tuesday, July 15, 2025**

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
*Washington, D.C.*

The committee met, pursuant to notice, at 10:16 a.m., in room 2128, Rayburn House Office Building, Hon. French Hill [chairman of the committee] presiding.

Present: Representatives Hill, Lucas, Huizenga, Wagner, Barr, Williams of Texas, Davidson, Rose, Steil, Timmons, Stutzman, Norman, Meuser, Kim, Garbarino, Fitzgerald, Flood, McClain, Downing, Haridopolos, Moore, Waters, Velázquez, Sherman, Meeks, Scott, Lynch, Green, Himes, Foster, Beatty, Vargas, Gottheimer, Gonzalez, Casten, Pressley, Tlaib, Torres, Garcia, Pettersen, Bynum, and Liccardo.

Chairman HILL. The Committee on Financial Services will come to order.

Without objection, the chair is authorized to declare a recess at any time.

Today's hearing is entitled, "Dodd-Frank Turns 15: Lessons Learned and the Road Ahead."

Without objection, all members will have 5 legislative days within which to submit extraneous materials to the chair for inclusion in the record.

I now recognize myself for 4 minutes for an opening statement.

## OPENING STATEMENT OF HON. FRENCH HILL, CHAIRMAN OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM ARKANSAS

Good morning. Today's hearing is focused on reviewing Dodd-Frank's real-world impact and its unintended consequences over the past 15 years. Our colleagues across the aisle often criticize today's banking system, but rarely do they acknowledge that it is a direct result of the policies they enacted after the 2008 financial crisis along party lines. Dodd-Frank was sold to the American people as a sweeping fix to prevent another crisis, yet over time, it has become clear that this approach has not delivered as promised for main street. Instead, history shows that it punished community financial institutions through its one-size-fits-all mandates, shifted activity outside the regulated banking system, created new and unaccountable agencies like the Consumer Financial Protection Bureau (CFPB), and prioritized duplicative compliance and regulatory issues and, most importantly, regulation by enforcement over ac-

tual consumer protection. These smaller institutions did not cause the crisis, but they have been forced to navigate new compliance burdens and divert resources away from serving their communities and toward satisfying Washington bureaucrats. The law created new agencies like the CFPB, which has operated with unprecedented autonomy and minimal accountability to Congress or the American people.

For 15 years, we have lived under the shadow of Dodd-Frank. This law did not just reshape banking, it rewrote the rules for our capital markets. It handed the Securities and Exchange Commission (SEC) sweeping new powers that have led to regulatory overreach, costly disclosure mandates, and mission creep into areas like corporate governance and executive compensation: areas historically governed by State law and protected by the business judgment rule. For 15 years, these policies have burdened the U.S. public companies while giving foreign competitors a leg up. Even worse, foreign private issuers were exempted from many of the most burdensome Dodd-Frank disclosure requirements.

We all know that healthy competition and innovation drive economic growth, creating more opportunities and better financial services for all Americans. Instead of burdening institutions with excessive red tape, we should be empowering them to serve families, small businesses, and local communities. That includes small and mid-sized companies trying to raise capital or grow through public market access. Unfortunately, the complexity and cost imposed by Dodd-Frank have helped fuel the long-term decline in U.S. initial public offerings, discouraging companies from going public altogether. As we examine the last 15 years, I hope we can do so with clear eyes.

It is also time to take a hard look at the rules that never made sense in the first place, rules that sit on the shelf and create needless uncertainty for market participants, just waiting for some new unelected bureaucrat to dust them off and put them to work. That is not how our system should work. We must work together to craft thoughtful, bipartisan reforms that restore balance, foster growth, and protect consumers. I look forward to a robust and productive discussion today. I am grateful to our panel for being with us, and I am hopeful that we can chart a better path forward for all Americans through financial oversight and through reform of Dodd-Frank. I yield back.

I now recognize the distinguished ranking member of the committee, Ms. Waters, for 5 minutes for an opening statement.

**OPENING STATMENT OF HON. MAXINE WATERS, RANKING MEMBER OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM CALIFORNIA**

Ms. WATERS. Thank you very much, Mr. Chairman. Good morning, everyone. Before I discuss today's hearing topic, we just got news that inflation has jumped to 2.7 percent as Trump's tariffs have started to take effect. This is another reason Trump's reckless tariffs and attacks on the Fed's independence are so dangerous, and consumers and small businesses will pay the price. It is striking that with this hearing, we are marking the 15th anniversary of the Dodd-Frank Act, a legislation enacted in the aftermath of the

2008 financial crisis, which unfolded under a Republicans' watch with President George W. Bush's Administration. Yet, the same week, Republicans in Congress are repeating the same mistakes that triggered the crisis in the first place. It is as if they have learned nothing from the painful lessons of 2008: the wave of foreclosures, the millions of jobs lost, and the devastation of countless families watching their entire life savings vanish in a blink of an eye.

Unfortunately, over the past 15 years, Republicans spent more time trying to undo Dodd-Frank than they have spent time trying to protect consumers and investors. They have done more to fight for interests of the same Wall Street CEOs whose reckless actions destabilize our economy than fighting for the main street and working-class Americans who power our economy. There is no clearer example of this than what we are witnessing just this week.

Republicans are pushing two particularly dangerous bills that will unleash risky cryptocurrency into our mainstream financial system without proper guardrails to protect hardworking Americans. If that sounds familiar, it is because it is.

The rise of complex, poorly regulated financial instruments was precisely what sparked the 2008 crisis, but these crypto bills do not just risk another economic meltdown. They are also riddled with loopholes that President Trump that gave him the green light to continue his crypto scheme that so far has netted him $1.2 billion. Yes, he owns crypto companies now. He owns crypto companies. Melania owns crypto companies. His sons own bitcoin companies. They are mining bitcoin coins right now. It is appalling that this Republican-led Congress can sit idly by and enable this blatant scheme and cash grab, especially after just voting so hard to hand Trump and his insiders a massive tax giveaway. This is more of the same taking from hard-working Americans to further enrich billionaires and crypto insiders. That is why I have joined with Ranking Member Lynch in leading Democrats in Anti-Crypto Corruption Week where we are outlining the true economic costs of these dangerous bills.

Deregulating crypto and enable a con by the most corrupt President in the history are not the only ways that Republicans are setting the stage for another 2008-style crisis. They are also working with the Trump regime to gut a core pillar of Dodd-Frank, the Consumer Financial Protection Bureau. This is incredibly dangerous. The Consumer Bureau was created to ensure a Federal watchdog that monitors Big Banks to protect consumers from the abusive practices and holds institutions accountable for ripping off consumers, but now, Trump and the Republicans are making good on their promise to delete the Agency. From slashing CFPB's budget in half, to firing dedicated staff, or halting lawsuits that would return stolen money to victims from them. They are dragging us back to the dark days before Dodd-Frank when consumers had no one looking out for them in the financial marketplace. Committee Democrats are committed to defending the Dodd-Frank Act from Republicans' 15-year campaign to repeal the law.

We will also continue fighting against reckless deregulation that favors mega banks and Big Tech over community banks and credit unions that put our taxpayers at risk. We will still see what hap-

pens when Republicans allow Wall Street, Big Tech, Big Crypto to police itself. Spoiler alert, it will not end pretty for our constituents, and with that, I yield back.

Chairman HILL. The gentlewoman yields back. I now recognize the vice chair of our full committee, Mr. Huizenga, for 1 minute for an opening statement.

**OPENING STATEMENT OF HON. BILL HUIZENGA, VICE CHAIRMAN OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM MICHIGAN**

Mr. HUIZENGA. Thank you, Mr. Chairman. On the 4th of July, President Trump and congressional Republicans delivered on a promise to pass legislation that helps all Americans. There is a stark difference between the One Big Beautiful Bill and the Dodd-Frank Act. The One Big Beautiful Bill will increase economic opportunities for those who need it most. It will strengthen our economy by slashing red tape and will make lasting reforms to the financial system. Dodd-Frank empowered Big Government bureaucrats and agencies like the Securities and Exchange Commission with sweeping unchecked authority. It allowed agencies to promote woke ideology and Environmental, Social, and Governance (ESG) mandates while straying from their core mission. Now by reining in the reach and the footprint of organizations like the CFPB, Republicans and President Trump will end regulation by enforcement. We will end burdensome regulations that harm every one of our constituents. In the Financial Services, Republicans will promote innovation and consumer choice that has been stifled under Democrat leadership. So I say I was not here for the passage of Dodd-Frank, but I have been living with the echo effects of it since 2011. With that, Mr. Chairman, I yield back.

Chairman HILL. The gentleman yields back. Today we welcome the testimony of our all-star panel: the Hon. Ken Bentsen, President and CEO of the Securities Industry and Financial Markets Association, a former Member of Congress from Texas and a member of this committee; Mrs. Lindsey Johnson, President and CEO of the Consumer Bankers Association; Mr. Tom Quaadman, Chief of Government Affairs and Public Policy in the Investment Company Institute; Dr. Paul Kupiec, Senior Fellow at the American Enterprise Institute; and Dennis Kelleher, Co-Founder, President, and CEO of Better Markets. We thank each of you for taking time to be with us today. Each of you will be recognized for 5 minutes to give an oral presentation of your testimony, and without objection, your written statements will be made part of the record.

The Honorable Ken Bentsen, you are now recognized for 5 minutes for your oral remarks.

**STATEMENT OF KEN BENTSEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION**

Mr. BENTSEN. Chairman Hill, Ranking Member Waters, and distinguished members of the committee, thank you for the opportunity to testify today. My name is Ken Bentsen. I am President and CEO of the Securities Industry and Financial Markets Association (SIFMA).

U.S. securities markets are the deepest and most liquid in the world. They are also the envy of the world. In the U.S., 75 percent of commercial activity is financed through our capital markets, significantly more than any other developed economies. In fact, I just spent the last week in Europe meeting with U.K. and EU financial regulatory officials, where both jurisdictions have prioritized development of their capital markets to spur investment and economic growth like that we have here at home. Vibrant and healthy capital markets allow companies to invest in plant and equipment, spurring job creation and economic growth, and American workers prepare for their retirement directly and through investment vehicles such as 401(k) accounts, providing investment capital that fuels our economy.

Again, if you look around the world, virtually every other nation looks at the U.S. as a model for our robust capital markets and investment system. Therefore, it is critical for policymakers to tailor regulatory policies to ensure transparency, investment protection, and mitigate legitimate market risk without unnecessarily disrupting or constraining these critical markets. Further, Congress has an important role to play beyond simply enacting the laws. It is important for Congress to periodically review previously enacted statutes to determine effectiveness, adherence to legislative intent, and impact on the market. So, I commend the committee for holding this hearing.

Beyond question, our markets and related participants are among the most regulated sectors in the U.S. economy, but not without cost. The post-2008 financial crisis regulatory and supervisory reforms, culminated in the Dodd-Frank Act, were the most expansive financial regulatory action since the 1930s. The act, comprised of 16 titles and approximately 400 rulemakings, significantly expanded the number and breadth and intensity of regulatory and supervisory requirements with which the U.S. financial sector is subject. I brought my table copy with me. These changes have significantly reduced the probability that a major banking organization would fail during an extreme shock while also reducing the potential contagion and cost if such a failure were to occur. In particular, large banking organizations have more and higher-quality capital today than pre-crisis, which provides them with larger buffers against failure if they experience unexpected losses.

Though many of the Dodd-Frank reforms have made the U.S. financial system more resilient and less prone to shocks, we believe that appropriate, tailored regulation should balance the dual goals of enhancing financial stability and investor protection while supporting the flow of investment capital to end users. The financial sector can continue to be well regulated, well capitalized, and resilient even with recalibration of certainly unnecessarily burdensome regulations. If banking organizations were permitted to unlock more of their capital and liquidity, additional lending and financing to consumers and businesses would provide for greater levels of economic expansion.

SIFMA has expressed deep concern about the Basel III Endgame proposal that was issued in 2023 by banking regulators not only because it would significantly increase aggregate U.S. bank capitals beyond their current historically robust levels, but because it

inappropriately targets banking organizations and capital markets activities for some of the largest increase. These impacts are, in turn, greatly exacerbated by overlaps between these frameworks and the Federal Reserve's stress testing regime. This is not only about the ability of banks to lend. Large bank broker-dealers comprise a significant market share of our Nation's securities and derivatives markets and, when combined with foreign banking operations, comprise about 90 percent of the market, so the knock-on effect is quite extreme.

It is also not just about large banks. Nonbank affiliated and regional broker-dealers and asset managers, all subject to robust rules and oversight by Federal market regulators, have been subject to enhanced regulatory and compliance burden. The cost of compliance has increased. According to one study, by over $50 billion annually. Many of our smaller broker-dealer members have reported the need to merge due to increased compliance costs. Over the last 15 years, the number of registered broker-dealers in the United States has declined by 30 percent. Some regulators have interpreted certain provisions of the Dodd-Frank Act as a license to establish new rules outside the original intent of the statute, notwithstanding the lack of any obvious market failure.

The U.S. financial system is significantly stronger and more resilient than it was before Dodd-Frank was passed in 2010. That is a good thing. However, SIFMA believes that it is now appropriate to evaluate whether certain components of the regulatory framework developed under the mandates of Dodd-Frank are excessively conservative and impose costs on the U.S. economy or financial markets and on main street that outweigh their benefits.

We appreciate the committee's interest in exploring these important questions on this 15th anniversary of Dodd-Frank. I yield back.

[The prepared statement of Mr. Bentsen follows:]

**Written Testimony of**

**Kenneth E. Bentsen, Jr.**

**President and CEO, SIFMA**

**Before the**
**Committee on Financial Services**

**U.S. House of Representatives**
**Dodd-Frank Turns 15: Lessons Learned and the Road Ahead**
**July 15, 2025**

Chairman Hill, Ranking Member Waters, and distinguished members of the Committee, thank you for the opportunity to testify today on the Dodd-Frank Act, now fifteen years since its original passage. My name is Ken Bentsen, and I am the President and CEO of the Securities Industry and Financial Markets Association (SIFMA).

The U.S. securities markets are the deepest and most liquid in the world. They are also the envy of the world. In the U.S., seventy-five percent of commercial activity is financed through our capital markets, significantly more than in other developed economies. In fact, I spent the last week in Europe meeting with UK and EU financial institutions and policy makers where both jurisdictions have prioritized the development of their capital markets to spur investment and economic growth like that we have here at home. Vibrant and healthy capital markets allow companies to invest in plant and equipment, spurring job creation and economic growth. Corporations, farmers, ranchers, investors, and governments utilize our capital markets to raise capital and credit and manage all types of risks. Our mortgage-backed securities market allows families to lock in a mortgage rate before buying a home. Cities, states and non-profits fund infrastructure projects, schools, and hospitals through the municipal bond market. The U.S. government funds daily operations through the Treasury market. And American workers prepare for their retirement, directly and through investment vehicles such as 401k retirement accounts, IRAs and pension funds, providing the investment capital that fuels our economy. Again, if you look around the world, virtually every other nation looks to our robust market and investment system as a model for economic development and growth. Therefore, it is critical that our policymakers tailor regulation not just to ensure transparency, protect investors, maintain fair and orderly markets and mitigate legitimate market risks, but to do so without unnecessarily disrupting or constraining the role capital markets play in fostering economic growth. Further, Congress has an important role to play beyond simply enacting the laws; it is important for Congress to periodically review previously enacted statutes to determine effectiveness, adherence to legislative intent, and impact on the markets. So I commend the Committee for holding this hearing.

Beyond question, our markets and related participants are among the most regulated sectors in the U.S. economy. Many regulations that affect the financial sector are essential to ensure fair and

orderly markets, safety and soundness of the financial system, and protect investors, issuers, depositors, and consumers. But they are not without cost.

The post-2008 financial crisis regulatory and supervisory reforms, as culminated in the Dodd-Frank Act ("DFA," or "Dodd-Frank"), were the most expansive financial regulatory actions since the 1930's, then in response to the Great Depression. The Act, comprised of sixteen titles and resulting in approximately 400 rulemakings, significantly expanded the number, breadth and intensity of regulatory and supervisory requirements to which the U.S. financial sector is subject. Many of the policies required by Dodd-Frank or promoted in the aftermath of the financial crisis have made the U.S. financial system stronger and more resilient today than it was before 2010.

These changes have significantly decreased the probability that a major banking organization would fail during an extreme shock, and if so, reduced the potential contagion and cost if such a failure were to occur. In particular, U.S. banking organizations have materially more and higher quality capital today than pre-crisis, which provides them a larger buffer against failure if they experience unexpected losses. The rules also require such firms to depend less on "runnable" funding and instead maintain larger holdings of liquid assets to help them endure short-term market distress. And, encapsulated in Title II of the Act are extensive mechanisms to wind down a failing institution and mitigate exposure to the broader system and ultimately taxpayers.

The largest and most complex banking organizations, the so-called GSIBs and systemically important banks:

- Have more than two times Common Equity Tier 1 capital as a percentage of risk-weighted assets and over three times in total dollar amount compared with 2007;[1]
- Have increased their liquidity resiliency, now holding more than twelve times the number of high-quality liquid assets relative to 2007;
- Have substantially decreased their reliance on short-term wholesale funding; and
- Have six times as much properly structured usable total loss-absorbing capacity, or TLAC, which consists of equity and long-term debt that, in the event that significant buffers against failure were inadequate, could be used to absorb the top-tier parent's losses and recapitalize its material subsidiaries without the need to taxpayer-funded bailouts and helping to prevent contagion throughout the financial system.

Furthermore, the Federal Reserve's CCAR stress test imposes dramatically higher *de facto* capital requirements on certain asset classes, notably securitized small business loans and residential mortgages, than would otherwise be prescribed by the capital rules.

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[1] https://www.pwc.com/us/en/industries/financial-services/library/basel-iii-and-banking.html

OTC derivatives markets have become much resilient through enhanced transparency, mandatory central clearing for standardized OTC derivatives, margin requirements for non-cleared derivatives and registration and regulation of key market participants. Swaps and security-based swaps are now reported to trade repositories. The majority of the notional volume of interest rate swaps and index credit default swaps are centrally cleared and traded on CFTC-registered swap execution facilities ("SEFs"). Non-cleared swaps are secured by adequate margin, preventing the buildup of unsecured exposure over time and thereby significantly mitigating systemic risk.

For retail investors, Section 913 of Dodd-Frank led to SEC Regulation Best Interest, which establishes a "best interest" standard of conduct for broker-dealers and associated persons when they make a recommendation to a retail customer relating to any securities transaction or investment strategy involving securities. This provision and the ensuing rule Reg BI were the result of extensive Congressional negotiation and SEC studies over more than a decade. Our members supported the effort and final product promulgated under then SEC Chairman Jay Clayton as it hewed closely to the text and intent of the statute to level the standard of care that brokers and advisers owe toward clients when preserving investor choice.

Since the financial crisis, the cumulative effect of stress testing, higher capital and liquidity, resolution and recovery planning, the regulation of OTC derivatives markets and various other reforms has led to the financial system becoming significantly more resilient and stable. The resilience of our financial institutions has borne out not only in theoretical stress tests but also in the crucible imposed by the COVID pandemic, during which economic activity ground to a halt and financial markets were stretched to unimaginable limits. While markets around the world, including in the US, seized up in the initial period following the nationwide shutdown of normal civilian activity in response to a global public health crisis, they recovered rapidly. And yes, while there was significant government intervention to provide a backstop, as was appropriate given a government-imposed shutdown of normal economic activity in response to the public health crisis, most of that intervention was not actually drawn and instead served to restore confidence. Importantly, US markets recovered quite rapidly and, in fact, provided the opportunity for corporates to access long term debt markets, repair balance sheets, and provide investment that resulted in the US economy recovering more quickly. Notably, during this period, no banks failed. And from an operations perspective, firms were able to pivot to remote locations and maintain normal market operations from afar. Importantly, in the US, and pretty much everywhere across the globe, financial markets remained open and operating. As the CEO of a member firm commented, "we went from ten trading desks to 1000 trading desks in a day." This is something of which US policy makers and all Americans should be proud.

Though many of the Dodd-Frank reforms have made the U.S. financial system more resilient and less prone to shocks, they are not without cost, and we believe that appropriately tailored regulation should balance the dual goals of enhancing financial stability and investor protection while supporting the flow of investment capital to end-users who deploy that capital to create jobs and grow the economy. Investment and growth are relative to risk, and while policy makers should

endeavor to mitigate and manage risk, eliminating risk is not only impossible, but also would undermine our economic system.

SIFMA believes certain modifications to Dodd-Frank and post crisis reforms are appropriate to ensure that the U.S. financial system optimizes its potential to help fuel economic growth and job creation. This doesn't need to be an either/or matter. The financial sector can continue to be well-regulated, well capitalized and resilient even with a recalibration of certain unnecessarily burdensome regulations, including numerous related to the Dodd-Frank Act. If banking organizations were permitted to unlock more of their capital and liquidity, additional lending and financing to consumers and businesses would provide for greater levels of economic expansion. Policymakers need to seek the appropriate balance, yet unfortunately, what we have seen is that the outcome is not always appropriately calibrated.

Increased capital and liquidity requirements and, in particular, recent proposals to increase those requirements under the so-called Basel III Endgame, as required by Dodd-Frank, have and will result in the tightening of bank's ability to deploy capital for lending and financing at the level to support optimal growth potential of the nation's economy. This is not just about the ability for banks to lend. Large U.S. bank affiliated broker-dealers comprise significant market share of the nation's securities and derivatives markets and, when combined with foreign bank dealer counterparts also active in the U.S. market, account for upwards of 90% of market share for traditional securities products such as equities, bonds, securitizations and derivatives. Restraining the ability of such firms to deploy capital to engage in these markets will have a direct effect on counterparties who rely on market financing and risk mitigation. While the U.S. continues to host the deepest and most liquid bond markets that are the envy of the world, such markets have become significantly less liquid in recent years, as bank affiliated dealers have been forced to reduce inventories as a result of DFA capital and market structure rules. While policymakers have sought to recalibrate some of these rules, as they did with Volcker in recent years, the proposed Basel III capital and liquidity rules will have the result of exacerbating this situation.

This is not just about banks. Non-bank affiliated and regional broker-dealers and asset managers, all subject to robust rules and oversight by federal markets regulators, have been subject to enhanced regulatory and compliance scrutiny and burden. The cost of compliance with the panoply of new rules has increased compliance costs for banking organizations, according to one study, by over $50 billion annually.[2] Many of our smaller broker-dealer member firms have felt the need to merge due to increased compliance costs as a percentage of total revenues. Over the last fifteen years, the number of registered broker-dealers has declined by 30% while total assets have increased from $4.7T to $6.4T.[3] Further, some regulators have interpreted certain provisions of the act as a license to establish new rules outside of the original intent of the statute notwithstanding the lack of any obvious market failure. Partly as a result of increased regulatory obligations resulting from Dodd-Frank, some financial activity has shifted in the past decade to more lightly regulated providers. One

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[2] Thomas L. Hogan and Scott Burns, "Has Dodd-Frank affected bank expenses?" *Journal of Regulatory Economics* (2019).
[3] https://www.sec.gov/files/dera-broker-dealer-activity-2506.pdf

asset class where this shift is particularly pronounced is mortgage origination and servicing. As noted in the 2022 FSOC Annual Report, non-banks originate approximately two-thirds of new mortgage originations, a nearly 27 percent increase since 2017. Non-bank servicing has increased from 11 percent of the market in 2011 to 55 percent in 2022. This shift, augured by the litany of Dodd-Frank prescriptions, could have profound implications for safety and soundness.

SIFMA believes it is time for a thoughtful assessment of where that balance between regulation and capital formation should be drawn. Despite fifteen years of demonstrated resilience through stress testing and real-world disruptions, financial regulators have repeatedly promulgated regulations without balancing the costs to job creation and economic growth against the problem sought to be remedied, and in some cases deemed remote risks to be justifications for major costs and market frictions associated with new rules.

Below is a discussion of various Dodd-Frank prescriptions which we believe are appropriate for review and revision.

**Prudential Regulation**

Bank capital and liquidity requirements have material impacts across the entire economy, affecting the ability of corporations, small businesses, governmental organizations, and consumers to fund their activities and manage all types of risks. The enhanced prudential standards pursuant to Title I of DFA, including enhanced capital and liquidity requirements inclusive of stress testing, and resolution plan requirements have contributed to strengthening the U.S. banking sector and making it significantly more resilient against material distress. However, many components of the standards have "gold-plated" the Basel international standards and promulgate repetitive and overlapping capital and liquidity requirements for same risks – resulting in excessive capital and liquidity requirements which create strong disincentive for large banks to engage in capital markets related activities, thereby constraining the availability and cost of capital for job creators and investors. It is crucial that policymakers, including Congress, conduct sufficient analysis and oversight to ensure that enhanced prudential standards strike the appropriate balance between ensuring financial stability and macroeconomic growth. It is particularly important that policymakers address the repetition and overlaps in the prudential standards that unnecessarily adversely affect the ability of large banking organizations to act as intermediaries in our capital markets, given that those markets fund roughly three quarters of all economic activity in the United States.

In particular, SIFMA has expressed deep concern about the Basel III Endgame proposal that was issued in 2023 by the banking regulators, not only because it would significantly increase aggregate U.S. bank capital levels well beyond their current, historically robust levels without any clear justification, but because it inappropriately, or perhaps unwittingly, targets banking organizations' capital markets activities for some of the largest increases.[4] These impacts are, in turn, greatly

[4] For additional background on the industry quantitative impact study analysis and SIFMA's response to the original Basel III Endgame re-proposal, see SIFMA, ISDA Comments on the Market Risk Components, January 16, 2024. Available at: https://www.sifma.org/wpcontent/uploads/2024/01/ISDA-SIFMA-Comment-Letter-January-16-2024-Basel-III-Endgame.pdf. See also SIFMA, FIA Comments on the Operational Risk Components, January 16, 2024.

exacerbated by the overlaps between these frameworks and the Federal Reserve's stress testing regime.

Enhanced Capital and Liquidity Requirements

At present, large banking organizations are bound by a complex web of capital and liquidity regulations, including up to 19 separate capital requirements[5] and 5 separate liquidity requirements.[6] Many of these requirements have gone materially above and beyond the Basel international standards due to U.S. specific "gold-platings" and resulted in many repetitive and overlapping capital and liquidity requirements for same risks,[7] a trend that continues, as evidenced in the U.S. Basel III Endgame proposal issued in 2023. In addition, the conceptual designs of various requirements lack inherent consistency and sometimes even contradictory to each other and market practice leading to excessive capital requirements.

1. *Supervisory stress tests and capital markets related activities.* The post-crisis financial reforms, e.g., the Volcker rule, mandatory margining, and mandatory clearing, have had their intended effect. Banks can no longer take the types of directional risks that resulted in significant losses during the 2008 financial crisis. Moreover, trading revenue has now become a source of strength in stress, which in turn allows banks to be a source of strength to the capital markets in periods of stress, including during the COVID pandemic and various geopolitical disruptions. However, the supervisory stress testing framework has not kept pace. The global market shock ("GMS") component and the supervisory models continue to assume banks suffer severe losses in stress when the opposite is true. As a result, capital markets, the engine of U.S. economic exceptionalism, are steadily losing market liquidity and dynamism.

2. *Supervisory stress tests and securitization markets.* The comprehensive post-crisis reforms focusing on securitization markets include risk retention, enhanced underwriting standards, enhanced disclosures, stress testing, as well as capital requirements. These reforms strengthened the quality of loans and improved credit enhancement in securitization structures. However, stressed shocks today in the global market shock component are nearly identical to pre-crisis shocks (AAA notes shocked at ~25%), effectively ignoring post-crisis reform. SIFMA estimated that 15% of the new securitization issuances in 2023 would result in capital exceeding max loss under the current capital framework, which will only get worse under the

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Available at: https://www.sifma.org/wp-content/uploads/2024/01/SIFMA-FIA-Op-RiskComment-Letter-Final-1.16.2024.pdf. More information can also be found in SIFMA's Blog Series on the Basel III Endgame, available at: https://www.sifma.org/resources/news/basel-iii-endgame-blog-series/

[5] I.e., 10 minimum risk-based capital ratios and buffers including stress capital buffer—result of DFA supervisory stress test, 3 minimum leverage ratios and buffer, and 6 total loss absorbing capacity/long-term debt minimum ratios and buffers. https://www.sifma.org/resources/news/blog/understanding-the-current-regulatory-capital-requirements-applicable-to-us-banks/

[6] I.e., liquidity coverage ratio (LCR), net stable funding ratio, internal liquidity stress tests (ILST), ongoing liquidity horizontal reviews, and resolution liquidity adequacy and positioning (RLAP) and resolution liquidity execution need requirements.

[7] E.g., the global market shock component overlaps with market risk capital framework, and RLAP is materially similar to LCR and ILST.

Basel III Endgame proposal – disincentivizing large banks from engaging securitization markets. In the last decade, banks have had to pull back resulting in less liquidity in securitization markets and higher costs to homebuyers.

3. *Enhanced Capital and Liquidity Requirements and U.S. Treasury markets.* To incentivize central clearing of U.S. Treasury securities and repos, certain central clearing houses are providing and expanding cross-margining arrangements. However, the current capital rules not only prohibit banks from recognizing risk-reducing benefits of cross-margining arrangements but instead result in materially higher capital requirements—disincentivizing large banks from facilitating Treasury clearing.[8]

4. *Collins Amendment.* The Collins Amendment was designed to ensure that capital requirements calculated using modeled approaches for large banks would not fall below levels set using standardized calculations set by regulators in 2010. Given that the post-crisis financial reforms have dramatically increased capital requirements for these banks and that a minimum floor is already included in the Basel III Endgame standards, the Collins Amendment should be reexamined and reformed. At a minimum, we recommend that U.S. Treasuries and central bank reserves be exempted from the Collins Amendment's floor on leverage calculations.

In aggregate, these requirements have inhibited the ability of banking organizations to support the U.S. capital markets, the U.S. Treasury markets, as well as the broader economy, and have pushed a significant amount of activity to more lightly regulated parts of the financial ecosystem. Proposed risk-based capital reforms, such as those envisioned by the 2023 Basel III Endgame proposal, could also negatively impact the securitization markets, which serve to lower borrowing costs for a wide variety of consumer and business loans, as well as inhibit the ability of corporations to prudently manage their business risks.

Tailoring

One-size-fits-all regulation has led to a significant decline in foreign banking organization ("FBO") activity in the United States and has impeded the ability of regional institutions to support the capital markets. More needs to be done to conform with both the spirit and letter of the 2018 tailoring law, the *Emerging Growth, Regulatory Relief, and Consumer Protection Act*,[9] ensuring that enhanced prudential standards, including capital, stress testing, liquidity, and resolution planning requirements are proportionate to the size and risks posed by the U.S. operations of FBOs and regional banks, and that such requirements do not unduly penalize the important role that these institutions play in supporting the U.S. capital markets and American companies. At a minimum, regulators should index the regulatory thresholds in the banking regulators' 2019 tailoring rule for GDP, to align the regulatory framework with the current market environment and eliminate regulatory cliff effects by

[8] https://www.isda.org/a/B4YgE/Cross-product-Netting-Under-the-US-Regulatory-Capital-Framework.pdf
[9] Public Law 115-174.

adopting transition or phase in periods for heightened regulatory requirements. The regulatory framework should also account for the home country regulation of internationally headquartered banks, including all capital, liquidity, stress testing, and resolution requirements applicable to the parent holding company.

**Capital Markets Regulation**

Securities Lending Reporting/SEC Rule 10c-1a

Section 984(a) of Dodd-Frank gives the SEC authority to develop a transparency regime for the securities lending market. The securities lending market is part of the necessary "plumbing" that contributes to the healthy functioning of the U.S. securities markets. Securities lending improves global market liquidity and facilitates asset redistribution in financial markets by supporting global capital market activities and helping to ensure prompt settlement of trades. Securities lending also supports the orderly operation of capital markets by, among other things, enabling the establishment of short positions and thereby facilitating price discovery and hedging activities.

In October 2023, the SEC adopted Exchange Act Rule 10c-1a pursuant to this provision, imposing extensive and granular reporting and public disclosure requirements regarding securities loans. The reporting and disclosure regime goes beyond the authority provided in the Dodd-Frank Act, capturing arrangements outside of traditional securities lending arrangements and requiring public disclosure of detailed information on individual securities loans on a slightly delayed basis. The rule is currently being challenged in court. Subject to the outcome of the litigation, SIFMA believes the rule should be revised to clearly limit its scope to traditional securities lending arrangements and to otherwise coordinate any public disclosure under the rule with the short reporting rule, Rule 13f-2, to ensure proper protection for market participants engaging in short selling strategies.

Short Reporting/SEC Rule 13f-2

Section 929X of Dodd-Frank gives the SEC authority to prescribe rules to make certain short sale data publicly available no less frequently than monthly. The SEC has long recognized that short selling provides the market with important benefits, including the following: (i) market liquidity is often provided through short selling by market professionals, such as market makers and block positioners, that offset temporary imbalances in the buying and selling interest for securities; (ii) short sales effected in the market add to the selling interest of stock available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary imbalance between buying and selling interest; and (iii) short selling can contribute to the pricing efficiency of the equities markets, i.e., market participants that believe a stock is overvalued may engage in short sales in an attempt to profit from a perceived divergence of prices from true economic values. Short selling, whether via individual securities, basket constituents, or derivatives (e.g., futures, swaps, options) is also a necessary component of prudent risk management.

In October 2023, the SEC adopted Exchange Act Rule 13f-2 to implement Section 929X. The reporting and disclosure regime goes beyond the authority provided in the Dodd-Frank Act,

imposing extensive and granular reporting requirements on market participants regarding their short selling activity and establishing an extensive public monthly short position reporting regime. The rule is currently being challenged in court. Subject to the outcome of the litigation, SIFMA believes the rule should be revised to significantly scale back the granular reporting obligations and to otherwise coordinate the rule with the securities lending reporting rule, Rule 10c-1a.

SRO Fee Filings/Exchange Act Section 19(b)

The Dodd-Frank Act significantly changed the process governing fee filings by the national securities exchanges and FINRA (i.e., the self-regulatory organizations ("SROs")). Prior to the changes made by the Dodd-Frank Act, SRO fee filings for market data and other products in which the SROs imposed fees on non-members were subject to public notice and comment and SEC approval before they became effective. Under the changes made by the Act, these fee filings are now immediately effective and essentially unchallengeable by market participants if the SEC does not suspend them within 60 days of filing. This has allowed the SROs to impose excessive fees on market participants and the public and to otherwise abuse the fee filing process. SIFMA believes this should be addressed by amending Exchange Act Section 19(b) to change the process back to the way it operated prior to the Dodd-Frank Act.

Municipal Advisor Regulation

The SEC's Municipal Advisor Rule was mandated by Section 975 of the Dodd-Frank Act, which became effective on July 1, 2014. Prior to Dodd-Frank, municipal advisors (consultants who advise state and local governments on bond issuance, use of derivatives and other related financial matters) were wholly unregulated. These independent, non-dealer municipal advisors were engaging in the business of advising municipal issuers without having taken any qualification test or professional examination; disclosed their backgrounds as registered representatives; been subject to restrictions on political contributions and gifts to issuer officials that would otherwise be prohibited for brokers, dealers and municipal securities dealers under the Municipal Securities Rulemaking Board's rules; and been held to prohibitions on using political consultants.

While Dodd-Frank sought to address this regulatory gap, the SEC proposed and implemented its rule that went far beyond the scope and authority Congress had intended, creating an unduly burdensome regulatory regime particularly for those broker dealers that were already regulated.

Bipartisan bills introduced in the 112th and 113th Congresses sought to clarify and simplify the scope of municipal advisor regulations under Dodd-Frank by mandating that any party explicitly engaged to serve as a municipal advisor would be subject to a fiduciary duty, regardless of whether they are a financial advisor, broker-dealer, bank or other type of entity. SIFMA believes that similar legislation should be considered to clarify and simplify the scope of municipal advisor regulations, which could reduce regulatory burdens and transaction costs without reducing protections for municipal securities issuers.

**Derivatives Regulation**

As discussed above, Title VII of Dodd-Frank directed regulators to enact reforms that have enhanced transparency and resiliency and mitigated risks in the OTC derivatives market. The implementation of Title VII, however, has also created unduly complex and costly rules that have impeded access to global and regional markets, reduced end-user access to funding and liquidity, and impaired efficient risk management. Addressing certain of these issues could help promote job creation, economic growth and U.S. competitiveness, without undercutting Title VII's transparency and risk mitigation benefits.

Cross-Border Framework

Despite global consensus for global regulators to coordinate on Title VII rules, including an express mandate for U.S. regulators in DFA, global regulators pursued differing approaches to derivatives regulation in the wake of the financial crisis. Insufficient coordination caused various adverse impacts to derivatives markets, which was exacerbated by the U.S. regulators' decision to apply their rules extraterritorially. Title VII limited extraterritorial application of Dodd-Frank rules to only those instances where non-U.S. activities present a direct and significant risk to the United States. As implemented, however, Title VII frequently applies extraterritorially to U.S. firms' foreign branches and affiliates and the non-U.S. market participants with whom they transact without meeting the direct and significant standard.

Further, under SEC rules, a non-U.S. firm (whether part of a US group or not) that trades with a non-U.S. client through personnel located in the U.S. must comply with a wide range of Title VII requirements – despite the fact that such personnel arrangements are critical to the maintenance of global market liquidity across multiple time zones.

Regulators are empowered to address these competitive disparities by allowing firms to comply with U.S. rules through "substituted compliance" with comparable non-U.S. rules. In practice, however, U.S. regulators have failed to make substituted compliance determinations in several key areas, and in others they have imposed limitations and/or conditions that seem antithetical to the goal of substituted compliance. As such, regulators' substituted compliance framework has not prevented the emergence of competitive disparities.

SIFMA believes that regulators should ensure reasonable and usable substituted compliance frameworks, as well as, in the case of the SEC, eliminate the application of requirements due to personnel location test.

Margin and Capital

New margin and capital requirements were central elements of Title VII's enhanced regulatory regime. Unfortunately, however, issues related to the implementation of the margin and capital rules continue to create challenges for the derivates markets. Inconsistencies in uncleared margin rules ("UMR"), for example, across the CFTC, SEC and bank regulators cause competitive disparities

between bank and non-bank, and U.S. and non-U.S., swap dealers and security-based swap dealers, despite Dodd-Frank's directive for harmonization across the U.S. regulators.

Inconsistency among non-bank margin regulations could be addressed by joint enactment of portfolio margining, as Congress directed. Further, U.S. bank regulators should grant substituted compliance regimes as DFA intended. Additionally, DFA did not complete the work needed to ensure U.S. bank regulators provide cross-netting capital relief by permitting recognition of the risk reducing nature of netting sets or hedged positions when calculating the capital required against counterparty exposure.

Another area where either the rules themselves, or the implementation thereof, do not live up to Congress's mandate is regarding eligible collateral for uncleared margin. The CFTC should confirm, as market participants have requested, that U.S Treasury money markets are eligible collateral, as they have recently done for U.S. Treasury ETFs.

SD/SBSD Regime Modernization

With more a rule set with over a decade of experience at the CFTC and nearly four years at the SEC, SIFMA believes it is appropriate to revisit rules for swaps dealers ("SDs") and securities-based swaps dealers ("SBSDs"). Specifically, the CFTC and SEC should examine where their rules add costs without commensurate benefit, create competitive disparities, and/or set up unclear or impossible expectations whose only benefit is enforcement penalties rather than setting market regulation which establishes appropriate customer protection, market integrity and regulatory transparency. Another area ripe for review is for the CFTC to improve transparency of data and methodology for setting block size and reporting caps and require periodic reconsideration of block levels and reporting delays. Working with market participants, the agencies can apply the lessons learned and more appropriately tailor requirements.

CFTC/SEC Harmonization

Renewed emphasis should be placed on the need to harmonize, to the extent possible, Title VII rule implementation between the CFTC and SEC, as divergences persist that seem to have little meaningful policy rationale. Because Dodd-Frank divided regulation of swaps and security-based swaps between the CFTC and SEC, many dealers are dually registered, subject to both regimes which are in many cases similar, but not identical and therefor they must meet different requirements for what is essentially one business. Examples of this include rules and interpretations pertaining to dealer regulation, transaction reporting, and margin, to name a few. The lack of harmonization can breed inconsistency, uncertainty and other market frictions. To avoid these consequences, SIFMA urges U.S. regulators and relevant SROs to ensure greater rule harmonization and consistency in rule application and interpretation.

**Securitization**

Securitization plays a unique role in how credit is raised for consumers, businesses, and commercial activities providing for efficient allocation of capital and diversification of risk to increase credit

allocation. U.S. securitization markets, which are the largest and most advanced in the world, attract investment capital from around the globe to provide credit for lending for home mortgages, auto loans and leases, business capital, credit and equipment needs, and many other forms of lending and leases. For example, securitization funds over 75% of mortgage lending, driven primarily by the critical TBA or "to be announced" market that allows mortgage lenders to lock in forward rates on behalf of home buyers at low or no cost, and mitigate interest rate fluctuation risk between the time a consumer enters an agreement to purchase a home and closes that transaction. Without vibrant securitization markets, the U.S. would be far more reliant on bank balance sheets to fund lending, as is the case in Europe, and this would decrease the availability of capital while increasing risk to the financial system. Notably, the EU has undertaken an effort to jump start its securitization market for exactly these reasons. Dodd-Frank ushered several important enhancements to securitization regulation – rules that have improved resilience and stability. However, SIFMA believes there are several revisions to that rule set that would materially benefit the provision of credit and, consequently, the U.S. economy, without compromising the safety and soundness of the financial system.

DFA Section 942(b)/SEC Regulation AB II

One of the lessons of the financial crisis for securitization was the importance of transparency into the assets that collateralize a securitization. While collective industry efforts to improve this disclosure were under way, Dodd-Frank required, and SEC implemented in Regulation AB II, asset-level disclosure for various kinds of asset backed securities. Regulation AB II's prescriptive, inflexible, and excessive requirements substantially increase legal risk to issuers and underwriters and put securitization at a competitive disadvantage compared to other forms of financing.

SIFMA believes that the costs to financial markets of Regulation AB II far outweigh the perceived benefits of the complex disclosure it requires. The reality is that Regulation AB II has effectively shut down registered (i.e. public) RMBS markets since 2014 due to the impossibility of production of the data for the 270 required data fields and legal risk associated with errors. Specifically, the SEC should review, reduce, and rationalize the number of required data fields for various types of asset-backed securities, in particular for residential mortgage backed securities ("RMBS").

DFA Section 621/SEC Rule 192

Dodd-Frank Section 621 prohibits securitization participants from engaging in any transaction that creates a conflict with any investor, with limited exceptions. Section 621 was included in Dodd-Frank in response to pre-crisis activity that was interpreted to be market participants betting on the failure of their own transactions. Section 621 prohibits shorting a transaction for which a firm is a securitization participant, as well as any economically equivalent transaction. The SEC finalized rule 192 in 2024 to implement Section 621

While Section 621's intentions are sound, the legislative text is very expansive and lacks clear boundaries. Consequently, the SEC's implementing Rule 192 is drafted in an overly broad and vague manner, making it difficult for both the SEC and market participants to interpret and operationalize. To wit, the SEC's rulemaking process alone took nearly 15 years. Regulatory changes including the implementation of the Volcker Rule and regulatory capital requirement revisions have transformed how regulated institutions transact in securities markets. Arguably, these changes have obviated the need for Section 621, as has the fact that these transactions no longer exist in the marketplace. Moreover, other SEC authorities, including its anti-fraud authority, apply to these pre-crisis transactions, a fact underscored by post-crisis litigation and enforcement actions brought under those authorities. Accordingly, SIFMA believes that Congress should revisit and eliminate Section 621.

DFA Section 1002/Definition of a "Covered Person"

Under Section 1002 of Dodd-Frank, the Consumer Financial Protection Bureau ("CFPB") has regulatory authority over "covered persons.". Though securitizations are generally governed by the SEC, the CFPB under previous administrations took a more expansive view that a securitization trust could be a "covered person" within the purview of the CFPB, expanding the CPFB's reach beyond consumer-facing primary markets into secondary markets where there is no interface with the consumer. The interpretation was novel, given that securitization trusts are limited purpose legal entities created solely for the purpose of securitization, do not engage with consumers, and do not provide products or services to consumers. Historically, liability for malfeasance in the servicing of loans in a securitization lies with the servicer, the sole entity in the securitization chain whose responsibility it is to service the loans. Unfortunately, the CFPB's novel interpretation was recently validated by a federal district court in a litigation brought with respect to the National Collegiate Student Loan Trusts (NCSLT). However, earlier this year, the current CFPB took action to forestall the application of this novel legal interpretation, providing immediate relief – but the going-forward threat and legal precedent remain.

The implications are weighty. Should this interpretation be applied across securitization asset classes, increased litigation risks from purported servicer malfeasance – risks that should be borne by the servicer – would be borne by investors because securitization trusts are now vulnerable to efforts by the CFPB to extract settlement monies and other forms of compensation from secondary market participants. Pricing for those risks would ultimately be felt in higher cost costs for consumers, whether it be auto loans, credit cards, mortgages, or other securitized loans.

SIFMA believes that Congress should clarify that a securitization trust cannot be a "covered person" under Section 1002, reversing the CFPB's overreach and restoring liability to the actors who actually commit malfeasance in a securitization.

Securitization Capital Requirements

U.S. risk-based capital held for securitization positions, and related liquidity requirements, were increased following the financial crisis. In addition, in calculating the adequacy of capital for purposes of CCAR, the shocks calculated for securitization were made extraordinarily high. Accordingly, and pursuant to the discussion in the Prudential Regulation section above, SIFMA believes it is now appropriate for a recalibration of existing capital and liquidity standards as applied to securitizations.

**Additional Regulatory Concerns Stemming from DFA**

Non-Bank SIFI Designation

Title I of Dodd-Frank established the Financial Stability Oversight Council ("FSOC"), whose primary responsibility is ensuring the stability of the U.S. financial system. There are many important roles played by the FSOC, including facilitating inter-agency discussions, assessing the overall health of the financial system, and analyzing the costs and benefits of multi-agency regulatory initiatives. However, the FSOC also has the statutory authority to label non-bank financial entities as "systemically important financial institutions," or SIFIs. Should the FSOC designate a non-bank entity as a SIFI, that entity would be subjected to prudential supervision by the Federal Reserve, including bank-like regulations and capital requirements.

SIFMA has consistently advocated that SIFI designations are inappropriate for asset managers and investment funds because they operate differently than other types of financial entities. Despite asset managers' limited threat to financial stability, the FSOC has revisited systemic designations for asset managers several times since Dodd-Frank became law.

SIFMA has consistently supported legislative efforts to refine FSOC's authority and refocus FSOC on its core interagency role and mandate to recognize systemic risk across the entire financial system. Short of such a more fundamental refinement, SIFMA believes that FSOC should bring greater transparency and predictability to the designation process by reverting back to the guidance it issued in 2019.[10] That guidance prioritized an activities-based approach to systemic risk and instituted strong due process provisions, including a clear commitment to conduct a cost-benefit analysis and assess the likelihood of financial distress or failure for any non-bank financial company under consideration or designation. SIFMA's Asset Management Group is joining other financial services trade associations to request that Treasury Secretary Bessent and other members of FSOC step back from the most recent 2023 guidance[11] that widened the definition of "threat to the financial stability of the US," expanded the industries and activities that could be designated, and eliminated the aforementioned due process provisions.

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[10] *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies,* 84 Fed. Reg. 71,740 (Dec. 30, 2019).
[11] *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies*, 88 Fed. Reg. 26,234 (Apr. 28, 2023).

Incentive Compensation (Section 956)

Dodd-Frank Section 956 requires six federal agencies to jointly prescribe regulations – or guidelines – that prohibit incentive compensation that they determine encourages inappropriate risk that could lead to material financial loss to covered financial institutions. In 2010, the Federal Reserve, the OCC and the FDIC jointly adopted the interagency *Guidance on Sound Incentive Compensation Policies*, which is still applicable today, raising questions about what problems continued rulemaking efforts seek to remedy.

The 2010 guidance is a principles-based approach which promotes effective compensation arrangements without being overly prescriptive. It wisely reflects, unlike proposed rulemakings in 2011 and 2016, an understanding that any oversight of incentive compensation must be dynamic and flexible so that it can be reasonably tailored in its application to allow firms to take appropriate business risks, compete for talent and reward good performance; cover only those individuals who could expose an institution to the risk of material loss; and apply only to those incentive compensation programs that could incentivize inappropriate risk. Further reinforcing the governing legitimacy and efficacy of the 2010 guidance, in 2024 Federal Reserve Chair Jerome Powell noted that the guidance "seems to have largely worked."

In the aftermath of the 2008 financial crisis, the financial services industry made significant strides in calibrating risks to their incentive compensation arrangements, resulting in improved governance and risk management. Boards are more actively involved in the design and review of compensation policies and programs, which are closely reviewed by institutions' risk functions. Financial institutions also work with their regulators to ensure their compensation policies appropriately balance risk and reward. Most financial institutions' compensation policies already have several components that are appropriately tailored to mitigate risks without introducing new ones, such as vesting and deferral periods, holding requirements for stock ownership and robust cancellation and clawback provisions. In addition, financial institutions' compensation arrangements are subject to scrutiny from various stakeholders and ever-increasing regulation, including the 2010 guidance. Accordingly, SIFMA believes that Congress and regulators should recognize that Section 956 is largely duplicative of the existing regulatory tools and repeal this provision.

Permissioned Customer Information Sharing (Section 1033)

Section 1033 of Dodd-Frank requires financial institutions to provide customers access to their financial data and the ability to share it with third-party applications. This section was intended to provide customers with more control over their data and foster competition among financial institutions. The CFPB was tasked with promulgating rules to establish the parameters of this provision. Unfortunately, the CFPB's 2024 rule failed to adequately protect financial institutions or their customers. Customer privacy requirements were not imposed on data aggregators and fintechs despite those entities handling the same customer PII held by financial institutions. Further, such entities did not have clear liability for failing to protect such information, leaving financial institutions on the hook for mistakes made by these more lightly regulated players. Rather, Dodd-Frank should have called for privacy protections to follow PII regardless of whether the entity

holding the data is a federally regulated financial institution. Without such protections, customer financial information is at risk of being misused, stolen, sold, or hacked, and customers and financial institutions will bear the costs.

**Conclusion**

In conclusion, the U.S. financial system is significantly stronger and more resilient than it was before Dodd-Frank was passed in 2010. This is a good thing. However, SIFMA believes that it is now appropriate to evaluate whether certain components of the regulatory framework developed under mandates from the Dodd-Frank Act are excessively conservative and impose costs on the U.S. economy, our financial markets, and on Main Street that outweigh their benefits. We appreciate the Committee's interest in exploring these important questions on this fifteenth anniversary of Dodd-Frank.

Chairman HILL. The gentleman yields back. Mrs. Johnson, you are now recognized for 5 minutes for your oral presentation.

**STATEMENT OF MRS. LINDSEY JOHNSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CONSUMER BANKERS ASSOCIATION**

Mrs. JOHNSON. Thank you, Chairman Hill, Ranking Member Waters, and members of the committee. I appreciate the opportunity to testify on behalf of the Consumer Bankers Association about the lessons learned from the Dodd-Frank Act.

My name is Lindsey Johnson. I am President and CEO of Consumer Bankers Association (CBA), the only national trade association focused exclusively on retail banking. CBA and our members work to promote sound policy to enable consumers individualize approaches to finance their own American dreams. CBA member institutions account for nearly 2 million employees across the country, extended roughly $3.4 trillion in consumer loans, and provided nearly $173 billion in small business loans last year alone. The vast majority of our members are more than $10 billion in assets, making them subject to CFPB's supervision and enforcement.

The Dodd-Frank Act was enacted to address vulnerabilities in the U.S. financial system exposed in the 2008 financial crisis. Dodd-Frank raised capital requirements for banks, established mortgage underwriting requirements, heightened oversight of systemically important institutions, and consolidated Federal consumer protection authority into a brand-new Federal regulator, the CFPB. It is important for Congress to continually review statutes to ensure that they are meeting their intended purpose, to know any unintended consequences, such as unnecessarily increasing costs for businesses or consumers, and to understand how markets have evolved and where certain standards may no longer be appropriate. While this is true for all titles of the Dodd-Frank Act, my comments will focus on Title X of Dodd-Frank: the creation of the CFPB.

American consumers deserve a credible, durable CFPB that executes on its statutory mission, heeds the bounds of its statutory authority, and addresses true market failures and consumer harms. Unfortunately, the political shifts at the Bureau have been seismic from administration to administration. To some degree, Bureau policy will inevitably reflect differences in political philosophies. However, numerous actions by the Bureau's prior leadership have raised important questions about whether it prioritized politics over people. We expand on these and other issues in great detail in my written testimony, and we are working with the Bureau's current leadership to address many of the most egregious concerns. This committee has a critical role to play to make more permanent reforms that can reboot the Bureau into a credible, durable, and more stable regulator. In my written testimony, I address three key issues where Congress should focus its review of the Bureau: first, ensuring the Agency follows the law; second, addressing true impacts of regulation on consumers; and third, focusing on fact-based policies and on true consumer harm.

The most direct action Congress could take is to clarify in its statute the Bureau's vague and largely undefined Unfair, Decep-

tive, or Abusive Acts or Practices (UDAAP) authority. The Bureau has in the past regularly expanded its authorities or illegally interpreted the statutory provisions to meet its own objectives. There are even examples where the Bureau sought civil monetary penalties retroactively for previously undefined violations. Now, even after 15 years, the CFPB still has not clearly explained what abusive acts and practices are and how they are distinct from unfair and deceptive acts. Unfortunately, this has placed all entities that the Bureau regulates at risk of inadvertent noncompliance, stymieing lending and innovation for consumers. It is imperative for Congress to pass Congressman Barr's Rectifying UDAAP Act to provide the needed clarity and definitions of CFPB's UDAAP authority so regulated entities know what is and is not permitted and how they can comply.

Second, the Bureau must consider the true impact of its actions on both consumers and regulated entities. To date, the Bureau is not required to perform a rigorous cost-benefit analysis to ensure the actions it is taking outweigh both the financial costs and the cost to consumers. The transparency in CFPB Cost-Benefit Analysis Act would eliminate this concern. The Bureau also needs to take into account the cumulative impact on the numerous oversight agencies for banks. Legislation to review the impact of overlapping regulations and impacts on consumer access and overall economic activity would greatly benefit consumers without diminishing the supervision and examination of banks.

Lastly, it is critical for the CFPB to be facts and data driven in its regulatory focus. The Bureau's Complaint Database, a tool that could provide important data beneficial to both consumers and regulated entities to help resolve problems early, is structurally flawed. The tool should be improved as duplicative, frivolous, and fraudulent complaints currently plague the system. Draft legislation released by this committee on the Bureau's Complaint Data base would significantly improve that process.

Thank you again, Chairman Hill, for the opportunity to testify. We stand ready to work with you and the committee to achieve thoughtful and effective change to ensure the Bureau is a strong and durable consumer protection regulator. I look forward to answering any questions you may have.

[The prepared statement of Mrs. Johnson follows:]

Testimony of Lindsey Johnson

President and CEO

Consumer Bankers Association

U.S. House Financial Services Committee

Hearing Entitled "Dodd-Frank Turns 15: Lessons Learned and the Road Ahead"

July 15, 2025

Chairman Hill, Ranking Member Waters, and members of the Committee, I appreciate the opportunity to appear before you today.

I am the President and Chief Executive Officer of the Consumer Bankers Association ("CBA"). CBA is America's only member-driven trade association focused exclusively on retail banking. Since 1919, CBA has partnered with our member banks to promote sound policy, prepare the next generation of bankers to lead the industry, and enable consumers' individualized approaches to the American dream. Our members include the nation's largest retail banks, with the vast majority holding more than $10 billion in assets– meaning that they are subject to Consumer Financial Protection Bureau ("CFPB" or "Bureau") supervision and enforcement jurisdiction. CBA member institutions account for nearly two million employees in America, extend roughly $3.4 trillion in consumer loans, and provide approximately $173 billion in small business loans annually.[1]

The U.S. banking system is the most competitive and dynamic in the world, with nearly 4,500 banks and more than 4,400 credit unions who collectively provide loans and leases of more than $12 trillion. Importantly, the nation's leading retail banks provide the tools necessary to help consumers and small businesses thrive, all while adhering to stringent federal oversight and supervisory requirements enforced by a myriad of regulatory agencies.[2]

The collapse of the U.S. housing market in 2007 and 2008 had a profound and widespread impact on the global financial markets. Congress passed the Dodd-Frank Wall Street and Consumer Protection Act ("Dodd-Frank") in 2010, which aimed to address vulnerabilities in the U.S. financial system at that time.

The Dodd-Frank Act raised capital requirements for banks, heightened oversight of systemically important institutions, established enhanced mortgage underwriting requirements, and consolidated federal consumer protections through the creation of the CFPB.

When considering the lessons learned and road ahead, it is important to assess not just the many Dodd-Frank Act reforms, but also its unintended consequences. Overregulation of the banking system has led to disintermediation of credit, pushing more lending outside of regulatory perimeter. Federal regulators routinely enacted rules and regulations without considering their individual– or cumulative– impact on consumers' access to banking services and products. Furthermore, overly complex regulations have failed to address areas of true consumer harm and have often resulted in increased costs.

Promoting the safety and soundness of our banking system and consumer protections are critical imperatives. But competition, innovation, and well-functioning markets are just as important– and indeed statutory objectives for the CFPB.[3] Accordingly, before creating new regulations,

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[1] Analysis of 2024 FR Y-9C item BHCK4150, FFIEC Call Report items RIAD4150, RCON5570 - RCON5575, and SBA Monthly 7(a) activity reports. Consumer loans include UBPR Report on all loans to individuals for household, family, and other personal expenditures not secured by real estate plus total real estate 1-4 family loans. Figures rounded to the nearest trillion and hundred billion.

[2] https://www.congress.gov/crs-product/R44918

[3] 12 U.S.C. 5511(a)

policymakers should be expected to fulfill their statutory duties to examine the consumer impact of each rule as well as how the cumulative impacts of regulation[4] could threaten to push lending outside of the banking system to less regulated entities, and can add costs that are ultimately borne by consumers.[5] This balance requires policymakers who are apolitically steadfast in their mission, who operate within their statutory authority, and who base their regulation on facts and data.

While these concerns may extend more broadly to various sections of the Dodd-Frank Act, my testimony today focuses primarily on Dodd-Frank's creation of the CFPB.

Consumers– regardless of political affiliation– should be able to count on a regulator that is focused on executing its statutory mission, heeding the bounds of its statutory authority, and addressing true market failures and consumer harms.

On some level, CFPB policy will inevitably reflect differences in political philosophies and will change with Administrations.[6] This is particularly the case because, unlike many other agencies, the CFPB lacks a board or commission leadership structure and instead is led by a single Director with unilateral authority. However, as Federal Reserve Vice Chair Michelle Bowman recently made clear, "We live in a time when confidence in public institutions is waning. As such, the banking agencies should strive to demonstrate beyond doubt that they execute their duties in an independent manner, focusing on statutory obligations."[7]

We quoted then-Governor Bowman last year in our testimony before the Subcommittee on Financial Institutions and Monetary Policy because this has become our mantra. Regulators must follow the law.[8] And while policymakers are entitled to their own opinions, they aren't entitled to their own facts. Unfortunately, in countless instances under the previous Administration, the CFPB regularly strained– or flat out disregarded– the clear language of its legal authority to advance blatant political goals.[9] As CBA regularly documented using the CFPB's own data, the previous CFPB cut corners and increasingly relied on inaccurate information, incomplete data, or flat-out falsehoods to justify its actions or rulemakings. In its eagerness to score headlines and political wins, the CFPB regularly failed to consider the true impact to consumers of its policies.[10]

In January of this year, CBA released a white paper titled, "Reforming the CFPB into a Strong and Durable Regulator Americans Deserve."[11] In doing so, we set out a series of immediate, near-term, and long-term reforms that the CFPB could act on and, separately, legislation for Congress to prioritize. In the six months between then and now, the Administration and new

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[4] https://www.federalreserve.gov/newsevents/speech/bowman20240510a.htm
[5] https://www.federalreserve.gov/newsevents/speech/bowman20240212a.htm
[6] See, e.g. Seila Law LLC v. Consumer Financial Protection Bureau, 140 S. Ct. 2183 (2020).
[7] https://www.federalreserve.gov/newsevents/bowman-starling-insights-20240213.htm
[8] https://docs.house.gov/meetings/BA/BA20/20240307/116927/HHRG-118-BA20-Wstate-JohnsonL-20240307.pdf
[9] https://www.politico.com/newsletters/west-wing-playbook/2024/04/24/bidens-growing-junk-fee-movement-00154186
[10] https://cfpbfactcheck.com
[11] https://consumerbankers.com/wp-content/uploads/2025/01/CBA-CFPB-White-Paper-1-13-25-updated.pdf

leadership at the CFPB have accomplished a remarkable number of reforms– including many of the immediate and near-term issues that we had identified.

As we now turn the page to longer-term work, CBA hopes to work with the agency on three major areas of reform:

First, CBA has highlighted to the CFPB that its authority to impose civil money penalties for Unfair, Deceptive, or Abusive Acts and Practices (UDAAP) violations needs attention and reform.

- Accordingly, CBA urges Congress to reform the CFPB's authority regarding Unfair, Deceptive, and Abusive Acts and Practices by passing H.R. 1652, the *Rectifying UDAAP Act*.

  CBA also appreciates the Committee noticing draft legislation for this hearing to provide additional clarity on the CFPB's use of civil monetary penalties and provide incentives for the self-reporting of clearly defined violations. CBA looks forward to being a resource as this legislation continues to be developed.

Second, CBA encourages the CFPB to coordinate its examination activities with federal prudential regulators.

- To advance its statutory mandate under Section 1021 of the Dodd-Frank Act, the CFPB should enhance coordination with federal prudential regulators to reduce redundant examinations and ensure consistent application of consumer protection laws across the financial marketplace. Depository institutions already operate under rigorous supervision and a multi-layered compliance framework, including oversight from the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and Federal Reserve. Streamlining CFPB examination activities for these entities would alleviate duplicative regulatory burdens, conserve agency resources, and promote a more level playing field for consumers engaging with both bank and non-bank providers of financial services.

Third, CBA has raised concerns with the CFPB that expansive actions taken by the prior CFPB Director to encourage state enforcement of federal consumer protection laws must be permanently clarified.

- The proper interpretation of Section 1042 of the Dodd-Frank Act is critical to preserving the balance Congress intended between federal and state enforcement of consumer financial protection laws. While the statute permits state regulators and attorneys general to bring certain actions under Title X, it also includes important guardrails. State regulators must provide notice to the CFPB before bringing claims under Title X. And the statute makes clear that the Bureau can intervene in (or even appeal from) those proceedings, to ensure consistency in the interpretation and development of federal consumer financial law.

  A formal rulemaking clarifying the Bureau's current interpretation of Section 1042 would help empower the CFPB to monitor and guide how states interpret and apply federal consumer financial law in enforcement actions in courts across the country.

While it is imperative that Congress pass the *Rectifying UDAAP Act* to provide the needed clarity on the CFPB's use of its UDAAP authority in a more permanent way, the three reforms outlined above lie within the CFPB's own ability to execute. The work may require sustained effort over time– potentially spanning multiple rulemakings, judicial interpretations, and even changes in agency leadership. As such, we respectfully urge Congress to remain actively engaged, particularly through its critical oversight role over changes in leadership.

To create the most sustainable reforms, Congress should, on its own, enact reforms to reboot the agency into a credible, durable, and stable regulator that operates in an apolitical manner, heeds the law, and is data driven in its policymaking.

In particular, CBA urges Congress to maintain a thoughtful and sustained focus on three overarching priorities. First, the Bureau must operate within the boundaries of its statutory authority and follow established administrative procedures when exercising that authority. Second, the CFPB must more rigorously assess the impact of its actions– across both consumers and regulated entities– by grounding its work in accurate data, robust cost-benefit analysis, and meaningful interagency coordination. Third, the Bureau should prioritize issues that present genuine consumer harm, including the rise in fraud and scams, rather than pursuing actions driven by political headlines.

Each of these priorities is essential to promoting consumer trust, fostering market stability, and ensuring that the Bureau serves its mission as Congress intended.

**First and foremost, a well-functioning market requires a regulator that heeds the law.**

The CFPB has regularly reached beyond its statutory limits in an effort to achieve political wins. And in many cases, the CFPB has simply disregarded or blithely attempted to bypass rulemaking requirements set by Congress.

- <u>The prior Administration's Dodd-Frank Act Section 1033 rule exceeds the statutory language and should be repealed or significantly modified.</u>

  CBA urges the CFPB to withdraw and repropose a rule that stays within the bounds of the statute, promotes standardized data sharing formats, and ensures that all market participants share responsibility for protecting consumer data.

- <u>Dodd-Frank Act Section 1071– the small business data collection rule– has a number of significant flaws and should be reproposed.</u>

  The CFPB's final rule implementing Section 1071 imposes overly broad and burdensome data collection requirements that far exceed the statute's intent and risk discouraging small business lending. CBA urges the CFPB to repropose the rule in a more targeted and transparent manner and supports legislative efforts to narrow its scope and protect borrower privacy.

CBA also recommends that Congress pass H.R. 941, the *Small Lender Act* and H.R. 2885, the *Bank Loan Privacy Act.*

- The CFPB must follow the law and the Administrative Procedure Act (APA) requirements for its rulemakings.

  The CFPB has frequently made significant policy changes through guidance, press releases, and blog posts, failing to adhere to the required APA rulemaking procedures.

  CBA appreciates the Committee noticing draft legislation for this hearing that would require the CFPB to set formal procedures for issuing, amending, and revoking guidance with public input. Clear guidelines for determining civil monetary penalty amounts would be particularly helpful.

**Second, the CFPB should be required to consider the true impacts of its rules on consumers and the broader market.**

To truly serve consumers, the CFPB must ground its policymaking in a clear-eyed understanding of the real-world effects of its actions. Effective consumer protection cannot be achieved through well-meaning intentions alone– it requires rigorous, data-driven analysis of how rules will impact both the individuals they aim to protect and the institutions they regulate.

- Requiring a true cost-benefit analysis of CFPB actions and rules– on regulated entities and consumers.

  CBA recommends that Congress pass H.R. 2331, the *Transparency in CFPB Cost-Benefit Analysis Act.*

- Requiring the consideration of the cumulative impact of regulations across regulatory jurisdictions– both on regulated entities and on consumers.

  CBA appreciates the Committee noticing draft legislation for this hearing that would require federal regulators to jointly review every three years the cumulative impact of their regulations, assessing effects on consumer access, credit availability, and overall economic activity, and recommend ways to streamline or eliminate duplicative or burdensome rules.

  Further, Congress could require that an independent research agency examine the effectiveness of major financial rulemakings after a period of five to 10 years. If there is sufficient evidence that the rule has not been effective in meeting its objectives, the regulation could sunset after a period of time unless the agency reproposes it with changes to improve its effectiveness.

- Addressing small dollar lending policies that have limited consumer choice and pushed consumers into more expensive lending products.

  CBA recommends that Congress pass the *Small Dollar Loan Certainty Act.*

**Third, the CFPB should commit to focusing on areas of true consumer harm, instead of chasing headlines or being motivated by political polling.**

The CFPB should focus on issues that pose the greatest threats to consumers, beginning by heeding its own data regarding fraud and scams that harm millions of consumers each year. The American public deserves a regulator that understands markets and represents facts accurately.

- Requiring the CFPB to be data driven and addressing structural flaws of the CFPB complaint database.

  CBA appreciates that the Committee has noticed draft legislation for this hearing that seeks to improve the CFPB complaint database by removing duplicative, frivolous, and fraudulent complaints. CBA looks forward to being a resource as this draft legislation continues to be developed.

- Prioritizing fraud and scams education and cross-agency coordination.

  The CFPB should commit its focus to areas of true consumer harm, such as fraud and scams–educating consumers, informing industry, and collaborating with other agencies. CBA recommends that Congress pass H.R. 2978, the *Guarding Unprotected Aging Retirees from Deception (GUARD) Act*, and S. 2019, the *Taskforce for Recognizing and Averting Payment Scams (TRAPS) Act*.

[Executive Summary End]

**CBA'S DIRECT ENGAGEMENT WITH THE CFPB:**
**CLARIFYING AND REBALANCING THE CFPB'S AUTHORITY TO PROMOTE FAIR, CONSISTENT, AND TRANSPARENT ENFORCEMENT**

*The CFPB's historical approach to enforcement of federal consumer financial protection laws– particularly under UDAAP, its coordination with prudential regulators, and its guidance to states– has too often lacked clarity, consistency, and guardrails. First, the Bureau's use of its UDAAP authority has swung dramatically from one Administration to the next, creating uncertainty and exposing institutions to retroactive penalties without clear guidance. Second, overlapping examinations by the CFPB and prudential regulators create redundancy for banks, especially when the Bureau devotes resources to areas already well-supervised by other agencies. Third, while the Dodd-Frank Act allows states to enforce Title X, it also imposes procedural safeguards that the previous CFPB leadership attempted to sidestep. Each of these areas would benefit from thoughtful rulemaking and Congressional oversight to ensure consumer protection is consistent, targeted to real harm, and not distorted by politics or regulatory duplication.*

1. **The CFPB's Unfair, Deceptive, and Abusive Acts and Practices authority is vague, undefined, and in need of reform.**

Treating customers fairly and following consumer protection laws are core to banks' business models. However, the Bureau's approach to UDAAP enforcement and supervision has been largely undefined, ever-shifting, and closed to input from stakeholders.

The CFPB's approach to UDAAP is possibly the best and worst example of how widely the pendulum can swing from one Administration to another. In 2020, CFPB Director Kathy Kraninger attempted to provide clarity by establishing a framework[12] on how the CFPB would intend to apply the "abusiveness" standard in supervision and enforcement matters. But just a year later, Acting Director David Uejio stepped in and rescinded the policy.[13] Two years after the initial guidance framework was rescinded, Rohit Chopra then issued a brand-new policy statement on how the CFPB would analyze elements of abusiveness.[14]

Even worse, since the Bureau's creation by the Dodd-Frank Act, the CFPB regularly moved the goalposts mid-game, making novel declarations of what constitutes a UDAAP violation but then seeking civil monetary penalties retroactively. This means institutions are assessed civil monetary penalties without being provided advanced notice (via rulemaking or the ability to address certain activity) that they have violated any form of obligation to their consumers, much less any regulatory requirements.

And despite all of these changes, it is still unclear what, if any, "abusive" acts and practices are not already "unfair" or "deceptive."

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[12] https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/
[13] https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-rescinds-abusiveness-policy-statement-to-better-protect-consumers/
[14] https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/

**Recommendation:**

- Pass H.R. 1652, the *Rectifying UDAAP Act.* The *Rectifying UDAAP Act* would provide needed statutory clarity on the CFPB's use of its UDAAP authority, ensure greater transparency and adherence to clearly defined statutory requirements by the Bureau, and ensure high regulatory standards are maintained. Importantly, this legislation would prohibit the CFPB from retroactively assessing a civil money penalty for a practice that was not previously identified as being prohibited.

  Specifically, the bill would:

  - Restrict the CFPB's authority to deem a financial practice abusive for purposes of enforcement activities, including by requiring that the act or practice intentionally interfere with the ability of a consumer to understand a term or condition. Conduct would not be deemed abusive if consumers could reasonably avoid it; it is outweighed by countervailing benefits to consumers or to competition; or is otherwise prohibited under federal consumer financial law;

  - Limit the CFPB's ability to seek monetary relief for unfair, deceptive, or abusive acts or practices when covered persons establish a good faith effort to comply with requirements. The bill would also establish the right for providers to cure violations if they self-report; and

  - Require the CFPB to conduct a UDAAP rulemaking to clarify what is within the scope of UDAAP, including a cost-benefit analysis.[15]

2. **The CFPB should reduce redundancy for entities with prudential supervision by fulfilling its statutory objectives to consistently enforce consumer protections under Section 1021 of the Dodd-Frank Act.**

Given that banks are already subject to extensive examination by prudential regulators and are required to operate under three lines of defense risk management framework,[16] CBA encourages the CFPB to coordinate with other regulatory bodies in its examinations of banks.

This would streamline regulatory burdens on the marketplace, while maintaining effective and consistent oversight where consumers engage with financial products and services. CBA member banks have reported occasions when they faced three simultaneous examinations on the same topic from three different regulators. In other cases, it appears that agencies may coordinate on scheduling examinations, but do not share information gathered during the examination process with one another or their reports of such examinations.

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[15] CBA also appreciates that the Committee has included draft legislation in this hearing to provide additional clarity on the CFPB's use of civil monetary penalties and provide incentives for the self-reporting of clearly defined violations. CBA looks forward to being a resource as this legislation continues to be developed.

[16] See, e.g., https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/corporate-risk-governance/pub-ch-corporate-risk.pdf

For example, if the OCC is interested in examining mortgage servicing practices, it should coordinate with the CFPB, which typically has jurisdiction over mortgage servicing. This would ensure banks are not producing the same content for two separate exams. Even more importantly, it isn't clear why the CFPB would need to examine the same bank that the OCC examined on similar issues.

This underscores a broader need to recalibrate the regulatory focus. Prudential regulators like the OCC, FDIC, and Federal Reserve have established authority and expertise in overseeing depository institutions. In contrast, non-bank financial companies– many of which now dominate key markets like mortgage lending, servicing, and personal lending– fall largely outside their jurisdiction. The CFPB, as the only regulator with supervisory authority over both banks and non-banks, should refocus its attention on these less-supervised sectors, where gaps in oversight are most acute and consumer harm is more likely to go unchecked.

As CBA has consistently emphasized,[17] ensuring that consumers receive consistent and robust protection, regardless of the type of institution providing the financial product or service, enhances trust and confidence across the entire financial system and enhances overall economic growth. Indeed, Section 1021 of Dodd-Frank explicitly states that the CFPB's objectives include ensuring that "Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition."[18]

To achieve this, the Bureau should apply a risk-based approach to supervision and enforcement that focuses on the nature of the activity and the degree of consumer risk, not just the type of entity offering the product. A rebalanced framework– where prudential regulators focus on bank supervision and the CFPB leads on non-bank oversight– would improve efficiency, reduce redundancy, and, as Congress directed, ensure that all market participants can compete based on the merits of their offerings, contributing to the overall soundness and integrity of the financial services ecosystem.

**Recommendations:**

- Congress should exercise its oversight authority to ensure the CFPB coordinates with other regulatory bodies to streamline examinations and reduce unnecessary burdens on financial institutions with prudential regulation, while maintaining effective and consistent oversight across the broader marketplace where consumers engage with financial products and services.

- The CFPB and the relevant prudential regulators should initiate a joint rulemaking to address these issues pursuant to Dodd-Frank Section 1025(b)(2).[19]

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[17] https://consumerbankers.com/wp-content/uploads/2024/01/CBA-Comment-on-CFPB-2023-0053-1.pdf
[18] 12 U.S.C. 5511(b)(4)
[19] "To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including consultation regarding their respective schedules for examining such persons") and 5512(e)(1)(A) (requiring coordination of scheduling of exams.

3. **The CFPB should write a rule that helps ensure consistent application of federal consumer law by state regulators across the country.**

Section 1042 of the Dodd-Frank Act explains: "[a] State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of *this* title or regulations issued under *this* title with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in paragraph (2)), and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity."

The Chopra-led CFPB bent the text of the law through a guileful but legally questionable contortion to dramatically broaden the limits set by Congress in the Dodd-Frank Act. The plain text of the Dodd-Frank Act is clear: state attorneys general can only bring federal consumer financial protection claims under Title X of the Dodd-Frank Act itself. If Congress meant for state regulators to be able to enforce "any provision of federal consumer financial protection law," it would have said so. Congress would not have pieced together a treasure hunt in the statute for regulators to parse. New leadership at the Bureau withdrew the May 2022 interpretive rule, an important first step.[20]

But Section 1042 includes important procedural guardrails to preserve the federal-state balance that Congress intended. Specifically, the statute requires state regulators to provide advance notice to the CFPB before bringing any claims under Title X and grants the Bureau the authority to intervene in, or even appeal, those proceedings. A new rulemaking could establish that states would be required to provide appropriate notice to the CFPB– 120 days, for instance. This would help ensure that the CFPB can appropriately participate and be heard in the interpretation and development of Title X regulations in state enforcement proceedings around the country.

**Recommendation:**

- The CFPB should formalize via a notice and comment rulemaking the correct statutory interpretation[21] of states' enforcement powers under Section 1042 of the Dodd-Frank Act.[22]

- CBA is supportive of the CFPB's current clarification of Section 1042 of the Dodd-Frank Act, and specifically agrees with the interpretation that (1) states shall only take enforcement actions for violations of the Consumer Financial Protection Act (CFPA) itself, not of all federal consumer financial protection laws; (2) the exclusions apply to state enforcement in addition to CFPB enforcement; states would be required to give the CFPB 120 business days' notice before taking independent action; and (3) the CFPA allows *joint* but not *concurrent* actions by states.

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[20] https://www.federalregister.gov/documents/2025/05/12/2025-08286/interpretive-rules-policy-statements-and-advisory-opinions-withdrawal

[21] Authority of States to Enforce the Consumer Financial Protection Act of 2010; Rescission, 90 Fed. Reg. 20565 (May 15, 2025).

[22] 12 U.S.C. 5552

**A WELL-FUNCTIONING MARKET REQUIRES A REGULATOR THAT HEEDS THE LAW.**

*In several high-impact rulemakings, the CFPB has exceeded its statutory authority, imposed sweeping mandates untethered to Congressional intent, and relied on mischaracterizations of the marketplace rather than sound data. These actions not only raise serious legal and procedural concerns– they also introduce unintended consequences for consumers, financial institutions, and the broader economy. Nowhere is this more evident than in the Bureau's recent rulemakings under Sections 1033 and 1071 of the Dodd-Frank Act.*

4. **Dodd-Frank Act Section 1033– The prior Administration's final rule far exceeds the statutory language or intent for consumers to have access to their personal financial data and should be repealed or significantly modified.**

CBA and our member banks support consumer access to their financial data and a move to a more innovative marketplace for consumer financial services. Many banks have already invested heavily in developing open application programming interfaces (APIs), enabling outside parties to build consumer products that draw from their consumers' financial data. And, indeed, many banks rely on consumer-permissioned data provided by banks and other providers of consumer financial services.

Open banking is, however, a very different thing than Dodd-Frank Act Section 1033. The CFPB exceeded the parse statutory language set out in Dodd-Frank Act Section 1033. Former CFPB Director Rohit Chopra characterized Section 1033 as allowing "individuals to fire, or walk away from, their financial provider for whatever reason,"[23] yet the statute itself contains no such language and instead is clearly focused on consumer access to their own information.

CBA continues to strongly object to the former CFPB Director's inaccurate assertions that this rulemaking is needed to increase competition in the marketplace. The consumer credit card and deposit account markets are highly competitive, and the CFPB should not have relied on mischaracterizations of the marketplace to justify this rulemaking. Beyond just the consumer credit card and deposit account markets, the number of non-banks offering bank-like products and services– which could potentially fall under the scope of Section 1033 in the future– has skyrocketed. In 2021, one data aggregator surveyed Americans with the Harris Poll and boasted that more Americans regularly use non-bank fintechs than video streaming services or social media.[24] For example, as of May 2025, fintechs account for 49.8 percent of all personal installment loan balances.[25]

More importantly, the statute also makes no reference to fees, APIs, or other fundamental aspects of the final rule. Indeed, the only required mandate for the CFPB in connection with Section 1033 is found in the requirement that the CFPB "shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this

[23] https://www.consumerfinance.gov/about-us/newsroom/director-chopra-prepared-remarks-at-money-20-20/
[24] https://plaid.com/blog/report-the-fintech-effect-2021/
[25] https://www.transunion.com/content/dam/transunion/global/business/documents/fs2025/may-monthly-snapshot.pdf

section."[26]

In May 2025, the CFPB filed a notice that new CFPB leadership has determined the final rule is unlawful.[27] The Bureau has said it intends to reconsider the rule. Should the current CFPB move forward with a version of its current rulemaking, CBA has significant concerns about a number of aspects of the prior CFPB's final rule.

Provisions in the final rule jeopardize consumers' control and security of their data. The prior Administration's final rule will increase fraud in a number of ways– (1) it requires "information to initiate payment to or from a Regulation E account" (account and routing numbers) to be shared with third parties; (2) data recipients will not be examined for compliance; (3) the final rule fails to prohibit screen scraping; and (4) it lacks a liability framework and ultimately threatens to leave banks and even consumers on the hook if a third party is breached, leading to unauthorized transactions from consumers' bank accounts. The existing liability framework places disproportionate responsibility on banks for the security and handling of consumer data even after it has been transferred to authorized third parties, without establishing clear oversight or accountability for those third parties in the data ecosystem. Third parties' use and protection of sensitive consumer data is outside of banks' control, which leaves banks unable to protect their customers from data breaches at third-party companies and from fraud that may result from these breaches.

If the CFPB wants to create an open banking ecosystem that fosters competition and benefits consumers, all participants in the market should be covered. The Congressional intent in Section 1033 is clear: it applies to "covered persons." The scope of covered accounts should be more than just asset accounts and credit cards– it should include auto loans and non-bank credit alternatives like Buy Now Pay Later (BNPL) and Electronic Benefit Transfer (EBT) cards. The final rule prohibits banks and other data providers from recovering costs from third parties who, themselves, often charge their own fees to other clients to access the consumer data. Such fees, which are now being contemplated in the European Union,[28] could be imposed by data providers on third parties in order to recover the costs of developing and maintaining new interfaces for third parties. Non-banks should share in the development and operational cost of setting up the data-sharing systems that they profit from. Moreover, such fees can be structured in such a way as to advance core principles, such as data minimization, that will protect consumers.

**Recommendation**:

- CBA would support the CFPB reproposing a Section 1033 rule that conforms to the confines of the statutory text set out by Congress, which obligates the CFPB to, through a rulemaking, "prescribe standard applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers." The CFPB should also extend the compliance deadlines to provide financial institutions with sufficient time to develop and implement the complex technical infrastructure and operational processes required for secure and effective data

[26] 12 U.S.C. 5533(d)
[27] https://storage.courtlistener.com/recap/gov.uscourts.kyed.106299/gov.uscourts.kyed.106299.57.0.pdf
[28] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0360

sharing under the Section 1033 rule.

5. **Dodd-Frank Act Section 1071– The small business data collection rule has a number of significant flaws and should be reproposed.**

In March 2023, the CFPB released the final rule implementing Section 1071 of the Dodd-Frank Act.[29] Section 1071 requires lenders to compile, maintain, and report information regarding loan applications made by woman-owned, minority-owned, and small businesses. Implementation of these requirements is an enormous undertaking, so much so that some lenders may choose to terminate their small business lending programs altogether due to compliance costs. The CFPB has stated that it plans to repropose the rule. CBA encourages the CFPB to consider the following reforms in its reproposal:

- CBA urges the Bureau to collect only those data fields required under Section 1071. This adds significant complexity and cost for lenders; at the same time, the CFPB has not adequately demonstrated that adhering to the plain language of the statute would be insufficient for identifying and addressing fair lending issues.

- CBA urges the Bureau to adopt a definition for "small business" of $1 million in gross annual revenue. This threshold will more accurately capture the small businesses intended to be monitored under Section 1071. The rule, instead, defines a small business as one with annual revenue of less than $5 million. This significantly broadens the scope of required data collection to include businesses that may have vastly different credit needs and profiles than smaller entities, thereby increasing operational complexities and potentially impacting the relevance of the collected data for its intended purpose. Further, many of these businesses already have an existing relationship with a financial institution and typically do not experience difficulty accessing credit.

- The prohibition against discouraging applicants from providing the required data under Section 1071 raises concerns for lenders due to the lack of clear definition of what actions or conversations could be deemed "discouraging," potentially complicating necessary interactions during the application process between lenders and their customers.

- CBA strongly urges the CFPB to not make Section 1071 data publicly available. If it is, the CFPB must adopt detailed rules for collecting and releasing data and only after public notice and comment. Additionally, failure to inform the public about the availability of data will have a chilling effect on borrowers voluntarily providing information and could have a chilling effect on small business lending. Publication rules should specifically address the treatment of each Section 1071 data field subject to release as well as conditions on release outside government for research or other purposes.

**Recommendations:**

[29] https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-create-a-new-data-set-on-small-business-lending-in-america/

- CBA recommends that Congress pass H.R. 941, the *Small LENDER Act*. This bill would reduce the definition of a small business for purposes of 1071 reporting from $5 million to $1 million. This would better focus the scope of Section 1071 reporting on small businesses that may experience difficulty accessing credit. Forthcoming changes to the bill are also expected to exempt more financial institutions from Section 1071 reporting, prohibit the CFPB from penalizing banks based on their customers' response rates, strike excessive data fields to be collected, and provide more time for compliance with these significant requirements.

- CBA recommends that Congress pass H.R. 2885, the *Bank Loan Privacy Act*. This bill would require the CFPB to conduct a notice and comment rulemaking on the 1071 balancing test before publishing 1071 data.

6. **The CFPB must follow the law and the Administrative Procedure Act (APA) requirements for its rulemaking.**

The CFPB has frequently made significant policy changes through guidance, press releases, and blog posts, failing to adhere to required APA rulemaking procedures.[30]

For example, in October 2023, the Bureau issued an advisory opinion on Section 1034(c) of the Dodd-Frank Act that created new regulatory requirements and entirely new categories of enforcement liability.[31] It contained specific new obligations and establishes new legal penalties, thereby introducing new regulatory expectations more than a decade after the statute was enacted. To the extent that the CFPB did have the authority to introduce any such new regulatory expectations, it should have done so via a rulemaking under an APA rulemaking, which includes requirements that the CFPB weigh the potential benefits of the rulemaking against its potential costs.

Similarly, in September 2024, the CFPB issued a consumer circular regarding overdraft opt-in practices.[32] This circular attempted to impose new regulatory obligations by increasing record retention requirements for overdraft services. This is yet another example of the CFPB issuing what should be a rule without going through the required APA rulemaking process. Financial institutions that offer overdraft services are required to have consumers affirmatively opt-in for overdraft services and are required to keep a record of that opt-in for two years. The CFPB tried to change this requirement via a footnote of the circular suggesting that absence of a record suggests that the bank never obtained consent. This wholly ignores the regulation's clear record retention requirements by effectively requiring financial institutions to keep records of overdraft opt-in forever.

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[30] Under recent leadership, there was documented history of the CFPB publishing and promoting press releases with language that lacked important context, intended to garner headlines rather than convey the facts. Such intentional dishonesty is especially unfortunate in those instances when the agency is announcing enforcement and voluntary supervision commitments. CBA urges the CFPB to stop the "gotcha" naming and shaming of covered persons, particularly releasing press releases that differ from the legal agreements the agency enters with settling parties.

[31] https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023_10.pdf

[32] https://www.federalregister.gov/documents/2025/05/12/2025-08286/interpretive-rules-policy-statements-and-advisory-opinions-withdrawal; https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-05/

Fortunately, the current Administration withdrew both the Section 1034(c) Advisory Opinion and overdraft opt-in circular.[33]

**Recommendation:**

- CBA appreciates that the Committee has noticed discussion draft legislation for this hearing that would require the CFPB to set formal procedures for issuing, amending, and revoking guidance with public input. CBA looks forward to being a resource on this or similar legislative efforts.

[33] https://www.federalregister.gov/documents/2025/05/12/2025-08286/interpretive-rules-policy-statements-and-advisory-opinions-withdrawal

**THE CFPB SHOULD BE REQUIRED TO CONSIDER THE TRUE IMPACTS OF ITS RULES ON CONSUMERS AND THE BROADER MARKET.**

*Unfortunately, in several recent rulemakings, the previous Bureau failed to weigh the impacts of its rules on consumers and the broader market appropriately, resulting in policies that increased consumer costs, reduced access to credit, and weakened trust in the regulatory process. Reform is needed to ensure that CFPB actions are not only legally sound but economically and operationally sustainable– advancing consumer protection while preserving access, innovation, and fairness in financial markets.*

7. **Require a true cost-benefit analysis of CFPB actions and rules– on regulated entities and consumers.**

Dodd-Frank requires the Bureau to consider the costs associated with rules but leaves the details largely up to the agency's discretion. This lack of consistency creates lopsided rules that may sound positive in concept but have damaging consequences– to regulated entities, and more importantly, to consumers. There are numerous rules done by the prior Administration that stood to harm consumers, by increasing their cost, or reducing their access to, credit. Not only do the costs of individual rules and regulations need to be considered, but so do the cumulative impact of rules being proposed.

Under the previous Administration, many of the CFPB's policies failed to consider potential harms to consumers, lacked appropriate analysis of costs and benefits, and exceeded the Bureau's statutory authority. In addition to the Dodd-Frank Act Section 1033 and Section 1071 rulemakings mentioned above, the CFPB's rulemakings regarding overdraft services and credit card late fees failed to appropriately weigh the costs they posed to consumers and the broader economy.

These rulemakings have been subsequently overturned or pulled back, but without appropriate reforms, a new CFPB could repeat the same mistakes.

Overdraft Services: On December 12, 2024, in the final days of his tenure, then-Director Chopra finalized a rule that would have created a one-size-fits-all, government-mandated banking service, that operated under a separate and more restrictive regulatory framework for banks and credit unions with more than $10 billion in assets, reducing access to checking services for customers at financial institutions.

The rule went well beyond the agency's statutory authority, all to advance the previous Administration's anti-inflation political campaign against "junk fees."

In issuing the final rule, former Director Chopra did not consider the rule's true impact on consumers, many of whom would have lost access to this important service if the rule had taken effect.[34] Further, former Director Chopra relied on data that did not include credit invisible

[34] https://consumerbankers.com/press-release/new-cba-survey-illustrates-consumer-harm-of-cfpb-overdraft-proposal/; https://consumerbankers.com/press-release/what-they-are-saying-setting-government-price-controls-on-overdraft-services-ignores-market-realities-harms-consumers/

consumers or consumers who lack traditional access to credit products. Accordingly, former Director Chopra failed to include the most critical one-fifth of Americans in its impact analysis, who would have been irreparably de-banked by this rulemaking.[35]

Additionally, the final rule would have hindered innovation, limited competition, and hampered financial institutions' ability to provide this essential service to the millions of consumers who rely on it.

Former Director Chopra also failed to meet the CFPB's statutory cost-benefit analysis requirements, as he relied on data that did not include overlooked credit invisible consumers who lack traditional access to financial institution-offered credit products.

Fortunately, Congress recognized the overdraft rule's fundamental flaws and passed a Congressional Review Act resolution to reject the overdraft rule, which the President signed into law in May 2025.[36]

Credit Card Late Fees: In March 2024, the CFPB finalized its proposed rule that would reduce the Federal Reserve Board's longstanding safe harbor for credit card late fees from $30 ($41 for subsequent late payments) to $8, without an inflation adjustment.[37] The CFPB's rule was, again, part of the Biden Administration's anti-inflation political campaign against "junk fees."

The Bureau attempted to justify the late fees rule by portraying the credit card market in ways that its own data shows are false. The former CFPB Director argued that late fees and, by extension credit cards, "aren't subject to the normal forces of competition."[38] According to the former Director, competition had been "undermined," so the CFPB needed to intervene to ensure the credit card market is fair and competitive."[39] But the CFPB's own CARD Act Report clearly shows a highly competitive market for credit cards. CBA detailed these findings in greater detail in a four-part "Facts Matter" series.[40] As an example of the hyper-competitiveness of the credit card market, the CFPB's CARD Act report shows that there were $53 billion of balance transfers in 2022.[41] To put that number in context, the amount of balance transfers that moved from one issuer to another is greater than the total holdings of all but the top seven credit card issuers.

The Bureau also claimed that this rule could help some credit card customers, in particular those who frequently pay late. However, the Bureau acknowledged that cardholders who never pay late– which the CFPB's own data indicates is 74 percent of all Americans with credit cards and

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[35] https://consumerbankers.com/press-release/cba-statement-on-cfpbs-misleading-overdraft-press-release/
[36] https://www.congress.gov/bill/119th-congress/senate-joint-resolution/18. CBA led litigation challenging the CFPB's overdraft rule. https://consumerbankers.com/press-release/cba-financial-trades-and-banks-file-lawsuit-against-cfpbs-overdraft-final-rule/
[37] https://www.consumerfinance.gov/rules-policy/final-rules/credit-card-penalty-fees-final-rule/
[38] https://www.consumerfinance.gov/about-us/newsroom/director-chopras-remarks-on-press-call-for-credit-card-late-fees-nprm/
[39] Id. and https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/
[40] CBA detailed these contradictions in greater detail in a four-part series. https://www.consumerbankers.com/cba-media-center/media-releases/facts-matter-cba-uses-cfpb-data-set-record-straight-card-act-report
[41] https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf#page=116

47 percent of subprime cardholders[42]– will not benefit from the reduced fees and could experience "higher maintenance fees, lower rewards, or higher interest on interest-paying accounts," and increased costs could completely negate any benefits.[43] Further, the CFPB's rule threatened to limit overall access to credit. As card issuers adjust to manage the risk of more late payers, the rule presented risk that the supply of credit would constrict. This restriction of credit could have "de-banked" existing consumer cardholders, while also making it more difficult for consumers to get access to new credit.

CBA was a co-plaintiff on a lawsuit challenging the CFPB's credit card late fees rule. In April 2025, the court granted the CFPB's and co-plaintiffs' joint motion to vacate the rule.[44]

**Recommendation:**

- Pass H.R. 2331, the *Transparency in CFPB Cost-Benefit Analysis Act*.

- Cost-benefit analysis is an important guardrail, to ensure that regulators appropriately gauge the costs of implementing and complying with a regulation for all affected parties. Several executive branch agencies must conduct cost-benefit analysis as part of the rulemaking process, which is overseen by the Office of Information and Regulatory Affairs (OIRA). However, Section 1022 of the Dodd-Frank Act only requires the Bureau to "consider" the costs associated with rules and leaves the details largely up to the CFPB's discretion.

8. **Require the consideration of the cumulative impact of regulations across regulatory jurisdictions– both on regulated entities and on consumers.**

Further, the cumulative impact of regulations– especially when imposed by multiple agencies without coordination– can distort risk-based pricing, a foundational principle of sound and fair credit markets. When layered compliance costs, conflicting rules, or overly prescriptive mandates limit a financial institution's ability to differentiate pricing based on risk, the result can be higher costs for all consumers, reduced access for underserved borrowers, and ultimately, greater systemic inefficiency.

Two closely related policies that would have created deeply harmful cumulative impacts are the Federal Reserve's proposed revisions to Regulation II– which implements the Durbin Amendment's debit interchange fee cap– and the CFPB's overdraft rule. The Durbin Amendment led to devastating consequences for consumers: diminished access to free checking, higher costs, and more fraud.[45] Further reducing the fee cap could increase consumer costs by up to $2 billion.[46] When combined with the CFPB's rule that would have capped overdraft fees at

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[42] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf
[43] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf#page=227
[44] https://consumerbankers.com/wp-content/uploads/2025/04/150-Order-and-Final-Judgment.pdf
[45] https://www.gao.gov/assets/gao-22-104468.pdf; https://www.federalreserve.gov/paymentsystems/2021-Interchange-Fee.htm
[46] https://consumerbankers.com/press-release/icymi-new-research-shows-consumers-could-pay-up-to-2-billion-more-under-regulation-ii-proposal/

$5, based on our analysis, these two proposals together could have resulted in 30 to 50 percent of consumers at a typical large regional bank losing access to low- and no-cost checking products.[47]

**Recommendations:**

- CBA is pleased that draft legislation is included for discussion in this hearing that would require banking regulators, including the CFPB, to conduct regular joint reviews of the cumulative impact of their rules, including effects on consumer access to financial services.

- CBA believes it would also be important to consider the cumulative impact of regulations on risk-based pricing and looks forward to being a resource as this draft legislation continues to be developed. Requiring regulators to assess cumulative effects across jurisdictions helps ensure that well-intentioned rules don't unintentionally undermine credit availability or push risk outside the regulated banking system.

- Further, as the number and scope of financial regulations increases, there is a lack of understanding as to how effective they are at meeting their stated objectives. The banking regulators currently put limited effort into understanding how their rules have improved outcomes for consumers and markets, skewed them, or resulted in little to no changes while increasing the regulatory burden. Congress can help the public better understand how effective financial regulations are by requiring regular lookbacks that examine the effectiveness of regulations after a period of time based on how they have either succeeded or failed to meet their primary objectives.

- Congress should work in a bipartisan manner on a legislative proposal intended to require an independent research agency– e.g., the Government Accountability Office ("GAO")– to examine the effectiveness of major financial regulations after a period of five to 10 years. If there is sufficient evidence suggesting the rule has not been effective in meeting its objectives, the regulation would sunset after a period of time unless the regulatory agency reproposes it with changes to improve its effectiveness moving forward.

9. **Address small dollar lending policies that have limited consumer choice and pushed consumers into more expensive lending products.**

Millions of Americans live paycheck to paycheck, leaving many consumers with little cushion for emergency expenses, strained credit scores, and limited credit options. The need for access to reasonably priced small dollar liquidity products has become more important than ever.

Historically, federal banking regulators and Congress have encouraged banks to help finance these needs because they can do so at lower costs and higher regulatory standards than other non-bank products. And while bank-issued small dollar loans are carefully designed with strong safeguards to protect customers, deviations in small dollar lending policy– based largely on political ideology and coupled with overly restrictive regulations– have precluded market

[47] https://consumerbankers.com/blog/the-data-desk-cumulative-impact-what-do-reg-ii-and-overdraft-proposals-mean-for-consumers-and-consumer-banking/

stability and limited banks' ability to innovate small dollar products to meet their customers' short-term financing needs.

A 2022 bipartisan GAO report reaffirmed CBA's longstanding position that excessive and ever-changing policies are stifling innovation and product development and hampering the most vulnerable consumers' access to credit.[48] For these reasons, long-term certainty on small dollar policy is needed to facilitate more banks being able to make these consumer-friendly loans.

Empowering banks to offer viable short-term lending products will provide consumers with a valued emergency safety net and far greater protections than they might receive at other less regulated entities. Lending safeguards should be put in place to protect consumers and hold bad actors accountable. The answer, however, is not overly prescriptive rules that force consumers to borrow more money than necessary, stifle innovation, or place limitations on consumers who use these products responsibly and repay them on time. Small dollar loans offered by depository institutions have built-in controls intended to protect consumers– all designed to prevent reliance on such loans and support the ability to repay the loan. Most importantly, all of this is done within the well-regulated and well-supervised depository marketplace.

**Recommendation:**

- Pass the *Small Dollar Loan Certainty Act.*

  This legislation would provide long-term stability and certainty for banks that would like to participate in the small dollar lending marketplace by preventing swings of the regulatory pendulum between Administrations. In turn, this would benefit bank customers by fostering a robust small dollar lending marketplace with numerous consumer-friendly products for Americans to choose from. This legislation would provide a safe harbor for small dollar loans that (1) are issued by federally insured depository institutions, (2) are structured as installment loans or lines of credit with reasonable repayment terms, and (3) do not have balloon payments, prepayment penalties, overdraft fees, or nonsufficient funds fees. Importantly, this bill would establish these parameters as a safe harbor to ensure lenders that comply with the bill's provisions are not penalized with enforcement actions from the CFPB or the federal banking regulators under the Truth in Lending Act. This legislation does not prohibit lenders from offering products that are different from the types of loans described in the bill. As a result, the bill will not impede lenders or banking regulators from innovating new types of small dollar consumer loan products or policies.

[48] https://www.gao.gov/assets/gao-22-104468.pdf

**THE CFPB SHOULD COMMIT TO FOCUSING ON AREAS OF TRUE CONSUMER HARM, INSTEAD OF CHASING HEADLINES OR BEING MOTIVATED BY POLITICAL POLLING.**

*The CFPB's singular focus must be protecting consumers from actual harm– grounded in data, not politics. Unfortunately, recent years have seen the Bureau devote disproportionate energy to politically popular topics that generate headlines, rather than directing its resources toward real, measurable harms facing consumers. This has led to misplaced regulatory priorities, policies based on flawed premises, and missed opportunities to address urgent threats like fraud, scams, and financial exploitation. If the Bureau is to fulfill its statutory mission, it must adopt a more rigorous, data-driven approach– one that prioritizes areas of genuine risk and fosters collaboration with other agencies to produce better outcomes for the public.*

10. **Require the CFPB to be data driven. Address structural flaws of the CFPB complaint database.**

It is imperative that the CFPB focus its regulation on areas of true consumer harm, identify actual market failures, and be data driven in its approach to consumer protection regulation.

During the previous Administration, the CFPB attempted to justify its policies by publishing press releases, blogs, reports, and other public statements that misconstrued or mischaracterized its own data. This has raised questions about whether the CFPB's policy agenda was more focused on political wins than what is empirically best for consumers. In response, CBA launched a "Facts Matter" series, using the Bureau's own data and analysis, to ground the policy discussion around objective data.[49]

One way for the CFPB to turn the page is to focus its enforcement and supervisory efforts on areas of the greatest consumer harm. CBA has documented multiple instances where the rhetoric and press releases from former CFPB leadership have not matched the data and analysis from its own consumer complaint database. In that regard, after analyzing four years of consumer complaints submitted to the database required under the Dodd-Frank Act, CBA found that the complaint volume in the CFPB's complaint database did not align with the agency's efforts. Topics receiving comparatively low complaint volumes (e.g., credit card fees) garnered outsized attention in CFPB press releases while those with the highest or fastest growing complaint volumes (e.g., fraud and scams) went relatively unaddressed.[50]

Further, for the CFPB's complaint data to serve as a credible basis for enforcement priorities, it must first be vetted for duplicates, frivolous entries, and fraudulent submissions. Without meaningful quality control, the complaint database risks misrepresenting the actual issues facing consumers. Flawed data can mislead regulators, skew public perception, and ultimately drive enforcement actions away from where they're needed most. Ensuring the integrity of the database is essential to identifying patterns of harm and focusing supervision and enforcement where they will do the most good for consumers.

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[49] https://cfpbfactcheck.com

[50] https://consumerbankers.com/blog/the-data-desk-complaints-part-i-im-not-complaining-but-refocusing-the-regulatory-lens-using-the-cfpbs-complaint-database/; https://consumerbankers.com/blog/the-data-desk-complaints-part-ii-im-not-complaining-but-what-about-fraud-and-scams/

**Recommendation:**

- CBA appreciates that the Committee has noticed discussion draft legislation for this hearing that seeks to improve the CFPB complaint database by removing duplicative, frivolous, and fraudulent complaints. CBA would encourage members of this Committee to consider specific definitions for terms like "duplicative, frivolous, unauthorized, or fraudulent," rather than letting CFPB or the courts determine how to interpret them.

11. **Prioritizing fraud and scams education and cross-agency coordination.**

The CFPB should commit its focus to areas of true consumer harm, such as fraud and scams– educating consumers, informing industry, and collaborating with other agencies.

America's leading Main Street banks have been raising the alarm about the rise in fraud and scams that are inflicting deep financial and emotional harm on American consumers and small businesses. Last summer, CBA contributed to the publication of a discussion paper exploring how industries could work together and with government to prevent fraud and other harms against consumers and businesses, "Stopping Scams Against Consumers: Roadmap for a National Strategy."[51] The document sets out an initial roadmap for cross-industry collaboration among financial institutions, technology companies, law enforcement, and the federal government.

In July 2024, CBA convened a cross-industry roundtable bringing together public and private leaders to discuss issues identified in the paper and begin alignment on the predicates for a national strategy for fighting fraud and scams.[52] We then went on to co-lead, with Microsoft, the Metrics Working Group of the Aspen Institute's Task Force on Fraud and Scams, which followed our own publications.[53]

In April 2025, the GAO released a report to Congress urging the development of a government-wide strategy– including collaboration across the CFPB and other federal agencies– to confront the fraud and scam epidemic that has affected millions of Americans across the country.[54] The GAO report calls for the establishment of a national scam estimate, a common definition of scams, and an evaluation of the outcomes of consumer education. The CFPB and other financial regulators can help address these issues by educating consumers on how to avoid fraud and scams and refraining from taking actions that make it more difficult for banks to combat them.

**Recommendation:**

- Pass H.R. 2978, the *Guarding Unprotected Aging Retirees from Deception (GUARD) Act*, and S. 2019, the *Taskforce for Recognizing and Averting Payment Scams (TRAPS) Act*.

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[51] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4897644
[52] https://consumerbankers.com/press-release/icymi-cba-convenes-cross-industry-public-private-roundtable-to-inform-whole-of-government-approach-to-combat-fraud-and-scams/
[53] https://fraudtaskforce.aspeninstitute.org/
[54] https://www.gao.gov/products/gao-25-107088

**Conclusion**

CBA is eager to work with this Committee, the broader Congress, and the Administration to create a credible, durable, and stable CFPB that appropriately heeds its authority under law and fulfills the agency's specific purposes, objectives, and functions, as set out by Congress. Ultimately, establishing long-term stability and credibility at the CFPB will greatly benefit consumers across the country.

## APPENDIX: CBA SUPPORTS ADDITIONAL LEGISLATIVE REFORMS TO TRANSFORM THE CFPB INTO THE CREDIBLE, DURABLE REGULATOR CONSUMERS DESERVE

Congress has a pivotal opportunity to enact significant, lasting reforms to the CFPB that would reshape the Bureau into the trustworthy and resilient regulator for American consumers. Enacting these additional legislative changes would help protect against the political pendulum shifts of policy and regulation that have taken place over the last three Administrations and result in policies that are more measured and durable.

1. **H.R. 654, the *TABS Act***

The Bureau has historically exceeded the limits on its authority established by Congress because it is largely insulated from Congressional oversight. Subjecting the CFPB to the annual Congressional appropriations process would not only compel the Bureau to begin taking Congressional oversight seriously, it would also provide Congress with ongoing opportunities to review and adjust the CFPB's budget as needed so that it can appropriately regulate the products and services offered to consumers by financial services providers.

CBA urges Congress to enact the *TABS Act*.

2. **H.R. 3445, the *Bureau of Consumer Financial Protection Commission Act***

Unlike most other financial regulators, the CFPB is run by a single Director with unilateral authority. This leadership structure has led to political pendulum shifts between Administrations that do not benefit consumers or regulated entities.

Additionally, due to the Supreme Court's ruling in *Seila Law v. Consumer Financial Protection Bureau*, the CFPB Director is now removeable at will by the President. While CBA believes this result is positive in that it places a limit on the exhaustive powers of the CFPB Director, it also unfortunately subjects the Bureau to drastic policy shifts based on political ideology. A bipartisan commission would help create stability across Administrations.

CBA urges Congress to enact the *Consumer Financial Protection Commission Act*.

3. **H.R. 2513, the *CFPB-IG Reform Act***

Despite the CFPB being such a consequential regulator with significant power over the consumer financial services marketplace, it currently shares an Inspector General (IG) with the Federal Reserve. The CFPB deserves an independent, impartial, entity that is dedicated to overseeing the Bureau full-time. This will bring more accountability and transparency to the operations of the Bureau.

CBA urges Congress to enact the *CFPB-IG Reform Act*.

Chairman HILL. The gentlewoman yields back. Mr. Quaadman, you are recognized for 5 minutes for your oral remarks.

**STATEMENT OF MR. TOM QUAADMAN, CHIEF OF GOVERNMENT AFFAIRS AND PUBLIC POLICY, INVESTMENT COMPANY INSTITUTE**

Mr. QUAADMAN. Chairman Hill, Ranking Member Waters, members of the committee, thank you for holding this hearing and for your leadership on keeping America's financial markets the global gold standard.

Prior to the financial crisis, many raised concerns that the U.S. financial regulatory architecture was out of date. Indeed, issues such as blind spots and lack of coordination hampered the ability of regulators and policymakers to address the crisis. Congress, through the passage of the Dodd-Frank Act, sought to respond to the crisis but ignored many of those issues. Instead, the Dodd-Frank Act added floors onto an old house that was built on a rickety foundation. Dodd-Frank, in certain areas, sought to eliminate risk, but really, you cannot eliminate risk. You can only transfer it elsewhere. Dodd-Frank also did not allow regulators the flexibility to meet future market developments and investor needs.

Dodd-Frank did get some things right. Transparency around the derivatives markets actually addressed a critical part of the financial crisis. The creation of Financial Stability Oversight Council (FSOC), which is a codification and expansion of the President's Working Group, was an important step forward in coordinating regulators. However, Congress largely delegated to agencies to flesh out the details of the bill. In some cases, regulators naturally sought to fill the void of ambiguity and expand their powers. Some examples include FSOC's attempt to designate nonbank financial institutions through systemic risk regulation was a mismatch in attempting to apply bank-like regulations on a business model which were not banks. Similarly, on money market fund reforms, FSOC sought to subvert a majority of the SEC commissioner's judgment in the path forward. The Commodity Futures Trading Commission (CFTC) created a duplicative regulatory regime on community pool operators without investor benefit. The Volcker Rule, which is a prohibition on proprietary trading by banks, in its implementation, the regulators actually included regulated funds. Even though it is not part of Dodd-Frank but does exert influence on Dodd-Frank policies, the Financial Stability Board, which is largely made up of central banks and finance ministers, directs pressure on policymakers in other areas.

These issues can be fixed. The FSOC Improvement Act, which was introduced by Congressmen Foster and Huizenga, would actually have an activities-based approach to systemic risk regulation. We would be happy to collaborate with the committee on clarifying language, both on community pool operators and the Volcker Rule. Furthermore, we believe that this committee and Congress should exact oversight over the activities of American regulators within the Financial Stability Board and should also make sure that there is a Team USA approach, while also broadening representation of other agencies within discussions at the Financial Stability Board (FSB). Furthermore, this committee and Congress should also en-

sure that we are addressing the needs of the market for today and tomorrow as well as where investors are going.

We believe it is important for Congress to pass the GROWTH Act, which was introduced by Congresswoman Van Duyne and Sewell, to remove a punitive tax on investors. We believe it is long past time to mandate e-delivery for investors, and we think it is very important for legislation introduced by Congressmen Huizenga and Sherman to move forward with this commonsense approach. Furthermore, there needs to be modernization of closed-end funds. We think it is important with legislation that was introduced by Congresswoman Wagner and Congressman Meeks that will allow for access of private capital in highly regulated funds, as well as ending activist campaigns.

Lastly, the Investment Company Institute (ICI), after a 3-year effort, issued a report earlier this year reimagining the 1940 Act with 19 different recommendations for how the 1940 Act can be modernized. The 1940 Act has not been reviewed by Congress in 30 years. We think that is an important step forward, and I want to submit this for the record. We look forward to working with you all on these issues, and I am happy to take any questions you may have.

[The prepared statement of Mr. Quaadman follows:]

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STATEMENT

OF

TOM QUAADMAN
CHIEF GOVERNMENT AFFAIRS AND PUBLIC POLICY OFFICER
INVESTMENT COMPANY INSTITUTE

BEFORE THE

US HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES

ON

DODD–FRANK TURNS 15: LESSONS LEARNED AND THE ROAD AHEAD

JULY 15, 2025

**Introduction**

The Investment Company Institute (ICI) represents the interests of US registered investment companies (registered funds), business development companies (BDCs), and similar funds organized outside the United States (regulated non-US funds and, collectively, regulated funds). We also represent the interests of the investment advisers that manage regulated funds and other investment products intended for the benefit of individual investors, including collective investment trusts (CITs) that are offered in defined contribution plans.

My name is Tom Quaadman, and I am the Chief of Government Affairs and Public Policy at ICI.

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As major participants in US and global financial markets, acting on behalf of more than 120 million American investors, ICI members support policy measures that promote robust and resilient markets. Millions of American households count on their investments in funds and CITs to help them achieve their most important financial goals, such as saving for college, purchasing a home, or providing for a secure retirement.

A confluence of events led to the 2008 financial crisis. There were many contributory factors to the crisis, including excessive risk taking, a housing market bubble, a weak regulatory framework creating blind spots, a lack of transparency, and poor cross-border coordination. In the immediate wake of the 2008 financial crisis, ICI issued a series of recommendations to address these concerns and had extensive meetings with Congress and the White House to press for action.

While the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank, Act, or Dodd–Frank Act) successfully addressed shortfalls such as transparency in the derivatives markets, it also missed an opportunity to enact reforms that could have increased investor protection and made the markets more efficient.

Since the passage of Dodd–Frank, the US financial system has grown and become more resilient. And we also now can learn from fifteen years of additional experience, including a global pandemic, geopolitical strife, technological advances, and changing macroeconomic conditions—developments that were not contemplated by the drafters of Dodd–Frank.

Therefore, ICI believes that it is an opportune time to reflect on how Dodd–Frank was implemented, and where it was not successful. ICI in this testimony proposes several tailored adjustments to Dodd–Frank that can address several of its shortcomings. We also believe that policymakers and regulators should not fight the last battle of the last war. Accordingly, we also suggest a series of new proposals that will help improve investor opportunity and protection in the future.

**Part I: Long-Term Impact of Dodd–Frank**

Fifteen years after the enactment of the Dodd–Frank Act, it is important to assess how well the law's implementation has achieved its goals—and where it may have unintentionally introduced inefficiencies or misalignment of risk. While the Act sought to give regulators new powers to assess and address potential financial stability risk, in its implementation agencies have, in practice, imposed unnecessary and costly burdens on regulated funds and their advisers without sufficient acknowledgement and appreciation of the commensurate benefits of such funds to investors and the broader financial system.

In this section, ICI highlights areas where Dodd–Frank implementation strayed from congressional intent and examines how certain agencies' actions have created overlapping oversight structures, led to regulatory uncertainty and instability, and failed to respect the expertise of primary regulators. Each of these cases offers an opportunity for thoughtful recalibration that addresses financial stability risk while promoting efficiency, clarity, and innovation for long-term investors.

**Overreach of FSOC**

ICI and its members recognize the importance of the United States to have the necessary capabilities to respond to new or emerging risks to financial stability. The most effective means for identifying and addressing these risks is through the experience and expertise of primary financial regulators. Primary regulators have the best view and understanding of markets and participants under their jurisdiction.

That is the approach that Congress had in mind when it established the Financial Stability Oversight Council (Council or FSOC) as a body comprising only the heads of existing regulatory agencies, making it clear they should act in coordination with "front line" regulators to address potential risks to financial stability. In using this approach, Congress expanded and codified the President's Working Group on Financial Markets created by President Ronald Reagan.

Congress also envisioned that this coordination would extend to the Council's authority to designate a nonbank financial company as a systemically important financial institution (SIFI designation).[1]

However, some of the Council's activities have diverged from its intended role. This underscores the need for Congress to refocus FSOC on its original mission as a coordinator among expert regulators. Regarding regulated funds and their investment advisers, there have been several instances in which the Council has posited potential risks to financial stability and then proceeded to assert itself in matters squarely within the expertise and statutory mandate of the Securities and Exchange Commission (SEC), under the pretext of addressing these supposed

[1] For an analysis of these authorities, see ICI letter to FSOC dated July 27, 2023 at 6-9.

risks. This approach reflects a misunderstanding of the distinction between investment risk and systemic risk and highlights the need to better tailor financial stability oversight to the unique structure of capital markets and their participants. This tailored approach will avoid imposing unnecessary costs or constraints that ultimately fall on investors.

1) ***SIFI designation.*** In September 2013, the Office of Financial Research (OFR), which provides analysis for FSOC and acts upon FSOC's direction, authored a report outlining improbable risks to US financial stability that funds, their advisers, or asset management activities could pose. The OFR report, coupled with indications in the press that FSOC was evaluating at least two large asset management firms for possible designation, signaled that the Council might apply its SIFI designation authority more broadly than Congress envisioned, raising important questions about the scope and focus of systemic risk tools in capital markets. Given FSOC's unwillingness to consider the expert views of the SEC—the regulator with the most experience and knowledge of the asset management industry—the SEC, on its own initiative, requested public comment on the OFR report, revealing through the public comment process fundamental flaws in the report. Those concerns, including those voiced by members of Congress, were further exacerbated by the lack of transparency in the Council's process for considering nonbank financial companies for possible SIFI designation. Within the next year, FSOC appeared to move away from active consideration of asset managers as potential SIFIs and worked with stakeholders on improvements to its SIFI designation process.[2] Nevertheless, ICI and its members remain concerned that the Council ***may in the future*** fail to leverage the experience and expertise of the primary regulators for asset managers and funds, and proceed with the designation of a registered fund or fund adviser without thoroughly analyzing all relevant factors and alternatives to designation. Such an approach would be inappropriate, contrary to congressional intent, and harmful to potentially millions of fund investors.[3]
2) ***Recommendations relating to open-end funds.*** In July 2014, the Council directed its staff to undertake an analysis of asset management products and activities to assess potential risks to financial stability. ICI viewed this announcement as far preferable to the specter of the inappropriate designation of an individual fund or adviser as a SIFI. A particular area of focus for FSOC was whether financial stability risks could arise from

[2] On February 4, 2015, the Council approved supplemental procedures for reviewing nonbank financial companies for potential designation, available here.

[3] ICI has repeatedly detailed the reasons why SIFI designation of a registered fund or fund adviser would be inappropriate, including that (i) the Federal Reserve Board would become a second supervisor to companies whose business is rooted in the capital markets and who the FRB does not have the expertise to regulate and (ii) it would result in the application of bank regulatory standards that are entirely out of keeping both with the way in which funds and their managers are structured, operated, and currently regulated and with the expectations of investors and the capital markets. For further discussion, see, e.g., congressional testimony in 2014, 2015, and 2019.

liquidity and redemption risk in registered open-end funds (mutual funds). As its inquiry developed, however, it became clear that FSOC's analysis of potential redemption risks closely resembled the earlier OFR report, which had drawn significant concern from stakeholders for its unsupported assumptions—underscoring the need for better coordination and evidence-based analysis. Although the SEC (the primary regulator for funds) was concurrently examining issues relating to liquidity risk in mutual funds and whether such funds should be required to formalize their already considerable risk management efforts, the FSOC continued its work. In fact, the Council issued a public update in April 2016 stating that liquidity and redemption risk in mutual funds did in fact pose financial stability concerns, while offering *no basis* for that statement. FSOC's update also set forth recommendations for the SEC during an active SEC rulemaking on that very topic. FSOC's process lacked the transparency and stakeholder engagement essential for developing sound, broadly supported regulatory recommendations.[4]

3) ***Recommendations relating to money market funds.*** The first and only time that the Council invoked its authority under Section 120 of the Dodd–Frank Act focused on highly regulated money market funds, which have all the protections of the Investment Company Act of 1940 (1940 Act) and adhere to stringent risk-limiting regulatory standards. Section 120 authorizes the Council to recommend additional standards for financial activities or practices if required for financial stability purposes. Congress imposed certain predicates for use of this authority, thus limiting it to specific circumstances and imposing procedural safeguards against arbitrary use. The Council's use of Section 120 authority did not appear to meet the procedural and substantive thresholds that Congress established to ensure accountability and appropriate checks on interagency recommendations.[5] Even more concerning was how the Council intervened during an active SEC rulemaking process, creating uncertainty for stakeholders and complicating the efforts of the primary regulator to carry out its mandate.

   In 2010, the SEC adopted extensive amendments to make money market funds more resilient to adverse market conditions of the sort experienced during the global financial crisis. Shortly thereafter, further reforms to money market funds, including the imposition of bank-like capital buffers, were considered by the SEC. Those reform ideas were wholly at odds with the extensive public record developed in the earlier rulemaking.

[4] See, e.g., ICI letter to FSOC dated July 18, 2016, for a more in-depth discussion of the shortcomings of FSOC's work. The letter included a detailed empirical analysis demonstrating why FSOC's hypotheses about destabilizing redemptions in high-yield bond funds were unsupported by data and actual experience.

[5] ICI Letter to FSOC dated January 24, 2013, available here.

> Additionally, a *bipartisan majority* of SEC Commissioners objected to considering those reform ideas without further study and analysis. It was then that the Council intervened by issuing recommendations for public comment, in effect invoking its Section 120 authority when the very issue of further reforms to money market funds was under active consideration by the primary regulator. In the end, the SEC considered and rejected the Council's recommendations, adopting a second round of reforms in 2014 based on its own proposals.

Accordingly, ICI has expressed concerns about the operation of FSOC. The overreach in the FSOC designation process, the lack of credibility of the OFR money market fund report, and FSOC's subsequent pressure on the SEC to act on flawed data all demonstrate FSOC's tendency to go outside the bounds of Congressional intent, regardless of the impact on market conditions. For these reasons, the ICI supported the 2019 Trump Administration guidance that created accountability and process around the FSOC designation process and shifted the focus to an activities-based approach. The Biden Administration reversal of the 2019 guidance and reinstitution of a designation approach represents a retreat from the rigor and transparency of that guidance, thereby diminishing stakeholder confidence in the consistency and accountability of FSOC's decision making.[6]

For the reasons outlined above, ICI urges the Committee to take a fresh look at how the powers and duties of FSOC could be recalibrated to align with and prioritize its essential role as convener of primary regulators and preclude the Council from inappropriately usurping those primary regulators' role.

ICI urges the Committee to:

- ***Encourage the FSOC to restore the 2019 guidance.*** Industry and other stakeholders require process, certainty, and transparency in the operation of FSOC, including when using its SIFI designation authority.
- ***Pass the FSOC Improvement Act of 2025.*** This legislation would ensure that the Council considers whether activity-based regulation or other means would sufficiently address a potential threat to financial stability before proceeding with a proposed SIFI designation. An earlier iteration of this legislation was approved by the House with strong bipartisan support.
- ***Reframe Section 120.*** FSOC should retain the ability to make recommendations, but final consideration and rulemaking should rest with the relevant expert agency. This would ensure that any standards adopted would be pursuant to the agency's existing statutory authorities. In the case of any financial activity or practice (i) that is widespread such that FSOC believes a coordinated solution across multiple agencies is required or (ii) that

[6] For a more detailed discussion, see ICI letter to FSOC dated July 27, 2023.

requires a fix that goes beyond an agency's existing statutory authority, the Council could identify this gap in regulation and report it to Congress.[7]

**Avoiding Regulatory Overlap**

The CFTC's 2012 amendments to regulations of commodity pool operators (CPO) are an example of an overly expansive interpretation of its Dodd–Frank mandate, resulting in overlapping regulation for SEC-supervised funds without advancing systemic-risk objectives.[8]

From its initial adoption in 1985, Rule 4.5 provided a uniform exclusion from CFTC regulation as a CPO for certain entities that invest and trade in derivatives when an entity is subject to another regulatory scheme. Among these entities are registered funds, which are comprehensively regulated by the SEC, including with respect to funds' holdings in derivatives. Other CFTC rules (*e.g.*, large-trader reporting) apply to registered fund trading in the commodity markets.

In February 2011, a year after Dodd–Frank became law, then-CFTC Chair Gary Gensler commenced a rulemaking to sharply curtail the Rule 4.5 exclusion *solely* for registered funds. The CFTC stated that it was targeting de facto commodity pools. This rulemaking was not mandated, or even contemplated, by Congress in the Dodd–Frank Act. The CFTC sought to justify the proposal by describing it as being "consistent with the tenor" of that Act[9] and by asserting that Congress gave the agency a "more robust mandate" to "manage systemic risk" in the derivatives markets.[10]

During the public comment period, ICI and other stakeholders warned that the CFTC proposal was overbroad, threatening to sweep in registered fund advisers that did not offer registered funds remotely resembling or competing with traditional commodity pools. Leaders on the House Agriculture and Appropriations Committees likewise voiced objections, including opposition to promulgating the rule without a thorough cost-benefit analysis because "the proposed rule has the potential to create duplicative, unnecessary regulations."[11]

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[7] Consistent with Section 112 of the Dodd–Frank Act.

[8] For detailed discussion of this issue, *see, e.g.*, ICI Statement to the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies, Committee on Appropriations, US House of Representatives, on CFTC Appropriations for Fiscal Year 2017 (March 14, 2016); Statement of Thomas P. Lemke, GC and EVP, Legg Mason & Co, LLC, on behalf of ICI, before the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises (July 10, 2012) at 23-26.

[9] *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 Fed. Reg. 11252, 11253 (Feb. 24, 2012); correction notice published at 77 Fed. Reg. 17328 (March 26, 2012).

[10] *Id.* at 11275.

[11] Letter from Chairman Jack Kingston, Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies, Committee on Appropriations, US House of Representatives, and Chairman K. Michael Conaway, Subcommittee on General Farm Commodities and Risk Management, Committee on

The CFTC moved forward, missing an opportunity to better calibrate its approach in a way that respected existing regulatory frameworks. The agency made no effort to determine whether its oversight of the registered fund advisers now required to register as CPOs would complement, conflict with, or merely duplicate the SEC regime. Nor did the CFTC assess its own reporting requirements that already applied to registered fund trading in the derivatives markets.[12]

For the last decade, ICI members have had to expend significant time and resources on complying with the amended Rule 4.5 exclusion or, if they were unable to rely on the exclusion, registering as a CPO and complying with the applicable requirements. The CFTC has never demonstrated how this great expansion of its regulatory activities through amended Rule 4.5 has produced any meaningful benefit to fund shareholders or protections for the markets. Instead, fund shareholders largely bear the costs of this overlapping and unnecessary regulation, which reduces yield for investors and diverts resources from enhancing fund performance or innovation.

ICI urges the Committee to:

- ***Confirm relevant regulatory agency authority.*** ICI believes that corrective action is needed to alleviate the costs and burdens of overlapping regulation for registered funds that do not compete with, or otherwise resemble, traditional commodity pools. For example, Congress could revisit legislation passed by the House in 2015 that would have restored exclusive SEC jurisdiction over advisers to funds that invest in only financial derivatives (*e.g.*, an S&P 500 swap) while continuing concurrent CFTC jurisdiction over advisers to registered funds that resemble or compete with traditional commodity pools (*e.g.*, managed futures funds, funds seeking exposure to the physical commodities markets).

**Unintended Effects of the Volcker Rule**

Section 619 of the Dodd–Frank Act, colloquially known as the Volcker Rule, restricts insured depository institutions and their affiliates and subsidiaries (collectively, banking entities) from engaging in proprietary trading and from sponsoring or investing in hedge funds and private equity funds. Implementation of this provision by five federal financial agencies (Agencies)

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Agriculture, US House of Representatives, to the Honorable Gary Gensler, Chairman, CFTC, dated January 30, 2012.

[12] ICI and the U.S. Chamber of Commerce joined together in a legal challenge asking the U.S. District Court for the District of Columbia to vacate and set aside the CFTC's amendments to Rule 4.5. In December 2012, the Court rejected ICI and the Chamber's challenge and upheld the CFTC's amendments. In response, ICI and the Chamber filed an appeal with the U.S. Court of Appeals for the District of Columbia Circuit. In June 2013, the Appeals Court issued its opinion, ruling in favor of the CFTC. The CFTC bifurcated its rulemaking, so the litigation challenging the registration and reporting requirements occurred before the harmonization rulemaking was complete. The Appeals Court decision appeared to reflect its judgment that the costs and benefits of the CFTC's expanded regulation of investment companies could not be fully assessed until the Agency completed its rulemaking to harmonize its rules with those of the SEC.

proved to be highly complex and inordinately burdensome, not only for banking entities and other market participants, but also for the Agencies. It included the adoption of initial regulations in 2013 that swept far more broadly than Congress intended and introduced tremendous uncertainty into the marketplace. In response, the Agencies issued piecemeal guidance in an attempt to help banking entities and other market participants navigate the ambiguities of those regulations. After determining that those piecemeal efforts were not sufficient, the Agencies revised the implementing regulations in 2019 and 2020 to simplify compliance and mitigate unintended consequences.

The Volcker Rule was not directed at regulated funds, but the 2013 regulations resulted in unnecessary spillover effects for regulated funds and their investment advisers. Most concerningly, the Agencies failed to provide a complete carveout for regulated funds, which are already subject to comprehensive regulation. The lack of an express exclusion left open the possibility that certain funds could be deemed to be "banking entities" and thus subject to the full panoply of trading and investment restrictions in the Volcker Rule. For example, in the case of a newly-launched fund whose investment adviser was affiliated with a bank, the adviser's investment of start-up "seed" capital—a longstanding practice well known to the Agencies—subjects the fund to the Volcker Rule. It is clear that Congress did not intend such a result.

The Agencies ultimately provided some relief, but this guidance was issued only days before the July 2015 compliance date and after months of effort from ICI and other stakeholders. The task of obtaining this relief was particularly burdensome because (i) the problem was apparent, as ICI and other stakeholders had brought this issue to the Agencies' attention three years earlier during the comment process, and (ii) the opaque and complex nature of multi-agency rulemaking created barriers and inefficiencies and made it difficult for industry participants to understand whether progress was being made.

A second spillover effect from the 2013 regulations involved the treatment of "foreign public funds"—non-US funds deemed by the Agencies to be dissimilar from hedge funds and private equity funds and thus outside the scope of the Volcker Rule. A foreign public fund is, in effect, the non-US equivalent of a US mutual fund. The 2013 regulations placed restrictions on US firms and their affiliates that relied on the "foreign public fund" exclusion, thus putting them at a competitive disadvantage to foreign firms offering the same types of funds. These restrictions also were at odds with the Agencies' stated intent to treat regulated non-US funds in a manner similar to US registered funds.

ICI and its members thus welcomed the Agencies' later openness to revisions—dubbed "Volcker 2.0"—to address industry concerns and make the regulations more workable. Through written submissions and in-person meetings, ICI explained the impact of the 2013 regulations on

regulated funds and offered concrete examples of the difficulties faced by ICI members.[13] We urged the Agencies not to let fixes for these problems get "lost in the shuffle" of competing demands for Volcker Rule reforms. ICI further noted that many of our members' problems would be solved without a corresponding increase in risk if the Agencies would exclude all regulated funds from the definition of "banking entity"—an approach that we repeatedly recommended since our first comments to the Agencies in 2012.

In its second corrective rulemaking, which was finalized in mid-2020, the Agencies did not follow that approach. Instead, through language in the preamble to the amended rule, the Agencies endorsed and slightly expanded upon earlier guidance regarding regulated fund seeding practices. ICI welcomed the greater clarity and certainty that these statements provided for our members. Nevertheless, the Agencies' decision not to adopt the exclusion for regulated funds urged by ICI and others has continued to result in needless complexity and, in our view, is inconsistent with Section 619's clear focus on unregulated funds and *not* the highly regulated funds sponsored and advised by ICI members.

Moreover, the lack of an express exclusion results in an incomplete solution to the problems that ICI has raised and underscores the fundamental problem with aspects of the Volcker Rule that remain today. For example, the provision of seed capital by a banking entity to a third-party regulated fund that operates as an exchange-traded fund (ETF) was not specifically addressed by the Agencies. This activity, however, clearly should be treated as a permissible activity for Volcker Rule purposes. The banking entity, in its capacity as an "authorized participant" to the ETF, is purchasing and holding fund shares as the fund works to establish regular trading and liquidity on the secondary market. As ICI has explained as far back as 2012, this is market making activity to support an investment product that Congress intended to be outside the scope of the Volcker Rule.

The example of the Volcker Rule further illustrates a broader challenge: when regulatory efforts extend beyond their intended scope or lack coordination, they can create avoidable complexity and costs for investors and market participants alike. At the same time, they dilute the effectiveness of oversight by misallocating limited regulatory resources.

ICI urges the Committee to:

- ***Clarify the Volcker Rule.*** Given that some of these fundamental problems remain outstanding, consider revising the statutory provisions to make clear that regulated funds are entirely out of scope of the Volcker Rule's restrictions and to reaffirm the importance of agency expertise.

[13] For a detailed discussion, *see, e.g.*, Letter to Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, dated Sept. 21, 2017.

**Governance and Accountability of the Financial Stability Board**

The need to resolve cross-border issues was an important priority arising from the financial crisis. Consequently, the need for international coordination and promotion of international standards has made the Financial Stability Board (FSB) a valuable forum for US regulatory authorities to meet with other international regulators, central banks, and finance ministries to consider emerging risks to the global financial system.

In the past fifteen years, the FSB has evolved into a powerful influence on US financial regulatory policy. The FSB regularly comments on, and discusses, regulatory developments centered in the United States and seeks to develop recommendations on regulatory approaches and standards regarding issues that have not yet been fully debated within the US regulatory system. Thus, there have been some cases where US regulatory proposals have been driven by pressure generated by FSB discussions.

One of ICI's main concerns with the FSB is that the membership of the powerful FSB Steering Committee consists primarily of central banks and finance ministries with only two seats currently occupied by pure market regulators (the US SEC and the Brazilian SEC). In addition, the United States—despite the size of its financial system relative to other financial systems in the world—is limited to three seats (US Treasury, Federal Reserve Board, and SEC). One effect is that European authorities, collectively, have a much "louder" voice in the FSB than the US authorities. We note that in 2022 and 2023 Chair Gensler sometimes suggested that one reason to complete flawed SEC rulemaking on US money market funds and swing pricing for US mutual funds was because of pressure from the FSB and European central banks.

Given that the FSB makes decisions by a "weight of the room" process (i.e., not unanimity but what a large majority of the body expresses), the composition of who is in the room and number of voices matter. It is logical to question whether the FSB Steering Committee has the right expertise (with its small number of market regulators) and composition (with its uneven geographic balance) to take up issues like the regulation of "non-bank financial intermediation" and OTC derivatives in a manner that appropriately takes into account the policy expertise of relevant US authorities and the importance of the US financial markets.

These issues are of particular importance as the activities of many US non-bank financial firms represent the global market. Consequently, sophisticated legal structures, such as US securities laws, are tailored to meet the needs of investors and the marketplace.

To improve the governance and accountability of the FSB, ICI urges the United States to:

- Expand FSB Steering Committee membership to more market regulators, including the US CFTC. Participation in lower-level FSB committees and working groups is not sufficient.
- Ask the FSB to give more weighted consideration to comments and input from the SEC and CFTC on matters where the SEC or CFTC is the primary regulator, such as issues related to non-bank financial intermediation and OTC derivatives. And the US Treasury Department and Federal Reserve Board should be expected to actively support such comments and input from the SEC and CFTC consistent with the SEC and CFTC's Congressionally-mandated regulatory authority in those areas.
- Direct US authorities to assert more control over the FSB work agenda particularly as it applies to issues where US markets and US market actors are the primary targets of inquiry, again giving more weighted consideration to the authority that is the primary regulator.

**Part II: Building on the Legacy of Dodd–Frank to Embrace Modernization**

While Dodd–Frank sought to respond to the unique challenges of the 2008 financial crisis, the transformation we have experienced in our capital markets over the past 15 years has shown that our regulatory frameworks must continue to evolve. Now is the time to take a forward-looking approach that better serves long-term investors and keeps pace with financial innovation. Such an approach would learn from the successes as well as failures of Dodd–Frank by lifting unnecessary regulatory barriers and promoting capital formation while at the same time being mindful of risks to investors and the financial markets.

This belief is the foundation of ICI's Modernizing the 1940 Act Project: a comprehensive, member-driven reform agenda that reflects more than three years of input from asset managers, fund directors, legal and compliance experts, and academics. In our March 2025 white paper, *Reimagining the 1940 Act: Key Recommendations for Innovation and Investor Protection*, ICI outlines 19 practical reforms designed to modernize the regulatory framework under the 1940 Act in ways that strengthen investor protections, eliminate unnecessary costs, and expand access to a broader range of investment opportunities.[14]

These proposals are grounded in our enduring support for effective regulation—and a recognition that the regulatory framework of the past must be refined to meet the needs of today's investors. They embrace technology, promote innovation, and recognize evolving investor preferences to ensure that regulation keeps pace with markets while avoiding prescriptive or overlapping rules that limit access, efficiency, and choice.

[14] Investment Company Institute 2025. *Reimagining the 1940 Act: Key Recommendations for Innovation and Investor Protection.*

As a complement to these recommended regulatory reforms, ICI supports a common-sense change in tax rules that would greatly benefit retail investors. The *Generating Retirement Ownership Through Long-Term Holding (GROWTH) Act* is a bipartisan bill that would empower long-term savers, enhance the compounding of returns, and remove an obstacle to financial security for millions of middle-income investors.

This Committee has already led on this issue. As discussed in greater detail below, the Committee has, on a bipartisan basis, passed the following bills that improve investor opportunity and protection—the *Increasing Investors Opportunities Act*, the *Retirement Fairness for Charities and Educational Institutions Act*, the *Improving Disclosure for Investors Act*, and the Access to Small Business Investor Capital Act. We urge the House leadership to bring these bills to the floor, pass them, and send them to the Senate for further action.

In addition to proposals listed above, such as the passage of the *FSOC Improvement Act*, the restoration of the 2019 Trump Administration guidance on FSOC, and legislative clarity around the Volcker Rule, we believe that Congress should move forward on the following recommendations.

**Allow for Reinvested Capital Gains Tax Deferral**

ICI strongly supports the *GROWTH Act*, a bipartisan proposal that would allow retail investors to automatically reinvest capital-gain distributions from mutual funds and other registered funds without triggering immediate taxation. Today, millions of middle-income investors face annual tax liabilities for reinvested gains—even when they do not sell their shares. This creates an artificial drag on compounding, distorts investor behavior, and penalizes long-term savings. The *GROWTH Act* aligns mutual fund tax treatment with other retirement vehicles and private investment structures, encouraging wealth accumulation and reducing unnecessary friction in the system.

**Foster ETF Innovation**

ETFs are among the most important financial innovations of the modern era. Despite their widespread popularity, regulatory barriers still constrain their development. The SEC should permit fund sponsors to offer both mutual fund and ETF share classes within a single fund structure, promoting operational efficiency and enabling investors to choose the structure that best fits their needs. The current requirement that a mutual fund and an ETF following the exact same investment strategy must be in two separate vehicles undermines the potential for economies of scale to reduce the expenses that investors pay and limits competition. The SEC appears to be making great progress here, and we are hopeful that it will complete this work in short order.

Additionally, the SEC should broaden the scope of permissible asset classes for semi-transparent ETFs. By allowing these vehicles to hold a more diverse array of assets—including fixed income

and global equities—while maintaining robust disclosure standards, the Commission can empower more active managers to enter the ETF space without compromising proprietary strategies. This expansion would unlock new options for investors and further bolster ETF innovation.

**Expand Retail Investor Access to Private Markets**

Expanding access to private markets is one of the most powerful levers Congress and the SEC can use to increase opportunity for everyday investors. Over the past decade, the private markets have grown dramatically—from under $5 trillion in 2013 to nearly $25 trillion today—offering higher potential returns and new avenues for diversification.[15] In particular, private credit activity now plays an enormous role in capital formation, benefiting both established and emerging businesses, as well as institutional investors. These markets, however, remain largely out of reach for retail investors. With the number of publicly traded companies declining significantly since the 1990s, the potential for the vast majority of Americans to participate fully in the wealth-generating engine of the US economy is diminishing, not growing.

ICI has recommended a number of concrete steps that would expand and enhance the ability of funds regulated by the SEC under the 1940 Act to provide ordinary investors with greater access to private market strategies. Closed-end funds are ideal vehicles to serve as the bridge between retail investors and private assets, but currently they are subject to a number of outdated restrictions. For example, mutual funds and ETFs should be granted additional latitude to participate in co-investments alongside affiliated funds. We commend the SEC for taking steps to expand co-investment, but further relief continues to be necessary, including allowing open-end funds to participate in such investments and providing greater flexibility for investments in private equity. Further, the SEC should revisit its "fund of funds" rules governing the ability of regulated funds to invest in other funds, in order to facilitate the ability of target-date and similar funds to offer a sleeve that includes exposure to private markets strategies.

In addition, regulatory reforms must address the vulnerability of listed closed-end funds to predatory activist campaigns. A listed closed-end fund is one of the best products to provide retail investors with access to private market investments. However, campaigns from activists can force short-term decisions upon the fund that undermine long-term retail investors. These campaigns and their associated risks have effectively frozen the IPO market for listed closed-end funds. Congress should act to pass the *Increasing Investor Opportunities Act*, which limits the ability of activists to engage in these campaigns and will encourage capital formation and retail access to private market investment strategies.

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[15] *See* Remarks by Eric Pan, President and CEO of the Investment Company Institute, at the ICI Leadership Summit (May 1, 2025, Washington, DC).

ICI also supports the *Retirement Fairness for Charities and Educational Institutions Act of 2025*. This bipartisan legislation would grant participants in 403(b) plans—millions of educators, nonprofit workers, and public servants—access to collective investment trusts (CITs), closing an arbitrary gap between the public and private retirement systems. CITs offer professionally managed, lower-cost investment options that would help these workers achieve better retirement outcomes.

**Eliminate Unnecessary Regulatory Costs and Burdens**

Outdated mandates increase costs for funds and investors alike. One of the most pressing examples is the continued requirement that funds use paper delivery as the default method for shareholder communications. In an age of mobile devices and digital platforms, investors overwhelmingly prefer electronic communication. E-delivery should be the default option, with paper available upon request, to improve efficiency, sustainability, and investor engagement. Congress should pass the *Improving Disclosure for Investors Act of 2025*, which has broad bi-partisan support and would accomplish this goal.

Similarly, funds, like operating companies, periodically conduct proxy campaigns, and the current fund proxy system is inefficient and expensive. A subset of proxy campaigns from 2012 to 2019 cost funds nearly $373 million—most of which was spent simply achieving quorum.[16] We know of three separate fund proxy campaigns in the last 16 years—none particularly controversial—that have exceeded $100 million (one of which would be about $200 million in today's dollars). Reform is needed to modernize the process, potentially by revising the means of achieving quorum imposed by the 1940 Act itself or removing shareholder vote requirements for certain changes when sufficient safeguards exist, such as board approval and advance shareholder notice.

Finally, the SEC should restore registered funds' ability to cross trade fixed-income securities in appropriate circumstances, rather than forcing them to execute these trades through third-party dealers and incurring commissions. As a result of the inaction of the prior SEC Chair, the ability of funds to engage in most types of cross-trades expired in September 2022, to the detriment of fund investors. ICI has conservatively estimated that in 2020 alone, cross trading fixed-income securities saved funds nearly $329 million and advisers' clients generally (i.e., funds and other clients) more than $390 million.[17]

**Better Leverage the Expertise and Independence of Fund Directors**

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[16] *See* *Analysis of Fund Proxy Campaigns: 2012–2019*, Investment Company Institute (December 2019).

[17] *See* *Rule 17a-7 at the Crossroads: The Right Path Forward*, Investment Company Institute (April 2021).

Today's fund boards are highly professional, experienced, and deeply engaged in oversight. Yet they are still subject to outdated requirements that diminish their effectiveness. For instance, current statutory provisions mandate that routine approvals—such as contract renewals and auditor appointments—occur at in-person meetings. Given modern videoconferencing capabilities, this requirement is costly and unnecessary. Boards should have discretion to determine when in-person meetings are appropriate, enabling more flexible, responsive governance. The SEC should also revisit outdated requirements that require board approval for routine matters and the hyper-technical standards for independence that deter qualified individuals from serving on fund boards.

**Conclusion: A Renewed Regulatory Vision to Serve Today's—and Tomorrow's—Investors**

ICI supports smart, effective regulation. But regulation must evolve to keep pace with changing markets. With more than 120 million Americans relying on registered funds to save for retirement, college, homeownership, and other goals, it is essential that our regulatory system reflects the tools and technologies investors use today—and anticipates those they'll need tomorrow.

For these reasons, ICI supports tailored changes to the Dodd–Frank regulatory framework that will better leverage the expertise and experience of primary financial regulators like the SEC and ensure that any decisions by FSOC about systemic risk are based on data and not supposition.

But in addition to correcting the errors and overreach of Dodd–Frank and FSOC, Congress and financial regulators like the SEC need to develop a forward-looking agenda to modernize outdated regulations in light of the enormous evolution in the markets—including the fund industry—in the years since the global financial crisis. The *Modernization of the 1940 Act* initiative and other initiatives supported by ICI provide practical, actionable plans for doing just that. We urge Congress and the SEC to take up this agenda and work with industry stakeholders to implement it. Doing so will not only protect investors—it will empower them.

ICI appreciates the opportunity to present this vision and stands ready to work with Congress and regulators to build a more modern, accessible, and resilient regulatory framework for America's investors.

Chairman HILL. Thank you, sir. Dr. Kupiec, you are recognized for 5 minutes for your oral remarks.

**STATEMENT OF DR. PAUL KUPIEC, SENIOR FELLOW, AMERICAN ENTERPRISE INSTITUTE**

Dr. KUPIEC. Thank you, Mr. Chairman, Chairman Hill, Ranking Member Waters, and distinguished members of the committee. Thank you for convening today's hearing and for inviting me to testify. I am a Senior Fellow at the American Enterprise Institute, but this testimony represents my personal views and research.

As the Dodd-Frank Act work as the authors intended, the goals in the Act's preamble include financial stability, improved accountability and transparency, and an end to too big to fail to protect the American taxpayer by ending bailouts, but in March 2023, the Federal Government was forced to take emergency measures to bail out the banking system. The crisis occurred when depositors withdrew their funds wholesale after recognizing that large, unrealized interest rate losses had effectively rendered their banks insolvent. The crisis was averted when the Treasury instituted a blanket deposit insurance guarantee for failed banks and funded a $25 billion first-loss backstop for a Federal Reserve emergency lending program needed to bail out the banking system. The Fed's term funding program provided banks with emergency liquidity. It made nearly 10,000 loans on bank collateral that had very large market value discounts as a consequence of increased interest rates.

The program loaned banks the full par value of their collateral for periods up to a year and, by some estimates, lent banks about $20 billion more than the market value of the collateral they pledged, and all at favorable rates. The decision to insure all depositors in the failed banks created very large insurance fund losses compared to the losses under a Federal Deposit Insurance Corporation (FDIC) lease cost receivership. Federal bank regulators failed in their oversight responsibility but still made the large banks, banks that bore no responsibility for the poor management at the failed institutions, pay for the large insurance fund losses.

Dodd-Frank orderly liquidation authority gave authorities the power to take SVB's bank holding company into an FDIC receivership, liquidate its assets, and use the proceeds to reduce the Silicon Valley Bank (SVB) insurance fund losses, and yet, it was not invoked. It is possible that authorities did not invoke Orderly Liquidation Authority (OLA) because OLA funding was precluded by the congressional debt ceiling, which was also a problem for FDIC failed bank receiverships. The receivership's funding needs exceeded the balance in the Deposit Insurance Fund because the congressional debt ceiling was binding, the FDIC could not borrow from the Treasury. The receiverships were forced to borrow from the Fed Reserve discount window and pay a penalty interest rate 70 basis points over Treasury borrowing rates on hundreds of billions of dollars in loans. These additional insurance fund losses were just passed on to the large banks through special differential item functioning (DIF) assessments without much, if any, public discussion. So much for improved accountability.

The large, unrealized interest rate losses that caused the March 23 crisis could have been detected as losses grew throughout 2022, as I show conclusively in my written testimony. The FSOC and its Federal banking regulator members could have used their extensive prompt corrective action powers to proactively impose remediation measures, yet they did not. Indeed, the past 15 years have demonstrated that the FSOC has little ability to detect and mitigate actual systemic risks. On several occasions, the FSOC completely missed actual sources of systemic risk, and on others, they falsely identified firms and activities as a systemic risk. The most recent example is the so-called Brown Industries Crusade launched to advance a political agenda rather than to address any demonstrable financial sector risk. The political nature of the FSOC's activities raises the cost of financial intermediation as FSOC policies change each time a new party assumes executive power.

The Dodd-Frank regulations also impacted financial intermediations, particularly for large, complex financial institutions. To be fair, changes in intermediation patterns also reflect changes in Federal Reserve monetary policy and the outpaced growth in Treasury debt. The largest banks increased their use of deposit funding while reducing their use of subordinated debt, Federal funds borrowing, and Federal home loan bank advances. These changes replaced active monitoring by lenders with skin in the game with regulatory monitors. The largest banks' share of investments to loans to businesses and consumers also declined as they substituted liquid Federal Government guaranteed securities and Federal Reserve interest-bearing deposits. Smaller banks not subject to Dodd-Frank enhanced supervision did not make these adjustments.

By many objective measures, the complex provisions and regulations in the Dodd-Frank Act did not work as their authors intended. I look forward to your comments and thank you.

[The prepared statement of Dr. Kupiec follows:]

Statement before the House Committee on Financial Services
On "Dodd-Frank Turns 15: Lessons Learned and the Road Ahead."

# The Dodd-Frank Act at 15: Has it worked?

**Paul H Kupiec**
Senior Fellow

July 15, 2025

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# The Dodd-Frank Act at 15: Has it worked?

## 1. Introduction

Chairman Hill, Ranking Member Waters, and distinguished members of the Committee, thank you for convening today's hearing, "Dodd-Frank Turns 15: Lessons Learned and the Road Ahead," and for inviting me to testify today.

My name is Paul Kupiec. I am a senior fellow at the American Enterprise Institute. This testimony represents my personal views and not the views of the AEI. It is an honor for me to be able to testify before the subcommittee today.

My background in financial market supervision and regulation includes 40 years as a professional economist specializing in financial market policies, risk measurement and banking regulation. I have held senior positions at the Federal Reserve Board, the FDIC, the IMF, Freddie Mac, the BIS and JPMorgan before joining the American Enterprise Institute.[1]

I will begin my written testimony by summarizing my findings.

Judging the Dodd-Frank Act by its own preamble, the Act is a failure. Notwithstanding the many complex and intrusive provisions of the Act, the financial system experienced a systemic banking crisis in March 2023. Widespread bank runs were averted when the federal government was forced to take measures to bailout the banking system.

The crisis was caused by depositor runs at several large banks. The runs ultimately resulted in these banks' failure. The underlying causes of the depositor runs were large unrealized interest rate driven losses that should have been proactively detected and remediated by the FSOC and federal banking regulators using the extensive prompt corrective action powers granted in the Dodd-frank Act and in prior federal legislation.

The crisis required the Secretary of the Treasury to provide depositors in the failing institutions with assurances of a blanket deposit insurance guarantee and a $25 billion first-loss backstop for a Federal Reserve emergency lending program that was required to bail out the remaining banks in the system. The so-called Bank Term Funding Program liquefied banks by making more than 9,800 loans on bank collateral pledged from bank held-to-maturity investment portfolios. The pledged collateral had very

[1] I have also separately submitted the most up to date curriculum vitae I have available, which unfortunately is current only up to December 2023. My AEI webpage includes additional research papers essays and op ed from 2024 and 2025. See, https://www.aei.org/profile/paul-h-kupiec/

large market-value discounts as a consequence of increased interest rates, but the Bank Term Funding Program loaned banks the full par value of the collateral for periods up to a year. By some estimates, at its peak, this program had outstanding loan balances of about $165 billion, with the Fed lending banks about $20 billion more than the market value of the collateral pledged, all at favorable interest rates.[2]

The decision to fully bailout very large sophisticated uninsured depositors and assign the resulting losses to the Deposit Insurance Fund (DIF), and ultimately to large banks through special DIF assessments, does not represent the "improved accountability" the Dodd-Frank Act's authors promised to deliver. The decision to insure all deposits regardless of deposit size generated very large DIF losses compared to the DIF losses that would have been generated if the failed banks had been resolved using standard least-cost FDIC receivership rules. The federal banking regulators who failed in their oversight responsibility assigned the cost of the resulting DIF receiverships to large banks that were not responsible for the poor management at the institutions that failed and triggered the crisis.

The unorthodox and opaque method used to fund the failed bank receiverships substantially added to the losses to the DIF, additional losses that were imposed on large banks through special DIF assessments. Moreover, the reasons behind the use of the unorthodox method for funding these bank receiverships highlight important shortcomings in both Title II of the Dodd-Frank Act and the FDI Act—shortcomings that, to the best of my knowledge, have not received the attention they merit given the issues and costs they could create in future financial crisis.

The past 15 years have repeatedly demonstrated that the Financial Stability Oversight Council (FSOC) has little ability to detect and mitigate actual risks created by so-called systemically important financial institutions or unregulated financial market activities. The FSOC failed to identify and take timely measures to control the excessive level of interest rate risk in the banking system, risk that ultimately materialized and required the Secretary of the Treasury to declare a systemic risk exception in March 2023.

The FSOC's systemically important institution designation power has been successfully challenged in court and the target of its disputed designation, Metlife, continues to be one of the largest, if not the largest,[3] life insurance and annuity underwriter. It continues to operate profitably without Federal

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[2] The estimate is from the Bank Policy Institute. See, https://bpi.com/bank-term-funding-program-experience-and-lessons-learned/#:~:text=The%20BTFP%20provided%20loans%20to%20financially%20sound,was%20providing%20over%20$165%20billion%20in%20loans.

[3] https://www.iii.org/fact-statistic/facts-statistics-insurance-company-rankings

Reserve Board enhanced oversight years after the FSOC designated it as a potential systemic risk to the financial sector.

The FSOC's attempts to regulate financial market activities—for example preventing the financing of so-called "brown industries"—have been conducted to serve a political agenda rather than to address any real demonstrable risk in the financial sector. The political nature of the FSOC's activities raise the cost of financial intermediation. Financial institutions incur costs as they must adapt their activities when the FSOC changes the "rules of the road" each time a new party takes executive power. The FSOC should be stripped of its powers to designate and regulate, and instead be assigned a purely advisory role. Congress should reserve the right to designate and regulate through appropriate debate and legislation.

While the Dodd-Frank Act failed in its primary goal of preventing a systemic financial crisis, my testimony will show that its many provisions did impact financial intermediation, particularly in regard to the operations of the large complex institutions on which the Dodd-Frank Act imposed enhanced supervision and regulation by the Federal Reserve Board. In conjunction with fundamental changes in the Federal Reserve's approach to implementing monetary policy, the provisions of the Dodd-Frank Act substantially increased the largest banks' use of deposit funding at the expense of reductions in the use of subordinated debt, federal funds borrowing, and Federal Home Loan Bank advances. This change in funding has effectively substituted regulatory oversight for active market monitoring by lenders that had actual "skin in the game".

Faced with new stringent regulatory capital and liquidity requirements and near-zero short term interest rates, the largest banks rebalanced their asset holdings away from loans to businesses and consumers and toward investments in liquid federal government-guaranteed securities and Federal Reserve interest-bearing deposits. Smaller banks not subject to Dodd-Frank Act enhanced supervision and regulation did not make similar adjustments in their investment strategies.

The analysis in my testimony will show that the enhanced bank minimum capital regulations imposed by federal bank regulatory agencies as required by the Dodd-Frank Act completely fail to account for unrealized interest rate losses. As the Fed began raising rates in 2022 to fight a persistent inflation, unrealized interest rate losses were building in the banking system. While unrecognized on bank balance sheet positions held at historical cost and when bank calculate their regulatory capital, these losses erode the true market value (the loss-absorbing capacity) of the regulatory capital levels banks report. The FSOC and federal banking regulators, to the extent that they recognized this risk, took no action to require banks to hedge this risk. By the end of 2022, more than a thousand banks were severely

undercapitalized after adjusting their reported regulatory capital levels for the true market value of their assets, including many large institutions and those whose failure triggered the March 223 banking crisis.

Consistent with the finding of a 2017 US Treasury study, my analysis shows that the Dodd-Frank Act measures taken to reduce the risks created by poorly underwritten securitizations and associated credit risk transfer activities have resulted in declines in the use of private-label securitizations and re-securitizations as vehicles to fund the economy's loan and debt security liabilities.

Whether or not securitization trends are problematic depends on whether the enhanced regulatory capital requirements and risk retention rules required by the Dodd-Frank Act are preventing soundly underwritten asset-backed security (ABS) issuance or just preventing risky securities from being issued. Given the data available to me, I have not been able to address this important distinction. However, when it comes to federally guaranteed mortgage-backed securities (MBS) issuance, there is evidence that the Dodd-Frank Act qualified mortgage risk retention rules have not kept federal housing GSE's from increasing the riskiness of the mortgage collateral that supports the MBS they issue.

Given the aforementioned prevalence of unrealized interest rate losses throughout the banking system, the March 2023 failure of SVB and Signature Bank created the risk of widespread depositor runs. The government responded by declaring a systemic risk exception which provided a blanket guarantee for all depositors in SVB and Signature Bank, an action that raised the cost of these bank resolutions. It turned out that SVB's holding company had close to $2 billion in deposits in SVB bank that went undetected by the FDIC when drafting the terms of the systemic risk exception, and the ownership of these deposits remains in legal dispute today. The FDIC is apparently claiming that the Federal Reserve holding company "source of strength doctrine" gives the Deposit Insurance Fund receivership ownership rights over the holding company's deposit, but the Fed's source of strength power has never been upheld in court.

The Dodd-Frank Act created Orderly Liquidation Authority (OLA) and gave federal authorities the power to take SVB's holding company into an FDIC receivership, liquidate its assets, and use the proceeds to support its distressed insured depository. In effect, the OLA is a turbo-charged source-of-strength power, and yet it was not invoked in the case of SVB. Its use, should the OLA have functioned as advertised, would have reduced SVB's resolution cost to the DIF by billions of dollars. I have not seen any public discussion that explains why the OLA was not used in the case of SVB. In my testimony, I suggest some reasons why the OLA may not have worked in the way the Dodd-Frank Act envisioned and explain how DIF and OLA legal access to funding may need to be modified to ensure OLA is possible and

to avoid future excess losses to DIF.

An outline of my Testimony Follows. Section 2 discusses the primary policies, federal agencies and financial regulations that had a role in creating the risks whose realization caused the Great Financial Crisis. Section 3 discusses provisions of the Dodd-Frank Act that were designed to control the sources of risk identified in Section 2. Section 4 discusses the impact that selected Dodd-Frank Act provisions have had on financial market intermediation 15 years after the Act became law.

## 2. Federal policies, agencies, regulations and the Great Financial Crisis

This section will discuss key government programs, agencies, and financial regulatory features in place prior to the 2008 financial crisis that created strong incentives for insured banks, investment banks, insurance companies and GSEs to take on excessive concentrations in residential mortgage risk and to issue poorly underwritten subprime mortgage-backed securities (MBS), hold highly-rated subprime MBS tranches as investments, purchase lower-rated subprime MBS tranches to engage in re-securitization transactions, and to write credit derivative contracts on tranches of subprime MBS securities. In many cases, the government agencies involved experienced large losses as a consequence of the exposures they assumed, and in some cases required emergency government assistance to continue operating.

The underlying causes of the Great Financial Crisis include:

- Unrecognized inadequacies in bank and investment bank minimum regulatory capital requirements
- Government programs and special purpose federal government agencies chartered to encourage and subsidize residential mortgage lending
- Government requirements to satisfy minimum "affordable housing lending goals"
- A pervasive decline in residential mortgage underwriting standards abetted by the growth of low down payment, interest only, and low documentation loans that encouraged excessive borrower leverage
- Unscrupulous and inaccurate securities ratings assigned by Nationally Recognized Statistical Rating Organizations (NRSROs)
- Financial regulatory agencies' general incognizance regarding the true underlying incentives driving subprime mortgage originations, securitizations, and re-securitization activity.

Subprime mortgage originations and a host of subprime related loan and capital market innovations ultimately created excessive financial sector leverage and unrecognized exposure concentration to the risks and ultimately to the losses created by poorly underwritten subprime mortgages.

It is important to recognize that all of the capital market activities that took place prior to the 2008 financial crisis took place within the scope of then existing laws, regulations, and with the full knowledge—

if not the full understanding—of bank and other financial regulatory agencies. Post-crisis legal cases have argued that the lack of due diligence in screening the subprime mortgage collateral used in securitization transactions bordered on financial fraud, but few if any officials were publicly questioning the adequacy of subprime securitization practices prior to the onset of the crisis. Moreover, in the boom years leading up to the financial bust—the time when excessive leverage and risk concentrations were building in the financial system —economists, including economists at important domestic and international regulatory agencies, argued that the securitization activity and other credit risk transfer activities associated with the structured subprime MBS market produced net benefits for the financial system, including reducing risk in the banking system.

**2.1 The Federal Home Loan Bank System**

For nearly 100 years, federal government institutions and regulations intentionally encouraged depository institutions to concentrate their investments in loans and activities that supported the residential mortgage market. The Federal Home Loan Bank Act of 1932 created the Federal Home Loan Bank (FHLB) System. Modeled after the Federal Reserve System, the Act created 12 district FHLB banks owned by member institutions who purchased shares in their district FHLB bank. Membership was originally restricted to financially sound building and loan associations, savings and loan associations, cooperative banks, homestead associations, insurance companies, or savings banks that made home mortgages.[4]

FHLB membership allowed an institution to borrow (using so-called FHLB advances) from their Home Loan Bank at favorable rates. Initially, advances had to be collateralized by residential mortgages, but the list of acceptable collateral expanded over time.[5] Unlike Federal Reserve discount loans, FHLB advance terms are flexible. Advances can have long maturities and customized terms.

Federal Home Loan Banks are able to borrow at favorable rates by virtue their ability to issue bonds with interest that is free from state and local taxes and with only a small interest rate premium over U.S. Treasury rates given the system's statutory $4 billion line of credit with the U.S. Treasury and their status as a government sponsored enterprise.[6] FHLB member institutions implicitly benefit from the FHLB's ability to borrow cheaply in the form of loan advance rates that are more favorable than market

[4] https://fraser.stlouisfed.org/title/federal-home-loan-bank-act-5998?page=2
[5] The original Act included many restrictions mortgages must have satisfied to be acceptable as FHLB collateral. For a current list of acceptable collateral for advances, see https://www.congress.gov/crs-product/R46499#:~:text=The%20ability%20of%20the%20FHLBs,privileges%20for%20the%20FHLB%20system.&text=Congress%20has%20given%20the%20Federal,%C2%A777c).
[6] https://www.schwab.com/learn/story/us-agency-bonds-what-you-should-know

repurchase rates on mortgages, and from member dividend earnings on their FHLB shares.[7]

In 1987, the Competitive Equality Banking Act introduced a requirement that savings and loan depositories satisfy a Qualified Lender Test which encouraged depositories to increase to their concentration in residential mortgage related investments. To satisfy the test, a thrift had to hold 60 percent of its total tangible assets in "qualified thrift investments" which could include loans, equity positions, or securities related to domestic residential real estate or manufactured housing, Federal Home Loan Bank stock, certificates of deposit, and investments in real estate partnerships and corporations.

The consequence of a thrift's failure to satisfy the Qualified Lender Test included: (1) prohibiting the thrift's holding company from partaking in a broad range of profitable business opportunities otherwise available to a holding company owning a single thrift that satisfied the Qualified Lender Test[8]; and (2) limiting the thrift's eligibility for Federal Home Loan Bank advances.[9] Residential mortgage-backed securities did (and still do) count toward satisfying the qualified thrift lender test.[10] In the years prior to the 2008 financial crisis, the qualified lender test required a thrift institution to invest 65 percent of its assets in qualified investments which could include subprime residential mortgage-backed securities without limit.[11]

In 1989, the Financial Institutions Reform, Recovery, and Enforcement Act opened FHLB membership to all depository institutions holding more than 10 percent of their assets in residential mortgage-related assets. Subsequently, many banks joined the FHLB system and were eligible to borrow from the system.[12,13] As a result of changes in FHLB membership requirements, FHLB membership increased from

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[7] See, https://www.congress.gov/crs-product/R46499#:~:text=The%20ability%20of%20the%20FHLBs,privileges%20for%20the%20FHLB%20system.&text=Congress%20has%20given%20the%20Federal,%C2%A777c).

[8] Certain activities that are permissible for a savings and loan holding company, such as acquiring, developing, improving, managing, and maintaining real estate, are generally not permissible for a bank holding company. See: https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-11-1-savings-association-designations.pdf, section 11.1.

[9] https://www.gao.gov/assets/ggd-91-24.pdf

[10] https://www.federalreserve.gov/supervisionreg/srletters/sr1709.htm

[11] FIRREA set the Qualified Thrift Test threshold at 70 percent. Sec. 437 of the Federal Deposit Insurance Corporation Improvement Act of 1991 reduced the threshold to 65 percent. https://fraser.stlouisfed.org/title/federal-deposit-insurance-corporation-improvement-act-1991-415

[12] https://www.federalreserve.gov/econres/notes/feds-notes/the-increased-role-of-the-federal-home-loan-bank-system-in-funding-markets-part-1-background-20171018.html

[13] At present there are also "Community Support Requirements" that a member institution must satisfy to maintain access to Federal Home Loan Bank advances. See: https://www.fdic.gov/resources/bankers/affordable-mortgage-lending-center/guide/part-3-docs/advances.pdf

3,200 institutions in 1989 to more than 6,400 members as of March 2025[14]. Over this period, total FHLB system assets, heavily weighted toward member institution advances, federal funds sold, and securities held for repurchase agreement loans, increased from $175 billion to $1.25 trillion.[15,16]

In the years leading up to the 2008 financial crisis, several FHLBs purchased private label subprime MBS for their investment portfolios. Several FHLB district banks posted losses in 2009 as a result of losses on their subprime MBS investments. The Seattle FHLB was ultimately forced to merge with the Des Moines FHLB as a consequence of Seattle's subprime MBS investment losses and the failure of Washington Mutual, its largest customer accounting for almost one-third of the Seattle FHLB's business prior to the thrift institution's failure.[17]

**2.2 Fannie Mae and Freddie Mac**

In 1938, Congress created a new federal agency, the Federal National Mortgage Association or Fannie Mae, to purchase residential loans guaranteed by the Federal Housing Administration (FHA) from mortgage lenders. In 1948, Fannie Mae also began purchasing mortgages insured by the Veteran Administration (VA). Fannie Mae financed these purchases by issuing federal government guaranteed bonds.

In 1968, the Congress created Ginnie Mae to guarantee timely principal and interest payments on mortgage-backed securities backed by pools of mortgages insured by the FHA, VA and other federal government mortgage guarantee programs. At the same time, Fannie Mae ownership was "privatized". Its mortgage investments shifted focus to conventional mortgages (non-government guaranteed or insured mortgages) and its debt was no longer explicitly guaranteed by the federal government or consolidated in federal government accounts. Privatization made Fannie Mae's bonds and mortgaged-backed securities only implicitly guaranteed by the federal government by virtue of an explicit multi-billion line of credit with the U.S. Treasury and its status as a "too-big-to-fail" government sponsored enterprise. Through the 1970s and into the 1980s, Fannie Mae primarily purchased conventional mortgages for its retained portfolio and financed them by issuing debt. Fannie Mae issued its first pass-through guaranteed MBS in 1981.

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[14] https://www.fhfa.gov/data/fhlb-membership
[15] https://www.fhlb-of.com/ofweb_userWeb/resources/2025Q1CFR.pdf
[16] At year-end 2007, the FHLB system had 8,075 member institutions. See, for example, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr357.pdf
[17] https://www.congress.gov/crs-product/R46499

In 1970, Congress created the Federal Home Loan Mortgage Corporation or Freddie Mac. Freddie Mac share ownership was originally restricted to the 12 district Federal Home Loan Banks and to Federal Home Loan Bank member institutions. It was created to assist the savings and loan industry in diversifying its real estate risks and to augment mortgage market liquidity by purchasing conventional mortgages with at least a 25 percent down payment (at most a 75 percent loan-to-value ratio) unless the remaining 25 percent exposure was covered by private mortgage insurance or another acceptable means of protecting the GSE from loss in the event of loan default. It would then use purchased mortgages to create pass-through MBS with guaranteed principal and interest payments and sell them to savings and loans, banks and other investors. It issued its first conventional mortgage-backed MBS in 1971. Throughout the 1970s and 1980s, Freddie Mac primarily purchased conventional mortgages to securitize.

In 1989, Congress removed the restriction on Freddie Mac share ownership and it became a publicly listed company and yet, like Fannie Mae, it retained its implicit federal government guarantee by virtue of its $2.25 billion line of credit with the U.S. Treasury and its status as a "too-big-to-fail" government sponsored enterprise.

Unlike Fannie Mae, Freddie Mac did not initially maintain a large retained portfolio of conventional mortgages financed by debt so it avoided the 1980s interest rate losses suffered by Fannie Mae and hundreds of savings and loan institutions.

From the early 1990s, Fannie Mae and Freddie Mac were direct competitors in purchasing conventional mortgages both to securitize as well as to hold for income in their retained portfolios. The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 made both housing GSE's subject to safety and soundness oversight by the Office of Federal Housing Enterprise Oversight (OFHEO). Moreover, the Act also amend their charters to add an "affirmative obligation to facilitate the financing of affordable housing for low-income and moderate-income families."[18]

The GSE's affordable housing goals were set by the US Department of Housing and Urban Development (HUD). They required both GSE to increase the share of their yearly mortgage purchases made in three affordable housing categories: (1) a low-and moderate-income housing goal; (2) a special affordable housing goal; and, (3) a central cities, rural areas, and other underserved areas housing goal. The Act specified the characteristics HUD could use to specify loans that could be purchased to satisfy each of the

[18] U.S. Code Title 12, Ch 46, Sec 4501. Section 1302(7) of Housing and Community Development Act.

affordable housing goals.[19]

Under the Clinton and the Bush administrations, HUD continually increased the GSEs' annual required minimum share of affordable mortgages purchases until the minimum shares peaked at 56%, 27% and 39%, respectively during the Bush administration.[20]

To meet their affordable housing goals, over time, the GSEs had to lower their minimum underwriting standards for the conventional loans they purchased.[21] Initially they lowered underwriting standards to allow the purchase of mortgages with low down payments and higher loan-to-value and debt service to income ratios. HUD changed the affordable housing rules to allow GSEs to purchase subprime mortgages from low-income borrowers to meet their affordable housing goals.[22] Eventually the GSE's underwriting standards were further lowered to allow an increased share of adjustable rate, interest only, mortgages with implicitly more than 100 percent loan-to value ratios,[23] and Alt-A mortgages including loans with minimal documentation concerning borrowers' ability to repay. The relaxation of GSE mortgage underwriting standards was mirrored in the wider market that supplied mortgages for private-label subprime MBS securitizations. In 2005 and 2006, subprime mortgages originations exceeded $450 billion and accounted for roughly 20 percent of all residential mortgages originated.[24]

Fannie Mae and Freddie Mac also purchased a large amount of private-label subprime mortgage-backed securities in part to satisfy their HUD affordable housing goals.[25] Ultimately, losses on their subprime mortgage investments and MBS guarantees required the Federal Housing Finance Agency to place the GSEs into conservatorship and request and receive (initially) a commitment for $200 billion in financial support from the U.S. Treasury in the form of special preferred stock purchase agreements.[26]

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[19] A single mortgage loan could be used to satisfy more than one GSE affordable housing goal.
[20] https://oversight.house.gov/wp-content/uploads/2012/02/20100512affordablehousingpolicyandthefinancialcrisis.pdf
[21] https://oversight.house.gov/wp-content/uploads/2012/02/20100512affordablehousingpolicyandthefinancialcrisis.pdf
[22] https://oversight.house.gov/wp-content/uploads/2012/02/20100512affordablehousingpolicyandthefinancialcrisis.pdf, page 10.
[23] Borrowers were allowed to fund their primary loan down payment and closing costs with a second lien mortgage. See, for example, https://www.fhfa.gov/sites/default/files/2023-05/HMG_MAE_-_2006_AHAR.pdf
[24] https://realestate.wharton.upenn.edu/wp-content/uploads/2017/03/632.pdf
[25] See for example, https://oversight.house.gov/wp-content/uploads/2012/02/20100512affordablehousingpolicyandthefinancialcrisis.pdf, or https://www.fhfaoig.gov/Content/Files/History%20of%20the%20Government%20Sponsored%20Enterprises.pdf
[26] U.S. Treasury commitment to support the GSE conservatorships was subsequently increased to $200 billion each in May 2009. See, https://www.congress.gov/crs-product/R44525

**2.3 Bank Minimum Regulatory Capital Requirements**

The Basel I minimum regulatory capital requirements, which became effective in 1993, included important incentives that encouraged depository institutions to invest in subprime MBS. Basel I was comprised of minimum regulatory capital requirements for bank credit risk that, in part, set risk weights on bank bond investments according to a bond's credit rating as determined by a Nationally Recognized Statistical Rating Organizations (NRSROs).[27] Basel I credit risk capital requirements were subsequently supplemented with Basel I market risk capital requirements that applied to securities held in a bank's trading book and by rules that set minimum capital requirements for securitization transactions and direct credit substitutes. These Basel I minimum regulatory capital rules created strong incentives for depository institutions to hold MBS instead of holding whole mortgage loans, including strong incentives to hold tranches of subprime private-label MBS.

Highly-rated tranches of subprime MBS securities promised higher yields than equivalent maturity U.S. Treasury securities and their NRSRO investment grade credit ratings created the perception that the MBS had very low default risk. Banks that were approved to have trading books could purchase bonds issued by tranches of subprime MBS and receive market risk regulatory capital treatment instead of credit risk "banking-book" treatment. By holding subprime MBS in their trading books, banks could leverage the yield on these bonds far in excess of the effective yields produced by whole mortgage loans held by the bank in their so-called banking book and subject to Basel I minimum credit risk capital requirements.

Prior to the Great Financial Crisis, Basel I capital rules included Basel I credit risk capital requirements, the Basel Market Risk Amendment for securities held in a bank's trading book,[28] and the Amendment for The Capital Treatment of Recourse, Direct Credit Substitutes and Residual Interests in Asset Securitizations, a rule that established minimum capital rules for bank loan sales and securitizations.[29]

Under the Basel I credit risk capital rules,[30] residential mortgage loans held by a depository on a "held-to-maturity" basis would be subject to a 50 percent risk weight. Basel I required the institution to maintain a minimum 8 percent risk-weighted capital ratio. For each $100 in residential mortgage loan balances the bank held on its balance sheet in its so-called banking book, it would have to maintain $4 in qualifying regulatory capital which was comprised of equity, qualifying reserves, qualifying hybrid capital

[27] The most important NRSROs were Standard and Poor's Corporation, Moody's, and Fitch.
[28] https://www.govinfo.gov/content/pkg/FR-1996-09-06/pdf/96-22546.pdf
[29] https://www.federalregister.gov/documents/2001/11/29/01-29179/risk-based-capital-guidelines-capital-adequacy-guidelines-capital-maintenance-capital-treatment-of
[30] https://www.bis.org/publ/bcbs04a.pdf

instruments and subordinated debt within prescribed regulatory limits.[31]

The Basel Market Risk Amendment took effect at the end of 1997. The Amendment specified capital requirements for securities held in a bank's trading book. Trading book securities had to be market-to-market daily. Their minimum capital requirement was determined by a value-at-risk calculation using either daily or ten-day security price changes. The institution was required to hold capital based on a (one-tailed) 99-percent 10-day value-at-risk estimate that was calculated using a model that satisfied a list of prescribed qualitative and quantitative regulatory standards.[32] Trading book value-at-risk capital requirements were substantially lower than the Basel I credit risk capital requirements that would apply if a security were held in the bank's held-to-maturity banking book. Market risk capital requirements made it beneficial to hold mortgage risk in the form of securities held in the bank's trading book instead of as held-to-maturity whole mortgages or mortgage-backed securities in the institution's banking book.

In 2002, the basic Basle I framework was modified by the "Recourse Rule" Amendment. This amendment was supposed to modify a bank's minimum risk-based capital requirements so that the requirements would be "better" aligned with the risk generated by: (i) bank asset sales that included recourse agreements; (ii) bank issued direct credit substitute products like liquidity puts; and, (iii) the various subordinated tranches in asset securitizations. With this amendment, securitization tranches rated by NRSROs, especially highly rated tranches, were assigned favorable credit risk weights which lowered the amount of regulatory capital a bank needed to hold the instrument in its banking book.

Tranches with NRSRO ratings AA and above received a risk weight of 20 percent ($1.6 in capital per $100 investment); tranches rate A received a 50 percent risk weight ($4 in capital per $100 investment); tranches rated BBB received a 100 percent risk weight ($8 in capital per $100 investment); and tranches rated BB received a 200 percent risk weight ($16 in capital per $100 investment). Tranches with ratings lower than BB had to be deducted dollar-for-dollar from a bank's regulatory capital ($100 in capital per $100 investment) which equates to a risk weight of 1250 percent.[33] These changes to the regulatory capital requirements gave banks a strong incentive to securitize their mortgage loans and, should they want to hold residential mortgage exposure in their banking book, hold it in the form of MBS tranches

[31] Banking book assets are valued at amortized cost and are intended to be held to maturity. In held-to-maturity treatment, loans or securities are held at amortized cost and any diminution in a position's value that arises because of an increase in the probability of payment delays or default is recognized through loss provisions which impact bank earnings. Changes in position values that owe to changes in interest rates are not recognized.

[32] The regulation allowed a bank to approximate 10-day price changes using one-day price changes multiplied by the square root of 10.

[33] These rating grades refer to Standard and Poor's rating categories.

with NRSRO ratings of A or higher.

The Recourse Amendment also included preferential treatment for short-term money market type instruments that received the highest NRSRO ratings. Instruments rated A1-P1 were assigned a 20 percent risk weight. Instruments rated A2-P2 received a 50 percent weight, while instruments rated A3-P3 received a 100 percent risk weight.

Prior to the onset of the 2008 financial crisis, market price quotes for NRSRO highly-rated tranches of private label MBS showed very little day-to-day price volatility. If these securities were held in a bank's trading book, instead of its banking book, they were subject to capital requirements set by the market risk amendment. The value-at-risk models for subprime MBS securities typically modeled day-to-day price variation in terms of the day-to-day variation of several key interest rates from the Treasury yield curve. These models typically did not model the possibility that a security might experience an NRSRO ratings downgrade or default. For the most part, these models produced very small value-at-risk estimates. Moreover, institutional investors could hedge any un-modeled but unwanted credit risk using credit default swaps written on MBS securities which would also be marked-to-market in a bank's trading book value-at-risk calculations.

In the years prior to the 2008 financial crisis, I saw regulatory value-at-risk estimates for highly-rated subprime MBS securities as low as 15 to 20 basis points. Using a typical Market Risk Amendment back test multiplier of 3, a 20 basis point average value-at-risk estimate, along with a 1.6 percent specific risk charge[34] would produce an equivalent risk weight of 9.1 percent. [35] This compares to a risk weight of 50 percent should the bank have held residential mortgage risk in the form of whole mortgage loan, or 20 (50) percent for AA (A) NRSRO-rated MBS investment grade tranche of a mortgage-backed security if held in the institution's banking book.

For every $100 invested in the aforementioned hypothetical private label MBS held in the bank's trading book, the bank would have to hold regulatory capital equal to 8 percent of $9.10, or about $0.73. If the bank had a supervisory approved specific risk model that produced a specific risk capital charge of less than 1.6 percent, the capital savings from holding MBS securities in the trading book instead of whole mortgage loans or MBS securities in the banking book could be even larger. MBS trading book exposures held in the form of asset-backed commercial paper would have had even smaller regulatory capital

[34] 1.6 percent is the specific risk capital charge for a non-government security with a maturity of more than 2 years.
[35] The equivalent risk weight for the mortgage-backed security is 12.5*.006+1.6=9.1 percent.

requirements.

Other regulatory capital requirements that created bank incentives to invest in residential mortgage risk included preferential rules regarding investments in Fannie Mae, Freddie Mac and Ginnie Mae securities. The debt and MBS issued by these federal housing GSEs received a risk weight of 20 percent for banking book investments and banks were not subject to concentration restrictions as to their total GSE exposures.[36] Moreover, national banks could purchase and hold Freddie Mac and Fannie Mae preferred shares in their banking book and face only a 20 percent risk weight. State-chartered banks could also purchase shares but faced a higher risk weight of 100 percent. Many banks did hold substantial investments in Fannie Mae and Freddie Mac debt and preferred shares and suffered commensurate losses on these investments when these GSEs were placed into government conservatorship.[37] These losses contributed to the failure of many insured depository institutions.

**2.4 Capital Market Financial Innovation**

Shortcomings in bank minimum capital requirement regulations were not the only factor contributing to the imbalances that caused the 2008 global financial crisis. The Financial Crisis Inquiry Report argues (and I agree) that the housing bubble and subsequent financial crisis were also fueled by the development of a new set of wholesale capital markets instruments that were created to facilitate the structured debt securitization market.

Ironically, the activities of the Resolution Trust Corporation (RTC), the temporary government agency created by FIRREA to dispose of the assets of failing thrift institutions, were an important catalyst for the development of the market for structured securitized debt products.[38] The Resolution Trust Corporation institutionalized structured debt securitizations. These financially-engineered instruments added credit enhancements to a pool of below investment grade collateral to create senior-subordinated bond structures with a large share of highly-rated bonds. The RTC was a pioneer in issuing senior-subordinated "waterfall structures", overcollateralization, bank letter of credit guarantees, and insurance company guarantees (so-called "wraps") as mechanisms that enabled pools of low-quality assets to be securitized

[36] Bank regulations typically limited a bank's overall exposure to a single counterparty to some percentage of a bank's capital. For example, OCC rules at the time restricted a national banking from lending more than 15 percent of the bank's unimpaired capital and surplus for unsecured a single borrower. They could lend an additional 10 percent of their unimpaired capital and surplus to that borrower if the additional 10 percent was fully collateralized. These rules were waived for exposures to the federal housing GSEs.

[37] See, for example https://www.federalreserve.gov/pubs/ifdp/2012/1045/ifdp1045.pdf

[38] This opinion is shared by many. See, for example, The Financial Crisis Inquiry Report (FCIC), available at https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf, pp. 69-71.

in special purpose financial entities that issued highly-rated bonds to fund a substantial share of their collateral pool.

The special financial entities involved in securitization transactions are called special purpose vehicles (SPVs) and special investment vehicles (SIVs). They are bankruptcy remote pass-through entities that purchase and hold loans or bonds and issue bonds called collateralized debt obligations (CDOs) to fund their investments. Like mutual funds, the CDO bonds issued by SPVs and SIVs are tax exempt entities provided that they distribute at least 95 percent of the income generated by the pool of assets that backs their securitizations.

CDO bonds issued SPVs and SIVs promise specific cash payments profiles funded from the gross revenues generated by their asset holdings and credit or liquidity guarantees. The gross interest payments from SPV(SIV) assets are pooled and divided among the classes of bonds issued by the SPV (SIV). The highest quality bond class issued by the SPV(SIV) gets the highest priority over the pooled interest receipts to satisfy the bond class promised interest payments. The second highest bond class issued by the SPV(SIV) has priority claim on the remaining pooled interest receipts to satisfy its class promised interest payments. The "waterfall" of claims on remaining gross interest receipts continues with further subordinated tranches.

As a general matter, SPVs issue bonds with effective maturities that mirror the maturity of the collateral pool while SIVs often fund long maturity collateral with short maturity securities like commercial paper.

By the time the RTC ceased operations at year-end 1995, the financial engineering techniques underlying senior-subordinated structures and credit enhancements were widely accepted by investors as a legitimate method of lowering the yields on the bonds issued to fund a pool of lesser quality securitized assets.

As the subprime mortgage-backed securitization market continued to develop using credit enhancement structures, the market needed to find buyers for the lower-quality tranches of MBS securities.[39] The market solved this problem by developing and expanding the issuance of subprime-backed CDOs to include bankruptcy remote SPVs that purchased, pooled, and securitized the subordinated tranches of subprime MBS issues.

[39] Early finance company who pioneered subprime mortgage securitizations in the late 1990s using pools of manufactured housing mortgages were forced into bankruptcy because, for lack of third-party buyers, they were forced to hold the subordinated tranches of their securitizations.

Low-rated subprime mortgage-backed bonds issued by SPVs and SIVs often were purchased by other SPVs and SIVs and used as the assets to back new so-called MBS re-securitizations. These re-securitizations were funded by issuing so-called CDO-squared securities which were bonds issued by an SPV that predominately purchased and held the securities issued by a CDO. CDO demand for subordinate tranches of subprime MBS securities indirectly supported orginations of subprime residential mortgages.[40]

Another financial innovation that fueled exposure to subprime mortgage default risk was the development of credit default swaps on single tranches of private label subprime MBS and synthetic CDO-squared securitizations. Banks, investment banks and insurance companies like American Insurance Group (AIG) were active participats in this credit risk transfer market.

Using credit default swaps referencing single tranches of private label subprime MBS, it was possible to either assume—or alternatively hedge—the credit risk on single tranches of private label subprime MBS. Banks and investment banks also assembled portfolios of credit default swaps on various private label single tranche subprime MBS securities and used them as the underlying collateral to create synthetic subprime CDO-squared securities. These derivative securities could be used to buy or sell the underlying default risk in subprime MBS and CDO-squared securities without the SPV owning the referenced subprime securities.

The securities issued by SIVs that purchased MBS were a specific class of asset-backed commercial paper. MBS SIV funded their assets with short maturity instruments. Under normal market conditions short-term interest rates are typically lower than longer maturity rates. SIVs' bonds appeared to be especially profitable so long as the term-structure of interest rates was upward sloping and SIVs' short-term commercial paper funding could continue to be rolled over at favorable rates.

Money market mutual funds were an important purchaser of asset-backed commercial paper backed by pools of subprime mortgage and MBS. At that time, money market mutual funds were required to invest 95 percent of their assets in investment grade commercial paper. Non-bank subprime mortgage originators and CDOs were large issuers of subprime mortgage asset-back commercial paper. In order to receive an investment grade rating, NRSROs required many asset-backed commercial paper issuers to have liquidity puts or letters of credit from banks. Banks sold credit guarantees to the SPVs and SIVs that purchased subprime mortgages and subprime MBS securities to facilitate their re-securitizations. These credit guarantees were direct credit substitutes eligible to receive favorable regulatory capital treatment

[40] FCIC, p. 134.

under the Basel I "Recourse Rule" amendment.

Non-bank subprime mortgage originators and commercial paper issuers also had large warehouse lines of credit with banks, sometimes in the form of repurchase agreements using subprime mortgages as collateral,[41] to fund their mortgage origination operations.[42]

As long as subprime MBS security pools experienced low default rates, banks profited from selling liquidity puts and letters of credit to asset-backed commercial paper programs backed by subprime mortgage collateral. Under the Recourse Rule amendment, these credit substitutes received preferential regulatory capital treatment.[43] However, this business became costly once banks had to provide these commercial paper programs with liquidity support when the market for asset-backed commercial paper collapsed in the fall of 2007.[44]

**2.5 Unscrupulous NRSROs**

The profitability of securitization and re-securitization programs depended on the share of the asset pool that could be funded by bonds that received high NRSRO ratings. NRSROs competed to rate the securities being sold to fund the subprime mortgage businesses. The NRSRO industry was highly profitable and very concentrated. S&P and Moody's accounted for over three-quarters of all assigned ratings. NRSROs were essentially unregulated and effectively shielded from any liability for producing inaccurate ratings.

NRSROs were exempted from any liability associated with their ratings under the so-called "negligence standard of care." Normally an expert's opinion could be published in a SEC registration statement only if: (i) the expert gives consent; and (ii) the expert is liable to investors for negligent and misleading opinions. In the case of NRSRO ratings, Rule 436 of the Securities Act explicitly states that NRSRO ratings included in a prospectus are not to be deemed part of the Section 7 or 11 of security registration statements.[45] Consequently, MBS CDO issuers did not have to get consent to disclose NRSRO ratings in bond prospectus and NRSROs were not liable for negligent or misleading opinions.

The profitability of MBS securitizations depends on acquiring a favorable NRSRO ratings on the largest

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[41] The Financial Crisis Inquiry Report (FCIC), available at https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf, p. 142.
[42] The Financial Crisis Inquiry Report (FCIC), available at https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf, p. 113.
[43] The Financial Crisis Inquiry Report (FCIC), available at https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf, p. 113-114.
[44] Covitz, Liang and Suarez (2009), "The Evolution of a Financial Crisis: Panic in the Asset-Backed Commercial Paper Market," Federal Reserve Board, https://www.federalreserve.gov/pubs/feds/2009/200936/200936pap.pdf
[45] https://www.law.cornell.edu/cfr/text/17/230.436

possible share of the asset pool's value backing the MBS. The larger the share of financing that could be raised from selling highly-rated securitization bond tranches, the greater the remaining cash flow and higher potential yield that could be earned on the subordinate tranches, making them easier to place or re-securitize in mortgage-backed CDOs.

NRSROs actively competed for market share in rating subprime MBS and CDOs. As Moody's managing director, Jerome Fons explained in Congressional testimony,[46] "My view is that a large part of the blame can be placed on the inherent conflicts of interest found in the issuer-pays business model and rating shopping by issuers of structured securities. An NRSRO's market share depended on its willingness to participate in this shopping spree.

NRSROs only were paid for the MBS and CDO securitization they rated, and as the housing price bubble grew, rating MBS securitization deals became a very important source of NRSRO business.[47] It was also relatively easy for the securitizing banks and investment banks to play the NRSROs against one another because MBS CDO structures were opaque and paid high fees to the winning NRSRO. Originators of structured securities typically chose the agency with the lowest standards, fueling a race to the bottom in terms of NRSRO rating quality.[48]

NRSROs did not sample or otherwise review the loans in the securitization asset pools they rated.[49] They increased the share of the asset pool funded by highly rated MBS tranches by employing optimistic modeling assumptions to rate structured MBS products. These included calibrating mortgage default assumptions using a historical period with rising home prices and very low subprime mortgage default rates. They also employed very optimistic correlation assumptions even though many asset pools

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[46] Testimony of Jerome S. Fons Before the Committee on Oversight and Government Reform United States House of Representatives October 22, 2008, https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/20081022102726.pdf [Fons' reference to (Fons 2008) in the quote is: "Rating Competition and Structured Finance, *Journal of Structured Finance*, Fall 2008.]

[47] For example, the FCIC reports (p. 118) that mortgage-backed securitization ratings made up close to half of Moody's rating revenues between 2005 and 2007.

[48] Fons went on to say, "Following the 2000 "spin" from Dunn & Bradstreet, in which Moody's became a standalone public company, management's focus increasingly turned to maximizing revenues. Stock options and other incentives raised the possibility of large payoffs. Managers who were considered good businessmen and women—not necessarily the best rose analysts—rose through the ranks. Ultimately, this focus on the bottom line contributed to an atmosphere in which the aforementioned rating shopping could flourish."

[49] FCIC, p. 120.

contained mortgages with geographic concentrations.[50] Even as housing prices rose to unprecedented levels, NRSROs never adjusted their modeling assumptions to put greater weight on the possibility of widespread home price declines.[51]

**2.6 Regulatory Experts Failed to Recognize the Risk**

The boom in subprime originations, securitizations and re-securitizations did not go unnoticed by financial regulators and their economist experts. In the boom that occurred before the crash, new financial innovations become widely adopted among financial institutions and appeared to be generating sustainable profits. In such circumstances, economists have an inherent tendency to attribute the financial trend as the outcome of some rational process. This tendency reflects the profession's predilection to model economic phenomenon implicitly or explicitly presuming that firms and investors have rational expectations. The subprime mortgage frenzy generated substantial financial institution profits in the years before subprime mortgages began to default with vigor, and true to nature, regulators' economic experts viewed so-called "originate to distribute" subprime mortgage market innovations as generally positive developments.

In a 2004 report[52] on Credit Risk Transfer, the Joint Forum, a Committee comprised of the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, and the International Association of Insurance Supervisors found, "Market participants generally hold highly favorable views regarding the overall benefits of a robust [Credit Risk Transfer] CRT market."[53] The report cites CRT benefits that include the ability to transfer risks and reduce risk concentrations. They also cite the benefits of CRT activity in fostering more liquid and transparent markets for credit risk generally.

The 2006 Financial Stability Report of the International Monetary Fund stated, "There is growing recognition that the dispersion of credit risk by banks to a broader and more diverse group of investors, rather than warehousing such risk on their balance sheets, has helped to make the banking and overall financial system more resilient.[54] The report argues that CRT brought new investors into credit markets

[50] NRSROs assumed the individual mortgages in MBS securities were unlikely to default simultaneously even though many of the loans in the pool were in the same geographic regions of the countries. In CDO deals NRSROs assumed that the performance of the MBS securities in the CDO pool were not strongly correlated.
[51] FCIC p. 121.
[52] Joint Forum (October 2004), "Credit Risk Transfer, https://www.bis.org/publ/joint10.pdf
[53] CRT is an abbreviation for Credit Risk Transfer which includes structured securitization products like subprime MBS.
[54] International Monetary Fund, The Influence of Credit Derivative and Structured Credit Markets on Financial Stability, in Global Financial Stability Report A Report by the International Capital Markets Department on Market Developments and Issues 51, 63 (April 2006).

with differing risk management and investment objectives (including other banks seeking portfolio diversification) which will help to mitigate and absorb shocks to the financial system. The improved resilience will result in fewer bank failures and a more stable supply of credit. The report concludes that CRT makes, "commercial banks, a core segment of the financial system, ... less vulnerable today to credit or economic shocks."

The conclusions of the IMF's financial stability report were echoed in the remarks made by Federal Reserve Bank of New York president Tim Geithners at the Global Association of Risk Professionals annual conference in 2006. According to Geithner, "the rapid growth in instruments for risk transfer and risk management... provide substantial benefits to the financial system. Financial institutions are able to measure and manage risk much more effectively. Risks are spread more widely, across a more diverse group of financial intermediaries, within and across countries. These changes have contributed to a substantial improvement in the financial strength of the core financial intermediaries and in the overall flexibility and resilience of the financial system in the United States. And these improvements in the stability of the system and efficiency of the process of financial intermediation have probably contributed to the acceleration in productivity growth in the United States and in the increased stability in growth outcomes experienced over the past two decades."

In 2008, economists from the Federal Reserve Bank of Boston and the FDIC presented a joint paper[55] at the Federal Reserve Bank of Chicago Bank Structure Conference (the premier Federal Reserve System bank research conference at the time) that argued, "banks use mortgage securitization to reduce insolvency risk and increase leverage. We also find that securitization techniques increase bank profitability."

In yet another example, a 2007 paper written by a Federal Reserve Board economist argued that the huge growth in the credit derivative and securitization market could be attributed to improvements in financial institution risk management. "Credit Derivative and Risk Management," which appeared in the Federal Reserve Bank of Atlanta Economic Review[56] concluded, "Given the rapid growth of the credit derivatives market, it may be fortunate that one of the most widely used complex credit derivative structures, the CDO tranche, is a mature product has already been through a stressful credit cycle. This experience should

[55] Jiangli, W. and M. Pritsker (2008), "The Impact of Securitization on U.S. Bank Holding Companies. No. 1097, Proceedings, The Federal Reserve Bank of Chicago https://econpapers.repec.org/paper/fipfedhpr/1097.htm
[56] https://www.atlantafed.org/-/media/documents/research/publications/economic-review/2007/vol92no4_gibson.pdf

contribute to financial stability during the next credit cycle, whenever that may come to pass."

Of course, in time, all these expert assessments of the benefits of the credit risk transfer associated with subprime mortgage originations and securitizations proved to be wrong. Subprime mortgage securitizations and related credit derivative market innovations created unsustainable credit risk concentrations and financial leverage in many financial institutions, including in "too-big-to-fail" federal housing GSEs, banks, bank holding companies, insurance companies and investment banks.

In a three-year period, from 2007 to 2009, subprime mortgage defaults led to a severe recession and the failure of over 150 insured depository institutions, stock market losses of nearly $8 trillion, the failure of several large investment banks, large losses at the FHA, the federal housing GSEs and insurance companies like AIG—all of which required federal government support.[57]

In response to the financial crisis, the U.S. government took extensive action to restore confidence in the financial markets. In October of 2008, Congress passed the Emergency Economic Stabilization Act ("EESA") to provide assistance to the financial system.[58] Subsequently, in June of 2009, President Obama announced "a sweeping overhaul of the financial regulatory system" to increase oversight of the financial system, which culminated with the passing of the Dodd-Frank Act.[59]

The Dodd-Frank Act was enacted on July 21, 2010. The Dodd-Frank Act instituted broad modifications to the supervision of financial institutions related to banking, securitization markets, consumer protection, executive compensation, and corporate governance.[60]

### 3. The Dodd-Frank Act

My discussion of the Dodd-Frank Act is focused on the provisions most closely related to the aforementioned supervision and regulation shortcomings that led to the Great Financial Crisis.

Among the many provisions of The Dodd-Frank Act was the creation of five new federal regulatory entities that were in large part created to prevent a reoccurrence of the most consequential financial excesses that caused the Great Financial Crisis. These entities are: The Consumer Financial Protection Bureau (CFPB), The Office of Financial Research (OFR), the Financial Stability Oversight Council (FSOC),

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[57] *See* FDIC, "Failed Bank list," available at https://www.fdic.gov/bank/individual/failed/banklist html.
[58] *See* "Emergency Economic Stabilization Act of 2008," Public Law 110–343, October 3, 2008, at 3765.
[59] *See* "Remarks of the President on Regulatory Reform," *Obama White House Archives*, June 17, 2009, available at https://obamawhitehouse.archives.gov/the-press-office/remarks-president-regulatory-reform/.
[60] *See* Davis Polk & Wardell LLP, "Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Enacted into Law on July 21, 2010," July 21, 2010, p. i. *See also* Morrison & Foerster, "The Dodd-Frank Act: A Cheat Sheet," 2010, p. 3.

the Federal Insurance Office (FIO), and the Office of Credit Ratings within the Securities and Exchange Commission.

The CFPB was created to protect consumers from unfair, deceptive and abusive practices. Among its duties are the promulgation of regulations that protect consumers from predatory mortgage origination practices, including ensuring they had the ability to repay their mortgages, and to enforce laws that prohibit discrimination in the provision of financial services.

The OFR was established to support the work of the FSOC by collecting and standardizing data. It is charged with providing research services to support the FSOC including developing tools that can be used to assess and monitor financial stability.

Insurance companies like AIG played an important role in the Great Financial Crisis by engaging in credit risk transfer activities that supported risky subprime MBS issuance. The FIO was created to assist the FSOC in identifying systemically risky insurers and insurance practices by collecting and analyzing information. It was also designated as the U.S. representative in international fora regarding insurance regulations.

The FSOC was created to identify institutions or activities that may have the potential to create systemic risk for the financial sector. It was also designed to coordinate information and regulatory activities among the Secretary of the Treasury (the FSOC chair) and its federal agency voting members: the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Federal Housing Finance Agency (FHFA), the National Credit Union Administration (NCUA), and the Consumer Financial Protection Bureau (CFPB). The head of the OFR and the FIO do not have direct regulatory authority and are non-voting FSOC members.

Among the FSOC's duties is the power to investigate and designate non-bank financial institutions as "systemically important" and require them to comply with enhanced regulation and oversight by the Federal Reserve Board. If it identifies financial activities or practices that raise systemic risk concerns, it has the power to recommend that the primary financial regulatory agency or agencies apply new or heightened standards and safeguards.

Poorly designed minimum regulatory capital requirements that allowed the use of in inaccurate NRSRO ratings and permitted excessive leverage were an important underlying cause of the Great Financial Crisis. The Dodd-Frank Act includes many provisions that mandate enhanced regulatory capital

requirements for large complex bank and financial holding companies and their insured depository subsidiaries.

For example, Title I Section 115 of the Act requires the Federal Reserve Board to consider imposing enhanced regulatory standards recommended by the FSOC for non-bank financial institutions that the FSOC has designated to be systemically important. The enhanced standards the FSOC may recommend include: "(A) risk-based capital requirements; (B) leverage limits; (C) liquidity requirements; (D) resolution plan and credit exposure report requirements; (E) concentration limits; (F) a contingent capital requirement; (G) enhanced public disclosures; (H) short-term debt limits; and (I) overall risk management requirements."

Section 121 of the Act gives the Federal Reserve Board prompt corrective action powers over the bank holding companies and non-bank financial institutions it supervises should the Federal Reserve Board, by a 2/3 margin vote, find that the institution "poses a grave threat to the financial stability of the United States." The Federal Reserve Board's powers are extensive and include the power to force the institution to sell or otherwise transfer assets, businesses or entities to nonaffiliated parties.

Section 165 requires the Board of Governors to impose enhanced regulatory requirements on the large complex bank holding companies it supervises. Enhanced regulations may encompass regulations of the type permitted under Section 115. The section also requires periodic Federal Reserve Board designed stress tests as well as periodic company-run stress test requirements.

Title I, Section 171 the Dodd-Frank Act requires regulators to establish both minimum leverage and minimum risk-based capital requirements and to impose enhanced capital requirements on institutions deemed to be systemically important and supervised by the Federal Reserve Board.

Title I also requires certain nonbank financial institutions and bank holding companies to periodically prepare and file resolution plans or so-called living wills with the Federal Reserve Board and the FDIC. These resolution plans include public and confidential sections, the latter of which have restricted access even within the FDIC and Federal Reserve Board.

The financial crisis was triggered by the failure of several large complex financial institutions in September 2008. These failures brought a halt to normal financial intermediation transactions until the federal government took extraordinary measures to rekindle investor confidence. Dodd-Frank resolution plans are intended to reduce the financial spillover risk created by the insolvency of large complex bank and financial holding companies. Resolution plans are intended to provide regulators with possible

strategies "for rapid and orderly resolution in the event of material financial distress or failure" under the bankruptcy code. Dodd-Frank Act Title II, Orderly Liquidation Authority, was created to help regulatory authorities maintain financial stability by resolving the failure of a large complex financial institution in a process using FDIC receivership powers when authorities have determined that its failure under a bankruptcy code proceeding would be highly destabilizing.

Under subsequent revisions to the Dodd-Frank Act, the largest most complex institutions, those deemed to be systemically important, must file living wills annually. Other large and complex financial intuitions, both foreign and domestic, must file a living wills every three years. The FDIC and Federal Reserve Board jointly review the credibility of institutions' living will submissions and must approve them.[61] Institutions can face penalties if their submission is not deemed to be credible.

Title II of the Dodd-Frank Act assigns the FDIC a new receivership role. In addition to the FDIC's duty to act as the receiver of failed insured depository institutions, Orderly Liquidation Authority (OLA) broadens the FDIC's powers by allowing it to function as the receiver for bank holding companies, financial holding companies and other financial firms should government authorities determine that the nonbank financial firm in question is in danger of failing and its failure and resolution under the bankruptcy code would have negative systemic consequences and create larger losses throughout the financial system.

Use of the OLA powers require a formal Systemic Risk Determination made by the Secretary of the Treasury in consultation with the President and financial regulatory authorities. A Systemic Risk Determination requires:

- The approval of the Secretary of the Treasury in consultation with the President
- A vote in favor of at least 2/3 members of the Federal Reserve Board, and
- A vote in favor from the primary federal regulator of the largest regulated financial subsidiary
    - The FDIC if an insured depository (at least 2/3 board approval)
    - The SEC if a broker-dealer (at least 2/3 board approval)
    - The FIO if an insurance company

Under the Dodd-Frank Act, the resolution under the OLA must not impose any losses on taxpayers.[62] The Dodd-Frank Act established an Orderly Liquidation Fund ("OLF") which is an FDIC line of credit with the U.S. Treasury that the FDIC may draw upon, subject to terms set by Treasury, to lend to the non-

[61] *See* FDIC Office of Inspector General, "The FDIC's Resolution Plan Review Process, available at https://www fdicoig.gov/publications/fdics-resolution-plan-review-process.
[62] *See* Dodd-Frank Act, at 1518.

bank financial institution's receivership."[63] The OLF is separate from the Deposit Insurance Fund. It is not prefunded, but instead relies the proceeds of asset sales in the OLA resolution and on special assessments on large highly complex institutions (that have not failed) to repay any OLF borrowings.[64] OLF special assessments are in addition to deposit insurance fund members' premium assessments.

Given the importance of asset securitization and the role inaccurate and conflicted NRSRO ratings played in creating the Great Financial Crisis, Section 932 of the Act gave the SEC increased regulatory powers over the NRSROs. It established the Office of Credit Ratings (OCR) within the SEC and assigned it regulatory responsibility to ensure NRSROs ratings were based on process approved (and attested to) by the NRSRO's board of directors.

The OCR is required to conduct annual audits of all NRSROs and guard against NRSRO conflicts of interest among internal sales and rating processes, and ensure the NRSROs were operating in an ethical manner. To improve transparency, NRSROs are required to publicly disclose key features of their ratings methodology. The Act also made it easier to sue NRSROs for malfeasance and empowers the Office of Credit Ratings to impose penalties for regulatory violations including repealing an NRSROs designation.

Importantly, Section 939 required financial regulatory agencies to remove all references to NRSROs ratings in their financial regulations such as bank minimum regulatory capital requirements. To create incentives to improve ratings accuracy, the OCR has used its rule making authority to facilitate the issuance of unsolicited ratings.

Section 941 of the Act requires that agents creating and selling asset backed securities retain an economic interest in the credit risk the securitization transfers to third parties to ensure that the securitization originator has "skin in the game", i.e., bears credit losses should its ABS issue subsequently perform poorly. The Act prohibits "a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain."

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[63] The Department of the Treasury, "Report to the President of the United States, Orderly Liquidation Authority and Bankruptcy Reform," February 21, 2018, p. 1.

[64] FDIC may impose a special assessment on certain large financial institutions with at least $50 billion in assets. The OLA has never been triggered, and thus there has never been a need for the Treasury to fund the OLF to provide financial support to a failed financial institution.

## 4. Has the Dodd-Frank Act Worked?

Measured by the goals articulated in its own preamble, the Frank-Act is a failure:

> An Act: To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Notwithstanding the many complex and intrusive provisions of the Act, the system experienced a systemic banking crisis in March 2023 that required a costly government-engineered bailout of the banking system when several "too-big-fail" banks failed. The underlying cause of these failures should have been proactively detected and remediated by the FSOC and federal banking regulators using the extensive prompt corrective action powers granted by the Act and prior legislation.

The crisis required $25 billion in a Treasury first loss backstop for potential losses the Federal Reserve might incur in providing an emergency lending facility that was needed to bailout the banking system. The so-called Bank Term Funding Program liquefied banks by loaning them par value on pledged collateral from their held-to-maturity investments even those with large market-value discounts as a consequence of increased interest rates.

The decision to fully bailout very large sophisticated uninsured depositors at failing banks and assign the resulting losses to the DIF, and ultimately to large banks through special DIF assessments is not an example of the "improved accountability" the Dodd-Frank Act promised to deliver. The decision to insure all deposits regardless of deposit size generated very large DIF losses compared to the DIF losses that would have been generated if the failing banks had been resolved using standard least-cost FDIC receivership rules. The federal banking regulators who failed in their oversight responsibility assigned the very large cost of the resulting DIF receiverships to large banks that had no responsibility for the problems at the banks that failed.

Because of issues discussed below, the failures had to be funded by Fed discount window loans. This unorthodox and opaque method of receivership funding increased the losses to the DIF, additional losses that were also imposed on large banks through special DIF assessments. The reasons behind the use of Fed discount window funding for these receiverships highlights important shortcomings in the FDI Act (as currently amended) and Title II of the Dodd-Frank Act, shortcomings that, to the best of my knowledge have not received the attention they merit given the issues and costs they could create in

future financial crisis.

When assessing the positives and negatives of the Dodd-Frank Act, the words Charles Ponzi seem apropos, "When a man's vision is fixed on one thing, he may as well be blind."[65] While the Dodd-Frank Act has failed to live up to its stated purpose, the performance of the financial system under the Dodd-Frank Act is not solely attributable to provisions of the Dodd-Frank Act.

The last 15 years have seen monumental changes in the manner in which the Federal Reserve conducts monetary policy. The Fed not only engineered extended periods of near zero interest rates, it engaged in several massive QE purchase programs that vastly expanded its balance sheet while paying interest on the vastly expanded bank reserve balances created by its QE purchases. In exercising monetary policy, the Fed was very slow to identify and react to a large and persistent bout of inflation, including a boom in housing prices. Moreover, over this period, the federal government has consistently run large budget deficits. Funding for these deficits has greatly expanded the volume of outstanding US Treasury securities with implications for the investments of financial sector institutions and the liquidity demands in Treasury markets.

**4.1 Impact of the Dodd-Frank Act on Financial Sector Intermediation**

The changes in federal supervision and regulation of financial institutions mandated in the Dodd-Frank Act have the potential to significantly alter the way in which the economy accesses financial intermediation services. Table 1 shows the shares of the economy's total loan borrowing liabilities held as assets by various categories of domestic financial institutions from 2015Q1 quarter-end through quarter-end 2025Q1. The data show that, over time, as the regulations required by Dodd-Frank became fully phased-in, the share of loans provided by the domestic banking sector and the government sponsored enterprises declined by about 1 percent, while loans held by credit unions, GSE guaranteed MBS and the catch-all "other lender" category—a category that includes private funds (included in the Flow of Funds nonprofit and household sector) and nonfinancial lenders—each increased more than 1 percent. The largest loss of market share of loan held, 1.7 percent, was posted by ABS issuers.

Table 2 shows the shares of the economy's total debt securities liabilities that have been issued as well as the share of these securities held as assets by various categories of domestic financial institutions from 2015Q1 quarter-end through quarter-end 2025Q1. The data show a decline in debt security shares owned by long-maturity debt mutual funds that has been more than offset by an increase in the debt

[65] As quoted in Kindleberger (1978), Manias, Panics, and Crashes. New York: Basic Books, Inc, p. 39.

security shares owned by money market mutual funds. The shift between long-maturity and money market mutual funds coincides with the increase in short-term interest rates that began in 2022 suggesting that this sizable shift is more related to Federal Reserve policy that it is to Dodd-Frank regulations. Declines in the market shares of Life Insurance Companies, Government Sponsored Enterprises, and Real Estate Investment Trusts were offset by increases in Exchange-Traded Funds and the catch-all "Other Lender" category, Other Lenders includes private funds and nonfinancial sector lenders. The share of ABS issuers declined over this period but the share was not large enough to justify showing it as a separate lender category. The market shares of debt securities owned by depository institutions and broker-dealers fluctuated over this period, but do not show any obvious trend. This suggests that these types of financial intermediaries, at least at the aggregate industry and total debt outstanding level, did not substantially change their investment share as Dodd-Frank regulations were phased in. However, individual institutions could have and did change the type of debt securities they purchased.

Table 1: Financial Institution Share of Total Domestic Loans Liabilities Financed

| Beginning Date of Quarter | All Sector Total Loan Liabilities; $Millions, NSA | U.S.-Chartered Depository Institution Loan Assets, NSA | Credit Union Loan Assets, NSA | Government-Sponsored Enterprise Loan Assets, NSA | Agency-and GSE-Backed Mortgage Pools Total Mortgage Assets, NSA | Issuers of Asset-Backed Securities Loan Assets, NSA | Life Insurance Company Loan Assets, NSA | Finance Company Loan Assets, NSA | Other Lender Loan Assets, NSA |
|---|---|---|---|---|---|---|---|---|---|
| 1/1/2015 | 25,075,689 | 30.7% | 2.9% | 22.0% | 6.6% | 5.0% | 2.3% | 4.9% | 25.6% |
| 4/1/2015 | 25,293,021 | 31.1% | 3.0% | 22.1% | 6.6% | 5.0% | 2.3% | 4.9% | 25.1% |
| 7/1/2015 | 25,435,629 | 31.3% | 3.1% | 22.1% | 6.8% | 4.8% | 2.3% | 4.9% | 24.8% |
| 10/1/2015 | 25,802,442 | 31.6% | 3.1% | 22.0% | 6.9% | 4.6% | 2.4% | 4.4% | 25.1% |
| 1/1/2016 | 25,993,484 | 31.7% | 3.1% | 21.8% | 6.9% | 4.5% | 2.4% | 4.2% | 25.4% |
| 4/1/2016 | 26,318,660 | 32.0% | 3.2% | 21.8% | 7.0% | 4.3% | 2.4% | 4.1% | 25.2% |
| 7/1/2016 | 26,585,808 | 32.1% | 3.2% | 21.7% | 7.1% | 4.1% | 2.4% | 4.1% | 25.3% |
| 10/1/2016 | 26,827,784 | 32.2% | 3.3% | 21.8% | 7.2% | 3.9% | 2.4% | 4.0% | 25.1% |
| 1/1/2017 | 26,972,926 | 32.0% | 3.3% | 21.7% | 7.3% | 3.8% | 2.4% | 3.9% | 25.5% |
| 4/1/2017 | 27,263,524 | 32.2% | 3.4% | 21.7% | 7.4% | 3.7% | 2.5% | 3.9% | 25.2% |
| 7/1/2017 | 27,620,083 | 32.0% | 3.4% | 21.7% | 7.5% | 3.6% | 2.5% | 3.8% | 25.4% |
| 10/1/2017 | 28,089,750 | 32.0% | 3.5% | 21.5% | 7.6% | 3.5% | 2.5% | 3.7% | 25.7% |
| 1/1/2018 | 28,196,110 | 32.0% | 3.5% | 21.4% | 7.7% | 3.5% | 2.5% | 3.7% | 25.8% |
| 4/1/2018 | 28,796,758 | 31.8% | 3.5% | 21.2% | 7.6% | 3.4% | 2.5% | 3.6% | 26.3% |
| 7/1/2018 | 29,088,243 | 31.7% | 3.6% | 21.1% | 7.7% | 3.4% | 2.5% | 3.6% | 26.4% |
| 10/1/2018 | 29,571,285 | 31.9% | 3.6% | 21.0% | 7.8% | 3.3% | 2.5% | 3.5% | 26.4% |
| 1/1/2019 | 29,597,631 | 31.8% | 3.6% | 20.8% | 7.8% | 3.3% | 2.6% | 3.5% | 26.5% |
| 4/1/2019 | 29,847,279 | 32.1% | 3.6% | 20.8% | 7.8% | 3.3% | 2.6% | 3.5% | 26.2% |
| 7/1/2019 | 30,323,354 | 31.9% | 3.6% | 20.6% | 7.8% | 3.3% | 2.6% | 3.5% | 26.6% |
| 10/1/2019 | 30,693,543 | 31.9% | 3.7% | 20.5% | 7.8% | 3.3% | 2.6% | 3.4% | 26.7% |
| 1/1/2020 | 31,981,840 | 31.9% | 3.6% | 20.3% | 7.6% | 3.3% | 2.5% | 3.3% | 27.4% |
| 4/1/2020 | 31,973,601 | 32.1% | 3.6% | 20.0% | 7.6% | 3.3% | 2.6% | 3.2% | 27.6% |
| 7/1/2020 | 32,121,431 | 31.6% | 3.7% | 20.3% | 7.6% | 3.3% | 2.5% | 3.2% | 27.9% |
| 10/1/2020 | 32,556,094 | 31.0% | 3.6% | 20.6% | 7.5% | 3.2% | 2.5% | 3.2% | 28.4% |
| 1/1/2021 | 32,858,074 | 30.5% | 3.6% | 21.0% | 7.4% | 3.2% | 2.5% | 3.2% | 28.6% |
| 4/1/2021 | 33,877,873 | 29.7% | 3.6% | 20.9% | 7.3% | 3.1% | 2.5% | 4.8% | 28.2% |
| 7/1/2021 | 34,380,091 | 29.4% | 3.6% | 21.0% | 7.2% | 3.2% | 2.5% | 4.7% | 28.3% |
| 10/1/2021 | 35,376,785 | 29.5% | 3.6% | 21.0% | 7.1% | 3.3% | 2.5% | 4.4% | 28.6% |
| 1/1/2022 | 36,182,010 | 29.1% | 3.7% | 21.2% | 7.0% | 3.3% | 2.5% | 4.3% | 28.9% |
| 4/1/2022 | 37,025,175 | 29.6% | 3.8% | 21.3% | 7.0% | 3.3% | 2.5% | 4.3% | 28.3% |
| 7/1/2022 | 37,647,501 | 29.8% | 3.9% | 21.5% | 7.0% | 3.3% | 2.5% | 4.2% | 27.8% |
| 10/1/2022 | 38,179,289 | 30.0% | 4.0% | 21.8% | 7.0% | 3.2% | 2.5% | 4.2% | 27.3% |
| 1/1/2023 | 38,465,721 | 29.9% | 4.0% | 22.2% | 7.1% | 3.2% | 2.5% | 4.2% | 26.9% |
| 4/1/2023 | 38,485,557 | 30.1% | 4.1% | 21.8% | 7.2% | 3.2% | 2.5% | 4.3% | 26.7% |
| 7/1/2023 | 38,612,631 | 30.1% | 4.2% | 21.8% | 7.3% | 3.2% | 2.6% | 4.4% | 26.5% |
| 10/1/2023 | 39,060,640 | 30.0% | 4.2% | 21.5% | 7.3% | 3.2% | 2.6% | 4.4% | 26.8% |
| 1/1/2024 | 39,125,070 | 29.9% | 4.1% | 21.4% | 7.4% | 3.2% | 2.6% | 4.4% | 26.9% |
| 4/1/2024 | 39,489,912 | 30.0% | 4.1% | 21.3% | 7.5% | 3.2% | 2.6% | 4.4% | 26.8% |
| 7/1/2024 | 39,883,623 | 29.8% | 4.1% | 21.2% | 7.5% | 3.2% | 2.7% | 4.4% | 27.1% |
| 10/1/2024 | 40,223,558 | 29.9% | 4.1% | 21.1% | 7.6% | 3.3% | 2.7% | 4.4% | 26.9% |
| 1/1/2025 | 40,382,342 | 29.9% | 4.1% | 21.0% | 7.6% | 3.3% | 2.7% | 4.3% | 27.1% |

Source: Federal Reserve Board Flow of Funds data and authors calculations.

Table 2: Financial Institution Share of Total Domestic Debt Liabilities Financed

| Beginning Date of Quarter | All Sectors Total Debt Security Liabilities, Millions of Dollars, NSA | Monetary Authority Debt Security Assets, NSA | U.S.-Chartered Depository Institution Debt Security Assets, NSA | Mutual Fund Debt Security Assets (Market Value), NSA | Money Market Fund Debt Security Assets, NSA | Security Brokers and Dealer Debt Security Assets, NSA | Property-Casualty Insurance Company Debt Security Assets, NSA | Life Insurance Company Debt Security Assets, NSA | Government-Sponsored Enterprise Debt Security Assets, NSA | Exchange-Traded Fund Debt Security Assets, NSA | Private Pension Fund Debt Security Assets, NSA | Real Estate Investment Trust Debt Security Assets, NSA | Other Lenders' Holdings of Debt Security Assets, NSA |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1/1/2015 | 36,778,363 | 12.6% | 8.9% | 10.3% | 4.5% | 1.5% | 2.8% | 9.0% | 1.3% | 0.9% | 3.3% | 1.0% | 43.8% |
| 4/1/2015 | 37,087,627 | 12.2% | 8.8% | 10.2% | 4.4% | 1.4% | 2.8% | 8.9% | 1.3% | 0.8% | 3.2% | 0.9% | 45.0% |
| 7/1/2015 | 37,284,348 | 12.3% | 8.9% | 10.1% | 4.4% | 1.4% | 2.8% | 8.9% | 1.2% | 0.9% | 3.2% | 0.8% | 45.1% |
| 10/1/2015 | 37,503,305 | 12.1% | 9.0% | 9.9% | 4.7% | 1.3% | 2.7% | 8.8% | 1.2% | 0.9% | 3.1% | 0.8% | 45.4% |
| 1/1/2016 | 38,006,860 | 12.2% | 9.0% | 10.1% | 4.9% | 1.4% | 2.8% | 9.1% | 1.2% | 1.0% | 3.2% | 0.8% | 44.3% |
| 4/1/2016 | 38,237,402 | 12.3% | 9.1% | 10.4% | 4.6% | 1.4% | 2.9% | 9.4% | 1.2% | 1.0% | 3.3% | 0.8% | 43.6% |
| 7/1/2016 | 38,573,853 | 12.1% | 9.3% | 10.6% | 4.5% | 1.4% | 2.9% | 9.5% | 1.2% | 1.1% | 3.3% | 0.8% | 43.4% |
| 10/1/2016 | 38,767,823 | 11.5% | 9.4% | 10.2% | 4.8% | 1.3% | 2.7% | 9.1% | 1.2% | 1.1% | 3.2% | 0.8% | 44.8% |
| 1/1/2017 | 39,066,040 | 11.5% | 9.4% | 10.4% | 4.6% | 1.4% | 2.7% | 9.1% | 1.1% | 1.2% | 3.3% | 0.7% | 44.6% |
| 4/1/2017 | 39,427,909 | 11.4% | 9.3% | 10.7% | 4.2% | 1.4% | 2.7% | 9.2% | 1.1% | 1.3% | 3.3% | 0.7% | 44.7% |
| 7/1/2017 | 39,920,078 | 11.3% | 9.3% | 10.9% | 4.4% | 1.3% | 2.7% | 9.2% | 1.0% | 1.3% | 3.4% | 0.7% | 44.5% |
| 10/1/2017 | 40,504,280 | 11.0% | 9.2% | 11.0% | 4.5% | 1.3% | 2.7% | 9.1% | 1.0% | 1.3% | 3.4% | 0.7% | 44.7% |
| 1/1/2018 | 41,131,589 | 10.5% | 9.0% | 10.9% | 4.8% | 1.2% | 2.6% | 8.9% | 1.0% | 1.3% | 3.3% | 0.6% | 45.7% |
| 4/1/2018 | 41,219,076 | 10.3% | 8.9% | 11.0% | 4.5% | 1.3% | 2.6% | 8.7% | 1.0% | 1.4% | 3.3% | 0.6% | 46.2% |
| 7/1/2018 | 41,673,332 | 9.8% | 8.8% | 11.0% | 4.5% | 1.3% | 2.6% | 8.7% | 1.0% | 1.4% | 3.3% | 0.6% | 47.0% |
| 10/1/2018 | 42,108,877 | 9.5% | 9.0% | 10.5% | 4.8% | 1.6% | 2.7% | 8.6% | 1.0% | 1.5% | 3.4% | 0.6% | 46.9% |
| 1/1/2019 | 42,667,800 | 9.3% | 9.1% | 10.7% | 5.1% | 1.5% | 2.7% | 8.9% | 1.0% | 1.6% | 3.4% | 0.6% | 46.0% |
| 4/1/2019 | 43,052,728 | 9.1% | 9.2% | 11.1% | 4.8% | 1.6% | 2.7% | 9.2% | 1.0% | 1.7% | 3.5% | 0.7% | 45.4% |
| 7/1/2019 | 43,719,144 | 8.9% | 9.4% | 11.4% | 5.3% | 1.5% | 2.7% | 9.4% | 1.1% | 1.8% | 3.6% | 0.7% | 44.3% |
| 10/1/2019 | 44,205,179 | 9.1% | 9.3% | 11.5% | 5.5% | 1.5% | 2.7% | 9.4% | 1.1% | 1.8% | 3.5% | 0.7% | 43.9% |
| 1/1/2020 | 45,261,385 | 11.8% | 9.5% | 10.4% | 6.4% | 1.6% | 2.6% | 9.0% | 1.1% | 1.8% | 3.5% | 0.6% | 41.7% |
| 4/1/2020 | 48,630,196 | 14.1% | 9.5% | 10.4% | 8.1% | 1.5% | 2.6% | 9.0% | 1.1% | 1.9% | 3.4% | 0.6% | 37.8% |
| 7/1/2020 | 49,310,946 | 14.5% | 10.0% | 10.8% | 7.4% | 1.4% | 2.6% | 9.0% | 1.1% | 2.0% | 3.4% | 0.7% | 37.0% |
| 10/1/2020 | 50,404,939 | 14.7% | 10.3% | 11.0% | 7.0% | 1.3% | 2.5% | 9.0% | 1.0% | 2.1% | 3.4% | 0.7% | 36.9% |
| 1/1/2021 | 51,246,379 | 14.7% | 10.9% | 10.9% | 7.0% | 1.0% | 2.4% | 8.5% | 0.9% | 2.1% | 3.3% | 0.7% | 37.5% |
| 4/1/2021 | 52,370,158 | 15.3% | 11.1% | 11.0% | 6.1% | 1.0% | 2.5% | 8.6% | 0.9% | 2.2% | 3.3% | 0.7% | 37.3% |
| 7/1/2021 | 52,918,092 | 15.9% | 11.4% | 11.1% | 4.8% | 1.0% | 2.5% | 8.6% | 0.8% | 2.2% | 3.4% | 0.7% | 37.6% |
| 10/1/2021 | 53,831,348 | 16.2% | 11.7% | 11.0% | 4.8% | 1.0% | 2.5% | 8.5% | 0.8% | 2.3% | 3.4% | 0.5% | 37.4% |
| 1/1/2022 | 54,770,130 | 15.5% | 11.4% | 10.2% | 4.6% | 1.0% | 2.3% | 7.8% | 0.8% | 2.2% | 3.1% | 0.4% | 40.9% |
| 4/1/2022 | 54,824,091 | 14.7% | 11.0% | 9.3% | 4.1% | 1.0% | 2.2% | 7.3% | 0.7% | 2.1% | 2.9% | 0.4% | 44.4% |
| 7/1/2022 | 55,220,778 | 13.6% | 10.3% | 8.7% | 3.8% | 1.1% | 2.1% | 6.9% | 0.7% | 2.1% | 2.7% | 0.4% | 47.5% |
| 10/1/2022 | 55,893,368 | 13.2% | 10.1% | 8.6% | 3.6% | 1.1% | 2.2% | 7.0% | 0.7% | 2.3% | 2.7% | 0.4% | 48.3% |
| 1/1/2023 | 56,690,678 | 12.7% | 9.8% | 8.7% | 3.9% | 1.4% | 2.3% | 7.1% | 0.7% | 2.3% | 2.7% | 0.4% | 48.1% |
| 4/1/2023 | 57,349,678 | 12.0% | 9.4% | 8.7% | 4.2% | 1.4% | 2.2% | 6.9% | 0.7% | 2.4% | 2.6% | 0.3% | 49.1% |
| 7/1/2023 | 58,137,735 | 11.0% | 8.9% | 8.4% | 5.0% | 1.4% | 2.2% | 6.6% | 0.7% | 2.4% | 2.5% | 0.3% | 50.7% |
| 10/1/2023 | 59,110,151 | 11.0% | 9.1% | 8.6% | 5.8% | 1.4% | 2.3% | 6.8% | 0.8% | 2.5% | 2.6% | 0.3% | 48.8% |
| 1/1/2024 | 60,023,028 | 10.3% | 9.0% | 8.7% | 6.2% | 1.6% | 2.3% | 6.7% | 0.8% | 2.6% | 2.6% | 0.3% | 48.9% |
| 4/1/2024 | 60,277,391 | 9.9% | 8.9% | 8.7% | 6.0% | 1.6% | 2.5% | 6.7% | 0.8% | 2.6% | 2.6% | 0.3% | 49.4% |
| 7/1/2024 | 61,320,831 | 9.9% | 9.1% | 9.0% | 6.3% | 1.7% | 2.7% | 7.0% | 0.8% | 2.8% | 2.6% | 0.3% | 47.8% |
| 10/1/2024 | 61,849,641 | 9.2% | 8.8% | 8.8% | 7.0% | 1.7% | 2.5% | 6.8% | 0.8% | 2.8% | 2.5% | 0.3% | 48.8% |
| 1/1/2025 | 62,654,817 | 9.1% | 9.0% | 8.8% | 6.8% | 1.9% | 2.6% | 6.8% | 0.9% | 3.0% | 2.5% | 0.3% | 48.3% |

Source: Federal Reserve Board Flow of Funds data and authors calculations.

My own research,[66] based on data up to 2020, shows that banks, especially the largest banks, responded to the post-crisis economic and regulatory developments by changing their funding strategies, scaling back trading activities, reducing labor costs, and altering their investment holdings. Faced with new stringent regulatory capital and liquidity requirements and near-zero short term interest rates, the largest banks rebalanced their asset holdings away from loans to businesses and consumers and toward investments in liquid federal government-guaranteed securities and Federal Reserve interest-bearing deposits.

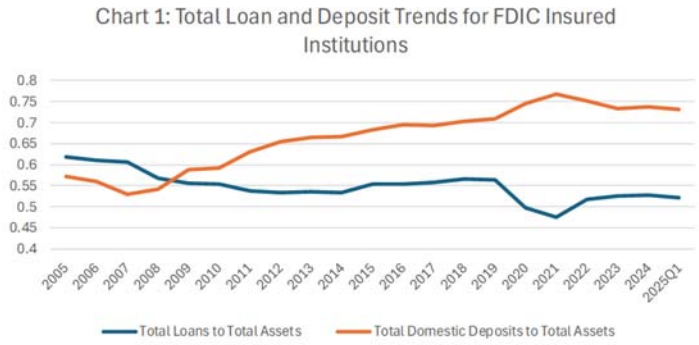
[66]See, https://www.aei.org/research-products/working-paper/20-years-of-banking-history-in-67-tables-and-charts/ The analysis in this section is based on the analysis in this study but I do provide footnotes with 2025Q1 data updates.

Business and consumer loans carry substantially higher regulatory risk weights (100 to 150 percent under the standardized approach) compared to the risk weights assigned to US Treasury securities and Federal Reserve deposits (0 percent), and federally guaranteed agency securities (0 to 20 percent). The higher an asset's risk weight, the larger the amount of equity that a bank must use to fund each dollar invested in the asset. Minimum equity requirements can also be increased by Dodd-Frank Act mandated leverage constraints if they are binding. The higher share of equity funding lowers the expected return bank shareholders can anticipate earning when the bank invests in that asset. When the government significantly increased the minimum regulatory capital levels the largest banks were required to maintain (at least through 2020) banks adjusted to meet these new requirements by making fewer business and consumer loans and holding more Federal Reserve deposits and government-guaranteed securities.

In 2000, banks with assets in excess of $250 billion invested about 57.5 percent of their assets in loans and leases and about 8.5 percent of their assets in federal government guaranteed securities and Federal Reserve deposits. In 2000, the Federal Reserve did not pay interest on banks' deposits held at Federal Reserve Banks. By 2020, after substantially higher minimum regulatory capital standards were in force and the Federal Reserve paid interest on bank deposits, banks with assets in excess of $250 billion invested 40 percent of their assets in consumer and business loans and over 30 percent of their assets in federally-guaranteed securities and interest-bearing Federal Reserve deposits. In 2021, these 13 banks held 55.6 percent of all assets in the banking system, but only made 44.3 percent of the banking system's total non-government guaranteed business and consumer loans.[67]

Chart 1 shows the trend in aggregate insured banking system's total loans to assets and total domestic deposits to assets. The post-crisis large-bank shift away from loans is reflected in Chart 1. The largest banks hold a disproportionate share of the system assets, so their behavior is the primary driver behind the trends depicted in Chart 1.[68]

[67] According to FDIC data, as of 2025Q1, the ratio of net loans and leases to assets for banks with assets > $250 billion was 41.7 percent.
[68] According to FDIC data, in 2025Q1 insured institutions with assets over $250 billion held 57.7 percent of the insured banking system assets.




Source: FDIC Quarterly Banking Profile data and author's calculations

Commercial and industrial (C&I) loans provide credit to private sector borrowers to help small and not-so-small businesses fund their operations. C&I loans do not require a borrower to secure the loan with real estate. In the year 2000, the largest banks invested over 20 percent of their assets in C&I loans. By 2020, the largest banks' C&I loans accounted for less than 10 percent of their total assets. Business credit was not the only type of credit impacted by the new rules. In 2006, the largest banks held 23.5 percent of their assets in nongovernment-guaranteed 1-to-4 family residential mortgage loans. By 2020, that share dropped to 10 percent.

The Dodd-Frank Act exempted smaller banks from the enhanced prudential capital and liquidity management standards imposed on the largest banks, but they were still required to meet new Basel III minimum regulatory capital rules adopted by banking regulators in 2013. However, small banks could continue to use the so-called "standardized approach" to calculate their minimum capital requirement whereas the largest banks were required to use the Basel III "advanced approach" to calculate the regulatory capital levels they were required to maintain.

Because banks of different asset sizes were subjected to different regulatory regimes, it may not come as a surprise that small and large banks evolved their businesses differently over this period. These differences are apparent when banks are assigned to five different size categories: very small banks with assets under $1 billion; banks with assets between $1 billion and $10 billion; banks with assets between $10 billion and $100 billion; banks with assets between $100 billion and $250 billion; and banks with assets over $250 billion. Banks in the smallest two size categories are typically considered "community banks," although some institutions operating within a localized geographic footprint can accumulate far

more than $10 billion in assets. Banks with assets in the $100-$250 billion range are typically large regional institutions, whereas banks with assets in excess of $250 billion are Dodd-Frank systemically important institutions.

For smaller banks, the switch from the Basel II to Basel III minimum regulatory capital regime added some new higher-risk weight investment categories to the standardized approach, but it left many of the Basel II risk weights unchanged. Under the new standardized approach, small banks did not have to satisfy many of the heightened prudential standards imposed on the largest banks. Small banks were exempt from satisfying the supplementary leverage ratio, the Global Systemically Important Bank (GSIB) supplementary capital requirements, new minimum liquidity requirements and the annual Federal Reserve Board stress testing process, all of which contribute to the amount of capital a Basel III advanced approach bank is required to maintain.

Small banks still faced slightly higher minimum regulatory capital requirements under Basel III primarily because of changes in the definition of regulatory capital and the imposition of a new "capital conservation buffer" that limits an institution's ability to pay dividends or repurchase its shares should its capital fall below designated threshold levels. However, at the time the rule was adopted in 2013, the FDIC estimated that 95 percent of small banks already had sufficient regulatory capital to comply with Basel III.

The data suggest that the adoption of Basel III had only a modest impact on the tradeoff between regulatory capital and profitability faced by small banks. After the adoption of Basel III, smaller banks typically maintained the share of their assets dedicated to funding business, agricultural and consumer loans. The data show that, for all size categories of banks with assets under $250 billion, on average banks increased the share of their assets invested in consumer and business loans. Throughout the period, banks with assets under $100 billion remained the predominant suppliers of commercial real estate loans, multifamily residential mortgages, farmland loans and other agricultural loans.

The Dodd-Frank Act increased federal insurance coverage on deposits to $250,000 per depositor. Banks reacted to the increased insurance coverage in conjunction with the Federal Reserve's post-crisis zero interest rate and QE policies by greatly expanding their use of deposits to fund their operations. The largest banks posted the greatest increase in the share of assets funded with deposits. Banks with assets in excess of $250 billion increased the share of deposits used to fund their assets from 63 percent in

2008 to 80 percent in 2021.[69] Banks with assets between $10 and $250 billion posted similarly large increases in the share of their assets funded with deposits. The smallest banks typically funded their operations using over 80 percent of deposits even before the Great Recession, and so their deposit share of funding increased by only about 3.5 percentage points in the post-crisis period through 2021. The banking system's increase in the use of deposit funding is clearly apparent in Chart 1.

Banks utilized the influx of new deposit financing to reduce their use of more expensive non-government guaranteed funding sources and Federal Home Loan Bank advances. Federal Home Loan Bank advances are available to member banks at subsidized rates, but they require banks to post collateral. In 2000, banks with assets larger than $10 billion used a significant share of long-term subordinated debt to fund their operations. Subordinated debt accounted for as much as 2.4 percent of assets in banks with assets between $100 and $250 billion. Because it has a long maturity, subordinated debt cannot "run" should a bank become distressed. Subordinated debt owners typically suffer losses should an issuing bank fail. By 2020, banks in all size categories had responded to the new regulatory and monetary policy regime by reducing the share of assets funded with subordinated debt to less than 50 basis points.

In addition to jettisoning their subordinated debt, large banks used their new deposits to substantially reduce other funding sources. They reduced funds borrowed using federal funds and other short-term, non-federally-insured instruments. Compared to pre-crisis levels, the borrowed federal funds to asset ratios of banks larger than $10 billion declined by more than 6 percentage points. These banks' "other borrowed funds" to assets ratios declined by over 7 percentage points. For some bank size categories, the declines were much larger.

The reductions in the use of federal funds and other non-federally insured sources of bank credit have important consequences for early-warning indications of underlying financial distress. Uninsured bank creditors historically have been the earliest to recognize institutions in distress. Because these bank creditors take losses if a bank fails, they are active bank monitors. These creditors typically withdraw their funds from the bank or sharply raise the interest rates they charge at the first sign of bank distress. Post-crisis, these private sector bank monitors have effectively been replaced by bank regulators via banks' decision to replace these funding sources with fully federally insured and implicitly-insured deposits. History suggests that the federal government regulators of all types are often slow to

[69] According to FDIC data, in 2025Q1, 77.1 percent of assets of banks lager than $250 in assets are funded with deposits.

recognize problems that emerge on their watch and less than transparent in their public disclosures of underlying problematic issues.

Historically, smaller banks did not make significant use of subordinated debt, federal funds borrowings or other short-term non-insured sources of credit to fund their balance sheets. Many relied on Federal Home Loan Bank advances as a source of funding. When these banks increased their share of deposit funding in the post-crisis period, they typically used the proceeds to reduce their use of Federal Home Loan Bank advances.

Based on my prior research using bank call report data through 2020, banks in all size categories posted increases in their equity-to-asset ratios as they anticipated the US adoption of the Basel II regulatory capital regime. By the time Basel II was formally adopted in 2007, on average, banks in all size categories had increased their equity-to-asset ratios to accommodate the increase in minimum capital required by Basel II. Banks in the smallest size category, assets under $1 billion, historically maintained, on average, the highest equity-to-asset ratios and consequently required the smallest adjustment to meet the new Basel II requirements. In contrast, the largest banks, banks with assets in excess of $250 billion, historically maintained, on average, the lowest equity-to-asset ratios and yet, in anticipation of Basel II, these banks raised their equity-to-asset ratios by only 1.18 percentage points on average. In contrast, banks with assets in the range $10-$250 billion on average raised their equity-to-asset ratios by as much as 4 percentage points.

Relative to the impact of Basel II, the data indicate that the 2013 adoption of Basel III capital regulations had only a muted impact on bank equity-to-asset ratios. Data through 2020 show that many of the largest banks' equity-to-asset ratios declined relative to the peak values they reached in the period between 2010 and 2013.

Subordinated debt is a component of a bank's loss-absorbing capital base. It protects depositors and the deposit insurance fund from losses in the event an issuing bank fails. Large banks' reductions in subordinated debt funding offset the additional loss absorbing capacity generated by the increase in bank equity-to-asset ratios. As a result, the largest banks' average loss absorbing capacity as measured by the ratio of total bank equity plus subordinated debt to assets was only 92 basis points larger in 2020 than in the year 2000. The next section provides a deeper analysis of the evolution of banking system solvency under Dodd-Frank enhanced minimum regulatory requirements.

**4.2 Dodd-Frank Act Minimum Tier 1 Leverage Capital Requirements**

The analysis focuses on the regulatory Tier 1 leverage ratio as the measure of bank capital adequacy

because, unlike other regulatory measures of capital adequacy, it must be calculated and reported by all FDIC insured banks.[70] The Tier 1 leverage ratio is calculated by dividing a bank's reported Tier 1 capital by its reported Total Assets for the Leverage Ratio.[71]

Tier 1 capital allegedly measures the "loss absorbing capacity" of a bank's total GAAP equity capital. It is calculated by making specific regulatory adjustments to a bank's GAAP balance sheet total equity that include adjustments for components of a bank's accumulated other comprehensive income (AOCI), selected intangible assets, and bank deferred tax assets. Depending on prevailing economic conditions, the AOCI adjustments to GAAP equity capital increase or decrease Tier 1 regulatory capital compared to a bank's GAAP equity.

Under prompt corrective action rules, a bank must have a Tier 1 leverage ratio greater than or equal to 5 percent to be considered "well capitalized" and a Tier 1 leverage ratio between 4 and 5 percent to be considered "adequately capitalized". A bank is "undercapitalized" if its Tier 1 leverage ratio falls below 4 percent and is classified as "significantly undercapitalized' if the ratio dips below 3 percent.

Table 3 reports the year-end Tier1 leverage ratios for all FDIC insured banks from 2019 through 2024, and for 2025Q1. The number of banks that correspond to various leverage ratio ranges are reported for banks of different size categories: banks with assets under $1billion (Table 3a); banks with assets between $1 and $100 billion (Table 3b); banks with assets between $100 and $250 billion (Table 3c); and banks with assets over $250 billion (Table 3d).

Table 3 shows that very few banks are classified as under-capitalized in any year according to their regulatory Tier 1 leverage ratios, and the few banks that qualify as undercapitalized are very small institutions. These data would seem to support often repeated regulatory official claims that the banking system has been well-capitalized over this entire period.

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[70] The Tier 1 leverage ratio is reported in FFIEC report variables RCFA7204 and RCOA7204. Roughly 1700 small banks are subject to a simplified community bank leverage ratio regulatory framework that does not require the banks to calculate risk-weighted capital ratios. The FDIC insured depository institutions include depositories regulated by the Federal Reserve, Office of the Comptroller of the Currency and the FDIC. Credit unions are not insured by the FDIC an are excluded from the analysis.

[71] The Tier 1 leverage ratio is reported in FFIEC report variables RCFA7204 and RCOA7204; Tier 1 capital is reported in variables RCFA8274 and RCOA8274; The regulatory measure of total assets is based on a daily average of consolidated assets with specific regulatory adjustments and is reported in variables RCFAA224 and RCOAA224.

Table 3a: Number of banks with assets under $1 billion and reported regulatory Tier1 leverage ratios

| Regulatory tier 1 leverage ratio | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025Q1 |
|---|---|---|---|---|---|---|---|
| 0.01<=ratio <0.02 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0.02<=ratio<0.03 | 2 | 1 | 1 | 0 | 1 | 1 | 1 |
| 0.03<=ratio<0.04 | 2 | 2 | 0 | 0 | 0 | 0 | 0 |
| 0.04<=ratio<0.05 | 3 | 2 | 3 | 2 | 1 | 0 | 1 |
| 0.05<=ratio<0.06 | 5 | 9 | 12 | 5 | 6 | 6 | 8 |
| 0.06<=ratio<0.07 | 21 | 45 | 65 | 40 | 23 | 16 | 10 |
| 0.07<=ratio<0.08 | 79 | 221 | 269 | 190 | 114 | 101 | 86 |
| 0.08<=ratio<0.09 | 400 | 712 | 710 | 536 | 448 | 429 | 396 |
| 0.09<=ratio<0.10 | 817 | 838 | 800 | 779 | 700 | 686 | 684 |
| 0.10<=ratio<0.11 | 810 | 636 | 632 | 639 | 639 | 575 | 575 |
| 0.11<=ratio<0.12 | 611 | 482 | 412 | 437 | 442 | 421 | 423 |
| 0.12<=ratio<0.15 | 982 | 660 | 546 | 621 | 692 | 726 | 737 |
| 0.15<=ratio<0.20 | 421 | 287 | 259 | 285 | 324 | 324 | 321 |
| ratio>.20 | 273 | 225 | 201 | 236 | 257 | 237 | 235 |

Table 3b: Number of banks with assets between $1 billion and $100 billion and reported regulatory Tier 1 leverage ratios

| Regulatory tier 1 leverage ratio | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025Q1 |
|---|---|---|---|---|---|---|---|
| 0.04<=ratio<0.05 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| 0.05<=ratio<0.06 | 0 | 1 | 1 | 2 | 0 | 1 | 1 |
| 0.06<=ratio<0.07 | 1 | 9 | 13 | 3 | 1 | 2 | 2 |
| 0.07<=ratio<0.08 | 24 | 72 | 104 | 52 | 37 | 29 | 26 |
| 0.08<=ratio<0.09 | 97 | 227 | 243 | 197 | 440 | 148 | 136 |
| 0.09<=ratio<0.10 | 194 | 229 | 217 | 268 | 197 | 294 | 288 |
| 0.10<=ratio<0.11 | 201 | 168 | 171 | 197 | 115 | 194 | 214 |
| 0.11<=ratio<0.12 | 104 | 80 | 72 | 84 | 115 | 136 | 144 |
| 0.12<=ratio<0.15 | 104 | 70 | 71 | 91 | 40 | 132 | 140 |
| 0.15<=ratio<0.20 | 30 | 26 | 31 | 39 | 15 | 37 | 41 |
| ratio>.20 | 15 | 15 | 18 | 19 | 0 | 15 | 18 |

Table 3c: Number of banks with assets between $100 billion and $250 billion and reported regulatory Tier1 leverage ratios

| Regulatory tier 1 leverage ratio | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025Q1 |
|---|---|---|---|---|---|---|---|
| 0.06<=Tier1<0.07 | 0 | 1 | 2 | 1 | 0 | 1 | 1 |
| 0.07<=Tier1<0.08 | 3 | 3 | 3 | 2 | 2 | 1 | 1 |
| 0.08<=Tier1<0.09 | 1 | 6 | 9 | 8 | 5 | 3 | 2 |
| 0.09<=Tier1<0.10 | 4 | 3 | 5 | 5 | 8 | 10 | 9 |
| 0.10<=Tier1<0.11 | 6 | 5 | 1 | 5 | 2 | 2 | 3 |
| 0.11<=Tier1<0.12 | 2 | 1 | 3 | 0 | 2 | 1 | 1 |
| 0.12<=Tier1<0.15 | 3 | 0 | 0 | 0 | 0 | 1 | 1 |
| 0.15<=Tier1<0.20 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Tier 1>.20 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Table 3d: Number of banks with assets over $250 billion and reported regulatory Tier 1 leverage ratios

| Regulatory tier 1 leverage ratio | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025Q1 |
|---|---|---|---|---|---|---|---|
| 0.05<=ratio<0.06 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| 0.06<=ratio<0.07 | 1 | 2 | 2 | 2 | 2 | 2 | 2 |
| 0.07<=ratio<0.08 | 0 | 5 | 4 | 3 | 2 | 2 | 2 |
| 0.08<=ratio<0.09 | 6 | 4 | 6 | 5 | 3 | 2 | 1 |
| 0.09<=ratio<0.10 | 2 | 0 | 0 | 1 | 3 | 4 | 4 |
| 0.10<=ratio<0.11 | 0 | 1 | 1 | 2 | 3 | 2 | 4 |
| 0.11<=ratio<0.12 | 0 | 0 | 0 | 0 | 1 | 2 | 0 |
| 0.12<=ratio<0.15 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| 0.15<=ratio<0.20 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| ratio>.20 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

**4.3 Regulatory Capital Rules and Unrealized Interest Rate Losses**

If a bank is placed into an FDIC resolution, it is the market value of the bank's assets, not their reported book value that determines the loss the resolution will impose on the DIF. Moreover, for a going concern bank, the market value of banks assets not their reported book value determines the liquidity the bank may acquire by pledging assets as collateral in repurchase agreements, Federal Home Loan Bank advances, or using the Fed's normal (non-emergency) discount window credit. Unrealized interest rate market value losses impact the market value of a bank's equity capital cushion available to support emergency liquidity operations or to absorb losses in a resolution.

Bank's equity capital measured using GAAP includes accumulated other comprehensive income (AOCI). AOCI measures unrealized market value gains and or losses on some bank securities and related hedges. Banks value their loans and held-to-maturity securities at amortized cost less any allowance for anticipated credit losses. Banks can also designate securities as "available for sale" which are recorded at current market value. The cumulative difference between the amortized cost and market value of a bank's available for sale securities constitute unrealized income when the market value exceeds amortized cost, and unrealized loss when market values are less than amortized cost. Banks record this source of unrealized income (or loss) in AOCI. AOCI also includes unrealized gains and losses on available for sale securities that have been reclassified as held-to-maturity, gains and losses on some bank hedging positions (e.g. derivative contracts) reported at market value, and unrealized gains and losses from changes in exchange rates.

AOCI is included as a part of a bank's regulatory capital unless a bank makes a choice to permanently exclude AOCI from regulatory capital measures. Small noncomplex banks had an option to choose to permanently exclude AOCI gains (losses) when calculating bank regulatory capital and most choose to do so. The largest banks and banks using the advanced risk-based regulatory capital approach must include AOCI in their regulatory Tier 1 capital with a single AOCI related adjustment.[72] In December 2019, all but 49 banks opted to exclude AOCI from their Tier 1 capital. By December 2024, the number of large complex banks that were required to include AOCI in their Tier 1 capital increased to 55 banks.

[72] Large complex banks include AOCI "LESS: Accumulated net gain (loss) on cash flow hedges included in AOCI, net of applicable income taxes, that relates to the hedging of items that are not recognized at fair value on the balance sheet (if a gain, report as a positive value [which is a subtraction from GAAP capital to arrive at tier1 common equity]; if a loss, report as a negative value [which is an addition to GAAP capital to arrive at tier1 common equity])

Many banks hold long-maturity fix-rate securities in their hold-to-maturity (HTM) portfolios. These securities are carried at amortized cost. Market-value gains and losses on these investments are not recorded as income and are not reflected in a bank's reported book equity or regulatory capital accounts. Large decreases or increases in interest rates can create substantial unrealized market-value gains or losses on banks' HTM securities portfolios. Banks' unrecognized gains or losses on HTM securities can be calculated from regulatory Call Report data that reports the amortized cost and the current market value of these bank securities.

Banks report their loan and lease investments at amortized cost net of an allowance for loan and lease credit losses. Many bank loans are made at fixed rates and have long maturities. If marked-to-market, loans with these characteristics will have suffered substantial losses from the interest rate increases posted since March 2022. However, banks are not required to estimate and report current market value estimates of their loans and leases on their regulatory Call Reports so current market values must be estimated. I use a simple econometric approach to estimate the magnitude of the unrealized interest rate losses on the market value of each bank's loans. My estimates of these losses are described elsewhere,[73] and are almost certainly conservative, meaning the estimates likely understate the true market losses on bank loan investments.

Table 4a-4d show my estimates of market-value adjusted Tier 1 regulatory capital ratios for all insured depository institutions based on year-end bank call report data from 2019 to 2024, and estimates for the first quarter of 2025. Banks with mark-to-market (MTM) adjusted ratios below 3 are shown in color (purple and red). Banks with estimated *negative* mark-to-market (MTM) adjusted ratios are shown in red.

The estimates in Table 4 show that, once the Fed started raising interest rate in 2022, a very large number of banks had substantial unrealized interest rate losses that reduced the mark value of their assets and regulatory capital to very low, and in many cases negative levels. The 2022 data in Table 4 reflect end-of-year bank positions. The estimates show that over 1000 small banks were severely undercapitalized on a market-value basis, including more than 300 with negative mark-to-market adjusted Tier 1 leverage ratios. Ten banks with assets between $100 and $250 billion were severely undercapitalized including 3 banks with negative estimated market-value adjusted capital, including SVB

[73] See for example https://www.aei.org/research-products/journal-publication/systemic-risk-and-unrealized-losses-in-the-banking-system/ or https://www.aei.org/research-products/journal-publication/commercial-real-estate-exposure-and-bank-counterparty-risk/

and First Republic Bank. Moreover 6 banks with assets over $250 billion were severely undercapitalized on a mark-to-market basis, including 2 with negative Tier 1 capital estimates. While somewhat diminished, unrealized interest rate losses have continued to be a systemic issue that is not reflected in minimum regulatory capital requirements through 2025Q1.

Table 4a: Number of banks with assets under $1 billion and MTM-adjusted regulatory Tier1 leverage ratios

| Adjusted Regulatory Tier 1 Leverage Ratio | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025Q1 |
|---|---|---|---|---|---|---|---|
| Tier1 <-.10 | 0 | 0 | 0 | 1 | 1 | 1 | 1 |
| -0.1<=Tier1<-0.05 | 0 | 0 | 0 | 6 | 2 | 4 | 5 |
| -0.05<=Tier1<-0.04 | 0 | 0 | 0 | 6 | 1 | 5 | 2 |
| -0.04<=Tier1<-0.03 | 0 | 0 | 0 | 17 | 8 | 6 | 6 |
| -0.03<=Tier1<-0.02 | 0 | 0 | 0 | 46 | 16 | 14 | 5 |
| -0.02<=Tier1<-0.01 | 0 | 0 | 0 | 90 | 36 | 38 | 19 |
| -0.01<=Tier1<0.0 | 0 | 0 | 0 | 162 | 76 | 52 | 66 |
| 0.0<=Tier1<0.01 | 0 | 0 | 0 | 245 | 193 | 105 | 86 |
| 0.01<=Tier1<0.02 | 1 | 0 | 0 | 318 | 281 | 139 | 166 |
| 0.02<=Tier1<0.03 | 3 | 0 | 1 | 418 | 395 | 232 | 251 |
| 0.03<=Tier1<0.04 | 2 | 1 | 0 | 453 | 470 | 278 | 307 |
| 0.04<=Tier1<0.05 | 2 | 2 | 3 | 441 | 446 | 386 | 403 |
| 0.05<=Tier1<0.06 | 4 | 0 | 13 | 369 | 399 | 426 | 435 |
| 0.06<=Tier1<0.07 | 9 | 4 | 52 | 284 | 300 | 377 | 352 |
| 0.07<=Tier1<0.08 | 43 | 16 | 176 | 212 | 215 | 349 | 296 |
| 0.08<=Tier1<0.09 | 171 | 62 | 500 | 151 | 159 | 233 | 242 |
| 0.09<=Tier1<0.10 | 582 | 224 | 789 | 96 | 136 | 191 | 174 |
| 0.10<=Tier1<0.11 | 811 | 615 | 684 | 73 | 84 | 159 | 152 |
| 0.11<=Tier1<0.12 | 756 | 781 | 510 | 51 | 68 | 101 | 99 |
| 0.12<=Tier1<0.15 | 1220 | 1520 | 662 | 118 | 133 | 168 | 164 |
| 0.15<=Tier1<0.20 | 530 | 603 | 305 | 69 | 78 | 105 | 87 |
| Tier 1>.20 | 294 | 292 | 215 | 144 | 150 | 153 | 159 |

Table 4b: Number of banks with assets between $1-100 billion and MTM-adjusted regulatory Tier1 leverage ratios

| Adjusted Regulatory Tier 1 Leverage Ratio | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025Q1 |
|---|---|---|---|---|---|---|---|
| -0.04<=Tier1<-0.03 | 0 | 0 | 0 | 0 | 1 | 1 | 1 |
| -0.03<=Tier1<-0.02 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| -0.02<=Tier1<-0.01 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| -0.01<=Tier1<0.0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 0.0<=Tier1<0.01 | 0 | 0 | 0 | 92 | 56 | 43 | 22 |
| 0.01<=Tier1<0.02 | 0 | 0 | 0 | 121 | 100 | 46 | 39 |
| 0.02<=Tier1<0.03 | 0 | 0 | 0 | 151 | 146 | 82 | 76 |
| 0.03<=Tier1<0.04 | 0 | 0 | 0 | 127 | 152 | 135 | 124 |
| 0.04<=Tier1<0.05 | 0 | 0 | 0 | 115 | 147 | 144 | 157 |
| 0.05<=Tier1<0.06 | 0 | 0 | 2 | 80 | 109 | 164 | 168 |
| 0.06<=Tier1<0.07 | 2 | 0 | 15 | 35 | 64 | 108 | 127 |
| 0.07<=Tier1<0.08 | 14 | 3 | 87 | 28 | 47 | 75 | 87 |
| 0.08<=Tier1<0.09 | 46 | 17 | 193 | 24 | 48 | 51 | 64 |
| 0.09<=Tier1<0.10 | 143 | 71 | 225 | 18 | 12 | 33 | 35 |
| 0.10<=Tier1<0.11 | 216 | 182 | 184 | 11 | 6 | 19 | 24 |
| 0.11<=Tier1<0.12 | 150 | 225 | 96 | 6 | 18 | 16 | 12 |
| 0.12<=Tier1<0.15 | 148 | 319 | 86 | 15 | 8 | 23 | 31 |
| 0.15<=Tier1<0.20 | 33 | 58 | 33 | 7 | 11 | 11 | 10 |
| Tier 1>.20 | 18 | 22 | 20 | 11 | 0 | 11 | 14 |

Table 4c: Number of banks with assets between $100-250 billion and MTM-adjusted regulatory Tier1 leverage ratios

| Adjusted Regulatory Tier 1 Leverage Ratio | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025Q1 |
|---|---|---|---|---|---|---|---|
| -0.03<=Tier1<-0.02 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| -0.02<=Tier1<-0.01 | 0 | 0 | 0 | 1 | 1 | 1 | 0 |
| -0.01<=Tier1<0.0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| 0.0<=Tier1<0.01 | 0 | 0 | 0 | 2 | 0 | 0 | 0 |
| 0.01<=Tier1<0.02 | 0 | 0 | 0 | 2 | 2 | 2 | 1 |
| 0.02<=Tier1<0.03 | 0 | 0 | 0 | 3 | 1 | 1 | 0 |
| 0.03<=Tier1<0.04 | 0 | 0 | 0 | 3 | 4 | 2 | 2 |
| 0.04<=Tier1<0.05 | 0 | 0 | 0 | 2 | 3 | 4 | 3 |
| 0.05<=Tier1<0.06 | 0 | 0 | 0 | 0 | 3 | 2 | 3 |
| 0.06<=Tier1<0.07 | 0 | 0 | 2 | 1 | 1 | 2 | 2 |
| 0.07<=Tier1<0.08 | 3 | 1 | 4 | 4 | 2 | 3 | 2 |
| 0.08<=Tier1<0.09 | 0 | 1 | 8 | 1 | 2 | 1 | 3 |
| 0.09<=Tier1<0.10 | 3 | 2 | 5 | 0 | 0 | 1 | 1 |
| 0.10<=Tier1<0.11 | 8 | 2 | 1 | 0 | 0 | 0 | 0 |
| 0.11<=Tier1<0.12 | 3 | 8 | 2 | 0 | 0 | 0 | 0 |
| 0.12<=Tier1<0.15 | 2 | 5 | 1 | 0 | 0 | 0 | 0 |
| 0.15<=Tier1<0.20 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Tier 1>.20 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |

Table 4d: Number of banks with assets over $250 billion and MTM-adjusted regulatory Tier1 leverage ratios

| Adjusted Regulatory Tier 1 Leverage Ratio | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025Q1 |
|---|---|---|---|---|---|---|---|
| -0.03<=Tier1<-0.02 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| -0.02<=Tier1<-0.01 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| -0.01<=Tier1<0.0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| 0.0<=Tier1<0.01 | 0 | 0 | 0 | 2 | 1 | 0 | 0 |
| 0.01<=Tier1<0.02 | 0 | 0 | 0 | 0 | 2 | 2 | 1 |
| 0.02<=Tier1<0.03 | 0 | 0 | 0 | 2 | 1 | 1 | 0 |
| 0.03<=Tier1<0.04 | 0 | 0 | 0 | 1 | 3 | 3 | 4 |
| 0.04<=Tier1<0.05 | 0 | 0 | 0 | 2 | 2 | 2 | 1 |
| 0.05<=Tier1<0.06 | 0 | 0 | 0 | 3 | 1 | 3 | 3 |
| 0.06<=Tier1<0.07 | 0 | 0 | 3 | 0 | 3 | 2 | 1 |
| 0.07<=Tier1<0.08 | 1 | 3 | 5 | 0 | 0 | 0 | 3 |
| 0.08<=Tier1<0.09 | 5 | 1 | 4 | 1 | 0 | 0 | 0 |
| 0.09<=Tier1<0.10 | 3 | 5 | 0 | 0 | 1 | 0 | 0 |
| 0.10<=Tier1<0.11 | 0 | 3 | 1 | 0 | 0 | 1 | 1 |
| 0.11<=Tier1<0.12 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| 0.12<=Tier1<0.15 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |

### 4.4 Measures Taken to Address the Risks in Securitizations

Securitization and related credit risk transfer products like credit default swaps that reference specific tranches of securitizations and re-securitizations played a central role in creating the excessive leverage and risk concentrations that caused the financial institution failures that triggered the 2008 financial crisis. The Dodd-Frank Act included several separate provisions that were designed to control the risks associated with securitizations and credit risk transfers. These included creation of the CFPB to protect consumers from predatory loan products with underwriting standards that virtually ensured that a high share of borrowers would default because borrowers lacked the resources to repay their loans. The Dodd-Frank Act required enhanced regulatory capital requirements on the large complex institutions involved in creating securitizations, re-securitizations and other credit risk transfer products. The Act introduced a new minimum "skin in the game" risk retention requirement for securitizations and re-securitizations. The Act also tightened the supervisory oversight over the NRSROs including enforcing new ratings transparency and conflict of interest rules and requiring annual compliance examinations.

### 4.4(a) Securitization Minimum Risk-based Capital Requirements

Basel III was the regulators' response to the Dodd-Frank Act's mandatory enhanced risk-based capital requirements for systemically important financial institutions. Regarding securitization and re-

securitizations, Basel III capital requirements replaced the NRSRO ratings-based risk weights that were in use during the Great Financial Crisis with risk weights determined by a supervisory formula.[74]

Most bank use the "simplified approach" to calculate the minimum capital for their CDO bond investments. The simplified approach uses a supervisory formula to calculate the risk weight for a securitization tranche using several inputs that measure the risk of the underlying collateral pool, the share of past due or defaulted assets in the pool, the subordination level of the tranche (the cumulative share of pool assets in tranches that bear losses before the tranche in question), the collateral pool of the trance in question in addition to the share of the collateral pool in all subordinated tranches (i.e., the subordination level supporting the tranche plus the tranche "thickness") . The formula also includes a parameter set by regulator known as the p-factor that in part determines the risk weight associated with a tranche. The p-factor is currently set at 0.5 for securitizations and 1.5 for re-securitizations. Securitization exposures are also subject to a 20 percent risk-weight floor.

Large complex institutions approved to use their own internal models to calculate their minimum regulatory credit risk capital requirements can use an advanced approach for calculating the risk weights of their securitization exposures. The advanced approach uses a supervisory formula with inputs that represent the tranche subordination level, thickness, the collateral pool's exposure-weighted average loss given default and a supervisory factor called the KIRB (which I am not going to attempt to explain).[75]

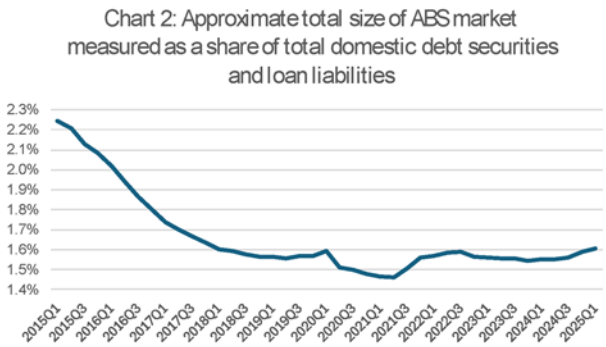
Chart 2 plots the approximate share of private-label ABS securities in domestic financial intermediation since 2015. ABS SPVs and SIVs must pass through more than 95 percent of their earnings to be tax exempt so the value of their liabilities (the securities) ABS issue must be close to the value of the collateral (assets) they own. The Federal Reserve Flow of Funds reports on the loan (see Table 1) and debt security assets owned by ABS issuers, but ABS collateral includes other assets like leases and tranches of other ABS securities. My measure of ABS activity is the Federal Reserve Flow of Funds Quarterly estimate of ABS total liabilities outstanding divided by Fed's estimate of total loan and debt security liabilities outstanding in a quarter. This estimate of ABS "market share" shows that ABS intermediation activity has declined as Dodd-Frank related regulations were phased in. While the measure I use is different, my finding are consistent with the finding of a 2017 U.S. Treasury report[76] and

[74] See, the FDIC worksheet available at: https://www.fdic.gov/news/financial-institution-letters/2015/fil15007.html#:~:text=Summary:,savings%20associations%2C%20including%20community%20institutions.

[75]For the details, see, https://www.occ.gov/publications-and-resources/publications/guidance-on-advanced-approaches/files/pub-gaa-2013-1.pdf

[76] https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf

a more recent Bank Policy Institute report[77] that uses SIMFA data.




**4.4(b) Minimum Risk Retention Requirements**

Given the risk diversification benefits of well-designed and executed securitizations, the aforementioned 2017 US Treasury report calls for revisions to the securitization minimum capital rules to reinvigorate ABS market activity. In considering revisions to minimum capital regulations, it is important to note that securitization activity has also been impacted by Dodd-Frank risk-retention rules.

Section 941 of the Act requires that agents creating and selling ABS retain an economic interest in the credit risk the securitization transfers to third parties. The prescribed minimum required retention rate is 5 percent for all ABS except for securitizations except where the entire collateral pool is comprised of residential mortgages that meet the minimum requirements set by the "Qualified Residential Mortgage" (QRM) rule as prescribed by the CFPB or for ABS with collateral pools that meet strict underwriting standards set by federal bank regulators. Residential MBS guaranteed the federal housing GSEs by definition meet risk retention rules since the GSE's insure the default risk of the entire mortgage pool.

"Qualified assets" are collateral that meets the prescribed strict underwriting standards set by bank regulatory agencies. The retention rate for securitizations with collateral pools that are 100 percent qualified assets is zero. A securitization with collateral that includes a partial share of qualified assets receives pro rata reduction in its required retention rate subject to a 2.5 percent minimum retention rate. In practice, the 5 percent retention rule applies to many types of asset-backed securitizations

[77] https://bpi.com/post-crisis-regulatory-reforms-and-the-decline-of-securitization/#_ftn5

where the collateral pool is neither entirely qualified mortgages or includes qualified assets.[78]

The mortgage underwriting standards needed to meet the QRM rule and mortgage collateral deemed acceptable by the federal housing GSEs (discussed in a subsequent section) have been liberalized so that borrowers can qualify for mortgages given the inflation residential property values have experienced since 2020.

Regarding non-mortgage private label ABS issuance, the delinquency rates of auto loans and credit cards have been rising since late 2021[79]. Given retention requirements, an anticipated high delinquency rate is a factor that would tend to depress auto loan and credit card securitizations, trends that are documented in the recent Bank Policy Institute Report.[80]

**4.4(c) NRSRO regulation**

Given the minimum regulatory capital requirements in place at the time, overly optimistic NRSRO ratings made it profitable to securitize poorly underwritten subprime mortgages that otherwise would not have been economic. The Dodd-Frank Act created the OCR and required it improve the transparency of the NRSRO rating process and police NRSRO conflicts of interest.

While NRSRO ratings were slow to be downgraded as the probability for losses on bank-related securities increased in the summer and fall of 2022, the Dodd-Frank Act regulatory provisions regarding NRSROs appear to working more or less as intended, at least according to the information I have been able to find. The SEC's OCR reports annually on its own regulatory activities as well as on the annual ratings activities of the NRSROs it supervises.[81] It reports on industry trends and identifies specific ratings categories where prior ratings have been or are expected to be inaccurate—in particular, overly optimistic given subsequent economic developments. In its most recent annual report, the OCR highlights substandard rating performance for prior ratings associated with commercial real estate credit collateral. While not identifying the institution involved, it reports on specific OCR rule violations discovered in the course of its NRSROs annual examinations and on the actions undertaken by the NRSRO to remediate the issue.

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[78] See for example, https://www.morganlewis.com/-/media/files/publication/morgan-lewis-title/white-paper/2024/guide-to-the-credit-risk-retention-rules-for-securitizations.pdf?rev=d0d11ddfda4c4211b11c74108f9cbf28&hash=0CF7DC199F7BB7ADC5B6B28EFD2D8EB9

[79] See, for example https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2025Q1

[80] https://bpi.com/post-crisis-regulatory-reforms-and-the-decline-of-securitization/#_ftn5

[81] https://www.sec.gov/files/jan-2025-ocr-staff-report.pdf

**4.4(d) QRM and GSE mortgage underwriting standards now accept risky mortgages**

Under the 2014 CFPB Qualified Residential Mortgage ability to repay rule, among other underwriting restrictions, a mortgage could have at most a 43 percent debt-to-income ratio (DTI) to be classified as a qualified mortgage (QM). A QM certification gives a loan originator "safe harbor" from legal liability should an originated loan subsequently default. Unless a mortgage qualifies as a QM, the lender could be subject to legal damage claims that the lender failed to establish that a borrower had the means to repay the mortgage as required by law.

Qualified mortgages are eligible to be securitized by private-label securitizes with a zero-risk retention rate. Fannie Mae and Freddie Mac are not formerly bound by the CFPB QRM rules. However, the Dodd-Frank Act exempts federal housing GSE's securitizations from the risk retention rule which in practice makes mortgages eligible for a housing GSE securitization a QM mortgages. In the so-called GSE patch, Fannie and Freddie adopted minimum mortgage collateral standards that, while similar in many respects to the 2014 CFPB rule, allowed higher (DTIs).

Residential home price inflation and higher mortgage rates experienced in recent years have put pressure on borrowers' abilities to qualify for QM mortgages under earlier standards. As a consequence, DTI standards have been relaxed. According to data from the AEI's Housing Center,[82] in the early 1990s, when mortgage rates were in the 7-8 percent range, the average debt-to-income (DTI) ratio for FHA purchase loans was 34 percent. Today, the average DTI on FHA loans is 46 percent even though mortgage rates have typically been below 7 percent.

Recent years have seen the distribution of DTI rates on all government guaranteed mortgages shift toward higher DTI rates. A large share of housing GSE loans have DTIs near the GSE's maximum allowable value of 50%. The maximum allowable DTI for FHA loans currently is 57%. Many believe that the trend toward increasing DTIs have helped fuel home price appreciation and increased the residential mortgage risk as these elevated DTI ratios leave little room for saving or unexpected expenses.

**4.5 Orderly liquidation authority**

The FDIC is the administrator of the Federal Deposit Insurance Fund (DIF) and the receiver of failed insured depository institutions. Since the passage of FDICIA in 1991, in its capacity as receiver for failed insured depositories, Section 141 requires the FDIC to resolve a failed depository institution in manner

[82] See, https://www.aei.org/research-products/report/aei-housing-market-indicators-june-2025/

that imposes the least cost on the deposit insurance fund unless the Secretary of the Treasury declares a systemic risk exception. The Section 141(G) of FDICIA allows that if:

> ...[U]pon the written recommendation of the *[FDIC]* Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that— (I) the Corporation's compliance with...*[a least cost resolution of]*... an insured depository institution would have serious adverse effects on economic conditions or financial stability; and (II) any action or assistance under this subparagraph would avoid or mitigate such adverse effects, the Corporation may take other action or provide assistance under this section as necessary to avoid or mitigate such effects. [italics added]

The FDIC is empowered to fund DIF resolutions with the resources of the DIF or by pledging receivership assets to borrow from the Federal Financing Bank[83] or by tapping the DIF's $100 billion line of credit with the U.S. Treasury.

In addition to the FDIC's duty to act as the receiver of failed insured depository institutions, Dodd-Frank Title II Orderly Liquidation Authority (OLA) gave the FDIC power to function as the receiver for bank holding companies, financial holding companies and other financial firms should government authorities determine that the nonbank financial firm in question is in danger of failing and its failure and resolution under the bankruptcy code would have negative systemic consequences and create larger losses throughout the financial system. Use of the OLA powers requires a formal Systemic Risk Determination made by the Secretary of the Treasury in consultation with the President and financial regulatory authorities.

The FDIC can use an Orderly Liquidation Fund ("OLF") line of credit with the U.S. Treasury to fund a non-bank systemically important financial institution in receivership. OLF borrowing are to repaid by selling the assets in the receivership or, if needed, by special assessment on large systemically important institutions.

Under the FDICIA as amended, the FDIC is empowered to recover the Deposit Insurance Fund cost of a systemic risk exception resolution through "1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the Corporation determines to be appropriate"

[83] https://ffb.treasury.gov/about/

[12 U.S.C. 1823(c)(4)(G)(ii)(I).]

As discussed in the introduction, The SVB and Signature Bank failures required authorities to declare a systemic risk exception and provide a blanket guarantee for all depositors in SVB and Signature Bank. This decision substantially increased the cost of these bank resolutions, particularly so in the case of SVB because 95 percent of its deposits were uninsured.

It turned out that SVB's holding company had close to $2 billion in deposits in SVB bank that went undetected by the FDIC when drafting the terms of the systemic risk exception. This fact alone indicates problematic FDIC management as the FDIC has regulations in place that give the agency timely access to depositor ownership records and to certain capital market transactions to allow the agency to make DIF exposure assessments for failing banks. Regardless, the blanket guarantee issued in the systemic risk exception did not explicitly exclude any SVB depositors and the ownership of SVB's holding company deposits remains in legal dispute today.

If federal authorities had made a systemic risk declaration and invoked OLA in addition to declaring a systemic risk exception under the FDI Act they would have released the FDIC from its least-cost resolution duty, allowing it to provide unlimited insurance SVB depositors, and allowed the FDIC to place the SVB's holding company into an OLA receivership, liquidate its assets, and use the proceeds to offset DIF losses incurred from the blanket deposit guarantee on SVB's deposits. I have seen no public discussion of why authorities did not use their Dodd-Frank Act OLA powers in this resolution.

The FDIC has a $100 billion line of credit it can use to fund DIF receiverships and the legal authority to pledge receivership assets and use Federal Financing Bank funding. The OLF has a line of credit with the Treasury which has a limit that is stated in terms of a percentage of the value of the assets of the financial firm in OLA receivership.

However, the US Treasury reached the Congressional debt ceiling limit in January 2023. Borrowing using the DIF's $100 billion line of credit with the US Treasury counts against the Congressional debt ceiling as does any borrowings made by the OLF. Borrowings made by the Federal Financing Bank are excluded from debt ceiling calculations but are limited to $15 billion in total by law. It appears that the OLA could not be used, at least in part, because OLF funding was precluded by a binding Congressional debt ceiling.

The balance in the DIF in March 2023 was about $116 billion. The FDIC could not risk draining the DIF to fund one resolution when there was risk of widespread depositor runs. The DIF needed in excess of $160 billion to fund the SVB receivership alone, and it could not tap the DIF line of credit with the US

Treasury because of the binding Congressional debt ceiling.

The DIF was forced to use SVB's OCC-chartered bridge bank to borrow from the Federal Reserve discount window using the Fed's "Secondary Credit Facility" that charges a 50 basis point penalty rate of interest over the Fed's primary credit discount rate.

By the end of March 2023, the DIF was paying the Fed 5.5 percent on its SVB-related loans while the 3-month Treasury rate was about 4.7 percent. The end result of these funding complications was that, through special DIF assessments, the largest banks' special DIF insurance assessments included charges for a 70 basis point penalty rate on hundreds of billion dollars in Federal Reserve loans because of a binding Congressional debt ceiling and Treasury funding access issues that were not anticipated when existing laws were enacted.

**4.6 FSOC identification of systemic risk**

In theory, the Financial Stability Oversight Council (FSOC) was created to enhance the federal financial regulatory agencies' ability to maintain financial stability by discharging their responsibilities to monitor financial institutions to ensure that they comply with applicable safety and soundness regulations. In practice, the FSOC has failed to identify and ensure that FSOC members proactively take steps to mitigate risks associated with products, processes, and institutions that subsequently triggered financial instability. The FSOC has instead often acted as an agent of the administration in power to implement a political agenda unrelated to financial sector systemic risk. Some examples include:[84]

- The FSOC failed to identify FTX as a systemic risk in a Digital Asset report it released just a month prior to the FTX failure.
- The FSOC and its bank regulatory agency members failed to identify the risk associated with legally permitted banking services that attracted large uninsured deposits from crypto-businesses that banks invested in long-maturity assets thereby creating interest rate risk and ultimately large losses and bank failures when the Fed increased interest rates.
- The FSOC and its bank regulatory agency members failed to identify and proactively take steps to mitigate the risk caused by maturity mismatches, and massive unrealized interest rate losses

[84] For a more detailed discussion of the FSOC's failure to live up to its Dodd-Frank Act stated objectives, please see my prior January 10, 2024 testimony before the House Subcommittee on Digital Assets, Financial Technology, and Inclusion On "Regulatory Whiplash: Examining the Impact of FSOC's Ever-changing Designation Framework on Innovation." https://www.aei.org/wp-content/uploads/2024/01/Kupiec-Jaunuary-10-Digital-Asset-Suncommittee-testimony.pdf?x85095

in over 1000 banks which lead to depositor runs and bank failures.

- Instead of performing as a body that objectively identifies financial stability risks and promotes transparent improvements in financial safety and soundness supervision and regulation, the FSOC's activities have become highly politicized.
- The FSOC has revised the standards and procedures that govern the discharge of its Section 112 and 113 powers each time the political party governing the executive branch.
- The FSOC favors the use of opaque Federal Reserve Board stress tests to measure and regulate risks it identifies instead of recommending transparent and publicly verifiable risk measures.
- No FSOC annual report prior to 2021 mentioned climate change as a systemic risk threatening financial stability nor is there any evidence that climate change has historically been an important factor causing bank failures and yet financial sector regulations to curb climate change became the focus of the FSOC's systemic risk recommendations.
- The FSOC's recommendation to impose climate change regulations on banks and other financial institutions was not the result of objective data analysis, but was the execution of a political plan to discourage investments in fossil fuel related activities hatched well before the current administration was elected.
- Climate change ceased to be an FSOC priority when the party in power subsequently changed.
- The policy uncertainty created by the politicization of the FSOC discourages private sector investment and financial services innovation
- Congress should revisit the Dodd-Frank Act and repeal the FSOC's Section 113 powers and instead make it an advisory body that provides recommendation for new regulations to Congress who must subsequently pass legislation should the Congress decide to adopt the FSOC's recommendation.

Chairman HILL. The gentleman yields back. Mr. Kelleher, you are now recognized for 5 minutes for your oral presentation.

**STATEMENT OF MR. DENNIS KELLEHER, CO-FOUNDER, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, BETTER MARKETS**

Mr. KELLEHER. Good morning, Chairman Hill, Ranking Member Waters, and the members of the committee. Thank you for holding this important hearing and for the invitation to Better Markets to testify.

While the focus today is the Dodd-Frank Wall Street Reform law, that law cannot be properly discussed or understood without reviewing the devastating financial crash that started in 2008 that made the law so necessary. That was the worst financial crash since the Great Crash of 1929, and it caused the worst economy since the Great Depression of the 1930s, which is why it was called the Great Recession. The damage caused by that crash ruined the lives of tens of millions of Americans, crushed small businesses and community banks, grievously damaged our economy and financial system, ballooned the country's debt, and undermined the pillars of our democracy, which depends upon an economy delivering rising living standards and broad-based prosperity.

Just a few facts to illustrate the horrific scope of the damage caused to Americans from that crash. Thirteen months after the September 15 bankruptcy of Lehman Brothers, the U6 unemployment rate reached 17.2 percent, throwing more than 27 million Americans out of work. Sixteen million foreclosure filings happened during the Great Recession, causing millions of families to lose their homes. Forty-plus percent of homes in the United States were underwater, meaning their mortgages were higher than the value of their homes for years after the Lehman bankruptcy. Ten years passed before the unemployment rate in the United States return to pre-2008 crash levels, and after 8 years after the Lehman bankruptcy, 90 percent of the American people were poorer at the end of 2016 than they were in 2007 by 17 to 34 percent.

It is also critical to remember that the 2008 crash was an avoidable, man-made financial crash and disaster that did not have to happen. It only happened because too many elected officials, policymakers, regulators, and others who should have known better listened to the financial industry's siren song of deregulation, which, as in the Greek myth, inevitably resulted in a catastrophic crash. That deregulation and crash resulted from too many believing the financial industry's claims that its interests overlap with the public interest, and that the industry is primarily focused on economic growth, job growth, credit supply, helping community banks, small businesses, and disadvantaged groups. The industry continues to trumpet these issues. Indeed, it is the chorus for the siren song of deregulation. Those claims, however, are usually smoke screens behind which they hide their profit and bonus-maximizing motives. That is fine for the private sector and that is fine for private companies, but that is not the public interest.

The overriding lesson that should be learned and guide the road ahead is to reject that misleading but appealing deregulation song that the industry is singing again. It will lead to an even more horrific result, in part because the country simply does not have the

fiscal or monetary capacity to properly respond to another financial and economic crash. The truth is that the threat from too-big-to-fail, too-big-to-manage, too-big-to-jail, and too-big-to-regulate financial institutions remains alive, well, and getting much worse due to the deregulation juggernaut unleashed by the Trump Administration. That was proved by the failure and bailouts of the three much smaller banks in 2023, which resulted from the deregulation in the first Trump Administration and cost the country more than $40 billion in direct bailouts and more than $300 billion in all-in costs. Yet the largest of those banks only had a little more than $200 billion in assets. In contrast, JPMorgan Chase alone has $3.64 trillion in assets, and the 15 largest banks in the United States have a combined $14 trillion in assets. There is no chance these much larger, much bigger, too-big-to-fail financial institutions can be resolved without destabilizing contagion and gigantic bailouts.

Now, because everybody knows that, even if many will not admit it, regulators have tried to varying degrees over the years to increase the resilience of these financial institutions in the event of the inevitable stressful situations that will threaten their viability. Engaging in massive deregulation that significantly reduces the resilience of these gigantic financial institutions, knowing that they cannot be resolved, virtually guarantees the next crash will be much worse than the 2008 crash and could well cause a second Great Depression. That is the bad news. The good news is it is not inevitable. It can be prevented. Indeed, we know how to prevent it because we did it for more than 70 years. From the major laws and regulations imposed on the financial industry during the Great Depression of the 1930s until about September 2008, the U.S. did not suffer from a major financial crash. Importantly, and finally, at the same time during those decades when the financial industry was under the most robust regulation in the history of the world, the U.S. economy grew at historic rates and generated broad-based wealth creation. That proves that a strong, regulated financial industry is not only compatible with but necessary to achieve above-trend growth, stability, and broad-based wealth creation. Thank you.

[The prepared statement of Mr. Kelleher follows:]

BETTER MARKETS

**Testimony of Dennis M. Kelleher**
**Cofounder, President and CEO Better Markets, Inc.**
**Before**
**The U.S. House Committee on Financial Services**
**"Dodd-Frank Turns 15: Lessons Learned and the Road Ahead"**
**July 15, 2025**

Good morning, Chairman Hill, Ranking Member Waters, and Members of the Committee. Thank you for the invitation to testify today.

My name is Dennis Kelleher, and I am the Co-founder, President and CEO of Better Markets, Inc. ("Better Markets"), which was founded 15 years ago on October 1, 2010, shortly after the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Wall Street Reform Law"). Better Markets is a non-profit, non-partisan, and independent organization created in the wake of the 2008 financial crisis ("2008 Crash") to promote the public interest in the economic and financial policymaking in Washington DC.

It is important to remember that the 2008 Crash was an avoidable man-made financial crash and disaster that, as detailed below, ruined the lives of tens of millions of Americans, grievously damaged our economy and financial system, ballooned the country's debt, and undermined the pillars of our democracy (which depends on an economy delivering rising living standards and broad based prosperity). It didn't have to happen and only happened because too many elected officials, policymakers, regulators, and others who should have known better listened to the financial industry's Siren song of deregulation, which, as in the Greek myth, inevitably resulted in a catastrophic crash. The overriding lesson that should be learned and guide the road ahead is to reject that baseless and misleading but appealing song, which the industry is singing again, and which will lead to an even more horrific result, in part because the country does not have the fiscal or monetary capacity to properly respond to another financial and economic crash.

The key to understanding the severity of this threat to the country is recognizing and admitting that too-big-to-fail, too-big-to-manage, too-big-to-jail, and too-big-to-regulate financial institutions remain alive, well, and getting much worse due to the deregulation juggernaut unleashed by the Trump administration. Like the existential threats posed to smaller countries like Iceland and Switzerland from their similarly dangerous institutions, these gigantic, sprawling, complex, highly leveraged, opaque, and global institutions are likely too-big-to-bail even in the U.S. given the fiscal, monetary, and political constraints. They clearly cannot be resolved without destabilizing contagion and bailouts, as proved beyond doubt by the inability to resolve the three much smaller banks that failed in 2023, the largest of which only had about $200 billion in assets. In stark and disturbing contrast, the 15 largest U.S. banks held a combined $14 trillion in assets as of March 31, 2025, with JPMorgan Chase having $3.64 trillion in assets; Bank of America with $2.26 trillion; Citigroup with $1.76 trillion; and Wells Fargo with $1.71 trillion. Because everyone knows (even if many

won't admit) that those megabanks cannot be resolved individually or collectively in an orderly fashion without contagion, regulators have tried to varying degrees over the years to increase their resilience in the event of inevitable stressful situations that will threaten their viability. Engaging in massive deregulation that significantly reduces the resilience of these megabanks knowing that they cannot be resolved virtually guarantees that the next crash will be much worse than the 2008 Crash and could well cause a second Great Depression.

That catastrophe will have been as avoidable as the 2008 Crash, and for similar reasons. As evidenced by the years-long massive deregulation of the financial industry that directly led to the devastating 2008 Crash—which cost the U.S. more than $20 trillion and resulted in a lost generation of Americans—Washington's policymaking had been hijacked by special interests to serve the financial industry not Main Street families. Better Markets was created and designed to be a substantive advocacy counterweight to those special interests on behalf of the public interest as the Dodd-Frank Wall Street Reform Law was being implemented through hundreds of rulemakings. The goals of that reform law included consumer and investor protection, ending bailouts by ending the threat of too-big-to-fail, and refocusing the financial system on supporting the real productive economy. Achieving those vital goals **required that the financial industry be re-regulated** so that it would never again threaten Main Street Americans' jobs, homes, savings, retirements, and so much more.

Better Markets' goal is an economy that works for everyone, and produces broad-based economic growth, increases living standards, and closes the wealth and income gaps that are destroying the American Dream for far too many Americans. Those goals require a strong, stable, and well-regulated financial system that supports the real productive economy and is focused on wealth creation rather than wealth extraction. Only that will result in economic opportunity, security, and prosperity for all Americans, and protect and promote Americans' jobs, homes, savings, retirements, and more.

Over the past 15 years, Better Markets' team of substantive experts in banking, securities, commodities, derivatives, economics, finance, and law—many with experience in the private sector—have worked tirelessly to achieve those goals, including participating in virtually all of the rulemakings and litigations related to the implementation of the Dodd-Frank Wall Street Reform Law. For example, Better Markets has filed over 500 comment letters in connection with rulemakings at all the financial regulatory agencies and departments, participated in dozens of litigations, and testified numerous times, most related to the Dodd-Frank Wall Street Reform Law. We have also published hundreds of letters, reports, fact sheets, and white papers on policy related to economic and financial issues and have had hundreds of meetings with U.S. regulators and policymakers. Much of our attention has focused on critical issues before this Committee, including ensuring that the financial system (1) supports the real economy, Main Street families, small businesses, durable and sustainable economic growth, jobs, rising living standards, and wealth creation; (2) is strong, resilient, properly regulated, not prone to crashes, and not dependent on bailouts; (3) protects consumers, investors, markets, and financial stability; and (4) reduces

wealth and income inequality. Our website, www.bettermarkets.org, includes information on these and our other public interest activities.

Prior to Better Markets, I had the privilege to work in the Congress as a senior staffer for three different U.S. Senators. In my last position, I served as Chief Counsel and Senior Leadership Advisor to the Chairman of the U.S. Senate Democratic Policy Committee, where I was involved in, among other things, the consideration and finalization of what became the Dodd-Frank Wall Street Reform Law. Before that, I served as Deputy Staff Director and General Counsel for what is now known as the U.S. Senate Health, Education, Labor & Pensions (HELP) Committee, and as Legislative Director and Leadership Advisor to the Secretary of the Democratic Caucus. Prior to my experience in the U.S. Senate, I was a partner at the global law firm of Skadden, Arps, Slate, Meagher & Flom, where I specialized in securities, financial markets, and corporate conduct in the U.S. and Europe. Prior to obtaining degrees with honors at Brandeis University and Harvard Law School, I enlisted in the U.S. Air Force while in high school and served four years active duty as a crash-rescue firefighter. I grew up in central Massachusetts. Additional information on my activities at Better Markets can be found here.

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## Summary of Lessons Learned and Not Learned from the Dodd-Frank Wall Street Reform Law

1. **The financial industry was under the most robust regulation in history in the decades after the Great Depression and the New Deal and through the 1970s. At the same time, the U.S. economy grew at historic rates**, there was broad-based wealth creation, and the U.S. experienced no financial crashes, all proving that a strongly regulated financial industry is not only compatible with, but necessary to achieve, above-trend growth and stability.
    a. When financial institutions are not properly regulated, capital is misallocated away from the often-low margin, longer-term real economy activities to high margin, short-term financialized and wealth extraction activities, which stunts capital formation, starves the real productive economy, and decreases economic growth.

   b. The high margin financialized and wealth extraction activities are also usually highly leveraged and complex, which causes financial instability and threats to the real economy, leading to failures, crashes, and bailouts.
2. **Un- and under-regulated financial institutions pose grave threats to the U.S. economy and the lives and livelihoods of all Americans**, as proved by the Great Crash of 1929 and the Great Depression of the 1930s, the S&L crisis of the late 1980s and early 1990s, the 2008 Crash and the Great Recession, and the 2023 banking crisis and bailouts. The shocking breadth and depth of the damage done by the 2008 Crash illustrates this point:
   a. 13 months after the September 15, 2008, bankruptcy of Lehman Brothers, the U.S. unemployment rate was more than 17%, throwing more than 27 million Americans out of work.
   b. 16 million foreclosure filings happened during the Great Recession, causing millions of families to lose their homes.
   c. 40+% of homes in the U.S. were underwater, meaning their mortgages were higher than the value of their homes for years after the Lehman bankruptcy.
   d. 10 years passed before the unemployment rate in the U.S. returned to pre-2008 Crash levels.
   e. 8 years after the Lehman bankruptcy 90% of Americans were poorer at the end of 2016 than they were in 2007 by 17% to 34%.
   f. U.S debt more than doubled as a result of the 2008 Crash.
   g. $29 trillion was spent, lent, pledged or otherwise used or made available to bailout financial institutions as a result of the 2008 Crash, with the $700 billion Troubled Asset Relief Program (TARP) program being just the visible tip of the bailout iceberg.
      i. As detailed below, these bailouts enabled the financial industry to quickly recover in stark contrast to Main Street Americans who suffered year-after-year.
3. **The damage inflicted on every corner of the country by the 2008 Crash shows why financial regulation and reform should not be partisan political issues**, and why everyone should resist the temptation to force-fit financial reform onto a political or ideological spectrum.
   a. Financial regulation, financial reform, deregulation, crashes, and bailouts are not left-right issues.
   b. All Americans—Republicans, Democrats, Independents, and nonvoters - are well-served by and deserve an economy that works for everyone and a stable, strong financial system that supports the real economy, does not fail, and requires no taxpayer bailouts.
   c. When that isn't the case, all Americans suffer regardless of party affiliation, ideology, or voting status.
4. **U.S. financial institutions were dangerously deregulated and supersized in the decades before the 2008 Crash**, which directly led to, caused, and spread the 2008 Crash.
   a. Starting with the Reagan administration and lasting through the George W. Bush administration, the core pillars of the New Deal financial reforms that

ended years of boom-bust cycles and that protected Main Street Americans from the unregulated, high-risk activities of Wall Street were gradually eroded, weakened, and, ultimately, eliminated.

b. That deregulation removed the layers of protection—supervisory, regulatory, and structural—between Main Street Americans and Wall Street's activities, resulting in Wall Street's 2008 Crash that devastated Main Street families.

5. **That deregulation resulted from many Washington policymakers being confused, misled, or incentivized to believe that the public interest coincides with the interests of the financial industry**, which virtually always claims that its interests overlap with the public interest and that the industry is primarily if not solely focused on economic growth, job growth, credit supply, and helping community banks, small businesses, and disadvantaged groups. The industry continues to restate these baseless claims—indeed, it's the chorus for their Siren song of deregulation.
    a. Those claims, however, are almost always just smokescreens behind which they hide their profit- and bonus-maximizing motives. We saw those claims in the years before the 2008 Crash and during the implementation of the Dodd-Frank Wall Street Reform Law. And we're seeing those claims relentlessly advanced today, as illustrated by the massive propaganda campaign against the Fed's proposed Basel III rule and by every deregulatory proposal the industry is pushing throughout the Trump administration.
    b. Financial institutions—from Wall Street to the smallest advisory firm on Main Street—are private, profit maximizing institutions like the rest of the private sector. Unlike the rest of the private sector, however, the financial industry is in the unique position of controlling the financial lifeblood of the economy, and they maximize their profits and bonuses by using that unique position to extract wealth through risky activities that often have little to no benefit for the real economy. People need to stop pretending that the primary goals of the financial industry are growing the economy, maximizing employment, making sure everyone has access to credit, ensuring customers are treated equally and fairly, etc. And they have to stop believing that deregulation is the way to achieve those goals, when in fact deregulation leads to crises, crashes, bailouts, and economic disasters that undermine all of the lofty goals the industry claims to care about.
6. **After the 2008 Crash, a comprehensive and effective financial reform law was necessary to re-regulate the financial industry, but the financial industry's war on reform prevented that from happening.**
    a. Wall Street and the broader financial industry besieged Congress with an army of thousands of lawyers, lobbyists, PR firms, and other allies to kill or cripple any financial reform legislation.
    b. As a result, the Dodd-Frank Wall Street Reform Law was not as effective as it should have been, and it was embedded with innumerable provisions that would favor the industry during the following year's long regulatory process.
        i. Foremost among the timebombs embedded in the law was delegating the implementation and details to the financial regulatory agencies,

which were charged with drafting, proposing, and finalizing more than 400 rules.

1. Given those agencies were required to follow the Administrative Procedure Act (APA), that meant it would be years before most of the provisions of the law became a reality. But that would only happen if those agencies could overcome the onslaught from the industry.

7. **The Dodd-Frank Wall Street Reform Law was far from perfect due to industry lobbying and its allies weakening what should have been a strong and effective law passed by a bipartisan supermajority. Nevertheless, the law could have and should have ended too-big-to-fail and bailouts; protected consumers and investors; restored financial stability; and redirected the financial industry** from high-risk socially useless wealth extraction activities to activities that would instead support the real productive economy.
    a. The law had the powers, authorities, and provisions to achieve these goals, including requiring:
        i. Adequate capital, liquidity, and margin to prevent failures and require financial institutions to absorb their own losses without bailouts.
        ii. A rigorous stress testing regime that would identify banks unable to withstand the inevitable markets shocks and downturns our economy experiences without failing and needing bailouts.
        iii. Resolution plans (living wills) enabling bankruptcy or wind-downs without contagion or bailouts.
        iv. Regulation of nonbanks and identification of emerging risks by the Financial Stability Oversight Council (FSOC), which could have eliminated regulatory arbitrage by ensuring systemically significant banks and nonbanks were similarly regulated.
        v. Exchange trading, clearing, registration, and disclosure in the securities and derivatives markets adequate to protect customers, investors, markets, market participants, and the financial system.
        vi. Banning dangerous proprietary trading by Wall Street's biggest banks and requiring that compensation schemes do not incentivize high risk conduct.
        vii. Separating the most dangerous and least socially useful derivatives trading at banks into separate, well-capitalized subsidiaries (the swaps push out).
        viii. A financial consumer protection agency empowered and funded to require financial institutions to comply with the law and protect consumers, which was also key to protecting financial stability.
        ix. Adopting a uniform fiduciary "best interest" standard for broker-dealers and investment advisors to prevent broker-dealers from recommending overpriced, underperforming, and risky investments.
        x. Reforming credit rating agencies, including eliminating the powerful conflicts of interest inherent in the "issuer pays" compensation model, which greatly contributed to the 2008 Crash.

8. **The Dodd-Frank Wall Street Reform Law didn't achieve its goals because the regulatory process to implement the Dodd-Frank Wall Street Reform Law was overwhelmed and captured by the very financial industry that was supposed to be regulated by the law.** The industry's army moved from besieging Congress to besieging the regulatory agencies where it weakened, if not killed, many of the core provisions of financial reform.
    a. When the Dodd-Frank Wall Street Reform Law passed Congress after a historic battle by the financial industry to defeat it, a top Wall Street lobbyist said it wasn't a defeat because it was only "half time," meaning that the industry was going to try to kill in the regulatory process what it wasn't able to kill in the legislative process.
    b. It then engaged in scorched earth trench warfare against the attempted implementation of the Dodd-Frank Wall Street Reform Law by the financial regulatory agencies, using every tool at their disposal, from the lure of high paying revolving door employment to the APA as a weapon to slow down and weaken virtually every rulemaking, preventing much of the law from ever becoming a reality.
    c. The entire APA rulemaking process was dominated if not monopolized by the financial industry with lopsided lobbying.
        i. For example, on the Volcker rule ban on proprietary trading, one study showed that 93.6% of the meetings at the agencies were with industry representatives.
    d. These efforts were substantially assisted by industry allies and sympathizers in government.
        i. at the agencies that often acted as de facto internal lobbyists for the financial industry. and
        ii. in Congress which often relentlessly attacked the agencies and regulators on behalf of the industry.
            1. Many of these industry allies and sympathizers, who were supposed to be acting in the public interest, left the agencies and Congress to spin through the revolving door to cash in by selling out their public service and going to work directly for the industry, usually against the very offices at which they had worked.
9. **The financial industry's attack also utilized the courts to delay and to kill those parts of the law they couldn't defeat in the legislative and regulatory processes.**
    a. When, after their best efforts, the industry was not able to weaken or kill a rule implementing the Dodd-Frank Wall Street Reform Law, they sued, often in friendly jurisdictions where their odds of getting industry-biased judges were highest and most likely to rule against the regulatory agencies.
    b. Even when they didn't win, the industry gained from delaying the implementation of the law during which time they continued their unregulated activities and enlisted Congressional and other allies to attack the law, the rulemaking process, the regulatory agencies, and anything else that stood in the way of their fight against financial reform.

10. **Parts of the Dodd-Frank Wall Street Reform Law were nonetheless implemented and some were effective,** before the rollbacks during the first Trump administration.
    a. Supervision and regulation at the biggest banks were substantially strengthened, which reduced the dangers from their highest-risk activities.
    b. Loss absorbing capital at the biggest banks increased substantially (although still not enough) and, despite the industry's claims, lending also increased (as did the financial industry's profits and bonuses).
    c. The unregulated derivatives markets were substantially regulated (although still insufficiently).
    d. Whistleblower programs were created and became effective, as did the investor protection advocate at the SEC.
    e. Asset-based securities regulation increased through a rule that required sponsors of securitizations to retain a meaningful amount of risk, i.e., "skin in the game," to ensure they have an incentive to take greater care when assembling their asset-backed securities (although there was a large loophole).
    f. The CFPB proved to be a strong, dedicated, and effective advocate for consumers of financial products.
    g. Many of these reforms directly contributed to the strength and stability of the banks and other financial institutions during the early days of the 2020 COVID 19 pandemic.
11. **The first Trump administration rolled back some of the implemented provisions of the Dodd-Frank Wall Street Reform Law and caused the 2023 bank failures and crisis.**
    a. 3 of the 4 largest bank failures in U.S. history happened in 2023 as a direct result of the industry's allies in the first Trump administration and in Congress rolling back key bank capital and liquidity provisions of the reform law during 2017-2020.
    b. Those failures caused a banking crisis that cost the American people more than $40 billion in direct costs and more than $300 billion in total costs.
    c. This proved yet again the dangers of deregulation.
12. **The current Trump administration's agenda has nevertheless put deregulation on steroids, which is extremely dangerous and will almost certainly lead to another catastrophic crash, likely worse than the 2008 Crash.**
    a. Deregulation[1] in just the first six months of the Trump administration—comprehensively tracked here—is deep, broad, and dangerous.
    b. This is happening at the SEC, CFTC, Federal Reserve, OCC, FDIC, NCUA, OFR, FSOC, and the Departments of Labor and Treasury, where Trump has

[1] As used herein, "deregulation" is not limited to undoing existing rules and failing to enact necessary new rules. It also includes the failure and refusal to enforce existing laws and rules (via dropped lawsuits, announcements of nonenforcement, and the refusal to file lawsuits) as well as the failure to properly conduct supervision and examination of financial institutions. As noted during the first Trump administration, "banks get kinder, gentler treatment under Trump" across the full range of regulatory responsibilities. See also, "Bank bosses call for softer rules, Trump-nominated regulators listen."

installed leaders overtly and overly favorable to the industry that the agencies and departments are supposed to regulate in the public interest.

c. This deregulation is not limited to undoing existing rules and failing to enact necessary new rules. It also includes the failure and refusal to enforce existing laws and rules (via dropped lawsuits, baseless guidance, announcements of non-enforcement, the refusal to file lawsuits, and even attempts to undo prior settlements and reverse court decisions) as well as the failure to properly conduct supervision and examination of financial institutions.
d. There is also a wholesale attack on the very existence of the CFPB, which was the most effective consumer protection agency in the history of the country, and which now has been effectively eliminated as a functioning agency.
e. The deregulatory campaign also seeks to destroy the independence of agencies by placing them under the political control of the White House and removing commissioners and board members without any cause, merely because of political affiliation.
f. The cuts to the workforce at the other financial regulators, under the guise of making the government more efficient, simply means that there are fewer cops on the Wall Street beat to identify and prosecute financial misconduct, supervise and regulate banks, and protect financial stability.

13. **Moral hazard—financiers and bankers believing they can do anything, reap the short-term rewards, and never face accountability or consequences—is at an all-time high in the financial industry.**
    a. Not only was there zero accountability for the 2008 crash—not a single high-level executive at a major Wall Street bank was prosecuted—but those in finance were bailed out, reaped historically high profits, and pocketed hundreds of billions in bonuses. That happened again during and after the banking crisis of 2023. Rather than being held accountable, the bankers were rewarded.
    b. Given that finance is driven by a monetary incentive system, the only rational decision for financiers is to ramp up risk to the highest levels conceivable because they will reap the upside and not suffer the downside, which will be shifted to Main Street Americans as has happened over the past decades.
14. **To prevent the coming catastrophe, the financial industry must be strongly regulated, not deregulated. The point of regulation is to counterbalance the profit-maximizing, risk taking motivations of individual institutions with collective protections for the American public.**
    a. As the former CEO of Morgan Stanley, John Mack, said.
        i. "We [Wall Street and the broader financial industry] cannot control ourselves. You [lawmakers and regulators] have to step in and control the Street."
    b. That's because the prospect of unimaginable riches in the very short term of a year or two is impossible to resist. Financers and bankers will always figure

out a way to justify their conduct and conclude that it is not an inappropriate risk or action.

c. As Upton Sinclair said, "it is difficult to get a man to understand something when his salary [or bonus] depends upon him not understanding it."
    i. Self-restraint like self-regulation is not possible in the face of some temptations and $1 million to $100 million bonuses for just one year are exactly those types of temptations.

**15. Policymakers must accept that conflict in financial regulation is inevitable, healthy, and, indeed, a sign of success.**

a. The attempt to have consensus or agreement among interested parties over financial reform and regulation cannot be achieved and should not be sought.
    i. Financial institutions are private companies seeking to maximize profits and are populated by people seeking to maximize compensation, both legitimate goals for private companies and the people who work at them. Policymakers, elected officials, and regulators are charged with protecting and promoting the public interest, which is often and inevitably in conflict with private sector profit and compensation maximization.

b. Regulators and financiers/bankers bring—and should bring—different perspectives to these issues, which in turn lead to different views and, inevitably, disagreement. That is actually a good sign. That means that both are doing their respective jobs of representing their divergent interests.

c. In the end, however, policymakers must have the resolve to do what is best for the public interest rather than yield to the self-serving goals of the financial industry in a vain quest for consensus.

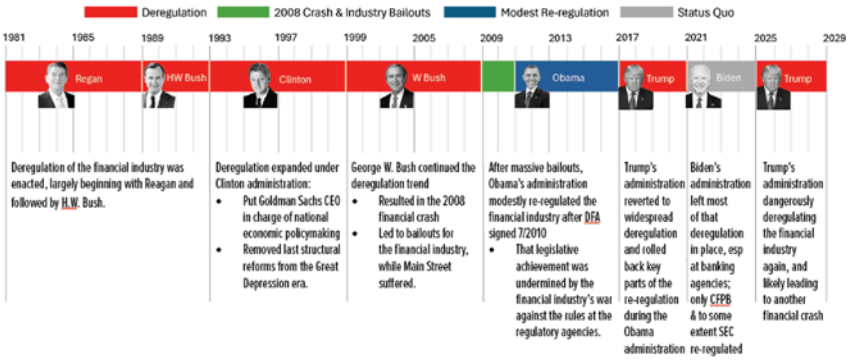
**16. Financial reform and properly regulating the financial industry isn't just a matter of economics and finance, but also a matter of a viable, sustainable democracy.**

a. You can't have a functioning democracy without economic opportunity, security, prosperity, and growth that is broad based. Deregulation and the crashes it causes prevent all that by killing credit, lending, businesses, community banks, economic growth, and prosperity.

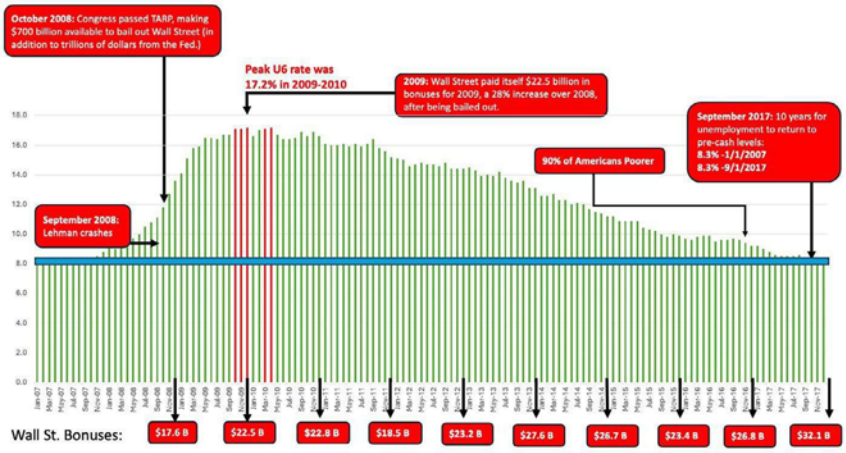
b. As Vice President Henry Wallace said in 1944:
    i. "The issue is very simple. The question is whether the people, keeping themselves fully informed, can operate through democratic government to keep the national interest above the interests of Wall Street."
        1. As Martin Wolf detailed in his brilliant book The Crisis of Democratic Capitalism, the challenge VP Wallace identified faces this generation as it did the generations of the 1930s and 1940s.

**Decades of Deregulation and the Crippling's Costs of the 2008 Crash**

The actions of the Trump Administration in the months since the inauguration have already opened cracks in the foundations of our economic and financial systems. While Administration actions on tariffs and starting a trade war have received most of the attention, the cumulative impact of his massive deregulation of the financial industry thus far and as expected over the next four years—which JPMorgan Chase's CEO Jamie Dimon said has bankers "dancing in the streets" with joy—will return the country to the non-regulatory regime and anything goes culture that prevailed from 2000 to 2007, and directly caused the horrific 2008 Crash, which necessitated the re-regulation of the industry via the Dodd-Frank Wall Street Reform Law. Trump's actions are deregulation on steroids—to a degree that the country has never seen before—and come on top of four decades of deregulation and an already seriously under-regulated, overly fragile, and crisis-prone financial system (as proved by the recent costly and entirely unaddressed 2023 banking crisis). To understand this, it helps to visualize the decades of deregulation that preceded Trump. This is what the regulatory history—or, more accurately, the deregulatory history—of the U.S. from 1980 through the next four years of Trump looks like:

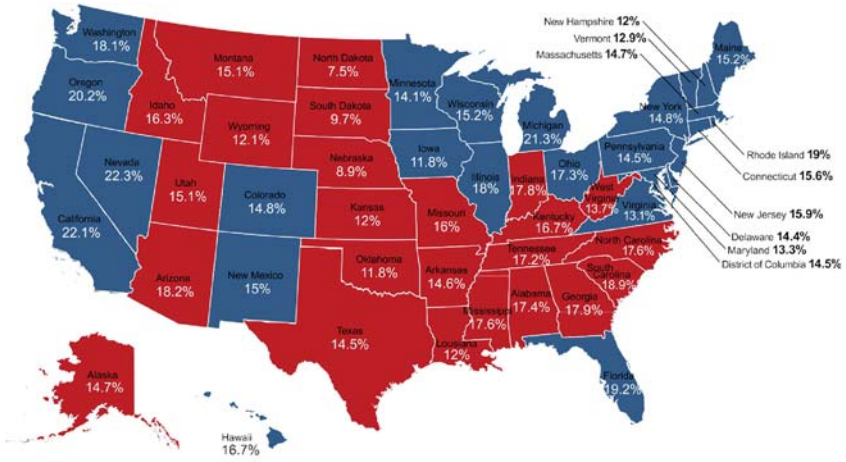


Trump adding four more years of deregulation and unleashing Wall Street and finance—appropriately referred to as a "new high water mark for deregulation"—are going to cause a catastrophic financial crash. It will almost certainly be worse than the 2008 Crash, which was the worst since 1929 and caused the worst economy since the Great Depression of the 1930s: it threw 27 million Americans out of work, caused 16 million foreclosure filings, pushed 40+% of homes underwater, and took 10 years for unemployment to return to 2007 levels:

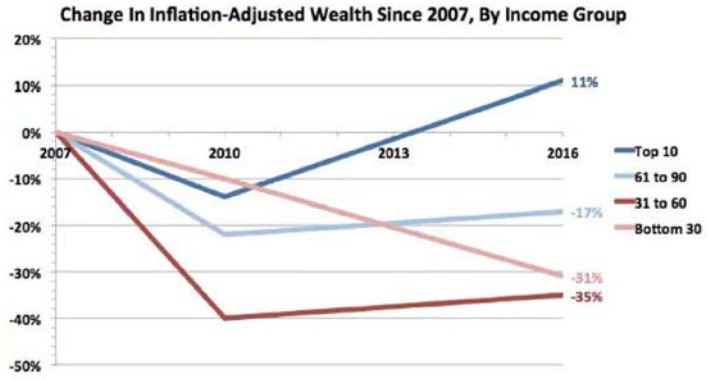



Note that while tens of millions of Americans suffered, Wall Street paid itself hundreds of billions of dollars in bonuses (the red bubbles at the bottom of the chart above), including $22.5 billion for the 12 months of 2009 when those banks were stuffing their pockets full of taxpayer bailout dollars.

It is important to remember that the incredible damage caused by the 2008 Crash was nationwide—no state was spared. The suffering was not limited to one part of the country or to the constituents of one party. The chart below shows the average of the U6 unemployment rate from the fourth quarter of 2009 through the third quarter of 2010 (by state colored by 2008 presidential vote). The 2008 Crash crushed people regardless of party, with 14.6% thrown out of work in red Arkansas and 16.7% in red Kentucky and 14.6% in blue New York and 22.1% in blue California.



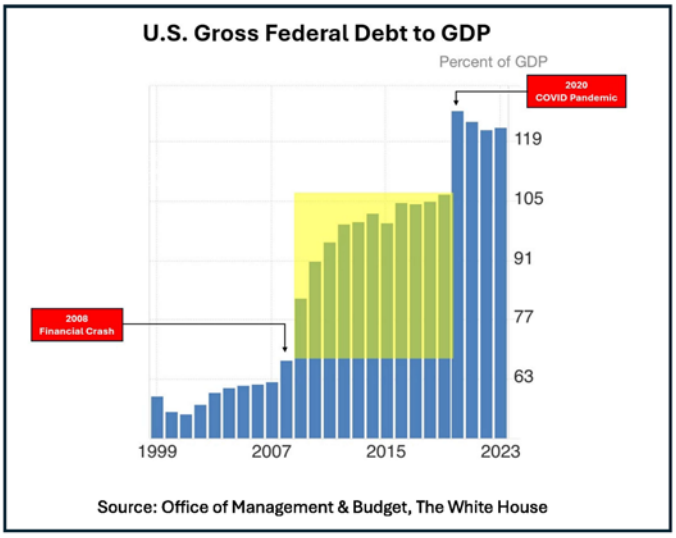

As a result of all the damage from the 2008 Crash and the bailouts, 90% of the American people were poorer in 2016 than they were in 2007 by between 17% to 35% according to a Federal Reserve study:



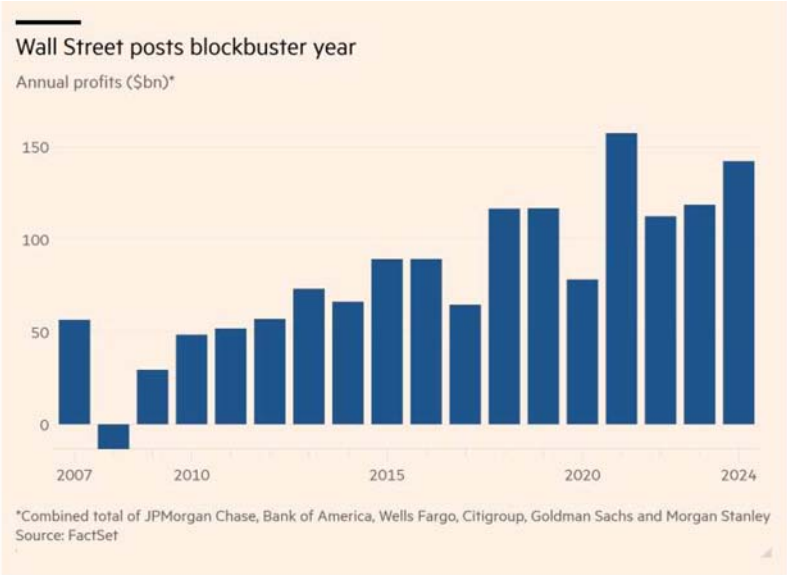

(Source: Federal Reserve)

Ultimately, the 2008 Crash cost the country more than $20 trillion in lost GDP and resulted in trillions of dollars of no-accountability bailouts for the financial industry. Economically speaking, the 2008 Crash resulted in a lost generation of Americans, with dire political and social consequences.

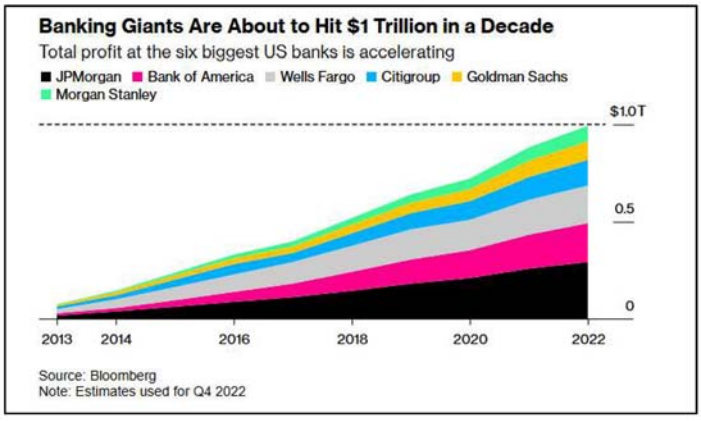
The 2008 Crash also destroyed the country's finances: the crash-caused Great Recession resulted in tax receipts plummeting and social needs/costs skyrocketing, all on top of the costs the country incurred to pay for the bailouts of the financial system. The result was exploding annual deficits leading to a dramatic increase in the national debt:




Throughout that time—as the American people grievously suffered from the financial crash— the financial and banking industries reaped the benefits of deregulation, bailouts, subsidies, and favorable Federal Reserve policies. One stark indicator of that is the bonuses Wall Street's financial firms paid themselves (identified above), but another indicator is the historic profits pocketed by the financial and banking industries. For example, just the 6 biggest U.S. banks had $142 billion in profits in just 2024, the second-best year on record since 2007, the year before the 2008 Crash. As astonishing, as illustrated in this Financial Times chart, those 6 largest banks have made gigantic profits every year since the 2008 Crash, as the country suffered:




**Put differently, as Bloomberg showed,** those six gigantic U.S. banks generated more than $1 trillion in profits in just the ten years from 2013-2022**:**



Nevertheless, the financial industry and Wall Street's biggest banks in particular complain nonstop that regulators are choking their businesses with regulations. JPMorgan Chase's CEO Jamie Dimon is one of the most high-profile, vocal Wall Street CEO, frequently attacking regulators and regulations, including as his bank recently reported historically high profits for 2024. Just days after Trump's election, Dimon said, "a lot of bankers [are] dancing in the street because they've had successive years and years of regulations, a lot of which stymied credit," meaning lending. However, the actual facts demonstrate that the banks have not suffered under regulation, which has been minimal, weak, and largely ineffective.

The most recent data proves that beyond doubt: just the four biggest U.S. banks "account for 44 per cent of the U.S. banking industry profits—the highest share for the first nine months of [2024] since 2015—despite the pool taking in more than 4,000 of the country's other banks." Profits at the biggest banks "rose 90% in 2024" and "bonuses jump[ed] 32% as the total surges to a record"—that was just for Wall Street bonuses paid in New York City, not the entire financial industry, which was presumably multiples higher. Those record New York City bonuses totaled $47.5 billion. As is evident beyond reasonable dispute, **regulation has not stopped record revenue, profits, and bonuses.**

No less an authority than former hedge fund manager and current Secretary of the Treasury, Scott Bessent, recently said, **"for the last four decades...Wall Street has grown wealthier than ever before."**

Additionally, the industry's claims that regulations have caused reduced "credit," lending, economic growth, and job and business creation are also inconsistent with the facts. Ironically, the facts show that those outcomes are a direct result of under-regulation and the resulting crashes that inevitably follow. The 2008 Crash was caused by decades of deregulation, and that crash caused tens of millions of Americans to suffer economic hardship for more than a decade afterwards. While on a much smaller scale, that also happened as a result of the 2023 banking crisis: some estimated that it was going to reduce GDP by as much as 1% due to credit contraction.

**Deregulation is what kills credit, lending, business and growth.** That's what four more years of deregulatory under Trump is going to cause, maybe not immediately, but sooner or later. We believe that it is going to lead to a historically damaging financial crash, which will reverberate economically, socially, and politically for decades to come.

One reason that is so highly likely to be the case is because **moral hazard in finance—the belief that one can do anything, reap the short-term rewards, and never face accountability or consequences—has probably never been higher in the financial industry**—and for good reason. Not only was there zero accountability for the 2008 Crash, but those in finance were bailed out, reaped historically high profits, and pocketed hundreds of billions in bonuses. That happened again in and after the banking crisis of 2023. Rather than being held accountable, the bankers were rewarded. As detailed below, the

deregulation and regulator (and prosecutor) capitulation since Trump was inaugurated six months ago are sending the message that the financial industry can do no wrong and, when it does, it will definitely not be punished. Given that finance is driven by a monetary incentive system, the only rational decision for financiers is to ramp up risk to the highest levels conceivable because they will reap the upside and not suffer the downside, which will be shifted to Main Street Americans, as has happened over the past decades.

The Great War of 1914-1918 was a global conflict that was one of the deadliest in history. When it ended, it was believed to be the worst that could ever happen in the world. But then World War II happened, which required The Great War to be renamed World War I. The Great Depression of the 1930s is so far the single worst economic catastrophe to befall the modern world. The economy after the 2008 Crash was the worst since the Great Depression, but didn't quite rise to that level, hence the appellation "the Great Recession." However, after Trump ushers in four years of historically broad and deep deregulation on top of decades of deregulation, the Great Depression may well become known as the First Great Depression after the next financial and economic crash.

Those are the stakes facing the United States and the world as Trump enacts deep, widespread deregulation, which will unleash Wall Street's megabanks and other large financial institutions on Main Street Americans, who will lose the vital protections those financial protection rules provide. Also, as happened in the 1920s and the early 2000s, deregulation in the U.S. will precipitate global deregulation and a global race to the regulatory bottom, ensuring that the coming crash will spread across the world, plunging all into catastrophe.

**The Trump Administration's Dangerous Widespread Deregulation Is Going to Cause a Crash**[2]

**Consumer Financial Protection Bureau**

The Trump Administration is attacking all of the federal regulatory agencies that protect investors, the financial markets, and the broader economy. But none of those assaults is more aggressive than the campaign against consumers as the Administration strives to dismantle the CFPB. The Administration sought to cut off its funding, fire nearly all of its staff, and shut down its operations. As one DOGE staffer has said, the Administration seeks to reduce the consumer watchdog to just "five men and a phone" in a room. And just last week, the Congress made good on Trump's promise by cutting the budget of the CFPB nearly in half via the budget bill. It is not a coincidence that the Administration and its allies in Congress would seek to gut the very agency that has provided $21 billion in relief to almost 200 million Americans in the last 14 years—that's $21 billion that the financial predators and the

[2] See also the April 29, 2025 Better Markets' Report entitled "Trump's Wall Street Deregulation on Steroids Is Going to Cause a Horrific Economic Crash on Main Street."

financial industry would like to keep in their pockets rather than that money benefiting the American people who were ripped off, discriminated against, lied to, and otherwise victimized by the financial industry.

Every American benefits from the CFPB being an effective cop on the financial consumer beat as demonstrated by its civil penalty fund's $3.3 billion in payments to Americans in every state. While only a small fraction of the $21 billion in relief secured by the CFPB for Americans, the civil penalty fund illustrates how everyone everywhere benefits from the CFPB. Here is a breakdown of payments by the CFPB from the civil penalty fund to harmed Americans by state:

The CFPB protects everyone regardless of party affiliation, voting status, or ideology. It doesn't matter to the CFPB if you live in a red or blue state. If you're ripped off or someone has broken the consumer protection laws, the CFPB is going to stand up for you and make the lawbreakers pay.

None of that matters to the Trump administration or the other industry-aligned critics of the CFPB. Beyond gutting the funding and staffing of the agency, the Trump Administration has also used the CFPB as a tool to dispense favors to the industry and undermine the rule of law. Specifically, the Administration has abandoned litigation and even settled consent orders against an array of financial firms, from big Wall Street banks to credit reporting agencies to student loan servicers to manufactured housing lenders. By one estimate, the CFPB has dropped more than half of all existing litigation.

On the policy front, Trump's CFPB (sometimes with the help of allies in Congress) has moved to rescind or repeal a host of rules and guidance meant to protect consumers from financial harm. Among the rules rescinded or repealed are those related to overdraft, medical debt, credit card late fees, data broker practices, and protections for Buy-Now-Pay-Later loans. On the guidance front, CFPB leadership has moved to dismantle the public-facing Consumer Complaint Database, a vital tool that has empowered millions of Americans to report fraud, abuse, and predatory practices. The rescissions also eliminated guidance that previously prevented nonbanks and fintech companies from misrepresenting themselves as FDIC-insured depository institutions—a tactic that has historically misled consumers into believing their funds are protected when they are not.

The Bureau has likewise announced its intent to reduce supervisory "events" (meaning, exams and the negative findings that could result) by 50%, regardless of the level of consumer complaints or alleged misconduct. In a shocking development, Bureau leadership has also said it will no longer prioritize supervision or enforcement of fair lending laws, and in a move without precedent, the CFPB attempted to nullify an already agreed-upon settlement related to discriminatory lending. In an action underscoring just how unprecedented and outrageous this attempt was, the U.S. District Court for the Northern District of Illinois recently rejected the CFPB's effort to nullify the settlement, relying in part on an amicus brief by Better Markets and other advocates.

One irony of all this is that only community banks – those with less than $10 billion in assets —are being supervised and regulated for consumer protection compliance because the Fed is mandated to do that. The CFPB is charged with doing that for banks with more than $10 billion in assets. So gutting the CFPB means that community banks are being regulated but Wall Street's megabanks are not.

**Deregulation at the Banking Regulators**

Properly implemented, the Dodd-Frank Wall Street Reform Law would have protected all Americans from the sort of excessive risk-taking and predatory practices that led to the 2008

Crash. It would have also helped to prevent or mitigate the next financial crisis. The financial system—particularly the biggest, most dangerous banks—is safer and less prone to contagion since the Dodd-Frank Wall Street Reform Law. However, the first Trump administration deregulated banks under $250 billion in assets, leading to the 2023 failures and bailouts. Moreover, recent deregulatory actions by the Trump Administration have opened cracks and exposed significant vulnerabilities that endanger the economy, financial system, banks, and Main Street America.

Despite the financial reform law's goal to eliminate too-big-to-fail (the idea that the government will always bail out the big, systemically important firms rather than let them fail) is alive, well, and getting worse. In fact, recent actions by the OCC and FDIC to loosen merger rules and policies to make them more industry-friendly have made the too-big-to-fail problem worse. One of the more egregious aspects is the regulators do not have to consider financial stability when considering an application for a bank merger. This is not a theoretical problem; in April 2025, the Fed and OCC approved the Capital One-Discover bank merger, which creates the 6th largest bank in the country and the largest credit card lender. This merger will cost consumers and endanger financial stability by allowing two banks with egregious histories of inadequate management, excessive risk-taking, and repeated illegal behavior to grow even larger and more interconnected. Rather than stopping such outrageous and inappropriate behavior, regulators are rewarding it. Moreover, the FDIC loosened expectations for large banks' planning for potential failures, which means a greater chance of contagion that would spread to other banks and the economy during a crisis, ultimately increasing the cost and risk of the next financial crisis.

All large, systemically important banks should be required to have sufficient liquid, high-quality capital to absorb their own losses without needing taxpayer bailouts or extraordinary emergency support from the Fed or other parts of the government. As proven during the 2008 Crash, the COVID-19 pandemic, and most recently in the 2023 banking crisis, this is simply not the case. Because banks do not have enough capital, an array of government programs and bailouts have been used to stop the contagion and risk from spreading to other parts of the financial system and collapsing the economy into a second Great Depression. After four years of deregulation under the first Trump administration, there was a full agenda waiting for the Fed, including the priority of finalizing the Basel III capital rules, the so-called "Endgame." Unfortunately, now two years after the July 2023 Basel Endgame proposal, the banking regulators have still failed to strengthen capital requirements for the megabanks. Instead, the regulators have proposed to weaken capital requirements with changes to the enhanced supplementary leverage ratio capital requirement, which would reduce capital requirements by an astonishing 27 percent for depository institution subsidiaries of the megabanks. The Fed is also moving ahead with dangerous changes that will fundamentally undermine the bank capital stress tests, making them less valuable and less sensitive to deterioration in bank conditions that could lead to bank failure or a banking crisis.

Regulators have also failed to implement rules to hold bank boards and executives accountable, allowing the megabanks to enrich themselves and shareholders after

executives pocketed hundreds of billions of dollars and avoiding any punishment for wrongdoing or misconduct. The Dodd-Frank Wall Street Reform Law recognized this unjust and unfair imbalance of incentives, and with Section 956, directed financial regulators to remedy it with a set of new rules for financial institutions and executives to follow related to incentive-based compensation. New rules were due within 9 months of the passage of the financial reform law, but unfortunately, more than 14 years have passed since that "deadline," and there is still no incentive-based compensation rule. Adding insult to injury, rules to hold bank boards of directors accountable for meeting basic, minimum standards for operating safely and fairly have been weakened. For example, in March 2025, the FDIC rescinded its proposed standards for corporate governance.

Over the last six months, all of the banking regulators have catered to Wall Street rather than protecting Main Street families and community banks. Newly confirmed Vice Chair for Supervision Michelle Bowman claims to care about Main Street, but has enthusiastically and unequivocally supported Wall Street with mindless deregulation. Acting FDIC Chairman Travis Hill has prioritized an anti-regulatory, pro-industry agenda that includes supporting fintech, crypto, bank mergers, and hot money brokered deposits rather than focusing on the FDIC's core mission to protect Main Street Americans' savings accounts, the banking system, and the economy. Likewise, Acting Comptroller of the Currency Rodney Hood detailed the OCC's priorities, which include supporting fintechs, digital assets, and reducing regulation to unburden the banks. The banking agencies' actions have demonstrated their stated focus on deregulation and their lack of focus on protecting consumers, including by rescinding the Community Reinvestment Act final rule and stopping work to find and end discriminatory practices at banks.

Finally, under the guise of innovation, the banking agencies are allowing unregulated/risky activities into the banking system. This is not unlike listening to the Siren song of allowing subprime mortgage activities into the banking system, which served as one of the primary drivers of the 2008 Crash. These actions are also reminiscent of—and will likely have a similar impact to—the complete deregulation of derivatives in 2000, which was both a key cause of the 2008 Crash and a conveyor belt spreading risk worldwide. The OCC, Fed, and FDIC have removed crypto guardrails for banks that want to handle crypto assets. The Fed, OCC, and FDIC have also all removed, or are working to remove, reputational risk from examinations, eliminating a vital early-warning system that will no longer be able to stop risky or discriminatory bank activities. Finally, the OCC has welcomed fintech companies into the banking system with the approval of applications and is considering additional companies' applications for a national trust bank charter.

**Neutering and Misusing the Financial Stability Oversight Council**

The financial crisis revealed a number of structural issues in U.S. financial regulation. Importantly, gaps in regulation left many so-called "nonbanks" or "shadow banks" that engaged in bank-like activities, such as AIG, Bear Stearns, and Lehman Brothers, unregulated or underregulated. In addition, financial regulation was significantly siloed—

individual regulators oversaw the particular activities and entities within their jurisdiction, but no one regulator monitored the entire financial system for risks. The Dodd-Frank Wall Street Reform Law established FSOC to remedy these critical shortcomings and to ensure that systemically significant banks and nonbanks were similarly regulated, thereby ending regulatory arbitrage.

Under the Obama Administration, the FSOC undertook its statutory mandate to designate "systemically important" nonbanks that posed a threat to the U.S. financial system, subjecting them to enhanced prudential standards and oversight. Though the Obama Administration designated just four financial firms for prudential regulation—Prudential, GE Capital, AIG, and MetLife—the FSOC made progress in identifying other nonbank financial risks. Likewise, the FSOC used authority under Section 120 of the Dodd-Frank Wall Street Reform Law to recommend that the SEC take steps to further mitigate the risks of money market funds. The SEC acted after the FSOC's actions.

But during the first Trump Administration, the FSOC abandoned its mission and mandate. The Council voted to de-designate AIG as a systemically important nonbank firm even though the company was larger and more interconnected than at the time of its designation. The FSOC also abandoned the defense of its designation of MetLife, which challenged the decision in federal court. Finally, the FSOC also de-designated Prudential Insurance. In addition to these individual de-designations, the FSOC also issued new guidance that intentionally made it nearly impossible to designate future nonbank firms for prudential regulation.

While the Biden Administration took steps to shore up the funding and staffing of the FSOC and worked to undo the designation guidance of the first Trump Administration, the second Trump Administration seems intent on using the FSOC as a tool to deregulate the financial sector and force unanimity within the member agencies.

**Crippling the Office of Financial Research (OFR)**

When the 2008 Crash hit, policymakers often did not have the data, information, or analysis on the financial system and the largest institutions to make informed decisions. The Dodd-Frank Wall Street Reform Law attempted to address that by creating the OFR to "improve the quality of financial data available to policymakers and facilitate more robust and sophisticated analysis of the financial system." During the Obama and Biden Administrations, the OFR was staffed and funded, and produced extensive, high-quality data and research to inform policymakers and the public about critical issues related to the financial system and financial stability.

For example, the OFR established a host of monitoring tools—including the bank systemic risk monitor, the financial stress index, and the money market monitor—during the Obama Administration. During the Biden Administration, the OFR began an ongoing data collection

project related to non-centrally cleared bilateral transactions in the U.S. repo market, the only repo market segment lacking a transaction-level data source.

During the first Trump Administration, the OFR shrank its staff. And recently, policymakers tried to advance budget legislation, H.R. 1, that would fully defund and dismantle the OFR. While the Senate parliamentarian excluded the OFR provision from the budget bill, the continued existence and efficacy of the Office remain at risk of severe budget and staffing cuts. Unfortunately, this is part of the Trump administration's attempt to make "federal data disappear" more broadly.

**Deregulation at the Securities and Exchange Commission**

The SEC, an historically independent agency, was created in the wake of the Great Crash of 1929 to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation. Since then, the U.S. financial markets have been, for the most part, well-regulated and well-policed, and that has engendered the faith and trust of investors worldwide. As a result, the U.S. has benefited from the deepest, most liquid, most efficient markets in the world, which have provided the fuel for the U.S. economy and standard of living.

However, the SEC's actions since Trump was elected signal a decided shift from those historic and critically important roles, especially of protecting investors which is being deprioritized to protect industry interests. The SEC is rapidly **moving from investor protection to management protection**. In fact, prior to Chair Atkins' confirmation, Acting Chairman Uyeda explicitly—and incorrectly—said as much when noting that since the inauguration:

> "the Commission has begun the process of returning to its narrow mission to facilitate capital formation."

There is no such "narrow" mission, and that benighted statement is directly inconsistent with the plain language of the statute creating the SEC.

Trump's acting SEC Chair did not wait for the new chair to be nominated or confirmed before undertaking widespread deregulation of the securities industry and weakened enforcement. Those actions included delaying reporting and disclosure requirement, proposing rules to open up unregulated private markets to retail investors, issuing new restrictive guidance for shareholder proposals, preventing large shareholders from engaging with companies on environmental or social issues, reducing information to catch lawbreakers via the Consolidated Audit Trail (CAT), permitting around-the-clock trading, dismantling the crypto enforcement unit, repealing accounting guidance designed to protect the financial system from crypto's risks, pausing and likely abandoning defense of the climate risk disclosure rule, declares memecoins unregulated, issuing guidance that stablecoins may not be securities, and taking actions to drop key lawsuits against lawbreakers like Binance as well as lawsuits filed by industry against rules they oppose.

Chair Atkins has continued this deregulation spree. For example, a key provision of the Dodd-Frank Wall Street Reform Law was the creation of the resoundingly successful whistleblower program at the SEC. That program incentivizes people to "blow the whistle" on lawbreaking by Wall Street's biggest firms by authorizing awards to whistleblowers who provide the SEC with information that leads to a successful enforcement action. Without costing a penny to U.S. taxpayers, the program has allowed the SEC to catch numerous fraudsters and return billions of dollars to defrauded Americans. Unfortunately, Chair Atkins has criticized the program and the SEC has not issued a whistleblower award since the day Atkins was sworn in.

Other actions taken by the SEC under Chair Atkins, and under Acting Chair Mark Uyeda before him, have been even more pernicious. During the first Trump Administration and the Biden Administration, the SEC brought cases to protect investors from the lawless crypto industry. Despite winning almost 100% of these cases, Trump's SEC has dismissed, agreed to dismiss, or paused cases that it had brought to force crypto firms to comply with the law—from stopping fraud to requiring firms to register with the agency and provide investors with adequate information. Registration would provide investors with the disclosures they need to navigate an industry rife with fraud, scams, and abuses, and prevent the commingling of functions and conflicts of interest that the securities laws prohibit in the rest of the securities industry. In addition to capitulating in specific cases, the SEC dismantled the crypto unit in the Division of Enforcement. The SEC's recent actions in the crypto space are shocking and unprecedented, undermining the SEC's reputation and integrity as well as the rule of law.

No less shocking is the SEC's weakening of the Consolidated Audit Trail (CAT). The CAT enables the SEC to not only manage and better understand market disruptions and crashes but also to identify, deter, and punish illegal manipulations and other trading abuses to better protect investors. Yet in February, the SEC issued an order providing that the CAT will no longer be required to collect key information for most natural persons. This will make it harder for the SEC to detect misconduct in the securities industry and identify the perpetrators. Given that it's the SEC's job to detect misconduct in the securities industry and hold the perpetrators accountable, the SEC's decision to make its own job harder and the job of financial lawbreakers easier is inexplicable.

Just as inexplicable is the SEC's push to expose retail investors to private market assets. Chair Atkins has already directed the staff to revisit guidance that prevents private funds from selling to retail investors. And the SEC has already allowed trading of an exchange-traded fund (ETF) that intends to invest in private credit. This poses numerous significant risks to retail investors with few if any offsetting benefits. The assets in private credit funds—non-bank loans—are illiquid, opaque, and hard to value, which is why such funds are normally sold only to institutional and other accredited investors. Even those investors have difficulty valuing loans that rarely trade, and even those investors have suffered massive losses as a result. Retail investors are unlikely to fare any better and will probably fare much worse.

These are just some of the deregulatory actions that the SEC has taken in the last six months that endanger investors. The SEC has also stopped defending rules intended to provide investors with material information; extended the compliance dates for rules intended to promote financial stability; and withdrawn rules intended to ensure investors receive the best prices when trading securities, protect investors from the dangers of artificial intelligence, and shield investors from cybersecurity risks. The SEC has further issued guidance making it harder for shareholders to engage with the companies they own and easier for those companies to exclude shareholder proposals. And the SEC has indicated that companies can expect a "more sympathetic ear" when it comes to the imposition of penalties when they are caught breaking the law.

If the SEC continues on this track, it will be fair to say that its mission is no longer to protect investors but to protect the industry it is supposed to regulate.

**Killing Independent Agencies and Politicizing Rulemaking**

Trump's deregulation juggernaut is so extensive that some of it is actually beyond the imagination of most people. For example, it is clear that the Trump administration intends to eliminate independent financial regulatory agencies and turn them into one-party echo chambers taking direction from the White House. This politicization of financial regulation was inconceivable before Trump's election and will undermine the quality and consistency of agency decisions and actions while guaranteeing destabilizing policy swings with each Presidential election.

Trump has issued an executive order to this effect and has already fired the two Democratic commissioners at the FTC and the two Democratic commissioners at the NCUA. He has also nominated a new Republican Chair of the CFTC, but for the term that was occupied by a Democratic commissioner; that Commission will soon have only one member, with no other commissioner nominations pending, which will seriously impair the ability of the agency to fulfill its mandated mission. Trump has so far refused to nominate any Democrats for the SEC, as well, and that agency will become a partisan one-party Commission by the end of the year.

Importantly, these actions will not only eliminate the minority party's voices from the critical issues facing our economy and financial system at these key regulatory agencies. They will also likely chill the majority members who remain who will correctly fear being abruptly fired without notice or cause if they do not do exactly as the White House dictates. Thus, Trump's actions will convert these previously independent agencies into mere extensions of the political operations at the White House.

Trump's plan to control the financial regulatory agencies goes far beyond having only his Republican appointees running the agencies. For example, the Treasury Secretary has repeatedly asserted a role in "coordinating" the independent agencies. The Treasury Department has been convening private meetings with the banking regulators to take "a

bigger role in streamlining and coordinating plans to ease regulation." It plans on taking "the lead in crafting recommendations on the policy agenda," "play a greater role in banking regulation, including the process for determining large banks' stress capital buffers," and "review a landmark bank-capital proposal and the Supplementary Leverage Ratio."

Moreover, Trump issued a memo directing agencies to "quickly repeal" rules deemed "unlawful, unnecessary, and onerous" without adhering to the process provided for in the Administrative Procedures Act (APA), which governs all rulemakings. While the memo claimed such actions were legal under the "good cause" exception in the APA, such a claim has never been legally tested and is likely illegal, although it is far from certain that increasingly biased and Trump-favorable courts will rule that is the case.

Finally, as detailed in a April 18, 2024, 25-page draft guidance memo from the Acting Administrator of the Office of Information and Regulatory Affairs (OIRA), Trump is instructing all agencies "to involve the White House regulatory office at all stages of rulemakings" and "to appoint a regulatory policy officer" to ensure that happens. It also prohibits the agencies from discussing "proposed regulations until they are approved by the White House." This is an unprecedented political intrusion into the activities, actions, and deliberations of independent agencies, which, if followed, would make them little more than offices of the White House and thoroughly politicized.

De facto eliminating independent financial regulatory agencies and politicizing rulemaking guarantees instability and wide if not wild policy swings with each change of administration.

Chairman HILL. The gentleman yields back. We will now turn to member questions. I recognize myself for 5 minutes for questions.

First, let me say that in looking at the inflation report this morning, the core Consumer Price Index (CPI) prices rose by less than expected for 5 months in a row, and on a cumulative basis, inflation, both headline and core, are trending close to the Fed's target of 2 percent; so, I think we continue to get inflation headed in the right direction in looking at today's report.

Dodd-Frank, back in 2008, 2009, 2010, during those debates, I was a bank CEO during that time of a community bank, and so I know very much what it was like before Dodd-Frank and post Dodd-Frank as a private citizen working in a private financial environment. Everyone knows the best efforts by Congress was to try to prevent another financial crisis, but since its passage, the regulatory framework has grown significantly more complex. For example, the Code of Federal Regulations that relates to commercial banking has expanded by 3,000 pages. Dr. Kupiec, based on your experience, has Dodd-Frank's complex regulatory framework provided meaningful improvements to safety and soundness, or has it created so much complexity and associated costs that it is unclear for both consumers, business, and the community banking environment to figure out what the benefits actually were? How do you parse that?

Dr. KUPIEC. The regulations have gotten entirely complex and out of hand, and they do not work, as is evidenced by the March 2023 crisis. I do not understand this notion that there was no crisis for 70 years. I think there was a savings and loan (S&L) crisis and a banking crisis in the 1990s, and before Dodd-Frank, we had a lot of financial crises over the years, well before Dodd-Frank, but the regulations have gotten very complex and they do not actually address the risks in the banking system.

As I lay out in my written testimony in tables, very comprehensive tables, the rules that they have created now do not even address interest rate risk, which is a basic risk, and the regulatory rules do not address that. While the regulatory ratios suggest that the banking system is solidly capitalized, once you take into account the fact that banks, which were loaded up with Treasury securities and other things, had huge, unrealized interest rate losses on their books, these complex regulations just do not tell you what the real truth of the matter is, and I will stop there.

Chairman HILL. Yes, I appreciate that perspective. I mean, when you look at Silicon Valley, which Mr. Kelleher noted in his views, I do not view Dodd-Frank having helped or hurt there. I mean, I think you had a gap in regulatory oversight by the San Francisco Federal Reserve that was embarrassing, and the State regulator in Sacramento and terrible management who are not paying attention to the most basic banking rules. I do not think you can point at any law change that caused the terrible outcome there. I really do not. We will debate that off the dais. The regulatory bodies created by Dodd-Frank, including CFPB and FSOC, have created an estimated, that I have read, according to American Bankers Association, some $38 billion in additional annual pre-tax costs for banks with smaller institutions bearing a disproportionate share of that burden. Mrs. Johnson, do you believe that this expanded bureauc-

racy has improved financial oversight, or has it resulted in so much excessive red tape, stifled economic growth that it has ended up restricting credit, and you have bank credit committees more focused on the next week's compliance meeting than lending money to their customers? What do you say on that?

Mrs. JOHNSON. I can say any time that you have banks who are spending more time and more money on compliance and understanding the compliance that is necessary for multiple different agencies, that is really problematic. On the supervision side, at least from a bank perspective, you have consumer protection from the Bureau, but we often hear from banks who have different but three examiners in their institutions at the same time asking for similar information. It is just an incredible burden on these institutions, and it really does take their attention away from things that they should be doing, which is lending in their communities.

Chairman HILL. Thank you. Mr. Bentsen, I am going to turn to you on the capital market side of Dodd-Frank, and you can respond to me in writing. I want to just ask you, the small institutions did not create the financial crisis, but Dodd-Frank imposed this big one-size-fits-all burden. Does that not hurt our capital market system?

Mr. BENTSEN. It certainly created some dysfunction within the system, so you are right. We have seen mergers amongst the smaller broker-dealers——

Chairman HILL. If you would expand that in writing, Congressman, and thanks for being here today.

Chairman HILL. I yield back, and we turn to the distinguished ranking member of the full committee, Ms. Waters, for her questions for 5 minutes.

Ms. WATERS. Mr. Kelleher, thank you for your testimony and reminding this committee of what a disaster and how costly the financial crisis really was. After the housing crash, where we saw mortgage brokers pedal no doc loans and other predatory products, why is it so important for Congress to create the Consumer Financial Protection Bureau. That way consumers of all stripes—students, seniors, servicemembers, and more—had a Federal cop on the beat fighting for them to make sure that mega banks or payday lenders or other bad actors were not ripping them off. Now, I understand you served for 4 years in the Air Force. Is that correct?

Mr. KELLEHER. Yes.

Ms. WATERS. Thank you for your service to our country. Trump's CFPB has claimed that they are going to prioritize protecting servicemembers and veterans, but I want your take on their actions. For example, Trump's CFPB proposed slashing staffing levels from 1,700 to 200 and proposed reducing CFPB's Office of Servicemember Affairs to just one employee, except the one employee they chose had already decided to retire, which would leave the office unstaffed. That office, which we required to be set up in Dodd-Frank, has been well respected across the political spectrum, with people like Holly Petraeus running the office before. How is it that the CFPB is supposed to protect servicemembers, veterans, and their families if they have no staff in the office?

Mr. KELLEHER. Anybody who claims that the CFPB currently manages protecting servicemembers, veterans, and their families is

lying. You cannot do it with one person. You need a full staff and let me just give you a few statistics. The median loss from fraud from January 2015 to October 2019 to civilians, $658; to active-duty members, $775; retired military and veterans, $950. Servicemembers, veterans, and their families are being disproportionately targeted by financial scams and financial predators, and they need a strong cop on the beat, and they need the Office of Servicemember Affairs at the CFPB to be properly regulated.

Since 2011, the CFPB has received more than 400,000 complaints from servicemembers, and it has been responsible for recovering approximately $363 million in restitution for military and their families. One person is not doing that. Ten people are not doing that. We need a CFPB that is funded, staffed, independent, and an effective cop on the beat not just for servicemembers, veterans, and their families, but for all Americans who are getting ripped off too often, which is why the CFPB was the most successful financial consumer protection agency in the history of the country, returning $21 billion, with a "B," billion dollars, to more than 200 Americans.

Ms. WATERS. Thank you very much. Another lie told by the President of the United States of America about how he cares about veterans and how he is going to help veterans. Let me tell you something. All of this talk about deregulation, about being consumed by regulation, it is because the rich, the big, and the powerful do not want oversight. They do not want us to have legislation that will make them accountable. Let me just tell you something. When we take a look at what is going on right now, the President, take a look at what he is doing with crypto. The President of the United States is engaged in a crypto con of massive proportion. In just 6 months, he has entered into the following crypto ventures. The President of the United States owns a $TRUMP meme coin, Trump digital trading coins; non-fungible tokens (NFTs); World Liberty Financial, his crypto company that is launching the stablecoin USDi; American Bitcoin, a bitcoin-mining corporation founded by Eric and Donald Trump, Jr.; and Social Truth Bitcoin Exchange-Traded Fund (ETF) and Crypto Blue Exchange-Traded Fund ETF; and even Melania owns crypto.

I want to tell you, as we sit here and listen to those who have been trying to destroy CFPB, I was here and I knew what was happening. We had no protection for consumers, and with Dodd-Frank, we were able to come up with ways that we could have consumers call in, have someone investigate their problem, help consumers who were being ripped off. I want to tell you the big boys will keep ripping us off as long as we let them, and I tell you we are going to be dealing with this all week. I am absolutely outraged by the way that they have tried to kill the Consumer Financial Protection Bureau. I am outraged with the crypto ownership——

Chairman HILL. The gentlewoman's time has expired. The gentleman from Michigan, the vice chair of the full committee, Mr. Huizenga, is recognized for 5 minutes.

Mr. HUIZENGA. Thank you, Mr. Chairman. I am going to jump right in. Mr. Bentsen, I will start with you. Over the years, you have seen multiple iterations of the Financial Stability Oversight Council, FSOC. In the early years, post the great financial crisis,

FSOC was given broad reaching authorities to designate nonbanks as systemically important financial institutions, or SIFIs. Under President Trump's first Administration, the FSOC moved to an activities-based approach—this was in 2019—which I believe was appropriate, especially in response to the post-MetLife debacle that had gone on. Four years later, 2023, under President Biden, the FSOC snapped right back to using an analytic framework for identifying and dealing with systemic risk, and as you can guess, Secretary Bessent, who is now the FSOC Chair, might have a very different view on how FSOC will operate under his leadership.

As you are familiar, Mr. Foster and I have once again introduced the FSOC Improvement Act. The bill would revise the flawed risk assessment framework and designation guidance governing the SIFI designation process for nonbank financial institutions. Here is the question: After 15 years, is it time for Congress to make these improvements? Are there enough data and use cases to show that how FSOC determines designations is not working or has not been working and has not worked in the past, and did they make the financial system safer and sounder, which is what we would all like to see?

Mr. BENTSEN. Thank you, Congressman. We support the bill that Mr. Foster and you have introduced. We have supported it in other iterations through previous Congresses, so yes, I think the time is overdue. Short of that, we would hope that the FSOC would revert back to, I think, the 2018 activity-based process that you noted, and the problem here is the way it was constructed, it is trying to impose a bank-like regulatory structure over asset managers. We have had now 15 years to think about this. We have had 15 years of experience in the marketplace and——

Mr. HUIZENGA. There is data there to——

Mr. BENTSEN. Yes. I think we know that activity space is a better approach, so we commend you all for the legislation.

Mr. HUIZENGA. Mr. Quaadman, do you mind commenting on this?

Mr. QUAADMAN. Yes, we would agree. I mean, ping-pong guidance is not a way to allow businesses to plan for the future. We do expect that the Trump Administration will move back to an activities-based approach, where, really, we do need to have legislation that is going to settle this once and for all and allow businesses the certainty to move forward.

Mr. HUIZENGA. So, clarity is what you are looking for?

Mr. QUAADMAN. Exactly. Clarity and——

Mr. HUIZENGA. Not in this week's clarity, Mr. Chairman, and the work that we have done, but clarity on this particular issue. Okay. I am going to stick with you, Mr. Quaadman, because I want to talk about conflict minerals. I know you have something that you have worked on, I have worked on. That is an issue that has been nearly a decade. I first started working on this with Congresswoman Gwen Moore, and it is Section 1502. I believe it was a failure then. I believe it is a failure now. Under the rule required by Dodd-Frank Act, public companies are required to scour their supply chain for tin, tantalum, and tungsten, and gold linked to militia groups in the Democratic Republic of Congo (DRC) and the surrounding Great Lakes Region. However, there was a report in

2024. This is one page of the 140 pages, I believe, or 120 pages of that 2024 Government Accountability Office (GAO) report, which I would like to submit to the record, Mr. Chairman.

Chairman HILL. Without objection.

[The information referred to can be found in appendix.]

Mr. HUIZENGA. While that report concluded that the SEC's rule under Section 1502 of the Dodd-Frank Act has not actually reduced violence in the Congo and in the region, and, in fact, there is a small chart that I will point out to everybody, it has actually expanded. It has expanded, and, in fact, Secretary Rubio and the Trump Administration had to intervene in the area in the last couple of weeks. Here is a quote from the report: "The GAO found no empirical evidence that the rule has decreased the occurrence or level of violence in the Eastern DRC." Here is the question: Section 1502 should absolutely be repealed, in my opinion, but what have we learned about some of the other Dodd-Frank rules that may have been very well intentioned, but, frankly, have not hit the mark?

Mr. QUAADMAN. Yes. This is based on my previous experience, but I think if you look at conflict minerals, there are a lot of difficulties there as you referenced. Even The New York Times and Washington Post have had front-page stories of how that provision actually made things on the ground even worse. We also have the disclosure was kicked out by the D.C. Circuit Court of Appeals. Yet, companies still have to do all the collection around it, which actually then means that investors have to bear the cost of that. I think it is a good example of where you can have well-intentioned disclosures that do not hit the mark and do not provide investors with useful information. We should really take a very strong look at whether or not they should even be in place. I also believe, too, of conflict minerals, what the Trump Administration is trying to do there as well as access to critical materials is important for American national security.

Chairman HILL. The gentleman's time has expired.

Mr. HUIZENGA. I yield back.

Chairman HILL. The gentleman yields back. The gentlewoman from New York is recognized, the ranking member of our Small Business Committee.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman, and good morning, everyone. Thank you for being here. If we are going to talk about Dodd-Frank 15 years later, we need to also look at the whole picture, including the industry and Republicans' attempt to weaken the original protections. Mr. Kelleher, can you explain the changes made to the Dodd-Frank Act by the passage of S. 2155 a few years ago and how those changes, particularly with regard to bank capital, left our financial system more vulnerable?

Mr. KELLEHER. Yes. Thank you for the question, and I want to start by agreeing with the chairman that it was miserable management that primarily drove those banks into high-risk activities and ended up resulting in their failures. Those were avoidable. Also, management ran those banks into the ground, and their boards failed to supervise them, and the regulators, frankly, did not do their job either. There was plenty of blame to go around, and there has been no accountability even now. Unfortunately, there was an

attempt to pass legislation, as you know, to claw back executive compensation under those circumstances that never saw the light of day but 2155 essentially eliminated, either de facto or by requirement, the prudential regulations on banks with less than $250 billion in assets.

Better Markets filed comment letters at the time that talked about 2155, and then when it was passed and went to the regulatory agencies, particularly the banking agencies, we said in letters, in writing, commenting on the proposed rules at the time that if you implement this law the way you are going to do it, you are going to have banks engage in higher-risk activities, and they are going to ultimately fail, and there are going to be bailouts.

Ms. VELASQUEZ. So——

Mr. KELLEHER. That is exactly what happened. It was predictable, foreseeable, and that is what happened.

Ms. VELÁZQUEZ. It is not entirely accurate to say that Dodd-Frank has not worked. Is it not a more accurate statement to say that changes made post-Dodd-Frank have weakened original protections and cost vulnerabilities in our financial system?

Mr. KELLEHER. Yes, and it is not only true for 2155. As I detailed in my written testimony, the primary reason that Dodd-Frank did not work is because of the war that the industry and its allies engaged in to attack and undermine Dodd-Frank at every step of the way in the regulatory process. When they did not win in the regulatory process, they ran to court and sued to try and win in the judicial arena what they could not win in the regulatory arena or the legislative arena. This law would have worked. It had the authority and the power to do the job. As I detailed in my written testimony, it was not allowed to do the job, and that is why it has not been successful.

Ms. VELÁZQUEZ. Like this hearing right now. Since 2011, the CFPB has secured more than $21 billion of relief for more than 205 million consumers. Unlike other financial regulators, Congress provided it with an independent funding mechanism. Yet, this has not stopped the Trump Administration and congressional Republicans from trying to destroy the Bureau from within, including as part of the One Big Ugly Bill, which slashed the Bureau's operating funding nearly in half. Can you explain the potential harm facing not just consumers, but the broader financial system by slashing the Bureau's funding by such a large amount?

Mr. KELLEHER. I think the Consumer Financial Protection Bureau has proved almost on a daily basis its importance to main street Americans who are getting ripped off and discriminated against as a routine matter. Look at the cases that the CFPB has brought over the 14 years that it existed. These are against giant financial institutions that have settled cases for hundreds of millions of dollars. They are not doing that because they are generous. They are doing that because they broke the law, and the highest-priced, the best lawyers in America are representing these premier financial institutions, and they are settling their legal violations. That is why the CFPB is needed. They need an effective cop on the beat, and you can only have an effective cop on the beat if you fund them. You cannot send cops into an inner-city, high-crime area with no bullets, guns, or cars, or flat tires, and that is what you

are doing on the consumer protection beat here by crippling the Agency.

Ms. VELÁZQUEZ. I rest my case, Mr. Chairman. I yield back.

Chairman HILL. The gentlewoman yields back. The gentleman from Oklahoma, the Chair of our Monetary Policy Task Force, Mr. Lucas, you are recognized for 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman. I, too, was one of the limited members of this committee who served on the Dodd-Frank conference committee, and I remember our efforts to get a legislative agreement that appropriately addressed the economic turmoil our country was facing. Unfortunately, Dodd-Frank ultimately resulted in dramatic regulatory overreach that I could not support, and we are still dealing with the consequences of the bill 15 years later. Many of the changes made during the time continue to damage our competitiveness and limit our economic growth. They do not account for the credit needs of farmers, ranchers, and main street businesses.

Starting with you, Dr. Kupiec. In our country, we have assigned the Fed to deal with monetary policy and prudential matters. We have also had this dual role, but after the passage of Dodd-Frank, their prudential functions expanded dramatically, and they have begun policing behavior they had no authority to do. As Chairman of the Task Force on this issue, I have a concern that I continue to raise that the broadening of authority of the Fed's regulatory and supervisory roles ultimately politicizes the institution and threatens monetary independence. Doctor, do you think mission creep from the regulatory side of the Fed complicates their role as our central bank?

Dr. KUPIEC. Yes, clearly. Clearly, and the climate change brought that to the fore in the last administration; the remit that the Fed should regulate climate change risks in banks and things like that. I think now they have abandoned that in the newest administration is another example of the ping-ponging of the FSOC and the executive role about designating things that really are not systemic risk as systemic risks.

Mr. LUCAS. Anyone who thinks that this was a negotiated bill, this was a slam dunk. I remember the opening day of the conference committee when the chairman of the conference, our Financial Services Committee Chairman, Barney Frank, announced that we would not be using the House draft, which represented a compromised effort in this committee, and we picked up the Senate document. That is when we knew the fix was on as members of this body.

Mr. Bentsen, as you know, Dodd-Frank altered the risk retention rules on securitized assets. In your view what is the effect on the cost of and the access to credit if this tool is cost prohibitive for lenders?

Mr. BENTSEN. Thank you, Mr. Lucas. Part of the problem with the changes in the risk retention rules was that there are so many different parts of Dodd-Frank that overlap and, in particular, the capital rules, and, in particular, we think about the stress test regime and the component of that, the global market shock. None of that has ever been adjusted to take into consideration the risk retention rules that were put into effect; so, we have a, I do not want

to call it a double count. We have double counts elsewhere, but in effect, we are scoring things according to the pre-legislative rules, so it compounds the impact of the capital rules. That affects the price on securitization.

Mr. LUCAN. Continuing with you, Mr. Bentsen, we have a new vice chairman for supervision at the Fed, and I believe Vice Chair Bowman is perfectly suited for the role. What should Vice Chair Bowman look at in a Basel re-proposal to address the concerns raised by market participants after the last proposal? How should Vice Chairman Bowman approach the Fundamental Review of the Trading Book in a Basel re-proposal?

Mr. BENTSEN. There are a number of issues that the Fed and Vice Chair Bowman should take a look at with respect to the Fundamental Review of the Trading Book, some issues that are inconsistent with other participants in the Basel framework in Europe and the U.K., but also how the Fed staff initially gold plated the proposal that would raise capital above already historic levels. Most importantly, and I think Vice Chair Bowman has said that she intends to do this as she has a conference next week that the Fed is hosting, is, again, to think about the interaction of all these rules. If the Fed agreed with us, and who is to say that they should or they should not? If they agreed with us and took all the suggestions that we put forth, they would still have an exorbitant increase in risk-weighting capital requirements on things like securitization. The reason for that is because of the interaction with the stress test regime, and that is a double count, and we have had a lot of discussions with them about this to sort of look at that.

Frankly, I think the Fed themselves were shocked with how their original proposal came out. Hopefully, now they will take that into consideration because this does have knock-on effect, not just the mortgages, but small business lending, equipment financing, things that are done through the securitization market.

Mr. LUCAS. Mr. Chairman, we can do better than the status quo we have now.

Chairman HILL. The gentleman's time has expired. The gentleman from California, Mr. Sherman, the Ranking Member of our Capital Markets Subcommittee, you are recognized for 5 minutes.

Mr. SHERMAN. Thank you. I enjoyed the exchange between Dr. Kupiec and our chair. The chair points out that Silicon Valley Bank was terrible management, as if that was a lightning strike. No. We have a system that says you buy long-term bonds. If they go up, you sell them, the bank recognizes an immediate profit, and the board of directors gets a huge bonus, and if they go down, you can hide that loss. Ninty-nine times out of 100, you will get away with it. So, bad management is from bad rules, and I have been in this committee for a long time saying we have to mark-to-market long-term debt held by banks.

The chair also says that we should allow State regulation to provide for corporations. That is a race to the bottom, and, again, we have bad management because of bad incentives. A State legislature in a small State, they are focused on getting revenue for their State, not upon providing good corporate management and oversight for corporations that may have a little impact on their State;

so, we need to deal with long-term debt on bank balance sheets. We need the Federal law to provide the rules for national corporations.

Finally, we have a system which does not give investors the information they need. A hundred years ago, when our accounting systems were designed or the financial statements were designed, the vast majority of the value of a company was in its physical assets shown on its balance sheet. Today, the most valuable thing is intangibles, particularly the workforce. Yet again and again, we do not require the disclosure of turnover rates, training expenditures, or anything else relevant to the workforce. For several years now, I have been pushing for us to disclose the China risk because what is the good of knowing last year's earnings per share if you cannot even get management to tell you how they would be affected by a breakdown in the U.S.-China relationship?

Today, we are focused on Dodd-Frank, and it brings the post-traumatic stress disorder (PTSD) of the 2008 crisis when this committee said never again. History does not repeat itself, but it rhymes. We have an echo of 2008 in Crypto Week. Now, this is also tax evaders' month and drug dealer facilitations year. Both bills rejected an amendment that I proposed here and to Rules Committee saying no bailouts for anyone in the crypto ecosystem. Those amendments were rejected, and the crypto world is looking forward to telling its investors they are as bailout eligible as Bank of America, but what caused the 2008 collapse? It was the subprime and liars' loans. What is a liars' loan? You agree to pay 1 percent more on your mortgage, and the lender says, well, just tell us what your income is, and you do not have to give us a W–2. You do not have to give us a tax return. So, the financial system back in 2008 strained to provide financial services to those who turned to their mortgage broker and said I really make a lot. I am just lying to the Internal Revenue Service (IRS) or my ex-spouse. Well, history rhymes.

This week we are going to deal with stablecoin. What is stablecoin? It is a money market fund that pays zero interest, a worse deal for consumers, just like the liars' loan is where you pay more on your mortgage, but what does the stablecoin offer? It offers hidden money so that you can defraud the IRS, your ex-spouse, engage in drug trafficking, et cetera. History does not repeat itself, it rhymes, and here we are back again trying to have our financial system meet the needs of those who want to cheat on their taxes, engage in illegal activity, et cetera.

Mr. Bentsen, your letter to the SEC talks about the separation of functions with vertical integration, where a single platform can act simultaneously as the issuer, broker, and exchange, and custodian. Can you explain what the risks are of allowing that integrated structure in the crypto world?

Chairman HILL. The gentleman's time has expired. If Mr. Bentsen, you would respond to the member in writing, please.

Chairman HILL. The gentlewoman from Missouri, Mrs. Wagner, who is the Chair of our Capital Markets Subcommittee, is recognized for 5 minutes.

Mrs. WAGNER. I thank you, Mr. Chairman. I thank our witnesses for being here today. Under former Chairman Gensler, the SEC repeatedly overstepped its statutory boundaries, invoking authorities

under Dodd-Frank in ways that neither align with the law's intent nor advance the Commission's threefold mission: to protect investors; to maintain fair, orderly, and efficient markets; and to facilitate capital formation. In fact, Gensler's regulatory agenda undermined these goals.

Under President Biden, everyday Americans in Missouri's 2nd Congressional District were told they would have fewer choices, increased costs, and less clarity on who they could ask for financial advice. In June 2024, the Fifth Circuit unanimously vacated the SEC private fund advisor rule, which would have imposed significant requirements on private fund advisors and made broad changes to how private funds operate. The SEC claimed the authority to propose this rule through Section 913 of Dodd-Frank, which is focused on the fiduciary duty of broker-dealers and investment advisors who are providing advice to retail customers. In this decision, again, an unanimous decision, the court rightly held that Section 913 of Dodd-Frank has nothing to do with private funds, and the SEC should not rely on this section of the statute to regulate private fund advisors and investors.

Mr. Quaadman, how does the Fifth Circuit's ruling on private funds rule redefine the scope of the SEC's authority under Dodd-Frank, and what are the potential implications for future financial regulations?

Mr. QUAADMAN. Thank you for that question, Mrs. Wagner. It is very important, and you have to remember, too, we are also living in a West Virginia verses Environmental Protection Agency (EPA) world now.

Mrs. WAGNER. Yes.

Mr. QUAADMAN. The Agency itself cannot move forward without clear direction by Congress. I would also say, too, I think some of the legislation that this committee is considering in terms of unused authorities really needs to be looked at very closely. The predictive analytics rule is another one which is very misguided.

Mrs. WAGNER. I am moving to that next.

Mr. QUAADMAN. There we go. I will let you ask the question then.

Mrs. WAGNER. In a similar way to the Commission's private funds rules, former Chairman Gensler's predictive data analytics proposals disregarded the limitations of Dodd-Frank Section 913 again. Section 913 primarily focused on retail customers and personalized investment advice about securities. However, the proposal stretched his authority to cover broad investor interactions and technologies like predictive data analytics and, which Congress never intended, and that is the heart of the matter here. Let me move to Mr. Bentsen. With legislative action, Mr. Bentsen, what action should Congress pursue to clarify the precise limits of this authority and prevent future instances of regulatory overreach?

Mr. BENTSEN. First of all, we agree with the court's decision with respect to the private funds. We were not a party to the suit, but we did file an amicus brief in support of the suit. Frankly, and in the case of the predictive data analytics, which we thought was not a very well-thought-out rule, and we are glad it has now been withdrawn. We actually think it was also unnecessary because, frankly,

whatever concerns there might have been are already covered under Reg Best Interest——

Mrs. WAGNER. Correct.

Mr. BENTSEN [continuing]. and so, there is not really a need for that. Section 913, and I was around, too, 15 years ago, Section 913 was highly negotiated between the House and the Senate, between then Chairman Frank and the Chairman of the Senate Securities Subcommittee, Senator Johnson, and Congress' intent was very, very narrow and very clear, to the point that you are making.

Mrs. WAGNER. It has been abused, certainly abused by the SEC during Democrat leadership that we have seen over and over again.

Mr. BENTSEN. I mean, the courts have kind of reeled it in, and so——

Mrs. WAGNER. Yes, but that costs money.

Mr. BENTSEN. Right.

Mrs. WAGNER. It gets trickled down to my Missouri retail investors, everyday investors. It is so infuriating to me that we have been litigating this for 15 years, Mr. Chairman. Let me move on.

While the SEC was rightly challenged for exceeding its authority during the Biden Administration, litigation contributes to a climate of uncertainty for investors and market participants across the country and costs. Businesses, particularly those in innovative sectors like fintech, become hesitant to invest in new technology or business models if the rules of the road are constantly in flux. Mr. Quaadman, to what extent did SEC's overreach and the court battles trigger, ultimately stifle, capital formation by creating an unpredictable operative environment? I am about out of time. You may have to respond in writing, but this is important.

Mr. QUAADMAN. Number one, there is a chilling effect. Number two, and I will respond in writing about interconnectedness of rules, which is not considered either.

Chairman HILL. The gentlewoman's time has expired.

Mrs. WAGNER. Thank you. I yield back.

Chairman HILL. Thank you very much. We now recognize the distinguished Ranking Member on our House Foreign Affairs Committee, Mr. Meeks from New York, for 5 minutes.

Mr. MEEKS. Thank you, Mr. Chairman. I want to thank you for holding one of the most consequential pieces of Financial Services legislation. I was in Congress back during the height of the financial crisis when Lehman Brothers failed, when major insurers were about to go under, when then President Bush had Secretary Paulson running to the House floor. I will never forget, he ran and met me in the Democratic room on the floor trying to get votes, saying that if we did not do something immediately, our entire financial system would fail. They did not have all the votes that they needed on the Republican side to get it done, so they desperately needed Democratic votes.

One of the things that we talked about at that time was there was one voice because I remember during that time, people were losing their homes, their credit gone, they are out, they are homeless, they are trying to find some, still could not get rent. The idea or the thought was everybody had some kind of coverage, except one group. It was called the consumers. I surely wish there was a panel here that some of the consumers would be here to testify,

also, who benefited for the last 15 years from having a Consumer Financial Protection Bureau.

Now, I am all for looking to see what we can do to improve, but one of the things that I think that we have not seen since 2008, we had a once-in-a-century pandemic that did not lead to contagion of the financial variety, the regional bank failures of 2023. What did not happen, that did not spiral because of Dodd-Frank, the reforms in it? Higher capital requirements, stress testing, and the Volcker Rule. It worked as intended, even with the failed management, what you said. Those practices that were put in place because of Dodd-Frank helped save more consumers who would have been victimized.

Now, I am really concerned, and I look at ways that we can try to fix a bill because sometimes bills change and move forward. One of the things that I was in favor of, and I think that we could look at, and I think, Mrs. Johnson, you talk about this, is how to get the politics out of this. Now, I was in favor and still am, and I believe you are, Mrs. Johnson, in having a bipartisan commission, and I think that the CBA has been talking about that so that we are not from administration to administration and things changing. I think that is something that we should be talking about here. I think that is really important, and I think you agree, Mrs. Johnson, that there is a need. You recognize the need for a CFPB. Is that not correct? Please say "yes" so that is on the record.

Mrs. JOHNSON. Yes.

Mr. MEEKS. My first question is under President Trump and Republican leadership, they wanted to zero out the Bureau, an effort that was slightly mitigated by the Senate's parliamentarian, but what the administration tried to do was to cut the Bureau staff by 90 percent in just 24 hours. Now, do you think that reflects a regulatory approach that is grounded in facts and data, or is that just trying to get rid of an agency? Yes, Mrs. Johnson?

Mrs. JOHNSON. I think what Congress ultimately did was a policy decision—I am sorry—a budget decision, not a policy decision.

Mr. MEEKS. I am just saying, zeroing out, that was not done. Let me just go because I am running out of time. I wanted to ask Mr. Kelleher, do you believe that the CFPB is being deliberately weakened under the guise of regulatory reform, and who stands to benefit from that if that is the case?

Mr. KELLEHER. There is no question that the CFPB is being weakened, if not killed, for the purpose of benefiting the financial industry and making sure there is not an effective cop on the consumer beat standing up for main street Americans, and having the power, authority, and funding to help them when they are getting ripped off.

Mr. MEEKS. So, we would go back to where we were before, where there would be no one there for the consumer. It was named the Consumer Financial Protection Bureau to protect the consumer who has never had a voice before this Congress before.

Chairman HILL. I thank the gentleman. The gentleman yields back. The gentleman from Kentucky, Mr. Barr, the Chair of our Financial Institutions Subcommittee, is now recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman. Let me start just where my friend from New York left off. I was encouraged to hear my good friend from New York embrace the idea of a bipartisan commission. We have that bill in our package of reforms, and I would invite the gentleman, my good friend, to look at that, to co-sponsor. I would love to work with you on a bipartisan commission reform. Also, the gentleman expresses concern about our One Big Beautiful Bill, which reduces the funding formula for the Bureau. I would encourage the gentleman and all my friends on the other side of the aisle to look at co-sponsoring my legislation that would allow them and us to reclaim the power of the purse over the Agency, the TABS Act, the Taking Account of Bureaucrats' Spending Act, which would restore Congress' bipartisan and meaningful oversight over the Bureau so that we would control the appropriation. So, I think the gentleman's line of questioning is timely because it gives us an opportunity in the Congress, on a bipartisan basis, to reclaim our oversight functions over the Bureau.

Mrs. Johnson, let us talk about CFPB reform. Would you explain how my legislation, the Taking Account of Bureaucrats' Spending Act, which would subject the Bureau to congressional appropriations, would enhance accountability and limit bureaucratic overreach?

Mrs. JOHNSON. I think that for far too long, the CFPB has not been accountable. We have not had a commission. We have not had consensus or dissenting views welcomed at the Bureau. It has been by one director, and oftentimes they have got kind of ruling by fiat, so Congress has not had the authority and the visibility into the Bureau. I think that they will be more responsive if there is an ability for you all to control the purse strings.

Mr. BARR. I appreciate your testimony endorsing my legislation to put some guardrails and definition around the abusiveness prong of Unfair or Deceptive Acts or Practices (UDAP). Why is that important?

Mrs. JOHNSON. Look, Congress did create an exceptional standard for UDAP with the CFPB, unlike the Federal Trade Commission (FTC), unlike some of the other prudential regulators. For far too long it has been undefined, and entities that are regulated by the CFPB do not have the clarity needed to understand what constitutes as an abusive act or practice and how that differs from, say, deceptive or unfair acts and practices. In addition to that, the CFPB has at times gone far beyond and really interpreted UDAP into things that it never was intended for. Oftentimes, it actually decides 1 day that something is illegal or that it is a UDAP violation when it was perfectly legal and acceptable and actually done by the entire industry the day before, then it applies, retroactively, penalties to different institutions. This is wrong.

Mr. BARR. Yes, and it is wrong. It denies Americans due process, and it is why the Bureau has such a black eye. It can be reformed into a much more professional Agency, and that is also why we need to stop these roving fishing expeditions, these civil investigative demands with no statutory violation or regulatory violation even alleged, just a fishing expedition with no due process. We need to reform that process as well.

Mr. Bentsen, as you pointed out, Dodd-Frank ushered in over 400 new regulations and granted regulators like the SEC broad discretionary authority. Nearly 15 years later, many of these powers remain unused, yet their mere existence creates regulatory uncertainty. For example, Section 921(a) allows the SEC to ban mandatory arbitration clauses and securities contracts without any additional action from Congress. Congress has already weighed in on this issue. In 2017 we overturned the Bureau's mandatory arbitration rule, not just on procedural grounds, but because the evidence showed arbitration delivers better outcomes for consumers than costly, drawn-out class action lawsuits. That was a clear bipartisan message. Regulators should not restrict arbitration based on ideological or political agendas, and that is why I introduced the Business Owners Protection Act to repeal these unused powers, to provide legal clarity, and enhance transparency and accountability at the SEC. Mr. Bentsen, how do these dormant but broad discretionary powers contribute to uncertainty and risk in the capital markets?

Mr. BENTSEN. Certainly, with respect to things like pre-dispute arbitration agreements, which is the mainstay in the securities world, and then to your point, is very investor friendly, very cost efficient, and much more cost efficient than court litigation. It is a little bit like a sword of Damocles hanging over you. So, we would agree with you that we are not sure why Congress felt the need to give the SEC the authority in this instance, and so, we would agree with repealing that.

Mr. BARR. There are a lot of dormant, unused authorities. It has been 15 years, and the SEC or other regulators empowered by Dodd-Frank have not acted, and Congress has sent a message to the contrary. We need to repeal those unused and dormant authorities. I yield back.

Chairman HILL. The gentleman yields back. The gentleman from Massachusetts, Mr. Lynch, the Ranking Member of our Digital Assets, Financial Technology, and Artificial Intelligence (AI) Subcommittee, recognized for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. I want to thank all the witnesses for your willingness to come before the committee today. Mr. Bentsen, good to see you again, sir. Welcome. I want to associate myself with the remarks of the gentleman from California, Mr. Sherman, earlier today——we have somebody's phone going off here.

—especially with respect to Mr. Sherman's comparison to 2008 and the conditions that existed then and today, where we have Crypto Week and some of the suggestions and bills that have come forward. Back then, in 2008, we had some very complex and novel innovations. We had collateralized debt obligations. We had credit default swaps. We had all these complex derivatives that were the wonder of the day, and the financial services industry came to us, and I think convinced a lot of members—not me, but a lot of members—to support that whole regime, and we saw how it blew up. Today, we have crypto, and even though it does not have any legal use case as yet, there is a lot of hype and there is a lot of support for it. It has only accelerated since President Trump became a crypto issuer, and his family has gotten into the business as well.

I am just concerned because I am seeing the same regulatory forbearance that I saw back in 2008 happen today. The SEC, under Trump, they came in and said, we are going to rescind the guidance that we used to give banks about crypto. Mr. Kelleher, as you pointed out earlier, we have some massive banks. Back in 2008, JP Morgan was $2 trillion. Now they are $3.4 trillion, Now Trump's SEC is saying to the Big Banks, all the Big Banks, and there are at least 5 of them over $1 trillion, 6 of them over $1 trillion, close to $2 trillion, he is saying, go ahead and get involved with a very volatile and speculative asset. What I worry about? I worry about the American taxpayer being on the arm on this one.

Back in 2008, I voted against it twice, but we had a huge bailout, over $700 billion. I had constituents in my district that did not even have bank accounts, and they took their taxpayer money to bail out the people who caused the problem. I see that happening again. This is not going to end well. This is not going to end well. Crypto is still an immature technology, an immature architecture. It is not there yet. It has got huge gaps, huge problems, and yet we are rushing in, and it is not going to end well and there is going to be a bailout required. Mr. Sherman and I both had amendments during the debate over some of these bills to say, okay, okay, if you want to take risks for the banks and others, do it on your own dime. Hold the American taxpayer harmless. Take all of that risk, but you are not getting a bailout. Every single Republican member voted against that. Every single Republican member said, no. No, the taxpayer is going to stay on the hook. That is what worries me. If the banks were taking the risks on their own, but they are insured. They are insured. They are just too big to fail.

Mr. Kelleher, what do you think the consequences are going to be when there is a disaster on crypto and a bunch of these meme coins or crypto assets go to zero, and there is a bunch of people that were led to believe by Congress that it was a safe bet, and they were led to believe by the banks that it was a safe bet, and then they are scrambling to recover their life savings? How is that going to go?

Mr. KELLEHER. It is the worst of all worlds because you are adding massive deregulation of financial institutions that are already too big to fail, and if they fail, they are going to get massive bailouts. So, on top of that deregulation, you are pouring the gasoline of the crypto industry, which, by the way, and we have a lot of materials on our website about this, are not even supported by the American people. They come up here and they claim they are supported by voters. We put out a Substack yesterday showing that is a false claim. So, crypto plus deregulation equals disaster and bailouts.

Chairman HILL. The gentleman's time has expired.

Mr. LYNCH. I yield back, Mr. Chairman. Thank you.

Chairman HILL. The gentleman yields back. The gentleman from Texas, Mr. Williams, the Chairman of our Small Business Committee, is recognized for 5 minutes.

Mr. WILLIAMS of Texas. Thank you, Mr. Chairman, and thank all of you for being here today. The biggest issue I hear from lenders in my district from the great State of Texas is the CFPB's 1071 small business lending rule. I have introduced legislation, H.R.

976, the 1071 Repeal to Protect Small Business Lending Act. My bill will repeal the unnecessary and burdensome rule, protecting lenders from endless compliance costs and protects the small businesses who rely on credit to expand operations and meet the needs of their customers.

Now, the CFPB's small business lending rule mandates that financial institutions collect and report sensitive personal data about small businesses loan applicants. The implementation of 1071 is a direct threat to relationship banking and pushes lenders toward a standardized one-size-fits-all loan process. These mandates subject smaller institutions to endless hours of compliance and paperwork and will decrease the amount of loans to small businesses that support their local economies. Mrs. Johnson, can you elaborate on how Section 1071 of Dodd-Frank has created unnecessary regulatory burdens for all financial institutions, and how will this negatively affect the relationship-based lending model for smaller community financial institutions that we have all had for years?

Mrs. JOHNSON. It is a really important question because banks really want to be able to provide the lending in their communities to the small businesses that fuel the overall economy. The requirements under Dodd-Frank were really for 13 data points to be collected. It took the CFPB a very long time to do that because even that is going to be an extraordinary effort for all banks, not just small banks, for large banks; so, I can only imagine how difficult this compliance burden will be for community banks.

The CFPB went far beyond that, and 80-plus data fields would be required under the CFPB's final rule. It was almost impossible for a lot of banks to actually collect that data and to do it in a way that was not going to be used against them. That was the other concern. I heard multiple times many lenders say they may have to stop small business lending altogether, so it was going to be a hamper on the overall economy as well.

Mr. WILLIAMS of Texas. When that happens, the economy gets smaller, not larger. Another major issue with Dodd-Frank that I hear about when I am back home in North Texas is how complexity and cost of making a mortgage loan is simply too much for smaller community banks that do fewer than 20 per year. So, this means handing off essential business relationships to another financial institution which may not have much flexibility or willingness to work with borrowers, especially in rural areas where this happens where the loan may be unconventional. Doctor, can you expand on how overreach of Dodd-Frank has been a driving force in small financial institutions exiting the mortgage business altogether and killing and hurting small businesses and individuals?

Dr. KUPIEC. The ability-to-repay rules are complicated. There are a lot of rules related to originating and holding mortgages that have been instituted after the Dodd-Frank Act. They were designed to protect consumers, but they raise a lot of costs for banks. There are studies that show community banks have faced very large compliance costs. There are some cutouts for the rules for very small institutions that make just a few loans, but even there, it favors larger shops that can have big compliance staff that can do these sort of things. So, it really does put community banks at a disadvantage for making these kind of loans.

Mr. WILLIAMS of Texas. As we always say, community banks hire more compliance officers now than loan officers, and that affects main street Americans.

Dr. KUPIEC. One thing that might be interesting is the effect of AI on the regulatory community. I mean, if you really think about so many things in the FSOC and other things are backward looking, and if AI can digest all the connections and past data, then maybe we can shrink the financial regulator staff and still do the same job we are doing. I mean, it is kind of interesting to think about that when people talk about the CFPB and cutting staff. Has anybody thought about where we are going to go and can AI actually do a lot of what the staff currently do? I mean, if you think about what they do, they are not particularly prescient about looking forward and identifying risks. They are looking always backward at data, and we feed in all kinds of data, so just a thought.

Mr. WILLIAMS of Texas. I have limited time. What specific policies from Dodd-Frank would cause a decrease in competition in the banking industry, to you, Doctor, and what can Congress do to reverse the course and allow financial institutions of all sizes to compete and avoid consolidation?

Dr. KUPIEC. There has been a trend in small bank consolidation for decades now. Dodd-Frank adds complex rules that do not make it any easier to be a community banker. I mean, I think rightsizing a lot of these rules would be helpful.

Chairman HILL. The gentleman's time has expired.

Mr. WILLIAMS of Texas. I yield back.

Chairman HILL. The gentleman yields back. The gentleman from Illinois, Mr. Foster, the Ranking Member of our Financial Institutions Subcommittee, is now recognized for 5 minutes.

Mr. FOSTER. Thank you, Mr. Chair, and to our witnesses. You may not recognize it, this here, it is a pin for the 110th Congress. I entered Congress in March 2008, and this is the pin I received and so, Lehman Brothers fell in October. I was up there in front as a junior member of the committee in the first row there, so I was just maybe 6 or 8 feet away when we had the famous hearing with eight failed banks coming up telling us that we had to, like, write them a great big check, or they were all going to be in trouble. That sort of was my initiation into this thing.

On the 15th anniversary, I think we should think deeply about fundamental issues. One of them is, why do we have financial services at all? It has three basic functions. One of them is to allocate capital. There are three basic functions—allocate capital, to do so efficiently, and to control risk—and at the time, our system had failed dramatically at all three of those. The housing bubble was probably the biggest misallocation of capital in human history because people were able to hide the true risk of non-repayment of these mortgages.

The efficiency? In the run-up to the financial collapse, the lion's share of corporate profits was in financial services, and that tells you right there that we were not running an official financial system, and that is very related to many of the abusive practices. None of you have mentioned the CARD Act or the credit card reforms that were just doing unbelievable things to consumers just to gouge them for money, people in vulnerable positions, and then

its third function of controlling risks that is I think enough is said about that, and I think it is very significant.

In the dog days of trying to deal with this first, to the emergency bailout that we had to vote for, then the stimulus of the economy, and then the Dodd-Frank rules of the road that we, I think, did our best to implement. I always tell myself that my goal was to die before we had another financial crisis and we have come pretty close to that. What happened a couple of years ago? Okay. It was a crisis, but it was minuscule on the scale of what happened in 2008. So, the discussion we have been having in the 15 years since then, there are two big buckets. The first one, to my mind, is systemic risk and with bank leverage at the very heart of that, and then the second thing has to do with consumer protection, and that has to do very much with the discussion of the maldistribution of wealth in our society, and the politics gets mixed up there. I would like to just talk about systemic risk.

The battle we cannot lose is bank capital on that. That was the thing. When I discovered as a junior member that the giant investment banks like Lehman were levered 30 to 1, that cannot be the right number. What is the right number? No, in fact, that was the right number, and the fact that anyone thought that was okay was just mind-boggling to me. In the 15 years since, when bank CEOs come into my office, 9 times out of 10, they have a complicated argument about why they want to lever up, okay? It takes a while to analyze these arguments, but we have to really understand the fundamental role of good bank capital requirements.

If you look at the comparison that gets made, we had a long discussion about the Basel III Endgame on this. Compared to Europe, we had higher bank capital requirements, and that should have crushed us, right? No, and, in fact, the U.S. banking system went from being on its back at the end of the financial crisis and source of ridicule to the rest of the world to the dominant financial enterprises in the world. So, we have done pretty damn well with really high, strong capital requirements. That is the battle we cannot lose.

The other one has to do with technology. I think it was Ben Bernanke that referred to the American International Group (AIG) as a well-run, traditional insurance company with a hedge fund grafted onto it that was playing in all these new derivative games and providing credit default products to all the European banks, and in such an interconnected way that if AIG went under. The European banks would be in violation of their capital requirements and have a huge contraction in Europe and around the world. So, these things, these are really the heart of this. The FSOC Improvement Act, which you talked about here, I believe that I have been working on this for years, and an activity-based approach is the right one. The arguments that I hear against it that are hardest for me to get my arms around are we have to be sure that this cannot be an excuse to drag out the process for a long time. So, with that one thing——

Chairman HILL. The gentleman's time has expired——

Mr. FOSTER. Thanks much.

Chairman HILL [continuing]. and I would encourage the panel to follow up on Dr. Foster's request for information.

Chairman HILL. The gentleman from Ohio, Mr. Davidson, the Chair of our Subcommittee on National Security, is recognized for 5 minutes.

Mr. DAVIDSON. Thank you, Chairman, for doing this hearing. Thank you for our witnesses for being here today and the work you have done to prepare for it and, frankly, the work you have done in many ways in the private sector and think tanks and whatnot to contribute to the discussion today.

Dodd-Frank was sold as a fix to the 2008 financial crisis, but honestly, it has been pretty bad for markets. It has probably been worst of all for student loans. The Federal Government took over student loans as part of that process as well, and that should indicate how bad this bill has been. It has gone about as badly as the student lending takeover has gone. It has choked off investor access, stifled capital formation, buried small banks under compliance costs that only the Wall Street giants can afford. Worst of all, it has created more bureaucracy, often in the name of helping consumers like the CFPB. One of the biggest ways consumers are being exploited is their data is being harvested, monetized, and exploited in all kinds of ways. CFPB has done nothing to modernize privacy and data protection, and when you look at Dodd-Frank regulations that have pushed regulators to hike capital and liquidity rules, mandate stress tests that have choked off capital to small businesses, it has really had a big negative impact in our economy.

Let us focus first on Basel III Endgame. Mr. Bentsen, Dodd-Frank was supposed to tailor regulations to the actual risks of each bank. So, how can anyone justify Basel III's one-size-fits-all capital standards?

Mr. BENTSEN. Thank you, Congressman. So, Basel III Endgame, the Fundamental Review of the Trading Book, is supposed to be the last component of the enhanced capital rules under Title I of Dodd-Frank. The problem with the proposal that is put forth is that we already are at historically high levels of capital. Dr. Foster was sort of talking about that, where we were and where we are today. The way that rule, as originally proposed, would increase the total aggregate amount of capital for the largest institutions beyond their already historical levels. To your point about the impact on business financing and lending is it would directly impact the Trading Book and raise capital in exorbitant amounts, which would definitely have a knock-on effect to small business lending and a negative consequence. So, it really needs to be reworked.

Mr. DAVIDSON. Yes, thank you for that. We tried with S. 2155 to do some tailoring, but often, the regulators have really pushed a different approach and used chokepoint tactics in other ways to really limit capital formation in the private sector, certainly limit it for small businesses and disfavored industries or disfavored individuals.

Another troubling development is the Fed's payment on interest. Prior to the 2008 financial crisis, just prior to that, they changed the rules, and before, when banks wanted to earn interest on their reserve requirements, they had to manage their own book. They had to buy Treasuries or whatever to earn a return, but they had to hold that capital in reserve. Now the Federal Reserve is paying interest not just on the required reserves, but on excess reserves.

When interest rates were 50 basis points, there was not a massive motivation to hold excess capital there, but when interest is over 4 percent, they are making 440 basis points, more than double what a normal rate for a management fee is for a hedge fund. They are not deploying their capital. Concurrent with Dodd-Frank and this change in interest rates, you have seen a massive growth in nonbank lenders.

Dr. Kupiec, could you explain the implications of that, where the capital is held with the excess reserve requirements? The Central Bank, in a way, is providing a disincentive. Why would banks want to loan at 6 percent to small businesses when they can get 440 for doing nothing?

Dr. KUPIEC. The Fed, as you point out, changed its operating procedures in 2008, in the fall of 2008. Paying interest on reserves was a way when the Fed did their quantitative easing and bought all these securities, to keep the banks from lending it out and causing inflation. So, interest on reserves has become a key part of the way the Federal Reserve does monetary policy. As you mentioned, unfortunately, now it requires the Fed to pay banks billions of dollars in interest on their reserves every year, and it causes the Fed huge losses, but they are kind of locked into that right now.

Mr. DAVIDSON. Yes, they are over $100 billion per year right now, and when you look at it, big businesses have access to the bond market. Small businesses are being denied loans, and that is why you see the growth in nonbank lenders. We really need to relook this, and I applaud the chairman for creating a task force to look at it. Thank you, and I yield back.

Chairman HILL. The gentleman's time has expired. The gentleman from California, Mr. Vargas, who is our Ranking Member on the Monetary Policy Task Force, is recognized for 5 minutes.

Mr. VARGAS. Thank you very much, Mr. Chairman and Ranking Member, and also for all the witnesses here today.

Two things around here seem to be assured. One, my friends on the opposite side of the aisle, Republicans, always say they are deficit fighters. They are not going to raise the deficit, and they are not going to increase the debt. That is what they always say, and then, of course, they increase the deficit, and they increase the debt. It is exactly what they do, and then they walk away as if they did not do it. It is like when you watch the sports, it is a late hit in football and then they walk away like, I did not do it. Yes, you did. Everyone saw it. It is on video, baby. Everybody saw what you did, and that is one of the things that is always assured here.

The second thing that is always assured is they cry for deregulation. We want to deregulate, we have to deregulate, and then they come up with some crazy financial instruments that do not work well. There is a collapse, and they do the same thing. They walk away once again, like, no, no late hit here, I did not do that, and they forget all about it. We saw that in 2008 with the financial collapse. We just saw it again with their big, ugly bill, and, unfortunately, I think we are going to see it with crypto here. Mr. Kelleher, could you comment on that?

Mr. KELLEHER. No, you are right. It is a huge problem because they are not just walking away. There is zero accountability, and the problem with zero accountability is you create moral hazard,

and you actually incentivize people to take bigger risks because they do not bear the downside. It is the problem with too big to fail. Everybody rails about Federal bureaucrats, bureaucrats, bureaucrats, but in 2008, they ran in here with their hands out looking for money from those bureaucrats. In 2023, they did not run to Wall Street saying help us save the banks. They came to the Federal regulators, the bureaucrats that are getting bashed all the time, who cannot do anything right until they wanted to ladle out the bailouts for their misconduct and for their high-risk activities. They took the bonuses. They are happy to get the bonuses in good times, then they are shifting the cost of bailouts to the American people. They did it in 2008, they did it in 2003, and that is going to happen again in the future with the deregulation supercharged by unregulated crypto.

Mr. VARGAS. I agree, and it is going to happen once again as it always does, walk away and say we did not do it. Now, Mr. Bentsen, I do not want to pick on you, but I do want to quote you. In your written testimony, you argue that "Many of the policies required by Dodd-Frank promoted in the aftermath of the financial crisis have made the U.S. financial system stronger and more resilient today than it was in 2010." Now, I heard the parade of horribles by the chairman at the beginning how horrible Dodd-Frank was, and you did not seem to parade that horrible here. Could you explain yourself?

Mr. BENTSEN. I think it was me.

Mr. VARGAS. Mr. Bentsen, you are the one that I quoted.

Mr. BENTSEN. I should note that I first met the Congressman when I testified before a joint committee of the Senate and the Assembly in California, and he was Chair of the California Senate Banking Committee, and I think it was whether or not California should adopt its own Dodd-Frank Act. My testimony was short. The answer was no. There are certain things, for sure, that we think that Dodd-Frank did to provide more resiliency to the system, addressed areas in the swaps market, at capital levels of quality.

Mr. VARGAS. Was it a good idea or a bad idea?

Mr. BENTSEN. But——

Mr. VARGAS. No, no, no, no, no, no. I am not going to "but" here. Was it a good idea? I have limited time, was it a good idea or a bad idea, Dodd-Frank?

Mr. BENTSEN. There were some parts that were good ideas, and there were some parts that were not good ideas.

Mr. VARGAS. Okay. Mr. Kelleher, is it a good idea or a bad idea? Yes?

Mr. KELLEHER. Dodd-Frank?

Mr. VARGAS. Yes.

Mr. KELLEHER. Dodd-Frank was absolutely essential at the time, and the interesting thing is Dodd-Frank was actually bipartisan legislation. It was a partisan vote, but Dodd-Frank, as you all know, from the 20 days of the conference, many, many, many Republican provisions are throughout Dodd-Frank, as does friend Ken Bentsen know.

Mr. VARGAS. Of course, but they forget like they always forget and walk away. The other thing I find interesting, we had a bunch

of bankers one time, and I asked the same thing of the bankers. You know what the bankers said? It was generally a good idea. There are some things that we thought were good. There are some things they did not like, but now we have the parade of horribles like it is the worst thing in the world. Now, the worst thing in the world is when the American people have to bail out the damn banks because these rich guys make all this money, and these guys allow it to happen, and then they simply put the cost on all of the consumers, all the United States' taxpayers, and you let the fat cats get away with it. That is the problem. With that, I yield back.

Chairman HILL. The gentleman yields back. The gentleman from Tennessee, Mr. Rose, is recognized for 5 minutes.

Mr. ROSE. Thank you, Chairman Hill and Ranking Member Waters, for holding this hearing, and thank you to our witnesses for taking time out of your schedules to be with us.

Mrs. Johnson, small businesses are incredibly important to Tennessee's economy. They make up the majority of all companies in the State and are considered the backbone of the economy. These businesses not only create jobs but also foster innovation and contribute significantly to the local communities. Section 1071 of the Dodd-Frank Act requires lenders to compile, maintain, and report information regarding loan applications made by certain businesses. Unfortunately, I understand that implementation of these requirements based on a rulemaking under the Biden-era leadership of the CFPB can be an enormous undertaking. The compliance burdens could result in some lenders choosing to terminate their small business lending programs altogether due to compliance costs.

I would like to touch on Chairman Hill's H.R. 941, the Small Lender Act. This bill would reduce the definition of a small business for purposes of 1071 reporting from $5 million to $1 million. Can you discuss how this bill would better focus the scope of 1071 reporting and how it would also ultimately benefit small businesses that are seeking access to hire more employees and expand their operations?

Mrs. JOHNSON. Absolutely. Small businesses, as you know, are the backbone of the economy. They hire the vast majority of employees throughout the country, and banks want to lend to them, and so, it was extremely problematic. CBA represents institutions $10 billion and above for the most part. I can tell you from some of the very largest institutions, some of the largest small business lenders in the country, that this was a compliance nightmare and a cost nightmare. So, for smaller institutions, it was going to be even more burdensome. I think the stretching of the requirement under Dodd-Frank from 13 data fields to 80-plus data fields was exorbitant and so, I think that the bill that Chairman Hill has introduced, the Small Lender Act, is very, very needed to reduce the reporting requirement from $5 million in annual revenues to $1 million in annual revenues that will better capture small businesses this bill is intended to capture.

Mr. ROSE. Thank you, and, Mrs. Johnson, as you may know, one of my bills, H.R. 2885, the Bank Loan Privacy Act, which has been attached to today's hearing, I was proud to introduce this legislation, which would require the CFPB, before modifying or deleting

any personal information collected under Section 1071, to engage in a formal rulemaking process with advance notice and public comment. Specifically, the rule would need to include a description of the intended modifications or deletions and an explanation for how these changes serve a legitimate privacy interest. In your view, would this legislation help ensure greater transparency and accountability in how the CFPB handles sensitive personal data under Section 1071?

Mrs. JOHNSON. It is extremely important. The data fields that are required under 1071 are personal-identifiable information; so, anything that they are doing in terms of collecting this information or changing or deleting that information, it should go through a notice and public comment period. Banks will want to provide feedback and input and make sure that it is done correctly.

Mr. ROSE. Mr. Chairman, I ask unanimous consent to have a letter from the Independent Community Bankers of America supporting the Bank Loan Privacy Act inserted into the record.

Chairman HILL. Without objection.

[The information referred to can be found in the appendix.]

Mr. ROSE. Mr. Bentsen, in your prepared testimony, you noted that large banking organizations are subject to up to 19 separate capital requirements and five separate liquidity requirements. Can you discuss the negative effects on the U.S. banking system of so many duplicative capital and liquidity requirements?

Mr. BENTSEN. Probably the most consequential impact is the interrelation and the lack of coordination of these different requirements. I have talked about the stress test and how it does not comport well, for instance, with the Basel III Endgame. When you have these many different items, not only do you drive up compliance requirements and compliance costs, but you also have to look and see how all of these capital and liquidity rules interact together. Again, as I mentioned, next week, the Federal Reserve is holding a conference which is looking at all of the capital and liquidity reforms that have been implemented since the great financial crisis. This is a good start for prudential regulators to sort of think about how do all of these rules stack up together.

Mr. ROSE. Thank you, and with the remaining moments, I will just tell a story. This morning, at a breakfast, I was eating a cinnamon roll, Mr. Chairman. It had a little-on it with some icing, and it tumbled off and down the front of my suit. It hit my shirt, my suit jacket, and my suit pants. That is the way I feel about Dodd-Frank at this point: a lot of unintended consequences, and they are not good. I yield back.

Chairman HILL. The gentleman yields back. I hope you changed clothes. We now turn to the gentlewoman from Ohio, Mrs. Beatty, who is the Ranking Member of our Subcommittee for National Security. You are recognized for 5 minutes.

Mrs. BEATTY. Thank you, Mr. Chairman and Ranking Member, and thank you to all of our witnesses today. Certainly, as you have witnessed and you have heard, we are here because Dodd-Frank turns 15. We are here to take a closer look at the last 15 years of Dodd-Frank, and I would like to walk you through some of the benefits we have seen since the law has been enacted.

Certainly, we will recall and know, before Dodd-Frank, predatory mortgage lending was rampant, consumers were vulnerable to unfair and abusive practices with no recourse, and financial institutions were subject to a disjointed regulatory and supervisory framework that created dangerous gaps in oversight and accountability. We also know, as my colleague, Mr. Vargas, pointed out, what happened in 2008 and what happened with the banks and where people came and the crises that we were in. Certainly, as we have witnessed from you, we all have a different view. I have never thought of it as a cinnamon roll and how it bounced off and what it did to a suit. I am not even sure that I got it, but that is another view that my colleague has presented. Certainly, I have a different view of what it has done, especially in the areas that you work, what it has done for financial stability, what it has done for accountability, what it has done for protecting our consumers. I think it is also worth noting that since Dodd-Frank, we have not had any wide scale to the magnitude of 2008 financial crisis. Certainly, we have had some, but the law has worked, in my opinion.

Mr. Kelleher, in the last several months, we have, unfortunately, seen that many Federal agencies have chosen to over comply with the administration's executive orders around diversity, equity, and inclusion. Let me kind of take you back again through history and remind you of Section 342 in the Dodd-Frank Act, which we are so fortunate that Congresswoman Maxine Waters played a lead role in Dodd-Frank and creating Section 342, which was the establishment of the Office of Minority and Women Inclusion, or as we refer to as OMWI, at our financial agencies, which is charged with promoting diversity and inclusion within the agencies that they are regulated entities. Mr. Kelleher, what impact will these attacks on diversity, equity, and inclusion have on policymakers' ability to address the racial wealth gap and ensure that there are truly equal opportunities to get ahead for all Americans?

Mr. KELLEHER. I think everybody recognizes, certainly in the private sector, the value and importance of diversity, multiple voices, and people with different experiences at the table, and that is certainly true at the financial regulatory agencies and the financial institutions that they oversee. We can see that by the identification and addressing of the predatory targeting of certain communities—communities of color, low-income communities, and others—and those communities are not visible often at the financial regulators when the people at the financial regulators do not have any visibility or experience in those communities.

The OMWI offices have been critical junction points in making sure that those issues are maintained a priority both within the agencies and within the regulated entities that those agencies are focused on. The more people are aware of the breadth of our communities, the people, and their experiences, the more that the rules can actually be tailored appropriately. The racial wealth gap was not talked about, was not visible for many years. It was not visible because people who are actually on the wrong end of the racial wealth gap were not represented in the regulatory agencies and even in policymaking, more broadly. The identification of that and addressing that through various regulations and laws has been critical, but diversity is what has driven that.

Mrs. BEATTY. Thank you. My time is almost up but let me just thank you for that and also say, although the Dodd-Frank made some great progress, there is no doubt that this country still faces persistent disparities in access to safe and affordable credit. Mr. Bentsen, we have had the opportunity with SIFMA to work together. Have you seen in financial literacy, in your work, the difference it makes when you are more inclusive?

Mr. BENTSEN. First of all, Congresswoman, I want to thank you and Congresswoman Kim for the work that you all do on financial literacy—that is very important—and for your engagement with the SIFMA Foundation. Absolutely, the foundation has seen the spinoff of increased financial literacy impact on students——

Chairman HILL. The gentlewoman's time has expired.

Mr. BENTSEN. We will answer for the record.

Mrs. BEATTY. Thank you so much. I yield back.

Chairman HILL. I commend you both on the financial literacy partnership. We now recognize the gentleman from South Carolina, Mr. Timmons. You are recognized for 5 minutes.

Mr. TIMMONS. Thank you, Mr. Chairman. I want to thank all the witnesses for joining us today to examine where 15 years of Dodd-Frank has gotten us. I want to begin by addressing the CFPB and the unchecked regulatory power that its past director wielded to impose his personal worldviews on the Agency. The constant pendulum swings in leadership direction between administrations, combined with inconsistent rulemaking, have made it challenging for well-intentioned businesses to operate and thrive under its oversight. As I have mentioned before, just hours before Director Chopra was removed from his position, the CFPB sent out a wave of civil investigative demands to businesses across the country at 5:30 on a Friday evening. I think we all know that no CFPB employee is working at 5:30 on a Friday. These actions were not based on legitimate grounds. Rather, they appear to be a final attempt by the former director to make a statement, sowing confusion and panic on his way out the door.

Mrs. Johnson, given the notion that the CFPB cannot be fully dismantled and that we cannot return to pre-2010 status quo, where do you see Congress stepping in to ensure the Bureau stays focused on its core mission and does not allow a rogue director in the future to expand its authority beyond that purpose?

Mrs. JOHNSON. Thank you for the question. I think it is going to be essential for us to take the opportunity and see what works and what does not work, and I think we have seen over the last 15 years that CFPB, even as, I think, it is by some bipartisan recognition, has been political. It has been driven by polling at times. To your point, they rushed things out the door even after an election, like the overdraft rule, which was significant. The biggest thing we can do is better define our UDAP authority so that companies, banks in particular, have certainty about how to comply and what it means to comply.

I think the second thing would be creating a rigorous cost-benefit analysis for the CFPB. They do not take into account the true cost to consumers when they are issuing different rules, whether it is credit cards, which are the number one way to access the financial system, or whether it is overdraft, where you have people on the

margins who really rely on this product. Again, these are really critical lifelines for a lot of consumers, and I think those would be two very significant steps. There are a number of other things that we recommend in our testimony, too.

Mr. TIMMONS. It was about a year ago when Director Chopra was here, and I told him that given the potential outcome of the November election, it would be, and my colleagues across the aisle, best interest for us to implement some reforms so we can stop the pendulum from swinging back and forth. Obviously, that wish was not heeded, so we now have an opportunity to address this going forward. To that point, are there specific regulatory tools or enforcement powers that CFPB should be leveraging more aggressively to deter repeat offenders and large-scale scam operations?

Mrs. JOHNSON. On the fraud and scam situation? Yes, absolutely. I mean, CBA, and actually, you all have been a phenomenal lead in heeding consumers' plea for help on being scammed out of their own money. For far too long, it has often been finger pointing from the CFPB when they actually have as one of their six core missions to help educate consumers so that the consumer can make informed financial decisions. You all are taking a leadership role in this. You have co-sponsored the GUARD Act, which will direct a more whole-of-government approach that will provide the resources necessary to law enforcement to be more engaged on this front. Banks spend billions of dollars and millions of man hours to help protect consumers from being scammed out of their own money, but these things are often originating outside the banking system. They are from telecom and social media, from State actors. We need a whole-of-government approach. I really commend you and your colleagues for taking a lead here.

Mr. TIMMONS. Thank you for that. I think we have an opportunity for some bipartisanship to get the CFPB back to its core mission and to not regulate by enforcement, and to create predictable standards that businesses and banks can then meet. I think that if we can create the predictability and seek out the bad actors without tying everyone else up with endless attorney fees and compliance costs, that is the path forward. My goal is for America to lead in all sectors of financial innovation by creating an environment where consumers have full control over their own financial data. For this to work, customers should be able to share their information seamlessly and securely with the applications of their choice, empowering them to access a wider range of financial services tailored to their needs. This requires a balanced approach that promotes innovation while ensuring strong privacy protections and cybersecurity standards. I think that we have an opportunity, this Congress, the next Congress, over the next 3–4 years to bring balance to something that we are not going to get rid of. I look forward to working with my colleagues across the aisle in that endeavor, and with that, Mr. Chairman, I yield back.

Chairman HILL. The gentleman yields back. The chair recognizes the gentleman from Illinois, Mr. Casten, the vice ranking member of the full committee, for 5 minutes.

Mr. CASTEN. Thank you, Mr. Chair. I would submit to you that there is only one lesson to be learned from every financial crisis. It is always the same lesson, and we have never learned it. The

lesson is that if you have something on your balance sheet that is risky and you would like to sell it, it is in your interest to have deep liquid markets of unsophisticated off-takers. That was the S&L crisis, and it was certainly the housing crisis. I mean, the housing crisis, right, we had risk in subprime mortgages. We offloaded those by bundling them into mortgage-backed securities. That got risky, so we offloaded those into credit default swaps, and then we figured out that if we could put those on over-the-counter markets, we could get less transparency, less regulation, and it was all good until it was not, and then it took everything down with it.

Now, if we had learned that lesson, we would not be voting on all this crypto crap this week, but we have not learned that lesson. I want to just understand because specifically in Dodd-Frank, there was this effort to create joint SEC-CFTC jurisdiction for some things that had run away from the supervision of SEC markets into less disclosure-intensive CFTC markets. Specifically, if you had a derivative tied to a security, it had to be inside the SEC. Mr. Bentsen, I want to just get some clarifying questions from you. If Microsoft were to custody their own stock and then issue a token that tracked that stock without granting ownership or redemption rights, would that be a derivative?

Mr. BENTSEN. Oh, you are asking prospectively. You are not asking with respect to Dodd-Frank, right?

Mr. CASTEN. I am saying right now under current law, would that be a derivative if they issued their stock as a token without granting ownership or redemption rights out of Treasury?

Mr. BENTSEN. Yes, I think that is——

Mr. CASTEN. Okay. That is not just if it is Microsoft, right, but if an investment company did that out of stocks that they controlled, that would also be a derivative?

Mr. BENTSEN. Again, you would have to look, but if you are not transferring all the rights of ownership that you would have——

Mr. CASTEN. Okay. So——Mr. Bentsen—with the individual equity, then it would be——

Mr. CASTEN. Okay, I agree, and for the record, I think we both agree with Hester Peirce, the Republican SEC——

Mr. BENTSEN. That actually goes beyond Dodd-Frank back to the Commodity Futures Modernization Act.

Mr. CASTEN. Yes, because Hester Peirce has just said that tokenized shares do not offer ownership of the underlying asset. Then in that case, it is a security-based swap and should not be traded at retail. That matters because in the CLARITY Act that is coming through this week, Section 202 specifically says that if you tokenize a security and raise $50 million or less, all of a sudden you can get out of SEC jurisdiction.

I would like unanimous consent to enter into the record an article in today's Wall Street Journal, "Want to Trade Amazon on Crypto Exchange? The Price Might Be Off by 300 Percent."

[The information referred to can be found in the appendix.]

Mr. CASTEN. It says that the tokens of Amazon today are trading at as much of a 300 percent premium over the stock price. That does not suggest an efficient market. I have one example on Jupiter, where it is over 100 times above the stock price.

So I guess, Mr. Kelleher, if we have the SEC commissioner saying this should not really be sold at retail, we seem to have agreement on this committee that is a derivative that should be subject to the SEC. Yet, we are going to vote this week to say let us not have the SEC regulate these tokenized securities, which are, according to today's Wall Street Journal, massively inefficient. Is that a good idea? Should we be concerned about that, or have we, in fact, learned nothing from Dodd-Frank?

Mr. KELLEHER. Everybody should be concerned about that. I mean, it has been said repeatedly that we have the most liquid, best capital markets in the world, that are the envy of the world, but that is only true because they are well regulated and well policed. That causes the faith and trust of investors worldwide to put their money into our markets. It is not preordained or predestined for us to always have the best markets in the world. When you pass laws that have ambiguities, carveouts, and loopholes that evade the most fundamental parts of our securities laws that make them well regulated and well policed, then you are not only opening loopholes for companies and financial predators and illegal and bad conduct that creates consumer risk as well as financial stability risk, you would literally endanger the entire capital formation allocation system and the status of our capital market.

Mr. CASTEN. I mean, it strikes me, like, if I was going to raise money today, I would raise a little bit of smart money on functioning equity markets and then I would lever it up with dumb money on the token, right? I mean, it seems like a smart thing to do. Look, I am about out of time, but just because you raised the police, you are reminding me that I remember when Gary Gensler first came into his job, he came to my office and talked about what he wanted to do on crypto regulation. I said you have two problems. Your advantage is that the Wild West needs a sheriff. Your disadvantage is that everybody in the Wild West likes to shoot the sheriff, and my Republican colleagues' commitment to defunding the white-collar police has been noted.

Chairman HILL. The gentleman's time has expired. The gentleman from Montana, Mr. Downing, you are recognized for 5 minutes.

Mr. DOWNING. Thank you, Mr. Chair. First, I would like to submit this letter from the National Association of Manufacturers to the record.

Chairman HILL. Without objection.

[The information referred to can be found in the appendix.]

Mr. DOWNING. Thank you, Mr. Chair, and thank you for the witnesses. There is this saying that just because you are not interested in politics does not mean politics is not going to be interested in you. The first time I ever came to DC, I was basically issuing Regulation D exemptions, securities, and had an investment bank group, a broker-dealer, and this thing called Dodd-Frank was coming down the pipe. That is the first time I ever climbed in an airplane and flew to DC to make sure people understood how that affected me, my business, my investors. I think that in reaction to the crisis at the time the pendulum swung. I think it swung a little too far and picked up a little too much baggage, and I think there

is an opportunity to right-size that, and I think there is a need to right-size it.

I am going to start off. I have heard from many of the banks and credit unions in my district across Montana just how harmful Dodd-Frank has been. One bank plainly told me that the creation of the CFPB has been the most negative and costly provisions of Dodd-Frank. Another small bank told me they have gone from one compliance officer before Dodd-Frank to four today, drastically increasing costs. I have heard similar stories on Rule 1071, specifically. In 2008, Montana had 64 State-chartered community banks, 64. Today there are 33.

I am going to start with Dr. Kupiec. Hopefully, I said that right. I am going to apologize. Is it fair to describe Dodd-Frank as irresponsibly pushing bank regulations into a one-size-fits-all model where the balance sheets of all banks look the same?

Dr. KUPIEC. It is not exactly one-size-fits-all. The largest banks are subject to different rules than the smaller banks. I think the crux of it all, though, is the regulations that have been put in place are very complex, very expensive, and they do not do what they were supposed to do. They do not work as advertised, and I think taking the time to right-size some of these regulations would be a good thing.

Mr. DOWNING. Do you believe that this hurts smaller players and innovators the most who specialize in their local communities?

Dr. KUPIEC. Small banks have been consolidating for decades, but it is certainly the compliance cost. If you have a small bank, you cannot spread the compliance costs across a big business like you can if you are Jamie Dimon and JPMorgan.

Mr. DOWNING. Thank you. I am going to move to Rule 1071. Mrs. Johnson, do you think the consequences of the CFPB's 1071 final rule will be especially pronounced in rural communities who already struggle with limited lending capacity?

Mrs. JOHNSON. I do, yes.

Mr. DOWNING. Thank you. I am going to switch quickly to mortgage lending. A bank in Montana recently told me Dodd-Frank's mortgage lending rules have made mortgage lending far more burdensome for the lender and more confusing for the borrower. In fact, the bank told me Dodd-Frank's regulatory requirements have caused many rural banks to get out of the mortgage lending business entirely. I am going to go back to Dr. Kupiec. Do you think Dodd-Frank's qualified mortgage rule has been successful in reducing systemic risk in the mortgage sector?

Dr. KUPIEC. The rule and the ability to repay rules are complicated, and they certainly impose a lot of compliance costs on banks. Again, small banks do not have the staff, and so it has caused a lot of small banks to get out of the business. It is kind of the inflation we have had in housing prices recently, the higher mortgage rates. The Qualified Residential Mortgage (QRM) rules, they are being stretched to allow higher debt-to-income ratios and things like that, and the Government-Sponsored Enterprises (GSEs) are funding loans with higher debt-to-income ratios. So, we are letting the risk of underwriting buildup to accommodate lending, and so, in essence, the rules, in some sense, are not doing what they were designed to do: protect people from taking out loans they

cannot afford. Now, given the housing price inflation and the high mortgage rates, policymakers are pushed to allow more people to qualify for loans. There is a tradeoff there.

Mr. DOWNING. Thank you. In my remaining time, I would like to highlight another issue I am very passionate about, which is eliminating the Federal Insurance Office, which was established by Dodd-Frank to monitor all aspects of insurance. The Federal Insurance Office, I believe, should be eliminated. The McCarran-Ferguson Act of 1945 makes clear that States have sole regulatory authority over the insurance industry, and the Biden Administration has weaponized the Federal Insurance Office, pursuing politicized data calls on climate rather than looking for ways to make the insurance sector operate more efficiently.

Chairman HILL. The gentleman's time has expired.

Mr. DOWNING. I yield, Mr. Chair. Thank you.

Chairman HILL. The gentlewoman from Michigan, Ms. Tlaib, you are recognized for 5 minutes.

Ms. TLAIB. Yes. Thank you, Mr. Chairman. I hope I can ask all of you a simple question. In 2008, do you believe shadow banks that took on short-term liabilities played a huge role in the financial crisis? I will start with you, Mr. Bentsen.

Mr. BENTSEN. I am not sure exactly how you want to define shadow banking.

Ms. TLAIB. Yes or no?

Mr. BENTSEN. There was no question that there were liquidity problems that have been addressed.

Ms. TLAIB. People acting like banks that are not banks, yes. How about you, Mrs. Johnson?

Mrs. JOHNSON. Yes, outside the regulated system.

Ms. TLAIB. Yes.

Mr. QUAADMAN. A housing crisis that morphed its way throughout the economy.

Ms. TLAIB. Yes. I was talking about shadow banks. Folks that acted like a bank, took on short-term liabilities was one of the main causes of the 2008 financial crisis. It is okay, Doc. You do not have to answer.

Dr. KUPIEC. I do not——

Ms. TLAIB. It is okay. Hey, it is still happening. It is going to happen, and Dodd-Frank did not come from, like, thin air, but——

Dr. KUPIEC. There were a lot of mortgages——

Mr. KELLEHER. There is no question——

Ms. TLAIB. That is right.

Mr. KELLEHER [continuing]. by any objective observer——

Ms. TLAIB. That is right.

Mr. KELLEHER [continuing]. that non-regulated shadow banks contributed significantly.

Ms. TLAIB. I would appreciate you three be honest.

Mr. KELLEHER. Unregulated Lehman Brothers——

Ms. TLAIB. That is right.

Mr. KELLEHER [continuing]. AIG, Bear Stearns.

Ms. TLAIB. Yes.

Mr. KELLEHER. You could go down a long list of non-regulated shadow banks——

Ms. TLAIB. That is right.

Mr. KELLEHER [continuing]. that drove the crash.

Ms. TLAIB. I know even those like Lehman Brothers or money market mutual funds that had the collateralized short-term debt experienced devastating runs. We know this. So, we have now nonbanks performing bank-like functions but without the regulation and oversight of the traditional banking sector. That is something that I want my colleagues to understand was happening. You can disagree certain things that CFPB is doing, hopefully factually based, but to say that it was not needed because of this, to me, is being dishonest with the American people.

Mr. Kelleher, would you say, like, stablecoin issuers right now act essentially like banks?

Mr. KELLEHER. Stablecoins are nothing but money market funds in disguise, for all intents and purposes, with high-run risk, and the way they are currently being talked about will have almost no regulation to protect the American people.

Ms. TLAIB. That is right. Mr. Kelleher, without deposit insurance, are these stablecoin users subject to runs like we saw occur in shadow banks in 2008?

Mr. KELLEHER. I do not think there is any question you are going to see runs, failures, and bailouts.

Ms. TLAIB. I want to be clear, so my colleagues know this is coming. In 2008, we saw the collateralized short-term liabilities held by nonbanks helping bring down the financial system, and now we are working to dramatically expand a whole new type of shadow banking in our country right now. Mr. Kelleher, do you agree that part of what made 2008 financial crisis so damaging was the linkages between the traditional banking sector and the shadow banking sector in the real economy?

Mr. KELLEHER. The interconnection between the shadow banks and the banks with transmissions of risk, and those transmissions of risk over time, created the circumstances, together, that systemically significant institutions, whether they were banks or nonbanks, ultimately failed. Now we are going to overlay, as you say, an entirely new shadow banking system called crypto, call it stablecoins——

Ms. TLAIB. That is right.

Mr. KELLEHER [continuing]. call it whatever you want, and they are not going to regulate them, so they, too, are going to be underregulated.

Ms. TLAIB. That is right. I do not even know who comes up with the names, Mr. Dennis Kelleher, but the GENIUS Act recreates and amplifies the same kind of linkages. For example, the act would allow banks to issue their own stablecoins, linking traditional financial sector to the volatile crypto industry. Perhaps most troubling about the GENIUS Act, it undermines the separation between commerce and banking. Walmart, Amazon, Meta, and all these are exploring the use of this right now. What sorts of risk are we talking about? Again, pretend our moms are watching us. Like, explain it because I need them to understand what my colleagues' lack of action or enabling right now is going to cause real impact on their lives.

Mr. KELLEHER. The biggest risk is that people are going to conclude, based on what is likely to pass, that these new financial in-

struments, that have no legitimate social purpose, are properly regulated by the Federal Government, and that is the biggest fraud on the public out there.

Ms. TLAIB. I tell people Amazon and Facebook could do shadow banking that could spill over to commercial financial sectors. Yes or no?

Mr. KELLEHER. You are going to be legitimizing a new financial product that is highly volatile, littered with conflicts of interest and almost no regulation, but there will be a claim of regulation and legitimacy, and that is going to drive the marketing, and that is going to cause massive losses to main street——

Ms. TLAIB. I got to get this in, Mr. Kelleher. Guess who is going to bail them out? Guess who is going to bail them out again? It is exactly what is going to happen. I just want to be on record saying I told you so. I am going to be here to say that.

Chairman HILL. The gentlewoman yields back. The gentleman from South Carolina, Mr. Norman, you are recognized for 5 minutes.

Mr. NORMAN. Thank you, Mr. Chairman. Since Dodd-Frank, the credit unions faced a dramatic increase in regulations, not knowing what the cost would be other than it was more cost. How can we in Congress balance the need for financial safeguards and protection with providing targeted relief for credit unions, particularly in the form of regulatory tailoring, exemptions, and the repeal of certain provisions, and make sure that this does not happen again because it created a world of problems and we are feeling the effects now? I guess, Mr. Bentsen, we can start and go down.

Mr. BENTSEN. Congressman, we do not represent credit unions, so I cannot really opine on the question. Sorry.

Mrs. JOHNSON. We represent mostly banks but a few credit unions in there. It is a duplicative regulatory environment that many institutions live under, especially if you have CFPB regulation in addition to your prudential regulation. You have multiple examiners. Other Members of Congress have mentioned more compliance officers at times and other functions of the bank, which just simply does not make—so, I think coordinating and just trying to reduce the duplication where you can is one very meaningful step.

Mr. QUAADMAN. Mr. Norman, ICI represents mutual funds and other regulated funds with the SEC. As I mentioned in my opening remarks and also with our testimony, there are duplicative regulatory requirements which are confusing and also where regulators are going beyond where Congress had mandated them to go. So, that creates problems not only for those funds, but even for those investors who want to deploy their money into those funds as well.

Dr. KUPIEC. I think many credit unions are sort of in the same position as community banks in terms of having to bear the cost of the regulations, but actually my written testimony shows that the credit union share of lending has actually grown relative to the banks over the last few years. So, they have actually done better than the banking system as a whole, a couple of percentage points difference. So, they have not had it as bad as the regular banks, I do not think.

Mr. KELLEHER. If you look at the facts, credit unions and community banks as well as the economy were crushed by the crash. Long

before Dodd-Frank got enacted or got implemented, community banks and credit unions and small business across the country were failing at massive rates because of the Great Recession that was caused by the crash. The damage done to those institutions from the crash far exceeded any even claimed damage by Dodd-Frank, and so the real issue is people are going to pay one way or the other. They are either going to pay for regulation and compliance costs to prevent the crash, or they are going to pay 10 times, 20 times, 100 times more to clean up a crash because they were not properly regulated. There is no choice in the world where there are no costs. The question is, when are the costs incurred and who is going to pay them?

Mr. NORMAN. Yes, but there is a question of one size does not fit all. I am in the real estate business. Let us talk about banks. A lot of them got out of the mortgage servicing and had to rely on other banks. I have the closing statements where the costs went up the minute Dodd-Frank took effect, and I guess to avoid duplicating that again, what lessons have we learned from that on the servicing side?

Dr. KUPIEC. The mortgage service business, there are some capital regulations that make them unfavorable for banks to do that business. A lot of it has consolidated and moved out. There are lots of government lawsuits against banks for underwriting subprime mortgages back under the Obama Administration where they went after lots of banks for the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and they paid huge fines for supposedly creating bad subprime mortgages, and most of them were settled without going to court. The banking system paid a lot, and the banking system, by and large, has shied away from the mortgage business for reasons of regulation, for reasons of getting sued, for things like that. It is not just the Dodd-Frank effect, but also there are other things that have gone on since the crisis that have made the banking system a bit shy about the mortgage business.

Mr. KELLEHER. They, of course, paid those massive fines because of fraud and illegal behavior, not because they were generous and not because they were not represented by the best lawyers in America.

Mr. NORMAN. Yes, but you had a lot of frivolous suits too that were charged, and that was not right. It is driving up the cost today. I thank each one of you for being here.

Mr. STUTZMAN [presiding]. The gentleman's time has expired. The chair recognizes the gentleman from Connecticut, Mr. Himes. He is now recognized for 5 minutes.

Mr. HIMES. Thank you, Mr. Chairman. Thank you to our witnesses. It has been a trip down memory lane to reflect this way on Dodd-Frank. I was actually in the very bottom row, a freshmen, when it was written, and it is interesting to see the very different opinions that are offered by our witnesses today. My own view, for what it is worth, is we were promised when it became law by many in the industry that this was going to obliterate the American strategic advantage of our deep capital markets. To be fair, on the left, people said this is the apocalypse in waiting and it is all going to happen again 2 years from now. None of that turned out to be true.

Our capital markets and our banking system are, in fact, the envy of the world, as Mr. Bentsen says, and with a few exceptions and including, by the way, the mother of all stress tests in the form of the pandemic, our system has held up remarkably well.

I guess I am intrigued. Dr. Kupiec highlights the Silicon Valley Bank disaster. I am not sure I agree with him that is evidence that Dodd-Frank is a failure, but I want to use my remaining 4 minutes to do something that I think is actually kind of useful, which is Dodd-Frank, of course, emerged because too few people saw the mortgage crisis coming. I certainly did not see Silicon Valley Bank crisis coming. My question to all five of you, and I think you have each got about 25 seconds to answer this. I am going to start with you, Mr. Kelleher, answering to the question. At the end of 2025, 6 months from now, there is a systemically threatening event. Let us think of the magnitude of Silicon Valley Bank, just for argument sake. That event originated how and in which market? Mr. Kelleher?

Mr. KELLEHER. Nobody knows, and we do not know because we put blinders on. We have defanged FSOC. We have gotten rid of 25 percent of the personnel at the FDIC. You could go agency by agency, and what you are doing is essentially disarming the front-line financial stability cops at the regulatory agencies. They are not just putting their head in the sand. They are leaving the field, and that is going to cause us to be surprised again like we were in 2008. AIG, everybody ran around going, "What is AIG?"

Mr. HIMES. Okay. Mr. Kelleher, your answer is that we are gutting the regulatory apparatus, I think. Is that a fair characterization, Dr. Kupiec?

Dr. KUPIEC. Yes, Silicon Valley Bank was a systemic problem because there were thousands of banks that had huge, unrealized interest rate losses on their books and could fail too. If you look at my written testimony, you will see that.

Mr. HIMES. I understand. I am looking for the answer to the question of when it happens again 6 months from now, why did it happen.

Dr. KUPIEC. I do not know.

Mr. HIMES. Okay. Fair enough. I do not either. None of us do. Mr. Quaadman?

Mr. QUAADMAN. Mr. Himes, thank you for that exercise. I would actually say if you looked at Dodd-Frank, the Office of Financial Research is supposed to be the early warning system for the Financial Stability Oversight Council. I would say if you looked at any of the hiccups that have happened in the system since 2010, the Office of Financial Research (OFR) has not performed that function. So, I think that actually makes the argument for why it should be brought under the appropriations process for congressional oversight.

Mr. HIMES. That does not sound like the source of a systemically threatening event. You do not want to opine on that?

Mr. QUAADMAN. Excuse me?

Mr. HIMES. I was looking for the answer to the question——

Mr. QUAADMAN. No, I know, but Dodd-Frank put in place a mechanism for that warning to happen, and that warning system has not worked.

Mr. HIMES. Okay. Okay. Mrs. Johnson?

Mrs. JOHNSON. Look, I do not think anybody knows. If we did, we all would be millionaires at this point. That is what we are constantly watching for. I can say that the consumer health right now is still very strong, that banks are incredibly well capitalized. I would say that there is an opportunity for something to happen outside of the banking system, and I just want to make this point because I have not had the chance to orally say this yet. The problem with so much regulation is that you do continually push consumers, especially consumers on the margin where the risk is highest, outside of the banking system. That is one thing that I think we all just need to be cognizant of. Banks are going to fail; nonbanks are going to fail over time. We want to make sure that there is an orderly process for that. We are a free market. That is going to happen, and I think that is something that will play out, but we absolutely want to be cognizant of pushing lending outside of the banking system.

Mr. HIMES. Okay, got it. Thank you. Mr. Kelleher?

Mr. KELLEHER. Hopefully, we are not graded whether we are right or wrong, and hopefully nothing happens. My sense would be if something happens that has a systemic-like effect, it is going to be some sort of extraneous event, whether it is geopolitical or pandemic-like, hopefully not another pandemic, but something along those lines.

Mr. HIMES. I am intrigued, and I got 25 seconds, that nobody said private credit. That is a market that has grown substantially. Nobody said crypto. We are talking a lot about that. Nobody said swap margins, which I was promised would bring down the system. Anybody want to use 10 seconds to elaborate?

Mr. KELLEHER. Let us worry about the Treasury markets. I mean, there are a lot of things to worry about, and that is why the rules are supposed to be in place to cover them all, to have discretion, to be able to identify emerging risks, and that is what has been shut down.

Mr. HIMES. Okay. Thank you. I very much appreciate it. Thank you to our witnesses. I yield back.

Mr. STUTZMAN. The chair recognizes the gentleman from Pennsylvania, Mr. Meuser, who is also the Chair of the Subcommittee on Oversight and Investigations. He is now recognized for 5 minutes.

Mr. MEUSER. Thank you, Mr. Chairman. Thank you all to our witnesses, a robust conversation and important. Barely a day passes, particularly being on this committee, where we do not hear from banks, large and small, about the compliance burdens that they are forced to navigate, and they do stem from Dodd-Frank. It is a common subject. Dodd-Frank created the FSOC, the CFPB, entities that operate with really little accountability really by design, leaving banks unsure on how to comply, not bright green lines, very subjective ideological lines. So, consumer fraud and scams are surging, yet the very agencies tasked with protecting consumers seem more focused on writing new rules and literally engaged in drive-by random investigations. That is why we are trying to roll back some unnecessary regulations and why this is critical, so; fi-

nancial institutions can focus on customers, providing capital and growing the economy.

Mrs. Johnson, Dodd-Frank promised stronger consumer protection, but banks consistently raise concerns about rising fraud and scams and heavy compliance. Fifteen years later, has the law improved consumer safety or bank performance?

Mrs. JOHNSON. I think, overall, the banking system is very resilient. I think they are very conservative in terms of making sure that they can lend to consumers and that consumers are able to repay. I think, more generally, one of the concerns that we have is the complexity and the redundancy of so much regulation into things that oftentimes are not really where the risk is. SVB was brought up earlier, and I think that those were pretty obvious errors of omission from the management on that case. We want to make sure that bank regulators are focused on where real risk exists, like interest rate and credit risk and then also outside of the banking system, where more lending is going because of all the regulatory burden and costs that banks have, including smaller banks, pushing lending out of the banking system. So just having a much more wholesome view.

Mr. MEUSER. Thanks. You brought up before you would like to see things based upon facts and data driven, your term, and your three pillars. Follow the law, that is one that should be a given, right? Review impacts, real impacts, and respond to those properly, as you do in business, as you do in life, and focus on real consumer fraud, and that just does not seem to be happening. In your view what is the biggest factor driving the rise in scams that we see today?

Mrs. JOHNSON. This is an area where we have called on the CFPB to fulfill its statutory mission and one of its core principles to educate consumers. Look, I mean, with the proliferation of technology and digital banking and social media and text messaging, consumers are being bombarded with opportunities to fall victim to handing their own money. Oftentimes, it is through a Facebook link that says there is a designer puppy and click here and pay me, and suddenly you have paid someone who is a complete fraudster. It is very, very difficult for a consumer to determine whether or not that person on the other end is a scammer.

Banks have spent, and I said this earlier today, billions every single year. It has been millions of man hours. We have a fraud committee within CBA that is extremely robust. I can tell you details of how much banks do to combat fraud and scams, but we need the government to step in and to recognize that often this is State sponsored, that this is originating outside of the banking system. We need telecom to step in. We need law enforcement to also step up. We appreciate Congressman Nunn and Congressman Gottheimer and others who have co-sponsored the GUARD Act. We think that is a really meaningful step forward.

Mr. MEUSER. All right. Good. Thanks. That was a big difference what Mr. Kelleher brought up a little while ago, appropriately regulated. That is a big, big difference from excessively regulated, and seeing that only 19 percent of small businesses say they have adequate access to capital. I think we can really go from good to great, and that should be a goal.

Dr. Kupiec, really quick—I am short of time—the Council of U.S. Financial Regulators relies heavily on the Office of Financial Research for data analysis. What agencies like FSOC depend on their own internal research shops? Does that risk not create an echo chamber?

Dr. KUPIEC. I am sorry. I did not hear the last bit. I mean, you are out of time——

Mr. MEUSER. All right. Does that create an echo chamber? I am out of time, so maybe we could talk about it later. Thank you very much. I yield back, Mr. Chairman.

Mr. STUTZMAN. Thank you. The gentleman yields back. If the witnesses also would be willing to submit the answer in writing to the committee, that would be fine.

Dr. KUPIEC. I will submit it.

Mr. STUTZMAN. Okay, we will submit it for the record. We can follow up.

Mr. STUZMAN. The chair recognizes the gentleman from California, Mr. Liccardo, who is recognized for 5 minutes.

Mr. LICCARDO. Thank you, Mr. Chair. Mr. Kelleher, I certainly understood from your testimony, and we have all understood over the last several months, that the Consumer Financial Protection Bureau has been gutted: its budget, its staff, et cetera, in the last several months, and specifically, some very important functions of that Agency appear to have severed. Specifically, the consumer complaint database that millions of Americans have relied upon is being dismantled. Who is going to step into that role to receive and act upon the complaints of millions of Americans who feel that they have been defrauded or scammed?

Mr. KELLEHER. Yes. When it is shut down, it is gone. There is not going to be any substitute or location for that.

Mr. LICCARDO. Many rules have been rescinded and repealed, for example, the excessive overdraft fees rule. Who is going to protect consumers against excessive overdraft fees?

Mr. KELLEHER. There will be no institution with the power and authority to be able to do that.

Mr. LICCARDO. The credit card late fees rule, who will protect consumers against exorbitant credit card late fees?

Mr. KELLEHER. Main street Americans getting ripped off by credit card companies are going to be left on their own to fend for themselves.

Mr. LICCARDO. The data broker rule was also rescinded. What about those many Americans who feel concerned about their privacy and abusive practices of data brokers?

Mr. KELLEHER. Yes. Americans, just hardworking main street Americans who are subject to abuse by data brokers selling their private information and spreading it around and causing identity theft and other fraud and illegal conduct. They are going to be on their own, once again having to fight against these huge financial institutions on their own.

Mr. LICCARDO. I understand that the agencies indicate they will no longer prioritize enforcement or supervision of fair lending laws. In fact, I think we saw a really extraordinary situation in which the CFPB essentially attempted to pull back on a settlement and

a Federal judge stepped in and refused to allow them to do that in Illinois. Is that right?

Mr. KELLEHER. He not only did that, but if you read his opinion, he excoriated the current leadership of the CFPB for trying to go back years to undo the settlement of an anti-discrimination law in a way that was quite shocking to even the Federal judge. So, we will see where that goes on appeal. Better Markets participated as an amicus in that case.

Mr. LICCARDO. For Americans who are not savvy enough or perhaps wealthy enough to have access to attorneys and they suffer from discriminatory lending or redlining, what options they have with the CFPB stepping back?

Mr. KELLEHER. This is why the CFPB was created, is that main street Americans do not have the time or the money to be going after huge financial institutions or financial predators who are prowling, frankly, the wallets and pocketbooks of main street Americans, from their credit cards to their checking accounts to their savings accounts, whether it is discrimination or other unfair and deceptive acts, and we saw that gap. This is not a theoretical problem. We saw it before 2008 and how consumers were abused. We also saw the systemic implications of it because the predatory subprime lending on the individual basis, where individual people getting mortgages were getting ripped off, that was bad, but it also got rolled up into becoming a systemic crisis. So, the purpose of consumer protection is, yes, to protect main street Americans and their wallets and pocketbooks. It is also to protect the systemic risk of failures and bailouts. All of that is gone. We created the CFPB for that purpose. It did really a shockingly good job in a very short period of time.

Mr. LICCARDO. I think it is important that as we think about the Consumer Financial Protection Bureau, this is, ultimately, an acronym that gets lost in the American public because there are so many agencies in the Federal Government. So many seem to have so little impact on our daily lives, but it is important for us to understand exactly what this particular Agency does. Undoubtedly, there have been cases of bureaucratic overreach, regulatory overreach. I have never known a regulatory agency that was not guilty of that, but there is a lot at stake here. Specifically, as I am thinking about the Civil Penalty Fund and $3.3 billion have been returned to Americans who have been scammed in various ways, what agency is going to step in?

Mr. KELLEHER. I have a chart in my written testimony that shows by State how much money every State has received from the Civil Penalty Fund, and everything from $35 million to Arkansas to $46 million to Connecticut. I mean, the CFPB protects everybody and benefits everybody in all 50 States, and every single congressional district here has received money. Their people, their citizens, their voters have received money from the CFPB when they were ripped off.

Mr. LICCARDO. Thank you, Mr. Kelleher. I yield.

Mr. STUTZMAN. The gentleman yields back. The chair recognizes the gentlewoman from California, Mrs. Kim. You are now recognized for 5 minutes.

Mrs. KIM. Thank you, Chairman and Ranking Member, for hosting this hearing today, and I want to thank all of our witnesses for joining us. Fifteen years later, it has really become self-evident that Dodd-Frank has only hurt consumers, small businesses, and the community financial institutions that it was supposed to protect. Regulatory costs have only increased since the passage of Dodd-Frank Act in 2010, and although financial institutions below $10 billion in assets are exempt from CFPB examination, they still face very high compliance costs. It is our credit unions and community banks who suffer the most as they do not have the resources to bear the burden of this regulatory scrutiny the same way that large commercial banks may be able to do. That is why they are hurt the most. Unfortunately, the result of all this has been consolidation among banks and credit unions over the last 15 years, and there have been few to no community financial institutions to replace those losses.

Let me talk about the real impact that it had in Orange County, where I represent. We have seen this firsthand with only one new bank and zero credit union formed in 2021. Since 2015, we have seen zero new credit unions from all across California. This would not be the case without the overburdening regulatory policies that were implemented in the Dodd-Frank legislation. I am going to ask this question to you, Mrs. Johnson. As we see the retail banking services pull back from our community, can you talk about the consequences for consumers and small businesses?

Mrs. JOHNSON. Sure, and thank you for the question. Look, there has undoubtedly been an impact. I mean, there is around a 40-percent reduction in the overall number of banks. We still have a highly competitive marketplace because you have still got around 4,500 banks and 4,400 credit unions, but it is extremely problematic when you do not have new players who want to come into this marketplace because they know that they can compete and do it efficiently and effectively. I think that there is a concern among otherwise budding entrepreneurs to come into the banking system, so we want to reduce that effect.

Mrs. KIM. Thank you. My view is that rather than promoting policies like those in Dodd-Frank that hurt consumers, we need to be promoting policies that put consumer first, which is why I introduced a couple of my bills, and I want to talk about that right now. The first is Credit Access and Inclusion Act, and the second one is Small Dollar Loan Certainty Act. I believe this will do just that in promoting the small businesses and our consumers. The Credit Access and Inclusion Act would responsibly expand the credit access for millions of Americans with limited or nonexistent credit history. I really want to thank my committee Chairman Hill for noticing that draft, and I hope that we can move forward with this bill with strong bipartisan support in the near future. The Small Dollar Loan Certainty Act would codify the prudential banking regulators' small-dollar lending guidance into law. Mrs. Johnson, can you explain why it is important for Congress to provide this type of statutory certainty for small-dollar lending policies rather than relying on the guidance alone?

Mrs. JOHNSON. Absolutely, and we want to thank you for that bill because millions and millions of Americans actually live pay-

check-to-paycheck. They want options for short-term liquidity loans, and a number of banks have actually been successful in coming back into this market, but that was after a period of time of a lot of regulatory uncertainty. There have been significant pendulum swings within the regulatory agencies, and there are multiple agencies involved, including the CFPB. So, them issuing guidance in 2020 was helpful to encourage banks to come back in so we have some clarity, but legislation is needed so we do not have that pendulum swing and the banks understand the rules of the road.

Mrs. KIM. Just to be clear, even though President Trump's regulators created the small-dollar guidance, it was maintained by President Biden's prudential regulators as well, right?

Mrs. JOHNSON. Yes. Yes.

Mrs. KIM. I want to shift gear very quickly and focus on one of the regulatory institutions created in Dodd-Frank; that is the FSOC. I have become really increasingly concerned that it is no longer fulfilling its mission of promoting financial stability in coordination with primary regulators. Mr. Quaadman, would you agree that the Council has really strayed away from its original mission?

Mr. QUAADMAN. Yes. With FSOC, the primary regulator really needs to be in the lead on that, and I will be happy to give more a detailed answer in writing if you like.

Mrs. KIM. Thank you.

Mr. STUTZMAN. The gentlelady's time has expired. The chair recognizes the gentlewoman from Massachusetts. Ms. Pressley is now recognized for 5 minutes.

Ms. PRESSLEY. Thank you to our witnesses for joining us today. In 2008, families across this country lost everything during the Great Recession. It was an economic catastrophe. Millions of people lost homes, lost jobs, and lost hard-earned savings. Now, the majority of Gen Z, who will see this hearing later, were just babies 17 years ago, so I cannot fault them that. They are completely unaware of the foreclosures and the pink slips, but I know my Republican colleagues and I certainly do remember. Republicans remember the heartache and pain that our country went through. It is estimated there were more than 5,000 suicides as a result of the financial crisis. Two thousand and eight was an avoidable economic crisis, a direct result of greed, reckless speculation, and weak regulation. That is why Dodd-Frank was essential. I do want to acknowledge good work of our very own Massachusetts Congressman, Barney Frank, in drafting of this seminal piece of legislation. It created basic guardrails, stronger capital requirements so banks could not gamble with our livelihood. The CFPB, the only Agency dedicated solely to protecting consumers, regular stress tests for banks so we would never be caught off guard again, Just 10 years later, in 2018, while 65 percent of families still had not financially recovered from a crash, Republicans rolled back key parts of Dodd-Frank.

They sent a clear message to their constituents: Wall Street profits margins matter more than your recovery and well-being. Now they are at it again by dismantling the CFPB. Just look at how Townstone, a mortgage lender, would repeatedly disparage black

neighborhoods in Chicago with racist comments. The CFPB rightly held them accountable for discrimination in housing in a case that was settled last November. When the Trump Administration tried to reverse CFPB's win, a Federal judge denied that outrageous request, affirming the critical role of the CFPB in stopping racial discrimination in mortgage lending. This is just one example of how Republicans dismantling the CFPB has real-world consequences, like letting mortgage lenders off the hook for illegal redlining.

To all of our witnesses, loud and proud, yes or no, do you support mortgage lenders getting away with breaking the law and discriminating against black people? Yes, just for the record.

Mr. BENTSEN. I do not.

Mr. QUAADMAN. We do not represent mortgage lenders, but personally, I do not.

Dr. KUPIEC. This is not my area of expertise.

Mrs. JOHNSON. No.

Ms. PRESSLEY. The colleague requested——

Dr. KUPIEC. Yes, I do not want them to discriminate against anybody.

Ms. PRESSLEY. Sir, I had a colleague across the aisle a moment ago who said that it is just a matter of following the rule of law, basic law, so this is not even a controversial thing. Racial discrimination is illegal.

Dr. KUPIEC. I am——

Ms. PRESSLEY. This is not a trick question. Really quick, loud and proud——

Dr. KUPIEC. I think people should follow the law.

Ms. PRESSLEY [continuing]. yes or no?

Dr. KUPIEC. I think people should follow the law.

Ms. PRESSLEY. Okay. I will take that as a no.

Mr. KELLEHER. I agree.

Ms. PRESSLEY. All right, good. Since its creation in Dodd-Frank, the CFPB has returned $21 billion to more than 205 million consumers who were exploited by predatory lenders and Big Banks, but today, Trump has fired nearly 90 percent of CFPB staff, and the Agency, under his administration, has withdrawn over 60 guidance documents, dropped enforcement cases, and brought the Agency to a halt, leaving hardworking Americans vulnerable to exploitation. To all my witnesses, yes or no, do you agree with the CFPB returning $21 billion to 205 million victims of deceptive and predatory financial practices? Yes or no.

Mr. BENTSEN. We do not engage with the CFPB, so I cannot really comment because I do not have the background in the case that you are citing; so, I apologize.

Mrs. JOHNSON. When a company breaks the law and consumers are harmed, they should have redress, but I have to say the CFPB's use of penalties has got to have some parameters. I can tell you firsthand that there are multiple times when they go after salacious headlines and outlandish sums of money when the company either did not break the law or they claimed a UDAAP violation on something that was completely——

Ms. PRESSLEY. Okay. I will take that as a no. I am reclaiming my time because I got to get everyone else on the record here. Okay. Yes or no, do you agree with the CFPB returning $21 billion

to 205 million victims of deceptive and predatory financial practices?

Mr. QUAADMAN. ICI's members are not regulated by the CFPB.

Mr. KELLEHER. Not my area. No comment. My only disagreement is it should have been higher.

Ms. PRESSLEY. All right. Thank you. If we as Members of Congress forget the visceral harm that families across the country suffered from in 2008, then we risk rolling back the very regulations and funding the very agencies that could prevent the next financial crash. Thank you, and I yield back.

Mr. STUTZMAN. The gentlelady yields back. The chair recognizes the gentleman from Nebraska, Mr. Flood, who is also the Chair of the Subcommittee on Housing and Insurance. He is now recognized for 5 minutes.

Mr. FLOOD. Thank you, Mr. Chairman. Before this hearing, I reached out to some Nebraska bankers to get their take on what the biggest takeaways from the Dodd-Frank law have been from their perspective. One significant change that has been the consolidation that has taken place post-Dodd-Frank. In 2009, there were 225 commercial banks in Nebraska according to the FDIC. In 2024, there are just 142. That is a 36-percent decrease over the last 15 years. My first question is for Mrs. Johnson and Dr. Kupiec. Can each of you please describe how Dodd-Frank has driven bank consolidation over the last 15 years, particularly in States with lots of community banks like Nebraska?

Mrs. JOHNSON. I think, unfortunately, your experience in Nebraska is fairly consistent with what has happened nationwide, and FDIC data paints a pretty stark picture. There has been about a 40-percent reduction. Look, CBA represents institutions $10 billion and above. Most of those institutions are going to have the wherewithal to absorb a lot of these costs. Community banks cannot, but I can tell you a $10 billion institution to a $500 billion institution, the costs only increase and it becomes more and more difficult to be at those different thresholds. The last thing I will say is, you do see banks staying at arbitrary thresholds, say, right below $10 billion or right below $100 billion. That is not what you want to see in a free market.

Dr. KUPIEC. Yes, I agree. There are thresholds that apply in the rules and make it more expensive to grow, but for small banks, compliance costs mean you have to grow to a certain scale to absorb those, and the fact that there is no entry means it is not a healthy market. In a healthy market, you have entry and you have exit. When you have no entry, it is not a healthy market.

Mr. FLOOD. I appreciate those answers. One of the things I want to stress is I am talking about towns with 1,200 people. When the bank closes, the cheerleaders do not get the check for $150, the football team does not get a pizza party, the post-prom does not happen, the community support dries up, and access to capital for people that farm within 5 miles is more difficult, and sometimes they end up with a bank that does not have that personal relationship with them and they will not work with them. So, there are real-world consequences to losing these banks.

To dig into the second theme that came up when I reached out to local bankers, I would like to read a quote from Zac Karpf, presi-

dent of the Platte Valley Bank in Scottsbluff, Nebraska. He writes, "When Dodd-Frank was passed, we embarked on a soul-searching journey of whether to stay involved in mortgage lending or not. Many of our competitors, most in rural or underbanked areas, did not stay as involved in mortgage due to the regulatory cost burden. While we decided to stay involved, the cost associated with Dodd-Frank compliance contributed to doubling of costs that have outpaced any increase in interest or fee income. Our compliance department is more than triple the size that it was in terms of when Dodd-Frank was passed. Especially since community banks had virtually zero participation in the root causes of the financial crisis, these additional costs have been directly unfair to entities that were not responsible and reduced the availability of credit to borrowers, specifically in rural areas."

Basically, I heard the same variation of what Mr. Karpf said from about four other bankers: either Dodd-Frank drove their bank out of the mortgage origination business, or they chose to stay in and are paying more for compliance as a result just to provide that service to their customers. So, let me be clear. In the aftermath of the financial crisis, we did need reforms to combat some of the abuses and practices that led to mortgages being issued to borrowers that had no business receiving them, but the end result seems to be that smaller banks are loath to participate in the mortgage business at all. Dr. Kupiec, is this problem where small banks are leaving the mortgage business something you have encountered in your research?

Dr. KUPIEC. Yes. There are surveys that say exactly what you are finding.

Mr. FLOOD. Secondly, to you again, we saw some tailoring in the 2018 law, S. 2155, in the Economic Growth, Regulatory Relief and Consumer Protection Act. Do you feel that this committee could explore any further changes to statute to help keep community banks in the mortgage origination business, and if so, what would you have us focused on?

Dr. KUPIEC. I do not view myself as an expert on all the mortgage rules, so I would prefer not to offer comments there.

Mr. FLOOD. Very fair. All right. With that, I do ask unanimous consent to enter a letter to Mr. French Hill and Maxine Waters from Brett Palmer, President of the Small Business Investor Alliance into the record.

Mr. STUTZMAN. Without objection.

[The information referred to can be found in the appendix.]

Mr. FLOOD. I yield back.

Mr. STUTZMAN. The gentleman's time has expired. The chair recognizes the gentlewoman from Texas. Ms. Garcia is now recognized for 5 minutes.

Ms. GARCIA. Thank you, Mr. Chair, and thank you to all the witnesses here today. As you can see, we are nearing the end, and while I have some time to say something about the witnesses, I want to especially welcome my friend and colleague from Houston, Congressman Bentsen. I still remember, Ken, campaigning for you back when we both had less gray hair. I color it and you do not, but it is good to see you, and my best to Tamra.

I remember the 2008 financial crisis. Americans lost their retirement nests eggs, their jobs, and their homes. In numbers, nearly 10 million Americans lost their homes. Nearly 9 million people lost their jobs. By 2012, 46.5 million Americans were living in poverty, and it should not surprise anyone in the room that communities of color were the most impacted. That is why Dodd-Frank exists, to prevent another devastating crisis and to provide guardrails and protections. Today, we are not here to celebrate its successes. We are instead mourning its dismantling as the current administration continues to undo the work in progress accomplished through Dodd-Frank, but we cannot rest on our laurels. We must also demand answers and fight to protect the historic law that protects our financial system and consumers.

Mr. Kelleher, what can be done with the Trump Administration's CFPB or supervision actions concerning penalties or fines against payday lenders and other high-cost lenders to protect consumers against multiple non-sufficient funds and overdraft fees on affordable loans?

Mr. KELLEHER. If the CFPB was in business doing its job as required by the law, it would properly regulate payday lenders, and it attempted to do so during the Obama Administration where payday lenders were required to actually determine—this is what the rule proposed—actually required payday lenders to determine that the person they were knowingly giving the loan to could repay the loan. It is shocking that you would need a rule that would tell a financial institution that it should see whether or not the person it is giving money to, a loan to, can repay it but they had to do that for payday lenders because the money that is made by the payday lenders is getting people into a debt cycle, giving money to people that they know they cannot repay it. So, the loan has to keep getting rolled over, more fees, more money, higher interest rates, over and over getting locked into a debt trap. Those rules actually were proposed and finalized by the CFPB to prevent that from happening, and, unfortunately, those rules are no longer applicable, and the CFPB is out of business, so there is nobody to enforce those rules or even enact those rules.

Ms. GARCIA. Tragically, that is something that is a big issue in my district. It is a 77-percent Latino district in Houston, and it is especially an issue for us because the people are struggling, particularly today, just to get gas, groceries, and food on the table, and they are desperate. If they cannot make it, they are working paycheck-to-paycheck, the payday lender may be the one to say, here, we will help you. You are right, they are probably going to end up paying back 5 to 10 times of what they originally borrowed, which is why those protections are necessary. In fact, a lot of them end up in situations where they have to rely on Buy Now, Pay Later practices to even make ends meet. So, how can we have greater predictions against payday lenders?

Mr. KELLEHER. At this point, Congress is going to have to either enact statutes, or somebody is going to have to get the CFPB back into business, and that does not look like it is going to happen. One of the more important things that can help is to prevent crashes to be properly regulated. One of the charts that I have in my written testimony shows the unemployment rate took 10 years after

the financial crash to return to pre-crash levels. When you look at the economic wreckage caused by that crash, many people are still suffering today. Frankly, that crash caused the United States a lost generation of Americans. People coming out of college did not get jobs. People who wanted to retire lost their nest eggs. People who wanted to advance in their careers; they did not get it. Twenty-seven million Americans were out of work in October 2009, 13 months after the crash of Lehman Brothers. That had ripple effects, literally, through today, to them, their children, their homes, their hopes, and their dreams. So, preventing those crashes by proper regulation and enforcement of the rules can do more to help everybody get on the economic ladder, stay on the economic ladder, and so that we can have an economy where the financial system supports it in this broad-based wealth creation. That is what we need, not deregulation.

Ms. GARCIA. I agree with you. Director Chopra came to my district to talk to our seniors because they had been particularly preyed on, not only by payday lenders, but telemarketers online phishing emails. I wanted to ask you more questions about that particularly for seniors, but I have run out of time, so I am going to submit the questions for your answer in writing.

Mr. KELLEHER. Sure. Thank you.

Ms. GARCIA. Thank you. I yield back.

Mr. STUTZMAN. The gentlelady yields back. The chair now recognizes the gentleman from Wisconsin, Mr. Steil, who is also the Chair of the Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence. He is now recognized for 5 minutes.

Mr. STEIL. Thank you very much, Mr. Chairman. Thanks for holding today's hearing, to full Chair Hill.

I want to start with you if I can, Dr. Kupiec. Let us go back a decade. In 2014, you wrote an op-ed in the Wall Street Journal back when I was in the private sector, a couple of years after Dodd-Frank was enacted. One of the concerns you raised was that FSOC, the Council's systemic risk designation authority was broad and prone to abuse, and you said, "The Council's designation power makes a mockery of property rights in due process." Ten years later, a decade later, we got some empirical data. Would you say that your prediction was accurate?

Dr. KUPIEC. I would. Systemic risk is never even defined in the Dodd-Frank Act. Yet, you are supposed to detect it and pass rules and regulations to stop systemic risk, something that has never even been defined in the act.

Mr. STEIL. What should Congress do to reform that area?

Dr. KUPIEC. I would make the FSOC just an advisory body. I would take away their designation authority, and they should report to Congress, and Congress should legislate if they want to expand regulation.

Mr. STEIL. Let me build on this by going to you if I can, Mr. Bentsen, on the same topic. FSOC famously designated two nonbanks as systemically important. One ultimately challenged that in court successfully. SIFMA has argued that the designations are inappropriate for nonbanks. Can you provide color as to why do you believe that to be the case?

Mr. BENTSEN. Yes. The problem is that the designation would create bank-like regulation of a designated entity, and particularly for asset managers who are regulated by the Securities and Exchange Commission. They are not——

Mr. STEIL. Was that a better way to regulate it through the SEC?

Mr. BENTSEN. A better way to look at it is to look at activities and not regulate entities that are nonbank entities, like a bank. So, I think both what the previous Trump Administration did in terms of focusing on activities and the legislation that Mr. Huizenga and Mr. Foster are pursuing are a better approach.

Mr. STEIL. Mr. Quaadman, do you agree with that assessment?

Mr. QUAADMAN. Yes, I agree because you want to have the primary regulator in charge. You want to have an activities-based approach, and the FSOC Improvement Act is the best way to get there rather than having this ping-pong guidance between administrations.

Mr. STEIL. Not only is there a ping-pong guidance, but you also view there to be a potential overlap between the actions and expertise of the regulators and the actions of FSOC.

Mr. QUAADMAN. Yes.

Mr. STEIL. A better way to divide those responsibilities?

Mr. QUAADMAN. One example to raise as well, even though it was not a designation example was where you had a majority of commissioners with the SEC wanting to go down a particular path of money market funds and the FSOC did an end-run around that. So, we want to make sure, through legislation like that, that there are very clear lines of authority and who is in charge.

Mr. STEIL. I think the more we have clear lines of who is in charge, the more efficient the markets are going to operate. Speaking of ambiguity, I am going to shift here slightly with you, Mrs. Johnson, if I can. CFPB, under Director Chopra, he had an opportunity to pursue rulemaking through a normal rulemaking process, but often, we saw then Director Chopra issue guidance, press releases, blog posts, in some cases, often, in my opinion, with inflammatory language. In theory, those types of things could be nonbinding, but in practice, that was not really the case because a lot of entities viewed themselves as potentially at risk of actions by the CFPB. Could you just comment very briefly as to how that would impact banks but, ultimately, their customers?

Mrs. JOHNSON. Yes. Look, I mean, I think issuing guidance on something that should have been a rule in the first place creates a ton of uncertainty in the marketplace. There were examples, including a Buy Now, Pay Later advisory opinion that the CFPB had issued where it would not even apply to banks, but we came out against it because we said, you should have written a rule. It was substantive change. If I can just expand for one second because it will allow me to respond to some things that Mr. Kelleher has said a few times earlier about the complaint database and the credit card late fee and the 20 billion civil penalties that have been paid out.

Facts matter. Facts matter when you are writing rules. We could talk about the complaint database being structurally flawed. We actually think it could be beneficial for consumers. If the CFPB had

wanted to rely on facts and even leaned on the complaint database to do so, it would have known that credit cards are very minimal in terms of the complaints from consumers. It would have focused instead on things like fraud and scams that are happening. When it talks about issues like credit card late fees, it completely paints an obscure and opposite picture of what the market reality is.

Mr. STEIL. Ultimately, to the detriment, often, of consumers because the focus of the CFPB was not on the fraud and scams that people were victims of. Seeing the time, Mr. Chairman, I yield back.

Mr. STUTZMAN. The gentleman yields back. The chair recognizes the gentleman from Texas. Mr. Green is now recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the witnesses for appearing. I especially thank Congressman Bentsen for being here today. Have not seen you in a while. Good to see you.

Mr. Kelleher, permit me to start with you, if I may, and, as you know, the CFPB was charged with assisting with military lending. In fact, we passed a Military Lending Act here in Congress. You cannot have an interest rate of more than 36 percent on military loans. Before that, it was all over the place. Mr. Kelleher, given the current situation with the CFPB, will our military people start to suffer and find themselves back where they were paying higher interest rates? Of course, they are not the persons who make the most money while they serve. They do have a salary, but it is probably just enough to get by on. Your thoughts, please.

Mr. KELLEHER. Look, it is pretty despicable. I commented on this earlier. Servicemembers, veterans, and their families are disproportionately targeted by financial scams and financial predators, and the data bears this out. The median loss for fraud is $658 for civilians; it is $775 for active-duty military; and it is $950 for military retirees and veterans. They are being targeted disproportionately, and their losses are disproportionately high, and that is why military servicemembers and their families actually had more than 400,000 complaints filed with the CFPB since it was created in 2011. The CFPB, to its credit, returned approximately $363 million in restitution for military-connected families.

So, not only the military. They are enforcing the Military Lending Act. They are enforcing the consumer protection laws against groups that are targeted, be they the elderly, as referred to earlier, or the military, who have other things, too. I served in the Air Force. You have a lot going on. You are being moved around. You are under a lot of pressure. You have a crazy job. Nowadays, we are still deployed all over the world. They are coming and they are going. Their families are at home sometimes, and they are somewhere else. They need and deserve the protection and this CFPB cut the Office of Servicemember Services to one person, and that person retired. That should be unacceptable to every American. That should just not be allowed in this country, and yet, that is what is happening, and not a peep—not a peep—from far too many people in the Congress to say, no, that is wrong, do not do it.

Mr. GREEN. Where will they take their complaints now? Where would they take their complaints now? They have these complaints. Where will they take them without a CFPB?

Mr. KELLEHER. There are a variety of consumer protection, the Better Business Bureau, but they do not have an empowered, funded consumer protection agency or advocate anywhere. The Department of Defense and the different services have a variety of services that they try to provide, but they are fragmented, and by the way, they actually have other really important jobs to do, like protecting the country. So, we created the CFPB and the Office of Servicemembers, so that there would be one place where everybody knew they could go, and they did know because they went there. We know based on the complaints, and we know based on the recoveries and the actions of the CFPB to stand up for the military, that it worked. It was very effective.

Frankly, I think if you look at the cases the CFPB brought for the military, the servicemembers, and their families being ripped off, nobody will disagree with a single one of those cases. In fact, they might actually agree with me that the problem with the amount of money returned by the CFPB was too low. Too low when you look at the egregious, outrageous conduct that is happening out there, and it is happening today. No cop on the beat. No place to go. They are on your own. You have to worry about doing your duty. You have to worry about your family back home while you are somewhere else. You have to worry about the bank and the credit card and the bills and the kids, and you have to do it on your own. That is wrong.

Mr. GREEN. Just quickly, if you can. You talked about the recovery from the financial crisis. Which ethnic group or race in this country had the most difficult time recovering?

Mr. KELLEHER. All the objective statistics prove that communities of color across the country and low-end communities actually disproportionately suffered and took a disproportionately long time to recover. As I said, many of those communities have not recovered. They are still suffering today from the financial setback that they suffered in the wake of the financial crisis. Those are the real victims. That is who we should be worrying about, not financial institutions complaining about costs that they do not actually bother providing the data and analysis for.

Mr. GREEN. Thank you, Mr. Chairman. I yield back.

Mr. STUTZMAN. The gentleman's time has expired. The chair recognizes the gentleman from New York. Mr. Garbarino is now recognized for 5 minutes.

Mr. GARBARINO. Thank you, Mr. Chairman. Thank you to all the witnesses for being here today.

Our financial systems benefit from firms offering a variety of products and services to the American businesses and consumers. Dodd-Frank and all of its rules and requirements have negatively impacted U.S. banks and have been stifling foreign banks' abilities to operate and invest in the United States. These limitations have real ramifications for lending and capital markets that drive economic growth. Currently, regulators do not account for foreign banks' unique ring fence structure and lower categorized risk profiles. In fact, rules like Basel are just blindly applied. Consequently, foreign banks are shrinking or outright leaving the U.S. markets and at a time that we want them to support consumers, businesses, and markets like U.S. Treasury market. Mr. Bentsen,

what steps can Congress or the agencies take so that foreign banks are better able to invest in the U.S. and contribute to our economy?

Mr. BENTSEN. Thank you, Congressman. First of all, I agree with your analysis that foreign banking operations add a tremendous amount of capacity to U.S. capital markets. That capacity has been constrained because of various capital and liquidity rules coming out of Dodd-Frank and other reforms that came out. Some of that was tailored as a result of the S. 2155, but we still see that the Financial Banking Organizations (FBOs) are capital constrained from adding capacity to the U.S. capital markets, and they often are very large players, along with the U.S. firms in that area. So, it would be helpful, starting with the regulators, I think, to think about more tailoring, which they have the authority to do under 2155 and think about the contribution that those banks provide to our market system.

Mr. GARBARINO. If they do, it will probably be quicker than if we have to act.

Mr. BENTSEN. Yes.

Mr. GARBARINO. Thank you. I would like to focus now on the U.S.-based institutions. A recent report on broker-dealer activity from SEC revealed that the amount of money handled by broker-dealers has grown from $4.6 trillion in 2010 to approximately $6.4 trillion in 2024. That is around a 36-percent increase in assets since the enactment of Dodd-Frank. At the same time, the number of broker-dealers has declined from more than 4,700 to less than 3,400, a 30-percent decrease over the same pyramid. Mr. Bentsen, how has Dodd-Frank contributed to this wave of industry consolidation?

Mr. BENTSEN. Firms report to us, particularly smaller broker-dealer firms report that their compliance costs have grown exponentially, and so, it is harder for a smaller firm to absorb that cost compared to a larger firm. So, we see a number of firms merging, and I think that is part of the reason that we see the decline in the number of broker-dealers over the last 15 years, and we see other firms who get out of the business completely. They go in and just become a registered investment advisor if they are primarily in the retail space. So we are definitely seeing a knock-on effect.

Mr. GARBARINO. That was going to be my follow up point, if you did not hit it, but the fixed costs are pushing smaller people out of business. What can we do or what can the SEC do to encourage industry diversification and competition in the way the Dodd-Frank——

Mr. BENTSEN. I think that the SEC and along with the Financial Industry Regulatory Authority (FINRA) need to think about looking at their rule book. FINRA has recently put out FINRA Forward, which they are looking at are there changes in their rule book that could help, particularly smaller firms, with their compliance costs.

Mr. GARBARINO. I appreciate that answer. Thank you. Switching gears for my remaining time. In 2010, Dodd-Frank's enactment provided regulators with a comprehensive and wide range of authorities to regulate our financial markets. However, there are several rulemaking authorities in Dodd-Frank that continue to remain unused even 15 years after its enactment. Dr. Kupiec, how does the

continued non-exercise of these powers contribute to the legal uncertainty for both investors and industry?

Dr. KUPIEC. I think this is a question more appropriate for SEC than the banking regulators.

Mr. GARBARINO. Okay. All right. Not a problem. All right. Mr. Bentsen, Section 913(g) of Dodd-Frank grants the Securities and Exchange Commission authority to establish a fiduciary duty for broker-dealers when providing personalized investment advice to retail customers, aligning their standard of conduct with that of investment advisors. However, this authority is also unused. If the SEC exercises authority under 913(g) and subjected brokers-dealers to a fiduciary standard, how could this disrupt capital markets?

Mr. BENTSEN. 913 was, as I mentioned earlier to one of your colleagues, was a highly negotiated part of Dodd-Frank, and it was really designed to provide a uniform standard or an equal standard of care between brokers and advisors operating under two different standards: the 1934 Act and the 1940 Fiduciary Act. Congress actually got this right in how they did it, and then the SEC, through multiple SECs, got it right with Reg Best Interest. I think reading it broader, and the courts found this was the case, reading it too broad was not what Congress intended.

Mr. STUTZMAN. The gentleman's time has expired.

Mr. GARBARINO. I would appreciate unanimous consent——

Mr. STUTZMAN. Without objection.

Mr. GARBARINO [continuing]. to enter a statement for the record from the U.S. Chamber of Commerce.

Mr. STUTZMAN. Without objection.

[The information referred to can be found in the appendix.]

Mr. GARBARINO. Thank you.

Mr. STUTZMAN. The gentleman from New York, Mr. Torres, is now recognized for 5 minutes.

Mr. TORRES. Thank you, Mr. Chair. My comments are going to be focused on housing. Since the 1980s, the home price-to-income ratio has nearly doubled. In the 1980s, the median home price was 3.5 times the median household income. Today, the median home price is 6 times the median household income. In the past half century, America has been witnessing the death of affordable homeownership. First-time homebuyers have historically made up 38 percent of overall homebuyers. In 2024, that number fell dramatically to just 24 percent, the lowest level ever recorded. The housing crisis is both a market failure and a regulatory failure, and it is a regulatory failure not only at the level of excessive zoning restrictions, but also at the level of excessive lending restrictions.

Abundance has become a ubiquitous term in our political discourse, but housing abundance requires financial abundance. Since the financial crisis, financing for first-time homeownership has not been abundant and affordable. It has become scarce and expensive. Before the financial crisis, the average credit score for approved loans was 710 to 720. After the financial crisis, the average credit score for approved loans was 760. The 50-point shift in the average approved Fair Isaac Corporation (FICO) credit score has meant the catastrophic loss of homeownership access for 10 million to 20 million prime borrowers. So, we are in a country where there are fewer people who own homes because of an artificially restricted

pool of potential homebuyers. There were fewer homes to own because of an artificially restricted supply of housing, and homeownership itself has been delayed by a decade. In 1991, when I was only 3, the median age of a first-time homebuyer was 28 years. Today, that number has risen to 38 years, the oldest median age ever recorded for first-time homeownership. I am among the millions of young Americans who have lived through the death of the American dream of affordable homeownership.

So, here is the question. When it comes to housing finance, did the U.S. get the regulatory balance right in the wake of the financial crisis, or did we swing the pendulum too far in restricting the supply of credit for first-time homeownership? That is an open question for anyone.

Dr. KUPIEC. I think the evidence from the American Enterprise Institute's (AEI's) Housing Center shows that the loan underwriting characteristics have been loosened to try to allow people to buy mortgages with a higher mortgage rate and the higher prices. In fact, underwriting standards have even slipped. I think the Federal Housing Administration (FHA) and the GSEs take now loans with 50-percent debt-to-income ratio, which, historically, is a really high ratio. So, things have actually moved toward less restriction on some of the lending, but the housing prices and the mortgage rates have just blown past that, and so, you are really at one of these quagmires. It gets really risky to make people loans, when the debt-to-income ratios get that high. Their ability to repay is not there and that is kind of the situation we are in. The regulations have been stretched to try to allow people to buy homes, but the house prices and the mortgage rates just make it unaffordable.

Mr. KELLEHER. I am not a housing expert, but you have put your finger on a really important issue that is complex and has many reasons. One of the reasons it is never discussed is the way capital is allocated in this country and to whom, right? If you look at the Big Banks, only about 40 cents of every dollar of deposits actually goes to lending. If you look at community banks, 75 cents of every dollar goes to lending. Why is that? Too often kind of high margin wealth extraction, financialized activities return the biggest profits and therefore bonuses as the banks get bigger. They use their balance sheet for all sorts of things having nothing to do with lending, and that is how you end up with 40 cents on a dollar of deposits going to lending at the Big banks, 75 cents at community banks because, as a number of your colleagues mentioned earlier, that is what they are into. They are into building their communities, whether it is small businesses or mortgages, and we need to think hard about the incentive structure that has our biggest banks putting a minority of their deposits into actual lending. It hurts the wealth gap. It hurts the racial wealth gap. It hurts the housing gap. Across the board, it impacts the problems that we are all trying to think about and address.

Mr. BENTSEN. I would just say there are multiple factors. There are some Dodd-Frank factors, things like Reg AB2, that came out of Dodd-Frank that has affected the Residential Mortgage-Backed Securities (RMBS) market. Pretty much the vast majority of loans now are either conforming loans or government guaranteed loans, so, our private market has gone away. That is number one but

there are other factors as well, as you pointed out, so it is a much more holistic problem that needs to be addressed.

Mr. TORRES. Thank you.

Mr. STUTZMAN. The gentleman's time has expired. I now recognize myself for 5 minutes. I would like to submit for the record a letter from the Defense Credit Union Council.

[The information referred to can be found in the appendix.]

Mr. STUTZMAN. Two decades ago, there were over 8,500 FDIC insured banks in the United States. Today, that number is just 4,000. Many of the banks we have lost are small community banks, which play a vital role in my district in northeast Indiana. Though there are several reasons for this decline, I believe Dodd-Frank's one-size-fits-all regulatory approach for banks is a key contributor. Mrs. Johnson, can you explain how Dodd-Frank's compliance burdens have contributed to consolidation in the banking sector, and what are the long-term consequences for communities if we continue down this path?

Mrs. JOHNSON. I think it is an incredibly important question, and anytime that we are talking about regulation, I think it is really important that we start with the outcome. What is the outcome that we want to see? We have the most competitive banking system in the world. It is diverse. Even to Mr. Kelleher's earlier points, you want banks who are out in the capital markets. You want them trading. You want them lending. There are a variety of things that all the banks do and they compete on. You are right, we have seen around a 40 percent reduction in the number of banks, and I think that consolidation is largely—not only, but largely—driven because of the regulatory burden. The problem with that is that you have less competition in for consumers' business, right?

The other piece of this is that it pushes lending outside of the banking system. You want banks competing with nonbanks. You want banks competing on every single product line. So, we just talked about mortgage. This pendulum has swung, and the majority of mortgage lending at different periods of time is now outside of the banking system entirely. You want banks in that business competing for those consumers. Same thing is happening for personal loans where the majority of loans are actually out of the banking system, auto lending. The list goes on and on. I do not think anybody argues against regulation and wanting safety and soundness in consumer protection, but there is always a cost, and we have to start weighing the costs and if it actually outweighs the benefits.

Mr. STUTZMAN. Thank you. As we have heard today, the result of Dodd-Frank was an entirely new regulatory regime with broad powers, expansive mandates, and little accountability to the American people. Under the Biden Administration, we saw this regime in a full display. Whether it was Director Chopra weaponizing the CFPB to pursue policies that would have destroyed the overdraft protections many of my constituents rely on, or Vice Chair Barr's efforts to impose the harmful Basel III Endgame capital requirements on banks. We have seen how far out of bounds agencies can venture because of Dodd-Frank. Dr. Kupiec, do you think the current Dodd-Frank regulatory regime is accountable to the American

people and is this expansive regulatory regime watering down congressional authority?

Dr. KUPIEC. I do not exactly know how it could be accountable to the American people. Does it serve the American people well? Parts of it work well, lots of it are too complicated, and lots of it, I think, could be revised and serve the people better. I will leave it at that. We are certainly not at a perfect regulatory balance.

Mr. STUTZMAN. What about the relationship with Congress?

Dr. KUPIEC. Oh, I think Congress has delegated too much authority to things like the FSOC to make designations, and I think those kind of powers belong in the legislature, and you guys should debate it and decide who gets regulated and who does not and the regulators should not decide on their own. They should advise you who they think, who you should be talking about, but I would not give them powers if it were my choice.

Mr. STUTZMAN. Thank you. Here in Washington, we have far too many agencies that seem to be more interested in expanding their own power than actually serving the public. Americans across the country, and certainly in my district, are fed up with this, as we just discussed a little bit. A prime example of this is the Office of Financial Research, which was created by Dodd-Frank to aid in data collection. The problem is that, prior to Dodd-Frank, Federal regulators already had an extensive ability to collect data. The Federal Reserve Board alone employs over 400 Ph.D. economists. In addition, each of its regional banks can conduct its own localized research, not to mention the extensive data collected by our other financial regulators. Mr. Bentsen, can you elaborate on how OFR has failed to add significant value beyond what existing agencies already provide, and how do you think this reflects the broader problem of regulatory sprawl under Dodd-Frank?

Mr. BENTSEN. Thank you, Congressman. OFR does collect a lot of data. You are right. Other agencies collect data. Congress has talked about this before, of looking to see can there be some coordination or streamlining of financial data collection, and in addition, protection of that data, I would add as well, because we know the government is susceptible to cyber risk, just as the industry is. On top of that, I mean, OFR, on the one hand, does play an important role. They collect data for the Secured Overnight Financing Rate (SOFR) reference rate. That is very important. On the other hand, they have had situations of mission creep. So, I do think it is appropriate for Congress to take a look at that.

Mr. STUTZMAN. All right. Thank you. My time has expired.

I would like to thank all of the witnesses for their testimony today.

Without objection, all members will have 5 legislative days to submit additional written questions for the witnesses to the chair. The questions will be forwarded to the witnesses for their response. Witnesses, please respond no later than August 20 of 2025.

[The information referred to can be found in the appendix.]

Mr. STUTZMAN. This hearing is adjourned.

[Whereupon, at 1:46 p.m., the committee was adjourned.]

# APPENDIX

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## MATERIALS SUBMITTED FOR THE RECORD

United States Government Accountability Office

Report to Congressional Committees

October 2024

# CONFLICT MINERALS

# Peace and Security in Democratic Republic of the Congo Have Not Improved with SEC Disclosure Rule

GAO-25-107018

GAO Highlights

Highlights of GAO-25-107018, a report to congressional committees

October 2024

# CONFLICT MINERALS

## Peace and Security in Democratic Republic of the Congo Have Not Improved with SEC Disclosure Rule

### Why GAO Did This Study

The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in 2010, noted that the trade of conflict minerals was helping to finance violent conflict in the DRC. Section 1502 of the act required SEC to promulgate regulations containing disclosure and reporting requirements for companies that use these minerals. SEC finalized this rule in 2012, requiring companies to begin annually filing disclosure reports in 2014. According to SEC, in requiring it to promulgate the rule, Congress sought to promote peace and security in the DRC by reducing non-state armed groups' revenue from the mining and trade of conflict minerals.

The act includes a provision for GAO to assess, among other things, the SEC rule's effectiveness in promoting peace and security in the DRC and adjoining countries. This report examines, among other things, (1) what can be determined about the SEC disclosure rule's effectiveness in promoting peace and security in the DRC and adjoining countries and (2) how companies responded to the rule when filing with SEC in 2023. GAO conducted statistical analyses of the SEC rule's effect on violence in the DRC and adjoining countries. GAO also analyzed a generalizable sample of 100 company filings from 2023. GAO interviewed DRC and U.S. government officials; UN officials; experts from nongovernmental and academic institutions; and industry stakeholders and representatives of companies that filed disclosures.

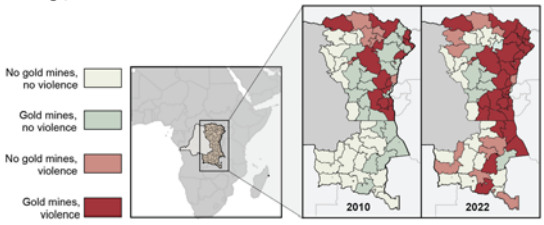
SEC disagreed with some of GAO's findings and raised concerns about some of its methodology and analyses. In response, GAO made certain adjustments that did not materially affect its findings.

View GAO-25-107018. For more information, contact Kimberly M. Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov

### What GAO Found

The U.S. Securities and Exchange Commission's (SEC) 2012 conflict minerals disclosure rule has not reduced violence in the Democratic Republic of the Congo (DRC) and has likely had no effect in adjoining countries. The rule requires certain companies to file reports on their use of tantalum, tin, tungsten, and gold, which are mined in the DRC. GAO found no empirical evidence that the rule has decreased the occurrence or level of violence in the eastern DRC, where many mines and armed groups are located. GAO also found the rule was associated with a spread of violence, particularly around informal, small-scale gold mining sites. This may be partly because armed groups have increasingly fought for control of gold mines since gold is more portable and less traceable than the other three minerals. Further, GAO found that the number of violent events in the adjoining countries did not change in response to the SEC rule.

**Locations of Violent Events and Informal Gold Mining Sites in Eastern Democratic Republic of the Congo, 2010 and 2022**




Sources: GAO, based on United Nations map and analysis of data from the Armed Conflict Location & Event Data and the International Peace Information Service. | GAO-25-107018

The SEC disclosure rule has encouraged companies to improve reporting of conflict minerals' sources by tracking the minerals' chain of custody, according to experts and industry stakeholders. In addition, though many factors contribute to conflict, stakeholders and experts said the rule has raised international awareness about the risks that minerals will benefit armed groups and thus support violence. Yet efforts to trace the origin of conflict minerals, especially gold, face obstacles such as smuggling.

The number of companies filing conflict minerals disclosures in 2023 increased for the first time since 2014, but many companies continued to report being unable to determine their minerals' origins. Companies comply with the SEC rule by submitting a disclosure describing their "reasonable country-of-origin inquiries" about the origin of conflict minerals in their products. In certain circumstances, companies must then conduct due diligence to determine their conflict minerals' source and custody. In 2023, an estimated 63 percent of companies made preliminary determinations, based on their inquiries, about their conflict minerals' origins. Of those that then performed due diligence, an estimated 62 percent reported being unable to determine the minerals' source.

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**Abbreviations**

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| ACLED | Armed Conflict Location and Event Data |
| ADF | Allied Democratic Forces |
| ASM | artisanal and small-scale mining |
| CODECO | Cooperative for the Development of the Congo |
| Dodd-Frank Act | Dodd-Frank Wall Street Reform and Consumer Protection Act |
| DRC | Democratic Republic of the Congo |
| DHS | Demographic and Health Survey |
| EDGAR | Electronic Data Gathering, Analysis, and Retrieval |
| FARDC | Armed Forces of the Democratic Republic of the Congo |
| FDLR | Democratic Forces for the Liberation of Rwanda |
| FNL | National Liberation Forces |
| IPSA | independent private sector audit |
| MONUSCO | United Nations Organization Stabilization Mission in the Democratic Republic of the Congo |
| MSF | Doctors Without Borders |
| MSPE | mean squared prediction error |
| OECD | Organisation for Economic Co-operation and Development |
| RCOI | reasonable country-of-origin inquiry |
| RED-Tabara | Resistance for Rule of Law in Burundi-Tabara |
| RMAP | Responsible Minerals Assurance Process |
| SEC | U.S. Securities and Exchange Commission |
| UN | United Nations |
| USAID | U.S. Agency for International Development |

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Congressional Committees

For more than 20 years, conflict in the Democratic Republic of the Congo (DRC) has contributed to severe abuses of human rights and the displacement of millions of people, according to the United Nations (UN) and the Department of State.[1] Despite attempts by the U.S. government and the international community to improve peace and security, armed groups from the DRC and neighboring countries continue to clash with Congolese security forces—the DRC national army and police—and with each other.[2] These armed groups and members of the Congolese security forces have also perpetrated violence, including sexual violence, against civilians. Various sources have reported that armed groups also continue to profit from the exploitation of "conflict minerals"—tantalum, tin, tungsten, and gold—by, for example, taxing miners to access the mines.

In July 2010, Congress passed, and the President signed into law, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[3] The act included provisions requiring the U.S. Securities and Exchange Commission (SEC) to promulgate regulations containing disclosure and reporting requirements on the use of conflict minerals from the DRC and adjoining countries.[4] In response, in August 2012, SEC

[1]In this report, references to conflict in the DRC refer to multiple conflicts among a variety of factions in eastern DRC rather than to a single conflict involving all relevant factions.

[2]In this report, "armed groups" refers to nonstate armed groups.

[3]Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18 (2010). The Dodd-Frank Act defines conflict minerals as columbite-tantalite (coltan), cassiterite, wolframite, gold, or their derivatives, or any other mineral or its derivatives that the Secretary of State determines to be financing conflict in the DRC or an adjoining country. See Pub. L. No. 111-203, § 1502(e)(4). Tantalum, tin, and tungsten—the derivatives of columbite-tantalite (coltan), cassiterite, wolframite, respectively—and gold are used in industrial and other applications. In this report, "conflict minerals" refers to either these ores or these metals.

[4]The Dodd-Frank Act defines "adjoining country" as a country that shares an internationally recognized border with the DRC. Pub. L. No. 111-203, § 1502(e)(1). When SEC issued its conflict minerals disclosure rule, Angola, Burundi, the Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia shared internationally recognized borders with the DRC.

adopted a rule requiring companies to file specialized reports, beginning in 2014 and annually thereafter, disclosing their use of conflict minerals.[5]

When releasing the disclosure rule, SEC noted that Congress's intent was to promote peace and security in the DRC by attempting to inhibit armed groups' ability to fund their activities by exploiting the trade in conflict minerals. Congress expected that reducing the use of such funding would put pressure on the groups to end the conflict, according to SEC.[6] SEC further noted that Congress wished to use the disclosure rule to raise public awareness about the sources of companies' conflict minerals and to promote due diligence about their supply chains. One of the provision's cosponsors expressed hope that it would help consumers and investors make more informed decisions. According to SEC, some who commented on its proposed rule predicted the disclosures would help investors understand risks to companies' reputations.

The Dodd-Frank Act includes a provision requiring us to report on the SEC disclosure rule's effectiveness in promoting peace and security in the DRC and adjoining countries and on the rates of sexual and gender-based violence in war-torn areas of these countries.[7] We have issued 17 related reports; this is our final report in response to the statutory mandate.[8] In this report, we examine (1) what can be determined about

[5]77 Fed. Reg. 56,274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1.

[6]77 Fed. Reg. at 56,276. The Dodd-Frank Act states that the President may take action to terminate the disclosure rule once armed groups are no longer directly involved and benefiting from commercial activity involving conflict minerals. Pub. L. No. 111-203, § 1502(b).

[7]The Dodd-Frank Act requires us to assess the effectiveness of section 13(p) of the Securities Exchange Act of 1934, as added by section 1502(b) of the Dodd-Frank Act, in promoting peace and security in the DRC and adjoining countries. Pub. L. No. 111-203, § 1502. Section 13(p) requires SEC to promulgate regulations requiring disclosure about certain conflict minerals, which the SEC did when it adopted its conflict minerals disclosure rule in 2012. Pub. L. No. 111-203, § 1502(b). Therefore, we assessed the effectiveness of the SEC disclosure rule in promoting peace and security in the DRC and adjoining countries. We are required to report on the effectiveness of the SEC disclosure rule annually from 2012 through 2020, with additional reports in 2022 and 2024. Pub. L. No. 111-203, § 1502(d), as amended by the GAO Mandates Revision Act, Pub. L. No. 114-301, § 3(b), 130 Stat. 1514 (2016). The act also includes a provision for us to submit a report that includes an assessment of the rate of "sexual and gender-based violence" in war-torn areas of the DRC and adjoining countries annually from 2011 through 2020, with additional reports in 2022 and 2024. According to UN officials, sexual violence is a form of gender-based violence.

[8]For a complete list of these 17 prior reports, see Related GAO Products at the end of this report.

the effectiveness of the SEC disclosure rule in promoting peace and security in the DRC and adjoining countries, (2) how companies responded to the disclosure rule when filing with SEC in 2023, and (3) what is known about the incidence of sexual violence in the DRC and adjoining countries since April 2022.

To determine the effectiveness of the SEC disclosure rule in promoting peace and security, we used statistical models to assess the rule's effect on the number and occurrence of violent events in eastern DRC and the levels of violence in countries adjoining it.[9] To design these models, we identified and reviewed relevant empirical studies; we also interviewed the studies' lead authors about their methodological choices. For our statistical analyses, we used data for violent events from Armed Conflict Location and Event Data (ACLED) as well as data for mine locations, mineral prices, and other relevant factors.[10] We assessed the reliability of these data by reviewing relevant documents, testing the data electronically, and reviewing knowledgeable officials' written responses to a range of questions about the data. We found the data to be sufficiently reliable for the purposes of conducting these statistical analyses of the rule's effect on the number and occurrence of violent events in the DRC and the levels of violence in the adjoining countries.

In addition, we interviewed various experts—U.S. and DRC government officials, UN officials, representatives of nongovernmental organizations, and researchers—to gather qualitative information about conflict in the DRC and about the SEC disclosure rule's effectiveness. Further, we identified and analyzed other relevant literature, including UN Group of Experts reports and studies from nongovernmental organizations, to identify other findings about the SEC disclosure rule's effectiveness.

[9]For our analysis of the disclosure rule's effectiveness in promoting peace and security, we defined "violent events" and "violence" as comprising battles, explosions and remote violence, or violence against civilians. We define eastern DRC as the territories and cities shown on State's 2011 "Conflict Minerals Map," which identifies mining areas affected by armed groups. The map covers Ituri, North Kivu, and South Kivu Provinces and parts of Upper Katanga, Lualaba, Upper Lomami, Maniema, Tanganyika, Tshopo, Lower Uele, and Upper Uele Provinces. We focused our analysis on eight adjoining countries—Angola, Burundi, the Central African Republic, the Republic of the Congo, Rwanda, Tanzania, Uganda, and Zambia. We excluded Sudan and South Sudan because the creation of South Sudan in 2011 changed Sudan's boundaries.

[10]ACLED, an international nonprofit organization, collects, analyzes, and maps data on violent conflict and protests—specifically, the dates, actors, locations, fatalities, and types of reported political violence and protest events—in all countries around the world.

To describe how companies responded to the SEC disclosure rule when filing in 2023, we generated and analyzed a random sample of 100 disclosure reports from the 1,017 in SEC's publicly available Electronic Data Gathering, Analysis, and Retrieval database.[11] We reviewed the Dodd-Frank Act and the requirements of the SEC disclosure rule to develop a data collection instrument that guided our analysis of the filings. We also interviewed SEC officials and a nongeneralizable sample of 13 industry stakeholders to gather additional perspectives about meeting the requirements of the SEC disclosure rule. We identified stakeholders through our prior work on conflict minerals, background research on companies and organizations involved in responsible sourcing efforts, and their participation in an annual industry conference, as well as an expert referral process that included asking experts to recommend other experts.

To provide information about sexual violence in the DRC and adjoining countries since April 2022, we reviewed and analyzed relevant journal articles and reports that we identified by searching databases, using key terms and concepts.[12] We also identified and reviewed relevant case-file reports. In addition, we interviewed officials from State, the U.S. Agency for International Development (USAID), UN agencies, and six nongovernmental organizations conducting work related to sexual violence in the DRC and adjoining countries. For more details of our scope and methodology, see appendix I.

We conducted this performance audit from August 2023 to October 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[11]We randomly selected this sample of 100 filings to create estimates generalizable to all companies that filed conflict minerals disclosures from January 2023 through September 2023.

[12]For our analysis of information about sexual violence, we focused on the DRC and the three countries that adjoin eastern DRC—Rwanda, Uganda, and Burundi. We last reported on these issues in September 2022. See GAO, *Conflict Minerals: Overall Peace and Security Has Not Improved in the Democratic Republic of the Congo since 2014*, GAO-22-105411 (Washington, D.C.: Sept. 14, 2022). That report discussed sexual violence in the DRC on the basis of information that had become available from March 2020 through April 2022.

## Background

### Recent History of Conflict in DRC

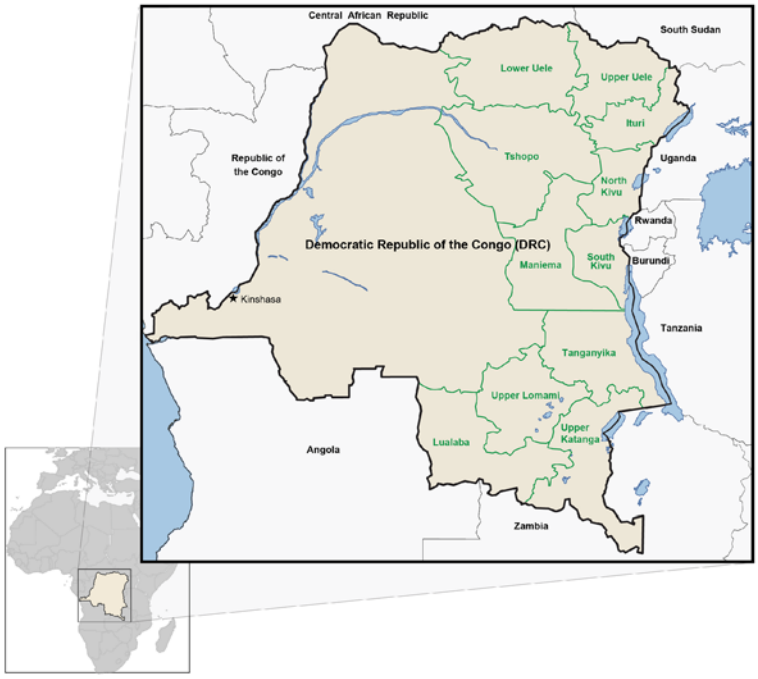
The DRC has experienced decades of political upheaval and armed conflict since achieving independence from Belgium in 1960. From 1998 to 2003, the DRC and eight other African countries fought in the Second Congo War, which resulted in the deaths of at least 3 million people in the DRC.[13] In 1999, the UN deployed a peacekeeping mission now known as the UN Organization Stabilization Mission in the DRC, or by its French acronym, MONUSCO.[14] However, armed groups continue to perpetrate violence in eastern DRC, the location of many mines that produce conflict minerals (see fig. 1).[15]

[13]In 1996, Rwanda and Uganda backed a rebellion against Zaire's leader Mobutu Sese Seko, a conflict that became known as the First Congo War. In 1997, the Congolese opposition leader Laurent Désiré Kabila seized power, Mobutu fled to Morocco, and Zaire was renamed the DRC.

[14]MONUSCO's mandated priorities are to (1) protect civilians under threat of physical violence and (2) support the stabilization and strengthening of DRC state institutions and key governance and security reforms. In December 2023, the UN Security Council adopted a resolution that extended MONUSCO's mandate for 1 year and set out a disengagement plan for MONUSCO to withdraw from the DRC. S.C. Res. 2717, U.N. Doc. S/RES/2717 (Dec. 19, 2023). On April 30, 2024, MONUSCO announced it had ceased operations in South Kivu Province and that its presence would be limited to Ituri and North Kivu Provinces as of May 2024.

[15]A DRC government official estimated the total number of tantalum, tin, tungsten, and gold mines in the DRC at 4,000 to 5,000. The International Peace Information Service, a Belgian research institute, has mapped approximately 2,800 of these mines in eastern DRC.

**Figure 1: DRC's Eastern Provinces and Adjoining Countries**




Source: GAO, based on United Nations map. | GAO-25-107018

Note: The term "adjoining country" is defined in Section 1502(e)(1) of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act as a country that shares an internationally recognized border with the Democratic Republic of the Congo (DRC). Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217 (2010). The adjoining countries were Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia when the U.S. Securities and Exchange Commission issued its conflict minerals disclosure rule. 77 Fed. Reg. 56,274 (Sept. 12, 2012).

The Kivu Security Tracker identified an estimated 120 armed groups in eastern DRC in 2020 (the most recent data available).[16] As we reported in 2022, the size and strength of these groups tend to change over time as groups fracture, disintegrate, collaborate, or form alliances, according to experts we interviewed and reports we reviewed from the UN Group of Experts on the DRC.[17] Various sources have reported that such changes often result from internal fractures or external circumstances, such as targeting by the Armed Forces of the DRC (known by the French acronym FARDC) or by other armed groups. Groups may range in size from very small militias, with 30 or 40 combatants, to groups of more than 1,000, according to the UN Group of Experts.[18] The structure of these armed groups also varies; some groups are well organized, while others are loosely defined self-defense militias. The text box describes selected armed groups operating in eastern DRC.

[16]Launched in 2017, the Kivu Security Tracker—a joint project of the Congo Research Group, Bridgeway Foundation, Human Rights Watch, and Ebuteli—maps violence in eastern DRC to better understand trends, causes of insecurity, and serious violations of international human rights and humanitarian law. The groups included in this count (1) had a differentiated organizational structure and an identity; (2) sought to assert some form of control over a geographic area; (3) referred to an ideology; (4) employed violence regularly as a technique of governance; and (5) were located in Ituri, North Kivu, South Kivu, and Tanganyika Provinces. See Kivu Security Tracker, *The Landscape of Armed Groups in Eastern Congo: Missed Opportunities, Protracted Insecurity and Self-fulfilling Prophecies* (New York: Feb. 2021). The Kivu Security Tracker went offline in 2023 after a security vulnerability was discovered in the tracker's database, according to Human Rights Watch.

[17]GAO-22-105411. In 2004, UN Security Council Resolution 1533 established the UN Group of Experts on the DRC. S.C. Res. 1533, U.N. Doc. S/RES/1533 (Mar. 12, 2004). The group is mandated to, among other things, evaluate the impact of conflict minerals traceability efforts as well as gather and examine information about networks supporting armed groups and criminal networks in the DRC and about perpetrators of human rights violations and abuses in the DRC, including those within the security forces. S.C. Res. 2360, U.N. Doc. S/RES/2360 (June 21, 2017).

[18]In some armed groups, not all combatants are individually armed, according to the UN Group of Experts.

**Descriptions of Selected Nonstate Armed Groups in Eastern DRC**

- **Allied Democratic Forces (ADF).** Created in opposition to the Ugandan government, ADF established ties with ISIS is in late 2018, according to the Department of State. The U.S. government refers to ADF as ISIS-DRC and formally designated the group as a foreign terrorist organization in 2021. This well-organized group includes recruitment and support networks, according to the United Nations (UN) Group of Experts on the Democratic Republic of the Congo (DRC). The Ugandan military, in collaboration with the Congolese military, has been fighting ADF in the DRC since late 2021.
- **Cooperative for the Development of the Congo (CODECO).** In 2017, CODECO emerged as a decentralized association of ethnic Lendu militias in Ituri Province, according to the International Crisis Group. In 2024, CODECO's spokesperson claimed that the group's various factions were coordinated and commanded by headquarters and that the group would cease hostilities once its rival armed group Zaïre disarmed and the Congolese military stopped targeting the Lendu community, according to the UN Group of Experts.
- **Democratic Forces for the Liberation of Rwanda (FDLR).** Currently operating in North Kivu Province, FDLR was created in 2000 by troops belonging to the Rwandan army and various militias, according to the Kivu Security Tracker. In 2010, we reported that the group's members included soldiers and officers from the former pro-Hutu Rwandan regime that planned and carried out the Rwandan genocide (see GAO-10-1030).
- **March 23 Movement (M23).** M23 is named for the date in 2009 when the National Congress for the Defence of the People signed a peace treaty with the DRC government. M23 captured the capital of North Kivu Province in 2012 before UN and Congolese forces defeated it in 2013. Allegedly supported by Rwanda, M23 reemerged in November 2021, in part, because of a lack of progress in the DRC government's implementation of the 2013 agreement that ended the initial rebellion, according to the UN Group of Experts. M23 claims to want to defend Congolese Tutsis against threats from Hutu groups, including FDLR, according to the Africa Center for Strategic Studies.
- **Mai Mai militias.** Mai Mai militias are numerous, disparate groups that operate as self-defense networks or criminal groups, according to the Congressional Research Service. The Kivu Security Tracker reported that approximately 40 percent of the armed groups in the region were Mai Mai militias in 2020.
- **National Liberation Forces (FNL).** Operating in South Kivu Province, FNL had approximately 250 Burundian combatants in 2021, according to the UN Group of Experts. The Burundian government accused FNL of a coup attempt in September 2022, according to the same source. Some sources refer to the group as the National Liberation Front.
- **Resistance for Rule of Law in Burundi-Tabara (RED-Tabara).** In 2016, the UN Group of Experts reported the RED-Tabara consisted almost entirely of Burundian citizens and was connected to the founder and leader of a Burundian political party. RED-Tabara has used South Kivu Province as a base to organize, plan, train, and launch operations across the border into Burundi and has recently been supported by Rwanda, according to the same source.
- **Yakutumba**. Yakutumba, also known as Mai Mai Yakutumba, is a predominantly ethnic Bembe armed group created by a former Congolese military officer in 2006, according to the UN Group of Experts and Kivu Security Tracker. In 2015, the UN Group of Experts reported that Yakutumba was a well-organized group, with soldiers, a navy, intelligence services, and a political party. In 2018, the same source reported that the group operated a parallel administration, including customs and migration offices to generate revenue.
- **Zaïre.** Zaïre began as a loosely defined self-defense militia in response to violence perpetrated by CODECO in northern Ituri Province, and it became more formalized in mid-2020, according to the Kivu Security Tracker.

Source: GAO analysis of UN, U.S. government, and nongovernmental organization data and reports. | GAO-25-107018

In general, the number of battles and incidents of violence against civilians in eastern DRC, remained relatively constant from 2004—after the Second Congo War—through 2016 and steadily increased from 2017 through 2021 and dropped slightly in 2022, according to ACLED data

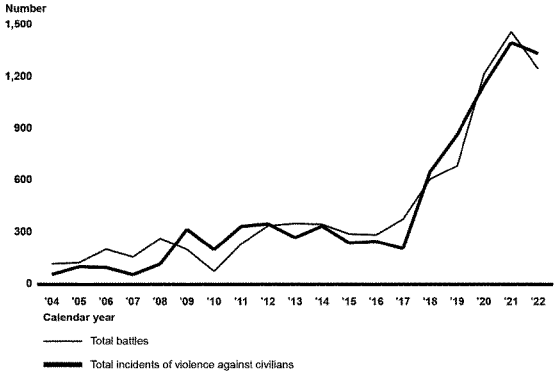
(see fig. 2).[19] Most battles occurred between armed groups and Congolese security forces.[20] As battles increased, so did incidents of violence against civilians, including attacks, sexual violence, abductions, and forced disappearances. Armed groups committed the majority of this violence against civilians, although Congolese security forces, including the military and police, were also responsible for some violence, according to ACLED data.[21]

[19]ACLED data are based on media reports, reports from nongovernmental and international organizations, selected social media accounts, and information obtained through partnerships with local conflict observatories. While local organizations gather primary data and have coverage that reflects local realities, these initiatives are often limited in scope, according to ACLED. Additionally, ACLED states that media reports may not capture all events. Consequently, ACLED may underreport events such as battles. In 2023, one of the local organizations supplying conflict information to ACLED ceased reporting. As a result, ACLED data on events in DRC for 2023 are not comparable to data for previous years and we have therefore annual data for years after 2022.

[20]From 2004 through 2022, battles also occurred between armed groups and foreign or other forces, such as the armed forces of adjoining countries (e.g., Burundi, Rwanda, and Uganda), MONUSCO, and private security forces, according to ACLED data. The number of these battles during this period ranged from one to 58 annually, averaging 16 per year.

[21]ACLED data also show an annual average of three incidents of violence against civilians by other armed actors, such as the state security forces of neighboring countries.

**Figure 2: Battles and Incidents of Violence against Civilians Committed by Non-State Armed Groups and Congolese Security Forces in Eastern DRC, 2004–2022**




Legend: DRC = Democratic Republic of the Congo.
Source: GAO analysis of data from the Armed Conflict Location & Event Data (ACLED). | GAO-25-107018

Notes: Congolese security forces include the military and national police. According to ACLED, incidents of violence against civilians include attacks, sexual violence, abductions, and forced disappearances and do not include battles between armed groups, explosions, or remote violence.

From 2004 through 2022, battles also occurred in eastern DRC between armed groups and foreign or other forces, such as the armed forces of adjoining countries (e.g., Burundi, Rwanda, and Uganda), United Nations peacekeeping forces, and private security forces, according to ACLED data. The number of these battles ranged from one to 58 annually, averaging 16 per year. ACLED data for this period also show an annual average of three incidents of violence against civilians by other armed actors, such as the state security forces of neighboring countries.

ACLED data are based on media reports, reports from nongovernmental and international organizations, selected social media accounts, and information obtained through partnerships with local conflict observatories. In 2023, one of the local organizations supplying conflict information to ACLED ceased reporting; as a result, ACLED data on events in DRC for 2023 are not comparable to such data for previous years, and we have therefore not included annual data for years after 2022.

As we reported in 2022, the increase in violence that began in 2017 was attributable in part to shifting alliances among various armed groups, the emergence of the armed group Cooperative for the Development of the Congo (CODECO), and the strengthening of a separate group, Allied

Democratic Forces (ADF), according to experts we interviewed.[22] In particular, ADF and CODECO factions tend to attack civilians, whereas other armed groups focus more on theft and taxation, according to experts from a research institution. Experts added that, regardless of armed groups' stated motives, such groups often prey on local populations and perpetrate abuses, such as raping civilians and destroying villages.

Moreover, the reemergence of the armed group M23 in November 2021 has increased conflict and violence against civilians in eastern DRC.[23] In June 2023, the UN Group of Experts reported that M23 continued to significantly expand the territory under its control and increase its attacks, despite bilateral, regional, and international de-escalation efforts.[24] To assist FARDC in its fight against M23, some armed groups created a coalition, Volontaires pour la défense de la patrie (Volunteers for the Defense of the Homeland, sometimes referred to as the Wazalendo), in September 2023, according to a UN Group of Experts report.[25] The report noted that some senior FARDC officers coordinated the military's collaboration with these armed groups, supporting them with logistics, weapons, and financing.

In December 2023, the UN Group of Experts reported that fighting between M23 and FARDC involved other Congolese and international armed actors and security forces.[26] M23 was supported by the Rwandan

[22]GAO-22-105411. ADF established ties with ISIS in late 2018, according to the Department of State. The U.S. government refers to ADF as ISIS-DRC and formally designated the group as a foreign terrorist organization in 2021.

[23]According to the UN Group of Experts, M23 reemerged because of, in part, a lack of progress in the implementation of the 2013 agreement ending the initial rebellion. M23's plan was to force the DRC government to accept the group's demands regarding amnesties, asset recovery, return to the DRC, integration into FARDC, and political positions.

[24]United Nations Group of Experts, *Final Report of the Group of Experts on the Democratic Republic of the Congo*, S/2023/431 (June 13, 2023).

[25]According to the UN Group of Experts, various Congolese armed groups have, in the context of "liberating" the country from the control of "foreign" armed groups such as M23, adopted the name "Wazalendo" (Swahili for "true patriots") to gain legitimacy and better position themselves for possible future integration into the Congolese military. United Nations Group of Experts, *Midterm Report of the Group of Experts on the Democratic Republic of the Congo*, S/2023/990 (Dec. 30, 2023). The Wazalendo also claim to defend local communities, according to State officials.

[26]United Nations Group of Experts, *Midterm Report of the Group of Experts on the Democratic Republic of the Congo* (2023).

military, while FARDC was supported by the Volunteers for the Defense of the Homeland, the Democratic Forces for the Liberation of Rwanda (FDLR), private military companies, and the Burundian military, according to the UN Group of Experts report. State officials told us that M23 contributes to conflict in eastern DRC through its own actions and by occupying the attention of FARDC and MONUSCO, giving other armed groups more freedom of action.

As we reported in 2022, violence in eastern DRC has affected the sense of security among civilians, who are often targeted by armed groups and Congolese security forces, according to experts.[27] For example, M23 has perpetrated deadly attacks and gang rapes among civilian populations associated with, or presumed to support, FDLR and other armed groups, according to the UN Group of Experts.[28]

Civilian insecurity has led to an overall increase in the numbers of internally displaced persons and refugees from the region. An estimated 6.7 million people were internally displaced by conflict at the end of 2023, according to the Internal Displacement Monitoring Centre.[29] This estimate reflects one of the largest internal displacement crises in the world, according to the UN Group of Experts. The same source reported that M23's territorial expansion led to the displacement of more than 1 million civilians in North Kivu Province as of April 15, 2023.

[27]GAO-22-105411.

[28]M23 claims to want to defend Congolese Tutsis against threats from Hutu groups, including FDLR, according to the Africa Center for Strategic Studies.

[29]Internal Displacement Monitoring Centre, *2024 Global Report on Internal Displacement* (Geneva: April 2024).

## SEC Conflict Minerals Disclosure Rule

**Uses of Conflict Minerals**

Various industries use the four conflict minerals—tantalum, tin, tungsten, and gold—in a range of products. For example:

**Tantalum** is used mainly to manufacture capacitors that enable energy storage in electronic products, such as cell phones and computers, or to produce alloy additives used in turbines in jet engines.

**Tin** is used to solder metal pieces and is found in food packaging, steel coatings on automobile parts, and some plastics.

**Tungsten** is used in automobile manufacturing, drill bits, cutting tools, and other industrial manufacturing tools and is the primary component of light bulb filaments.

**Gold** is used as money reserves, in jewelry, and in electronics such as cell phones and laptops.

Source: GAO. | GAO-25-107018

In August 2012, SEC adopted its disclosure rule for conflict minerals in response to Section 1502(b) of the Dodd-Frank Act.[30] The rule requires certain companies to (a) file a specialized disclosure report, Form SD, if they manufacture, or contract to have manufactured, products that contain conflict minerals necessary to those products' functionality or production and (b) file an additional conflict minerals report, if applicable.[31]

SEC's Form SD provides general instructions to companies submitting a disclosure report and specifies the information that the form, in addition to a conflict minerals report, must include. According to these instructions, a company must file a conflict minerals report if, after exercising due diligence, it has reason to believe its conflict minerals may have come from covered countries and may not have come from scrap or recycled sources.[32]

The SEC disclosure rule outlines a process for companies to follow, as applicable. To comply with the rule, the process broadly requires a company to take the following steps:

1. Determine whether the company manufactures, or contracts to have manufactured, products with "necessary" conflict minerals.

[30]77 Fed. Reg. 56,274.

[31]The SEC disclosure rule applies to any issuer that files reports with SEC under Section 13(a) or Section 15(d) of the Securities and Exchange Act of 1934, including domestic companies, foreign private issuers, and smaller reporting companies. 77 Fed. Reg. at 56,287. According to SEC, issuers that have a reporting obligation are companies that offer shares publicly and file forms 10-K, 20-F, or 40-F with SEC. For the purposes of our report, we refer to issuers affected by the rule as "companies."

[32]For the purposes of the disclosure rule, SEC refers to the DRC and its adjoining countries—Angola, Burundi, the Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia—as "covered countries."

2. Conduct a reasonable country-of-origin inquiry (RCOI) to determine the origin of those conflict minerals.[33]
3. Exercise due diligence, if appropriate, to determine the source and chain of custody of those conflict minerals and whether they benefited armed groups, and adhere to a nationally or internationally recognized due diligence framework, as available for these necessary conflict minerals.[34]

As adopted, the SEC disclosure rule required companies to, among other things, describe in their conflict minerals reports, if appropriate, any products "not found to be 'DRC conflict free'" and post this information to their websites. However, an appellate court found that Section 1502 of the Dodd-Frank Act and the rule violated the First Amendment to the extent that the statute and the rule required companies to report to SEC and disclose on their websites that any of their products have not been found to be DRC conflict free.[35]

Following the appellate court decision, the staff of SEC's Division of Corporation Finance issued guidance in April 2014. This guidance indicated that, pending further action by SEC or a court, companies required to file a conflict minerals report would not have to identify their products as "DRC conflict undeterminable," "not been found to be DRC

[33]According to the disclosure rule, it does not specify the steps and outcomes that are necessary to satisfy the RCOI requirement, because "such a determination depends on each issuer's facts and circumstances." Nevertheless, the rule describes several general standards. The RCOI must be "reasonably designed" and "conducted in good faith." The preamble to the rule states that an issuer would satisfy its RCOI requirement if it seeks and obtains reasonably reliable representations indicating the facilities that processed its conflict minerals and demonstrating that the minerals did not originate in the covered countries or came from recycled sources. The preamble to the rule also states that an issuer would have reason to believe representations were true if a processing facility received a "conflict-free" designation by a recognized industry group as part of an independent private sector audit. 77 Fed. Reg. at 56311-12.

[34]A company is required to perform due diligence on its conflict minerals' source and chain of custody and provide a description of the measures it took to exercise due diligence, if, after completing an RCOI, it knows or has reason to believe that the minerals may have originated in the covered countries and may not be from scrap or recycled sources. 77 Fed. Reg. at 56,281.

[35]According to SEC staff, the U.S. Court of Appeals in April 2014 rejected challenges to the bulk of the SEC conflict minerals rule. However, the court held that Section 1502 of the Dodd-Frank Act and the rule violated the First Amendment to the extent that the statute and the rule required regulated entities to report to SEC and to state on their websites that any of their products had not been found to be "DRC conflict free." *Nat'l Ass'n of Mfrs. v. SEC*, 748 F.3d 359 (D.C. Cir. Apr. 14, 2014).

conflict free," or "DRC conflict free."[36] The guidance also indicated that companies are not required to obtain an independent private sector audit unless they choose to describe their products as DRC conflict free in a conflict minerals report.[37]

In April 2017, after the final judgment in the case, the staff of SEC's Division of Corporation Finance issued revised guidance.[38] This guidance indicates that, because of uncertainty about how SEC commissioners would resolve issues related to the court ruling, the division would not recommend enforcement action to the commission if companies filed disclosure only for certain items specified under the rule and did not include a description of due diligence.[39]

However, as we previously reported, SEC staff told us that the 2017 staff guidance is not binding on the commission, which can initiate enforcement action if companies do not report on due diligence in

[36]See Keith F. Higgins, Director, SEC Division of Corporation Finance, *Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 29, 2014). According to SEC staff, the April 2014 guidance is still in place.

[37]Under the SEC disclosure rule, an IPSA expresses an opinion or conclusion as to whether the design of the issuing company's due diligence measures as set forth in its conflict minerals report conforms in all material respects with the criteria set forth in the nationally or internationally recognized due diligence framework the company used. The IPSA also expresses an opinion or conclusion on whether the description of those measures the company performed as set forth in its conflict minerals report is consistent with the due diligence process the company undertook.

[38]The final judgment set aside the SEC disclosure rule "to the extent that the statute and rule required regulated entities to report to the [U.S. Securities and Exchange] Commission and to state on their websites that any of their products have 'not been found to be "DRC conflict free.'" *Nat'l Ass'n of Mfrs. v. SEC*, No. 13-cv-635 (D.D.C. Apr. 3, 2017). The District Court also issued a remand to SEC. For SEC's revised guidance after the final judgment, see SEC Division of Corporation Finance, *Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 7, 2017).

[39]The updated guidance specifically states that "in light of the uncertainty regarding how the [SEC] Commission will resolve those issues [raised by the Court's decision] and related issues raised by commenters, SEC's Division of Corporation Finance [SEC staff] has determined that it will not recommend enforcement action to the Commission if companies, including those that are subject to paragraph (c) of Item 1.01 of Form SD, only file disclosure under the provisions of paragraphs (a) and (b) of Item 1.01 of Form SD." The statement noted that it "is subject to any further action that may be taken by the Commission, expresses the Division's position on enforcement action only, and does not express any legal conclusion on the rule." See SEC Division of Corporation Finance, *Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule*.

accordance with the rule.[40] The SEC Chair released a statement in 2018 confirming that SEC staff statements are nonbinding and do not create enforceable legal rights or obligations of the commission. The statement clarifies a distinction between SEC staff's views and the commission's rules and regulations.[41] As we previously reported, SEC staff told us that the 2017 guidance is temporary but remains in place pending the commission's review of the rule.[42] As of June 2024, review of the rule was on SEC's long-term regulatory agenda, meaning that any action would likely not take place within the next 12 months, according to SEC staff.

## Prior GAO Reporting on Conflict Minerals

We have reported on the DRC and conflict minerals since 2010.[43] The text box summarizes our findings and recommendations from selected prior reports.[44]

[40]GAO, *Conflict Minerals: 2020 Company SEC Filings on Mineral Sources Were Similar to Those from Prior Years*, GAO-21-531 (Washington, D.C.: July 12, 2021).

[41]Jay Clayton, SEC Chairman, *Statement Regarding SEC Staff Views* (Sept. 13, 2018). According to SEC staff, the Chairman's statement was a general statement regarding staff views and was not specific to staff statements regarding the conflict minerals rule.

[42]GAO, *Conflict Minerals: 2022 Company Reports on Mineral Sources Were Similar to Those Filed in Prior Years*, GAO-23-106295 (Washington, D.C.: July 19, 2023).

[43]For a complete list of our 17 prior reports on these topics, see Related GAO Products at the end of this report.

[44]Appendix IV summarizes the status of agencies' implementation of the recommendations in these prior reports.

**Recommendations and Findings from Selected Prior GAO Reports about DRC and Conflict Minerals**

- In 2020, we reported that the Department of State and the U.S. Agency for International Development had implemented the U.S. conflict minerals strategy but had not established performance indicators for all of the strategic objectives. We recommended State develop performance indicators for assessing progress toward these strategic objectives. In February 2023, State said officials were considering revisions to the strategy and would develop indicators as part of any updates. See GAO-20-595.
- In 2017, we reported that almost all artisanal and small-scale mined gold from the Democratic Republic of the Congo (DRC) is produced and traded unofficially and smuggled from the country. Additionally, we reported that incentives for responsible sourcing of artisanal and small-scale mined gold were limited by the relatively small number of gold mines validated as conflict free and the DRC's relatively high provincial mining taxes, compared with taxes in neighboring countries. See GAO-17-733.
- In 2016, we reported that processing facilities act as "choke points" in conflict mineral supply chains and present challenges for companies filing conflict mineral disclosures. We recommended that the Department of Commerce take steps to (1) assess the accuracy of independent private sector audits; (2) establish standards of best practices for such audits; and (3) acquire the necessary knowledge, skills, and ability to carry out these responsibilities. As of February 2023, Commerce had not implemented this recommendation. See GAO-16-805.
- In 2014, we recommended that Commerce develop and report required information about smelters and refiners of conflict minerals worldwide. Commerce sent Congress a list of all known conflict mineral processing facilities worldwide in August 2014 and subsequently published this list on its website. See GAO-14-575.
- In 2012, we recommended that the Securities and Exchange Commission identify remaining steps and associated time frames to finalize and issue a conflict mineral disclosure rule. The commission subsequently adopted a final conflict minerals disclosure rule and published it in the Federal Register on September 12, 2012. See GAO-12-763.
- In 2010, we recommended that State develop actionable steps the U.S. could take to help monitor, regulate, and control the minerals trade in eastern DRC. In late 2010, State updated its DRC conflict minerals strategic plan with five objectives to address linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products. See GAO-10-1030.

Source: GAO. | GAO-25-107018

## SEC Disclosure Rule Generally Has Not Reduced Violence in Eastern DRC or Adjoining Countries but Has Encouraged More Transparent Sourcing

Our statistical analyses found that the SEC conflict minerals disclosure rule has not reduced the occurrence or number of violent events in eastern DRC and was associated with a spread of violence in certain territories containing artisanal and small-scale mining (ASM) sites for gold.[45] Further, the rule likely had no effect on violence in the countries adjoining the DRC. Armed groups in the DRC fund their violent activities through various sources besides conflict minerals, and a number of interdependent factors, such as influence from neighboring countries and weakness in governance, contribute to conflict in the east, according to experts. The rule has encouraged companies to improve their due diligence and transparency regarding conflict minerals' origins, according to industry stakeholders. Nevertheless, obstacles associated with smuggling and cost may limit the efficacy of efforts to trace conflict minerals' origins, according to experts and reports by nongovernmental organizations.

[45]Artisanal and small-scale mining sites are small, typically labor-intensive mining operations characterized by a lack of mechanization and capital investment.

## SEC Rule Has Not Reduced and Likely Contributed to Spreading Violence in Eastern DRC and Likely Had No Effect in Adjoining Countries

### Violence in Eastern DRC Has Not Decreased with SEC Disclosure Rule

Our statistical analysis of ACLED data on violent events, data on ASM locations and mineral prices, and other data found no evidence that the SEC disclosure rule has decreased violence in eastern DRC.[46] Specifically, our analysis of data from July 2004 through December 2022 showed that the disclosure rule was not linked to a decrease in either the occurrence or number of violent events in eastern DRC.

Our analysis compared the territories that were likely to be most affected by the SEC disclosure rule with territories that were likely to be less affected by it.[47] By controlling for specific territories, our model isolated the effects of the SEC disclosure rule from factors in each territory that remained constant or slowly evolved over time, such as geographical characteristics, governance, ethnic tensions, and the presence of natural resources.[48] Additionally, by controlling for each month of the selected period, the model accounted for time-specific factors that affected the territories of eastern DRC equally, such as macroeconomic conditions and temporal proximity to elections. Further, the model controlled for specific factors that varied across territories and time that we identified as

[46]For the purpose of our analysis, we defined "violent events" and "violence" as comprising battles, explosions and remote violence, and violence against civilians. We focused our analysis on artisanal and small-scale mines because they face more interference from armed groups than industrial mines. We compared the number and occurrence of violent events before and after the enactment of the Dodd-Frank Act in July 2010. Although SEC finalized its disclosure rule in 2012, our analysis used the enactment of the Dodd-Frank Act as a proxy for the rule because companies, governments, and others began to take action after the act's enactment in anticipation of the rule. See appendix II for more information about this analysis.

[47]We followed related empirical literature by defining the territories that were likely to be most affected by the rule as those in Maniema, North Kivu, and South Kivu Provinces where the President of the DRC announced a ban on mining from September 2010 until March 2011 and those containing at least one mine with geocoordinates in State's 2011 map of conflict mining zones. See appendix II for more information about our analysis as well as its limitations.

[48]We examined violent events in eastern DRC's second-level administrative units, which consist of territories and cities. For the purposes of this report, we refer to these administrative units collectively as territories.

likely affecting violence, such as mineral prices, historical violence, spatial proximity of violence, and precipitation patterns. (Fig. 3 shows Congolese miners using artisanal mining techniques.)

**Figure 3: Artisanal Mining in the DRC**

Artisanal tin (left), tantalum (center), and gold (right) mining sites.
Legend: DRC = Democratic Republic of the Congo.
Source: International Peace Information Service. | GAO-25-107018

The results of our analysis are consistent with previously published studies. For example, a 2023 study found that the probability of conflict in the DRC—specifically, violence against civilians, battles, riots and protests, and deadly conflict—roughly doubled through 2016 because of the Dodd-Frank Act.[49] The study also found evidence suggesting that the act, which required that SEC promulgate the conflict minerals disclosure rule, caused a reduction of workers employed at tantalum, tin, and tungsten mines.[50] The study's author posits that the ability of armed groups to perpetrate violence may have increased because the labor market shock caused by changes taken in reaction to the act reduced miners' options for earning income from mining and thus increased their incentive to join armed groups.

[49]Jeffrey R. Bloem, "Good Intentions Gone Bad? The Dodd-Frank Act and Conflict in Africa's Great Lakes Region," *Economic Development and Cultural Change*, vol. 71, no. 2 (Chicago: Jan. 2023). The author notes that the Dodd-Frank Act directed the SEC to issue a rule requiring certain companies to disclose whether conflict minerals used in their products originated in the DRC or adjoining countries and, if so, to conduct due diligence to determine any supply chain links to armed groups.

[50]Specifically, the study found a reduction of 42 to 51 percent in the number of workers at tantalum, tin, and tungsten mines visited by the International Peace Information Service from 2009 through 2017. See Bloem, "Good Intentions Gone Bad?"

Similarly, a study examining the Dodd-Frank Act's short-term effects (those prior to 2013) found that, rather than reducing violence, it increased the likelihood that armed groups would loot, and commit violence against, civilians.[51] The study's authors suggest that the act led to displacement of armed groups, which encouraged them to replace lost revenue by looting.

## SEC Rule Likely Contributed to a Spread of Violence around Gold Mines in Eastern DRC

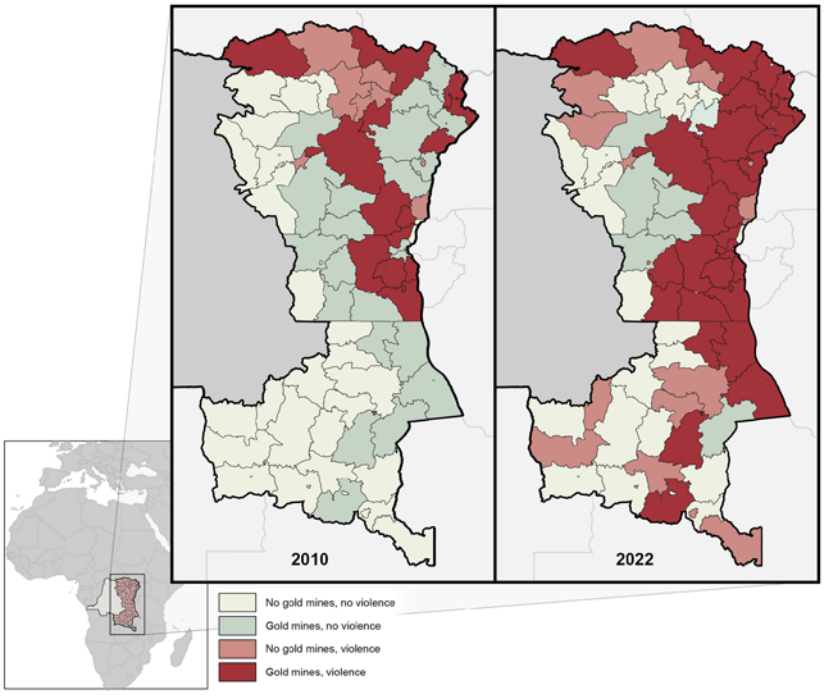
Our analysis of ACLED and other data showed that the SEC disclosure rule was associated with a spread of violence in eastern DRC, particularly in territories with ASM sites for gold that were likely to be most affected by the SEC rule.[52] We found that violence spread primarily to these territories; we did not find a similar effect in territories containing ASM sites for tantalum, tin, or tungsten.[53] Figure 4 shows territories where violent events occurred around ASM sites for gold in eastern DRC in 2010 and 2022.

[51]Dominic P. Parker and Bryan Vadheim, "Resource Cursed or Policy Cursed? U.S. Regulation of Conflict Minerals and Violence in the Congo," *Journal of the Association of Environmental and Resource Economists*, vol. 4, no. 1 (March 2017). Although we did not examine the same outcomes (i.e., battles, looting, and violence against civilians), we used the same methodology and examined a longer time period.

[52]We followed related empirical literature by defining the territories that were likely to be most affected by the rule—that is, the treated territories—as those in Maniema, North Kivu, and South Kivu Provinces where the President of the DRC announced a ban on mining from September 2010 until March 2011 and those containing at least one mine with geocoordinates within State's 2011 map of conflict mining zones. For treated territories, each additional gold mine was associated with an additional 0.1 to 0.2 percent increase in the likelihood of any monthly violent event occurring. For the average treated territory with gold mines, this represented a 43 to 95 percent increase in the likelihood of any monthly violent event compared with the average for July 2004 through June 2010. Some iterations of our analysis also found that the SEC disclosure rule was associated with an increase in the number of violent events in treated territories with gold mines. Appendix II provides detailed results of our analysis.

[53]Our analysis generally did not find reduced violence in territories with tantalum, tin, and tungsten mines. However, comparing treated territories with and without tantalum, tin, and tungsten mines, we found reduced violence in the territories with the smallest and largest number of mines, as measured by the first and fourth quartile of tantalum, tin, and tungsten mines. Appendix II summarizes this analysis in more detail.

**Figure 4: Eastern DRC Territories Where Violent Events Occurred around Artisanal Gold Mines in 2010 and 2022**




Legend: DRC = Democratic Republic of the Congo.
Sources: GAO, based on United Nations map and analysis of data from the Armed Conflict Location & Event Data and the International Peace Information Service. I GAO-25-107018

Note: We examined violent events in eastern DRC's second-level administrative units, which consist of territories and cities. For the purposes of this report, we refer to these administrative units collectively as territories.

The results of our analysis are consistent with other academic research. For example:

- Studies published in 2017 and 2023 found that the likelihood of battles and of the presence of armed groups may have shifted away from tantalum, tin, and tungsten mines to other types of mineral mines, including gold, as a result of the Dodd-Frank Act's requirement that SEC promulgate the conflict minerals disclosure rule.[54] The studies suggest that the act may have led to more violence around gold mines than around tantalum, tin, and tungsten mines because (1) the majority of gold mined in the DRC supplies jewelry markets in the Middle East and Asia, which are not covered by the SEC disclosure rule, and (2) gold is more difficult to trace back to mines controlled by armed groups because it is easier to melt and separate from the surrounding rock. In contrast, tantalum, tin, and tungsten are extracted with additional rock that can help identify their origins. The studies posit that because of these factors, armed groups looking to maximize their revenue moved away from tantalum, tin, and tungsten mining areas to compete over gold mining areas, thus increasing conflict.
- Another study, published in 2018, found that the Dodd-Frank Act increased battles, looting, and violence against civilians in territories with an average number of gold mines.[55] The study posits that when armed groups moved toward gold mining areas, they may have also looted and committed violence against civilians in those areas.

State reported in a 2017 cable that due diligence and traceability schemes resulting from the SEC disclosure rule led to reforms that reduced armed groups' presence and overall criminal activity around tantalum, tin, and tungsten mining sites.[56] However, according to the

[54]Parker and Vadheim, "Resource Cursed or Policy Cursed?"; Bloem, "Good Intentions Gone Bad?" A 2024 study found that after companies began filing conflict minerals disclosures with SEC in 2014, the probability of conflict's occurring in a territory with the average number of ASM sites for tantalum, tin, and tungsten decreased, while the probability of conflict's occurring in a territory with the average number of ASM sites for gold increased. Bok Baik et al., "The Real Effects of Supply Chain Transparency Regulation: Evidence from Section 1502 of the Dodd–Frank Act," *Journal of Accounting Research*, vol. 62, no. 2 (May 2024).

[55]Nik Stoop, Marijke Verpooten, and Peter van der Windt, "More Legislation, More Violence? The Impact of Dodd-Frank in the DRC," *PLoS ONE* (Aug. 9, 2018).

[56]A traceability scheme uses documentation, such as identification tags attached to bags of minerals, to verify the origin of minerals and generate a chain of custody from a mine to smelters and refiners. See GAO-22-105411.

cable, conflict did not decrease around gold mining sites.[57] Similarly, as we reported in 2022, armed groups have had fewer opportunities to benefit from illegal involvement in mining tantalum, tin, and tungsten as due diligence and traceability schemes for these minerals have expanded to more sites, according to the UN Group of Experts. This expansion of due diligence and traceability schemes for tantalum, tin, and tungsten has often led to measures at these sites to prove that the minerals produced are free from armed group interference. However, armed groups have continued to interfere in the mining and trade of gold, according to experts we interviewed in 2022 and the UN Group of Experts.

Security improved around tantalum, tin, and tungsten mines in part because some ASM sites were industrialized following the SEC disclosure rule, according to a conflict minerals expert.[58] Citing the examples of an industrial gold mine and an industrial tin mine, the expert explained that the armed groups left the areas when these mines became industrialized, which improved public security. A 2019 study found that the expansion of industrial mines reduced the number of battles among armed groups.[59] To protect their investments from armed groups, industrial mining companies tend to maintain strong security apparatuses, supported by FARDC and mining police. Figure 5 shows an industrial tin mine in the DRC.

[57]SEC officials said the agency has not evaluated the rule's effectiveness in promoting peace and security in the DRC and adjoining countries because the agency's role was to promulgate the rule and administer its requirements.

[58]Industrial mining is undertaken by a corporate entity on a formally recognized mineral claim, generally using capital-intensive technology and advanced machinery and equipment.

[59]Nik Stoop, Marijke Verpooten, and Peter van der Windt, "Artisanal or Industrial Conflict Minerals? Evidence from Eastern Congo," *World Development*, vol. 122 (2019): 660–674.

**Figure 5: Industrial Tin Mine in the DRC**

Legend: DRC = Democratic Republic of the Congo.
Source: Alphamin. | GAO-25-107018

## Violence in Countries Adjoining DRC Was Likely Not Affected by SEC Disclosure Rule

We conducted a separate statistical analysis, using data on violent events from January 2004 through August 2015, and found that the number of violent events in the countries adjoining the DRC likely did not change in response to the SEC disclosure rule.[60] Although ASM sites for tantalum, tin, tungsten, and gold, as well as armed groups and conflict, are largely concentrated in eastern DRC, the disclosure rule also addresses conflict minerals sourced from the adjoining countries. Thus, we assessed the rule's effect on violence in Angola, Burundi, the Central African Republic, the Republic of the Congo, Rwanda, Tanzania, Uganda, and Zambia.[61] Our analysis showed that changes in levels of violence in these countries

[60]We used a synthetic control model, which created a data-driven, artificial control country representing each adjoining country's counterfactual experience without the SEC disclosure rule from August 2010 through August 2015. We compared the number of violent events that occurred during the 5 years after the Dodd-Frank Act's enactment in July 2010 with the number of violent events that would have occurred without the SEC disclosure rule. We ended our analysis with 2015, after 5 years, because the quality of the synthetic control degrades over time, becoming less reliable. However, we found a similar result when we extended the time period to December 2022. See appendix III for additional details of our analysis, including its limitations.

[61]We did not examine the effect of the SEC disclosure rule on violent events in Sudan or South Sudan, because Sudan's boundaries changed in 2011 when South Sudan gained its independence.

were similar to changes in other low-income and lower-middle-income countries where the SEC disclosure rule does not apply.[62]

## Factors Besides Minerals Contribute to Conflict in Eastern DRC

### Armed Groups Finance Violent Activities through Various Sources besides Conflict Minerals

Although SEC, in promulgating the disclosure rule, stated that Congress intended for the rule to reduce funding for armed groups in eastern DRC, these groups continue to finance violent activities through a variety of sources, according to experts and UN Group of Experts reports. The reports note that some armed groups continue to benefit from the trade of conflict minerals. For instance, armed groups may tax mine access as well as the mined minerals. A 2023 report from the International Peace Information Service found that armed groups were present at 29 percent of mines and that 42 percent of miners worked under armed group interference.[63] Armed groups, FARDC units, or armed criminal networks interfered at 55 percent of ASM sites for gold and 35 percent of ASM sites for tantalum, tin, and tungsten, according to the report.

In December 2023, the UN Group of Experts reported that armed groups were involved in the mining and trade of tantalum, tin, and tungsten in North Kivu Province.[64] For instance, the report stated that armed groups may charge diggers daily fees for access to mines and "security" and may require traders and pit managers to pay monthly fees.[65] The minerals are

[62]We first calculated the estimated effect for each adjoining country by using synthetic control counterfactuals. We then gauged the relative importance of these estimated effects by comparing the estimated effects for the adjoining countries with those from the global set of low-income and lower-middle-income countries. Appendix III summarizes this analysis in more detail.

[63]The International Peace Information Service visited 829 mines in eastern DRC from January 2021 to April 2023. These mines employed an estimated 132,320 miners. The organization has found that the armed groups and FARDC tend to prey on the most productive and less accessible mines. International Peace Information Service, *Analysis of the Interactive Map of Artisanal Mining Areas in Eastern Democratic Republic of the Congo 2023 Update* (Antwerp: July 2023).

[64]UN Group of Experts, *Midterm Report of the Group of Experts on the Democratic Republic of the Congo* (2023).

[65]A MONUSCO official said that armed groups have been known to execute miners who refuse to pay these illicit taxes. The UN Group of Experts reported in 2023 that these fees were estimated to generate, with at least 100 diggers per mine, a monthly total of at least $15,000 to $20,000 for the armed groups. UN Group of Experts, *Midterm Report of the Group of Experts on the Democratic Republic of the Congo* (2023).

then smuggled to Rwanda or laundered into the official supply chain, according to the report.

However, armed groups also obtain funding from sources other than conflict minerals. As a conflict minerals expert explained, the absence of minerals would not end conflict in eastern DRC, because these groups would find other ways to finance their activities. Experts we interviewed for our 2022 report said that armed groups are adaptable in finding ways to fund their activities and that the groups weigh costs and feasibility when considering various revenue sources.[66]

Many armed groups raise funds through extortion unrelated to conflict minerals—that is, by taxing economic activities or transit in areas under their control, according to experts. For example, M23 taxes households, goods, and agricultural crops, either in cash or in kind, in areas it controls, according to a UN Group of Experts report.[67] Armed groups may erect roadblocks to charge for the safe passage of goods and people (see fig. 6). The UN Group of Experts reported in December 2022 that M23 earned an average of $27,000 per month through taxes imposed on pedestrians with goods leaving the DRC at a Ugandan border crossing.[68] As we reported in 2022, armed groups may also extort "protection" fees for providing security services for communities or for businesses involved in illegal trading, according to experts.

[66]GAO-22-105411.

[67]UN Group of Experts, *Midterm Report of the Group of Experts on the Democratic Republic of the Congo,* S/2022/967 (Dec. 16, 2022).

[68]UN Group of Experts, *Midterm Report of the Group of Experts on the Democratic Republic of the Congo* (2022).

Figure 6: People Waiting to Pass Roadblock in North Kivu Province, DRC, in 2018

Legend: DRC = Democratic Republic of the Congo.
Source: International Peace Information Service. | GAO-25-107018

Further, armed groups raise revenue by exploiting natural resources besides conflict minerals, according to the UN Group of Experts. Reports published by the UN group have noted that some armed groups raise funds through the trade or control of wildlife products, coal, timber, and agricultural goods. Armed groups may also raise funds through looting, kidnapping for ransom, and other acts of criminality and banditry, according to experts we interviewed in 2022.

## Various Interdependent Factors Contribute to Violence in Eastern DRC

Various interdependent factors described in our 2022 report—natural resource exploitation, influence from adjoining countries, ethnic tensions, weak governance, corruption, and economic pressures—continue contributing to violent conflict in eastern DRC, according to experts we interviewed.[69] These factors' dynamics and interaction, their roles, and their relative significance vary depending on the area, according to State officials. Given the complexity and entrenched nature of conflict in eastern DRC, experts said they would not expect the SEC disclosure rule alone to meaningfully reduce violence.

[69]GAO-22-105411.

**Natural Resource Exploitation**

Competition for land and other natural resources continues to aggravate conflict significantly in eastern DRC, according to experts we interviewed for this report.[70] As a Congolese researcher explained for our 2022 report, armed groups and military and political elites fight for control over territory to benefit from its natural resources.[71] The desire to control land and other natural resources can intertwine with ethnic tensions, influence from adjoining countries, and lack of other economic opportunities.

However, minerals do not primarily drive conflict in eastern DRC; rather, natural resources, including conflict minerals, provide revenue that sustains conflict, according to experts we interviewed. As we reported in 2010, the minerals trade is not the root cause but one of several factors perpetuating conflict in eastern DRC by providing resources to armed groups.[72] In that report, we noted that some research suggests resource exploitation is a consequence of violent conflict, rather than its cause, and may result from the breakdown of the rule of law. Further, experts told us that armed groups often form because of grievances rather than a desire to control and benefit from minerals.

**Influence from Adjoining Countries**

Influence from adjoining countries, particularly Burundi, Rwanda, and Uganda, continues to exacerbate conflict in eastern DRC, according to experts we interviewed. Such influence can be linked to national security concerns, geopolitical aims, economic interests, and ethnic solidarity.

Some armed groups operating in eastern DRC emerged in opposition to the governments of Burundi, Rwanda, and Uganda—notably, Resistance for Rule of Law in Burundi-Tabara (RED-Tabara), National Liberation

[70]Issues concerning land ownership, access, and use contribute to conflict, according to USAID's 2021 DRC conflict assessment. The assessment notes that land disputes are often intertwined with ethnic tensions because of the lack of official documentation and the predominance of customary law over statutory law. See International Business and Technical Consultants, Inc., *USAID/DRC Conflict Assessment*, a report prepared at the request of the U.S. Agency for International Development (Feb. 5, 2021).

[71]GAO-22-105411.

[72]GAO, *The Democratic Republic of the Congo: U.S. Agencies Should Take Further Actions to Contribute to the Effective Regulation and Control of the Minerals Trade in Eastern Democratic Republic of the Congo*, GAO-10-1030 (Washington, D.C.: Sept. 30, 2010).

Forces (FNL), FDLR, and ADF.[73] In response, these countries have conducted military incursions into eastern DRC, some without the consent of the DRC government, according to experts. In late 2021, the Ugandan and Congolese militaries began joint operations against ADF.[74] In August 2022, the Burundian and Congolese militaries also began joint operations against RED-Tabara and FNL.

The Rwandan military has provided material, operational, and logistical support to M23 as well as conducted operations in the DRC, State reported on the basis of information provided by the UN Group of Experts.[75] According to State officials, M23 would fail without Rwanda's support. Experts associated Rwanda's support for M23 with factors such as natural resource exploitation and competition with other adjoining countries, especially Uganda.

- **Natural resource exploitation.** A mining belt with one of the world's major sources of tantalum is located in the DRC along its borders with Rwanda and Uganda. During the wars in the 1990s, the Ugandan and Rwandan militaries entered eastern DRC and seized control of mines to channel profits back to their countries, according to the U.S. Institute of Peace. Rwanda, Uganda, and, to a lesser extent, Burundi are the main conduits for smuggled gold from the DRC, while Rwanda has historically been the main exporter of smuggled Congolese tantalum, tin, and tungsten, according to the International Peace Information Service.
- **Geopolitical competition.** Experts said Rwanda may feel threatened by the developing Uganda–DRC relationship. For instance, the joint Uganda–DRC military operation against the ADF, together with a project to rehabilitate roads connecting the DRC and Uganda, has strained regional dynamics, according to the UN Group of Experts. In

[73]Some sources refer to FNL as the National Liberation Front.

[74]In response to the Ugandan military's pursuit, ADF has moved westward, further into the DRC, and ADF leadership decided to reduce attacks in the DRC and focus on attacks in Uganda, according to a December 2023 UN Group of Experts report.

[75]Department of State, Bureau of Democracy, Human Rights, and Labor, *2023 Country Reports on Human Rights Practices: Democratic Republic of the Congo* (Washington, D.C.: Apr. 22, 2024). In response to ongoing conflict, the East African Community announced it would deploy a regional force to eastern DRC to, among other things, support FARDC against armed groups. This force was deployed from November 2022 through December 2023, according to the UN Group of Experts. In December 2023, the Southern African Development Community announced it would deploy a regional force to do the same.

addition, the recent involvement of the Burundian military in the fight against M23 and the Rwandan military has exacerbated tensions between Rwanda and Burundi, according to the June 2024 UN Group of Experts report.[76]

### Ethnic Tensions

Tensions between various ethnic groups also continue to contribute to violence in the region, especially when combined with economic pressures and influence from adjoining countries, according to experts. For example:

- Tensions between ethnic Hutus and Tutsis continue to contribute to conflict in the DRC. After Rwanda's 1994 genocide, approximately 1 million Rwandans migrated into the DRC's eastern region, including Hutu elements that had participated in the genocide's planning and execution. According to UN and State officials, Rwanda perceives the DRC as having provided a safe haven for the FDLR and for original Hutu perpetrators of the genocide.
- Ethnic Lendus and Hemas fought in the Second Congo War, and tensions between them have also continued, according to the International Crisis Group. The armed group CODECO, which was formed from Lendu militias, has targeted Hema communities, according to the International Peace Information Service. However, experts have also attributed conflict between the Lendu and Hema communities in the northern part of DRC's Ituri Province to competition for land and resources rather than ethnic tensions.

Ethnicity-based rhetoric by leaders and the media can exacerbate conflict in eastern DRC. For example, in its 2023 Human Rights Report for the DRC, State observed that media reports of Rwanda's support for M23 have contributed to violence and discrimination against DRC populations thought to have Rwandan origins and against those perceived to support Rwanda or M23.[77]

### Weak Governance

Experts we interviewed said that weak governance, often combined with corruption, continues to contribute to conflict. In 2022, we reported that

[76]UN Group of Experts, *Final Report of the UN Group of Experts on the Democratic Republic of the Congo*, S/2024/432 (June 4, 2024).

[77]Department of State, *2023 Country Reports on Human Rights Practices: Democratic Republic of the Congo*.

the inability of weak and ineffective DRC government institutions to address citizens' grievances or negotiate access to resources, such as land, minerals, and local power, often leads to conflict, according to experts.[78] State's 2022 Integrated Country Strategy for the DRC notes that "decades of poor governance and elite predation have destroyed civic trust." State officials told us that the DRC's difficult business environment, combined with a weak judiciary, can impede investment and economic growth that could help alleviate citizens' economic pressures.

State's 2022 Integrated Country Strategy for the DRC also notes that the government's security forces, including FARDC and the national police, are generally ineffective. State officials told us that FARDC has little control over eastern DRC and lacks the capacity to create and implement a strategy to defeat M23 and other armed groups.

**Corruption**

Corruption continues to contribute to conflict in the DRC, according to experts. In January 2024, Transparency International reported that over the past 5 years, the General Inspectorate of Finance had uncovered numerous cases of mismanagement of public funds. A UN official explained that such corruption can impede the country's development, as public resources are captured by elites. However, public corruption cases either have not resulted in sanctions or have been overturned, according to State officials.

As we reported in 2022, some FARDC elements behave similarly to armed groups by charging illegal taxes and illegally exploiting natural resources, including gold, according to the UN Group of Experts.[79] The International Peace Information Service has found that FARDC units are the armed actors most often interfere in the mining sector and operate roadblocks.[80] A UN official observed that most FARDC soldiers are young, untrained, poorly paid, and poorly fed and that well-trained, well-equipped, well-paid forces would likely be less corrupt.

[78]GAO-22-105411.

[79]GAO-22-105411.

[80]International Peace Information Service. *Analysis of the Interactive Map of Artisanal Mining Areas in Eastern Democratic Republic of Congo 2023 Update.*

**Economic Pressures**

Economic pressures stemming from the region's poverty and unemployment also continue to contribute to conflict. As we reported in 2022, legitimate economic activity and employment opportunities in eastern DRC are generally lacking apart from the mining industry.[81] High unemployment leads to increased recruitment by armed groups, according to a MONUSCO official. For example, the UN Group of Experts reported in December 2022 that M23 recruitment tactics have included promises of employment.[82] Further, a USAID official said that disarmament, demobilization, and reintegration processes have failed to provide employment opportunities to former combatants. Without employment, former combatants may be more likely to return to armed groups.

## SEC Disclosure Rule Has Encouraged Transparency, but Efforts to Trace Minerals' Origins Face Significant Obstacles

### SEC Disclosure Rule Has Encouraged Companies to Improve Due Diligence and Transparency about Minerals' Sources

The SEC disclosure rule has encouraged responsible sourcing efforts overall, according to industry stakeholders. Stakeholders said that the rule has raised awareness about minerals' origins by requiring end-user companies to better understand their supply chains and conduct due diligence, especially when sourcing from conflict-affected and high-risk areas. An industry stakeholder explained that the rule has helped make companies aware that their supply chains can affect conditions on the ground. Some companies report on their efforts to responsibly source nonconflict minerals because the SEC disclosure rule has raised public awareness about responsible sourcing in general and the companies want to respond to their customers' concerns, according to industry stakeholders.

Moreover, industry stakeholders and conflict minerals experts told us that the SEC disclosure rule has raised international awareness about the risks of minerals' benefiting armed groups and contributing to conflict in

[81]GAO-22-105411.

[82]UN Group of Experts, *Midterm Report of the Group of Experts on the Democratic Republic of the Congo* (2022).

the DRC. A UN official said that the SEC rule and the publicity surrounding it has helped bring attention to the problem of conflict minerals in the DRC. DRC government officials we interviewed in Kinshasa expressed appreciation for the rule's effect in drawing attention to conflict in the DRC and minerals' role in the conflict.

In response to concerns about conflict minerals, industry associations and others have developed traceability schemes to track the minerals' chain of custody. A 2020 report examining the effects of these schemes on mining communities found that households in areas where such schemes operated reported less interference by undisciplined elements of FARDC.[83] Households in these areas also reported a greater presence, and more frequent activities, of state mining agents responsible for oversight, technical support, and taxation.

Incident reports from these traceability schemes can provide information about companies' supply chain risks, according to industry stakeholders. For instance, one organization that facilitates traceability efforts in the DRC, Rwanda, and Burundi reported identifying, in a single year, 1,613 alleged incidents related to due diligence, chain of custody, corruption, security forces or armed groups, human rights, or health and safety. The organization categorized 159 of these incidents as highly serious, requiring immediate attention and possible disengagement.

According to the organization, incidents indicating supply chain risks include traceability or procedural issues related to establishing minerals' chain of custody, bribes that influence statements of minerals' origins, and illegal behavior by armed groups or state security officials. For example, the organization reported being informed by a DRC government agency that a Mai Mai armed group had fired shots around a mine and burnt the house of a mining police officer, kidnapped his wife and children, and stolen several motorcycles, allegedly demanding that the mining police leave the area. (Fig. 7 shows a mining police officer at a mine entrance in the DRC.)

[83]The 2020 report also noted that the households in these areas did not report feeling more secure, despite the withdrawal of the military and influx of state agents and mining police. Project on Resources and Governance et al., *Evaluating Due Diligence Programs for Conflict Minerals: A Matched Analysis of 37 Mines in Eastern DRC* (Los Angeles and Antwerp: Nov. 2020).

**Figure 7: Mining Police Officer at a Mine Entrance in the DRC**

Legend: DRC = Democratic Republic of the Congo.
Source: International Peace Information Service. | GAO-25-107018

There are also indications that industry efforts have improved transparency about conflict minerals' sourcing. For example, in May 2024, an industry association, citing a UN Group of Experts report, alerted smelters in its assurance program and others about the risk of armed group interference in the minerals supply chain from the DRC and Rwanda. The industry association noted that, in accordance with international due diligence guidelines, any reasonable risks of direct or indirect support to armed groups through minerals sourcing necessitates mitigation efforts through disengagement.

Industry stakeholders explained that the SEC disclosure rule provides an incentive for companies to require compliance from their suppliers, including smelters and refiners, and to consider removing noncompliant suppliers from their supply chains. Some filing companies indicated in their disclosures that they may cease doing business with suppliers they believe pose a risk of supporting armed groups in the DRC or adjoining countries. In addition, some companies indicated that such provisions were included in their conflict minerals policies. However, representatives said that removing a supplier from a company's supply chain can be challenging and slow, particularly if the company is several tiers removed from the problematic supplier. As we reported in 2020, companies have indicated that identifying viable alternatives to problematic suppliers and

can be difficult and establishing new relationships can be costly and time consuming to.[84]

Some companies may use their leverage to secure cooperation from suppliers and ensure that their mineral purchases do not provide financing to armed groups, according to company representatives we interviewed. They explained that the largest companies have the purchasing power needed for such leverage.

## Efforts to Trace Origins of Conflict Minerals, Especially Gold, Face Obstacles That May Limit Efficacy

Efforts to trace the origins of conflict minerals, particularly gold, face implementation challenges associated with cost and smuggling that may limit the efforts' efficacy, according to experts and reports by nongovernmental organizations. Minerals from mine sites validated as "green" or "blue" through the International Conference on the Great Lakes Region's regional certification mechanism may be exported legally from the DRC and its adjoining countries, including Rwanda and Uganda, according to the mechanism's manual.[85] However, implementing this regional certification mechanism exceeds some countries' economic capacity, according to a DRC government official.[86]

Experts we interviewed explained that validating mine sites as free of conflict or of interference from armed groups is time consuming and expensive. Many mines are located in remote, potentially insecure areas, and coordinating teams to visit and inspect them is difficult, according to

[84]GAO, *Conflict Minerals: Actions Needed to Assess Progress Addressing Armed Groups' Exploitation of Minerals*, GAO-20-595 (Washington, D.C.: Sept. 14, 2020).

[85]The International Conference on the Great Lakes Region is an intergovernmental organization with 12 member states—Angola, Burundi, Central African Republic, Democratic Republic of the Congo, Kenya, Republic of Congo, Rwanda, South Sudan, Sudan, Tanzania, Uganda, and Zambia. The conference's regional certification mechanism uses a color-based validation scheme, in which a "green" mine meets all standards (i.e., no conflict or child labor) and can produce minerals for certified export. A "yellow" mine has infractions of one or more important criteria but can produce minerals for certified export; the mine operator has 6 months to resolve the infractions. A "red" (uncertified) mine has grave infractions of one or more critical criteria and remains red until a further inspection shows the infractions to have been resolved. A red mine is prohibited from producing minerals for a minimum of 6 months. In 2019, the conference added "blue" to its validation scheme. A "blue" mine can produce minerals for certified export if the exporter has conducted an on-the-ground risk assessment that finds the mine meets all standards, publishes this risk assessment publicly, and shares it with the member state's government and the conference's secretariat.

[86]DRC government officials told us the DRC was the only country in the International Conference to trace minerals from mine to export and noted their concerns that other Conference members were not taking sufficient actions to fully implement traceability programs.

experts. According to a DRC government official, inspection teams visited only about two-thirds of the country's ASM sites from 2017 through 2021, and arranging follow-up visits to observe conditions is onerous.[87] Moreover, training certification auditors is costly, according to the official.[88]

Although traceability schemes exist for tantalum, tin, and tungsten, tracing chains of custody for gold—which is more portable, valuable, and fungible—is more difficult. Experts told us that these properties of gold, in addition to the DRC's high taxes and fees on gold relative to neighboring countries', incentivize smuggling. In 2021, IMPACT, a nongovernmental organization, estimated the cost—including the official 3.5 percent export tax—of legally exporting and internationally transporting gold sourced from ASM sites in the DRC at 12 percent or 19 percent of the exports' value, depending on the province from which it is exported.[89] Although the DRC's tax structure may appear to align or compete with those of adjoining countries, legal gold exports from the DRC are subject to additional provincial-level taxes and fees, according to IMPACT.[90]

The illicit gold trade is estimated to generate more than a billion dollars annually, according to USAID. In 2019, the UN Group of Experts reported that most gold from ASM sites was smuggled out of the DRC through

[87]A green mine must be recertified as such annually. Yellow mines should be re-inspected within 6 months. Blue mines can retain their status for 3 years.

[88]USAID's Sustainable Mine Site Validation project aimed to strengthen methods to validate ASM tantalum, tin, tungsten, and gold sites as conflict-free by, among other things, building the capacity of DRC Ministry of Mines personnel, including training mine inspectors.

[89]IMPACT based these estimates—generated by its Just Gold Project—on gold extracted and exported. The project found that export taxes for this gold totaled a maximum of 12 percent when exported from Ituri Province and 19 percent when exported from South Kivu Province. The project also found that the percentage of taxes, charges, and fees was related to the amount of gold being exported. An exporter of more gold incurs smaller taxes, charges, and fees per gram. IMPACT reported that exporters of industrially mined gold paid the official 3.5 percent per gram for export taxes, with no additional taxes or fees. However, IMPACT calculated that taxes, fees, and transport costs add 18 to 22 percent to the cost of exporting ASM gold from Ituri Province, making it more expensive than the global purchase price. IMPACT, *The Just Gold Project: Lessons for the Future of Artisanal Gold in the Democratic Republic of the Congo* (Ottawa: March 2021).

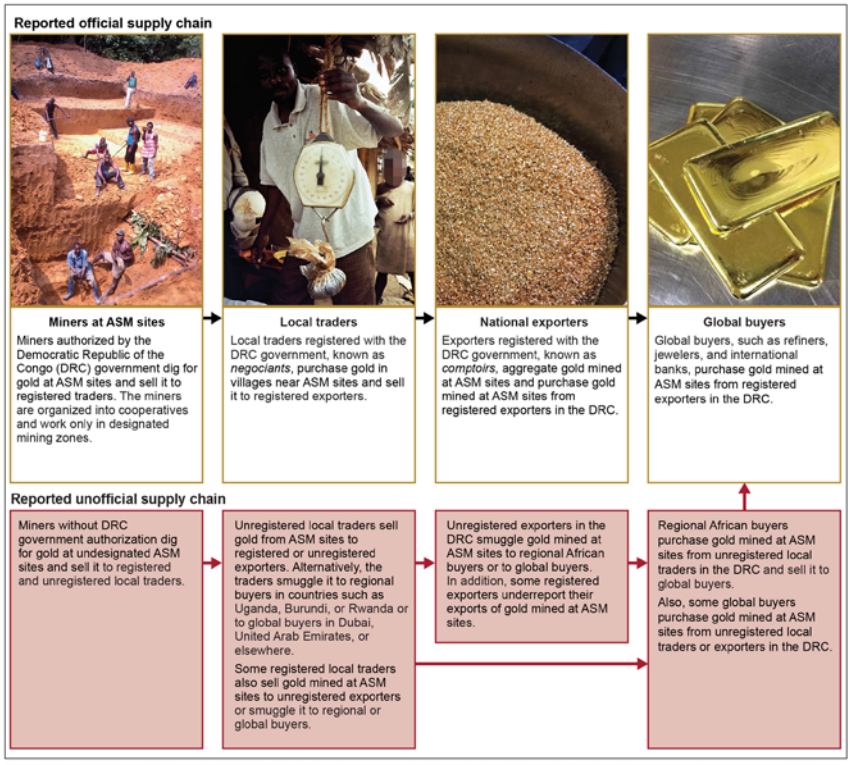
[90]For example, according to IMPACT, Uganda charges a royalty on the value of the amount mined rather than an export tax. In 2017, Uganda eliminated this royalty on gold to encourage more gold producers to bring their gold to the country's largest refinery, according to IMPACT.

neighboring countries, usually destined for Dubai, United Arab Emirates.[91] In 2017, we reported that, according to USAID and UN reports and experts, gold illegally mined in or exported from the DRC can enter the official supply chain when unregistered local traders or exporters sell it to regional buyers in Burundi, Rwanda, or Uganda or global buyers in Dubai.[92] As we also reported in 2017, some factors that contribute to smuggling include corruption, inadequate infrastructure, and limited government control over the remote areas where gold from ASM sites is primarily produced, according to reports and DRC government officials. Figure 8 illustrates the official and unofficial supply chains for gold from ASM sites in the DRC.

[91]UN Group of Experts, *Final Report of the Group of Experts on the Democratic Republic of the Congo*, S/2019/469 (June 2019). The DRC government and United Arab Emirates-based companies created Primera Gold with the aim of combatting fraud and smuggling in the ASM gold sector, according to the company's website. See Primera Gold DRC SA, "Welcome to Primera Gold DRC SA," accessed May 20, 2024, https://primeragoldrdc.com. The 25-year contract, signed in 2022, gives Primera Gold the right to export ASM gold from the DRC, with a preferential tax rate to make sales to the company more attractive, according to experts.

[92]GAO, *Conflict Minerals: Information on Artisanal Mined Gold and Efforts to Encourage Responsible Sourcing in the Democratic Republic of the Congo*, GAO-17-733 (Washington, D.C.: Aug. 23, 2017). As we reported in 2017, USAID has worked with IMPACT, Tetra Tech, and the DRC government to implement a traceability scheme for ASM gold. More recently, USAID's Clean Gold project sought to scale up exports and sales of conflict-free ASM gold by developing market linkages between mining cooperatives and responsible gold supply chain actors.

**Figure 8: Illustration of Reported Official and Unofficial Supply Chains for Gold from Artisanal and Small-Scale Mining (ASM) Sites in the DRC**




Sources: GAO analysis of reports by U.S. agencies, the United Nations (UN), and nongovernmental and international organizations and of interviews with government and nongovernment stakeholders; photos by (left to right) International Peace Information Services (IPIS), IPIS, GAO, GAO. | GAO-25-107018

Notes: Stakeholders we interviewed included, among others, officials of the U.S. and DRC governments and the UN Group of Experts; representatives of international and nongovernmental organizations; and representatives of gold refineries, auditing firms, local traders, and jewelers in Dubai, United Arab Emirates.

"Official" refers to aspects of the supply chain where participants register or report to the DRC government. "Unofficial" refers to aspects of the supply chain where participants do not register or report to the DRC government.

Moreover, conflict minerals experts and industry stakeholders expressed concerns about the efficacy of traceability schemes—noting, for example, the persistence of problems such as fraud, corruption, and smuggling despite these schemes. Smugglers are able to circumvent traceability schemes, even those for tantalum, tin, and tungsten, according to experts. For example, the UN Group of Experts has reported evidence of smugglers' fraudulently using documentation issued by traceability schemes to launder illicit material into the official supply.

In April 2022, Global Witness, an international nongovernmental organization, reported that the most widely used traceability scheme had permitted tantalum, tin, and tungsten from unvalidated mines, including some occupied by armed groups, to be tagged as coming from validated mines in North Kivu and South Kivu Provinces. In December 2023, the UN Group of Experts reported that due diligence for the tantalum, tin, and tungsten sectors in a territory in North Kivu Province had collapsed.[93] Armed groups widely interfered with the mining of these minerals, according to the report. In June 2024, the UN Group of Experts reported that armed groups, including M23, continued to control the minerals trade in this territory.[94] The report noted that some of these minerals were smuggled to Rwanda.[95]

[93]UN Group of Experts, *Midterm Report of the Group of Experts on the Democratic Republic of the Congo* (2023).

[94]UN Group of Experts, *Final Report of the Group of Experts on the Democratic Republic of the Congo* (2024).

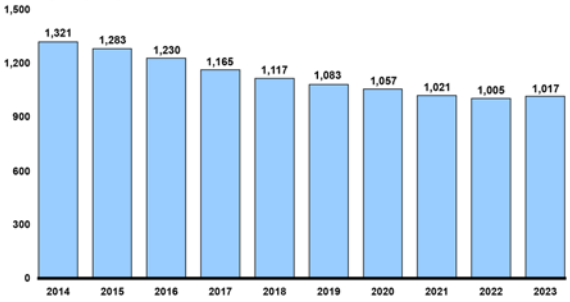
[95]Rwanda recorded a 50 percent increase in tantalum exports in 2023 compared to 2022, according to the UN Group of Experts.

## More Companies Filed Disclosures in 2023, but Many Were Unable to Determine Conflict Minerals' Origins

### Number of Companies Filing Conflict Minerals Disclosures Increased for First Time since 2014

The number of companies that filed conflict minerals disclosures in 2023 was higher than the number that filed in the previous year—the first time this had occurred since 2014, when companies began filing the disclosures in response to the SEC rule (see fig. 9). In 2023, 1,017 companies filed a conflict mineral disclosure with SEC—12 more than in 2022.[96]

**Figure 9: Total Number of Companies That Filed Conflict Minerals Disclosures with Securities and Exchange Commission, 2014–2023**




Source: GAO analysis of Securities and Exchange Commission filings. | GAO-25-107018

As figure 9 shows, the number of annual filings dropped steadily during the first 9 years, from 1,321 in 2014 to 1,005 in 2022. According to SEC

[96]Each company submits a single Form SD annually about its sourcing of necessary conflict minerals.

officials, the decrease in the number of disclosures may have resulted from a variety of factors, including corporate mergers and acquisitions, transitions from public to private corporate ownership, and changes in business practices by companies that had previously filed. The decrease in disclosures may also reflect some companies' perception that they are unlikely to face enforcement action by SEC for noncompliance with the disclosure rule, according to industry stakeholders including a firm that services filing companies.[97]

## Percentage of Companies Reporting RCOI Determinations about Conflict Minerals' Origins Has Risen Significantly

Our analysis of a generalizable sample of 100 disclosures filed in 2023 found that a significantly larger percentage of companies reported preliminary determinations, based on RCOIs, of their conflict minerals' origins than in 2015.[98] Companies comply with the SEC disclosure rule by conducting an RCOI to determine whether any of the conflict minerals in their products may have originated in covered countries and may not be from recycled or scrap sources. Although the rule does not prescribe an RCOI process, many companies described conducting RCOIs in similar ways. For example, one of the filings we reviewed stated that the company had asked its suppliers to collect information about the presence and sourcing of conflict minerals used in the products supplied. We found that an estimated 97 percent of companies reported conducting an RCOI in 2023.[99] This percentage is similar to the estimated percentages that have reported conducting an RCOI since companies began filing in 2014.

Of companies that filed disclosures in 2023, an estimated 63 percent reported preliminary determinations of their conflict minerals' origins after conducting an RCOI—14 percentage points higher than the percentage that reported such determinations in 2015. This statistically significant increase has been driven by an increase in the percentage of companies that preliminarily determined their conflict minerals may have originated

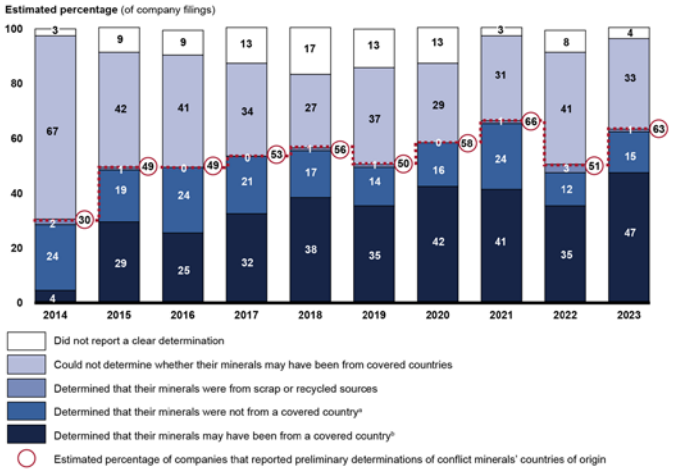
[97]SEC staff previously told us that the commission could initiate enforcement action if companies do not report on their due diligence in accordance with the rule. See GAO-23-106295.

[98]We did not include 2014 in our analysis of past RCOI determinations because it was the first year in which SEC required companies to file conflict mineral disclosures and because the 2014 determinations differed substantially from those in subsequent years.

[99]Our review of a generalizable sample of 100 companies' 2023 disclosures found that an estimated 71 percent of companies reported using tin in their products, an estimated 68 percent reported using gold, an estimated 59 percent reported using tantalum, and an estimated 57 percent reported using tungsten. Some companies did not specify the conflict minerals they used.

from covered countries. The percentage of companies that preliminarily determined their conflict minerals were not from covered countries or were from scrap or recycled materials has remained generally consistent since 2015.[100] Figure 10 shows the percentages of companies that reported various determinations about their conflict minerals' sources after conducting RCOIs from 2014 through 2023.

**Figure 10: Estimated Percentages of Companies Reporting Various Determinations after Conducting "Reasonable Country-of-Origin Inquiries" about Conflict Minerals' Sources, 2014–2023**




Source: GAO analysis of U.S. Securities and Exchange Commission (SEC) filings. | GAO-25-107018

Notes: To comply with the SEC's conflict minerals disclosure rule, companies conduct a "reasonable country-of-origin inquiry" to preliminarily determine whether conflict minerals used in their products

[100]Because we followed a probability procedure based on random selections, our annual sample is one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (e.g., plus or minus 10 percentage points). This interval would contain the actual population value for 95 percent of the samples we could have drawn. We expected that 5 percent of the confidence intervals from the samples in any particular year would not reflect the true percentage of companies making such a determination.

may have originated in covered countries—that is, the Democratic Republic of the Congo and adjoining countries—and may not be from recycled or scrap sources. 77 Fed. Reg. 56274 (Sept. 12, 2012). "Adjoining countries" is defined in section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217 (2010). For the purposes of the SEC disclosure rule, SEC refers to the DRC and its adjoining countries as "covered countries."

Data shown are estimates with a margin of error of no more than plus or minus 10 percentage points at the 95 percent confidence level.

Percentages shown for each year may not sum to 100 because of rounding.

[a]A determination that conflict minerals are not from a covered country means that the filing company determined either that (1) the conflict minerals in its products did not originate in a covered country or (2) it had no reason to believe the conflict minerals originated in a covered country.

[b]A preliminary determination that conflict minerals may have been from a covered country means the company conducted a reasonable country-of-origin inquiry and determined that it knew or had reason to believe the conflict minerals in its products originated in a covered country.

Our analysis of disclosures filed by companies that conducted an RCOI in 2023 found the following:

- An estimated 47 percent of the companies reported having preliminarily determined that conflict minerals in their products may have come from covered countries.
- An estimated 33 percent of the companies reported that after conducting an RCOI, they were preliminarily unable to determine whether any of their conflict minerals may have originated in covered countries.
- An estimated 15 percent of the companies reported having determined that the conflict minerals in their products did not come from covered countries.
- An estimated 1 percent of the companies reported having determined that all conflict minerals in their products came from scrap or recycled sources.[101]

## Most Companies That Performed Due Diligence in 2023 Could Not Determine Origin of Conflict Minerals

A majority of the companies that conducted due diligence to determine the source of their conflict minerals reported being unable to make such a determination. The SEC disclosure rule requires a company to exercise due diligence on the source and chain of custody of its conflict minerals and provide a conflict minerals report, if its RCOI gives reason to believe that any necessary conflict minerals may have originated from covered countries and may not have come from recycled or scrap sources. Our

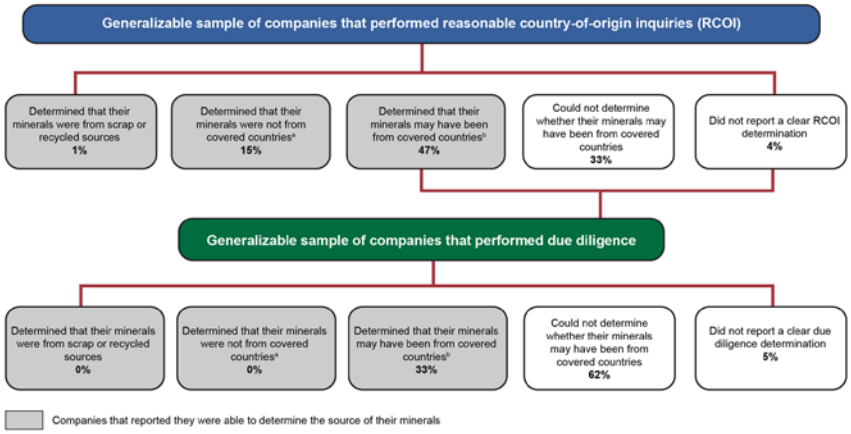
[101]An estimated 4 percent of companies did not report a clear RCOI determination. According to SEC staff, companies that reported conducting due diligence are not required to report an RCOI determination. All companies in our sample that did not report a clear RCOI determination reported conducting due diligence.

analysis of disclosures filed in 2023 found that an estimated 94 percent of the filing companies conducted due diligence after conducting an RCOI.[102] This percentage is higher than the percentages that conducted due diligence in 2022 and 2021, although the differences are not statistically significant.

As figure 11 shows, our analysis determined that an estimated 62 percent of companies that conducted due diligence reported being ultimately unable to determine whether the conflict minerals in their products originated in covered countries. An estimated 33 percent of companies that conducted due diligence determined that their minerals may have originated in covered countries, and an estimated 5 percent did not clearly report a determination. None of the companies that conducted due diligence reported that their minerals were not from covered countries, and none reported that their minerals came from scrap or recycled sources.

[102]We also found that an estimated 94 percent of the companies that conducted due diligence in 2023 reported using the Organisation for Economic Co-operation and Development's (OECD) due diligence framework. The framework includes five steps: (1) establish strong company management systems, (2) identify and assess risks in the supply chain, (3) design and implement a strategy to respond to identified risks, (4) carry out an independent third-party audit of smelters' and refiners' due diligence practices, and (5) report annually on supply chain due diligence. See Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 3rd ed. (Paris: OECD Publishing, 2016).

**Figure 11: Estimated Percentages of Companies Reporting Various Determinations of Conflict Minerals' Sources on the Basis of RCOIs and Due Diligence in 2023**




Source: GAO analysis of U.S. Securities and Exchange Commission (SEC) filings submitted in 2023. | GAO-25-107018

Notes: To comply with the Securities and Exchange Commission's (SEC) conflict minerals disclosure rule, companies conduct a "reasonable country-of-origin inquiry" to preliminarily determine whether conflict minerals used in their products may have originated in covered countries—the Democratic Republic of the Congo and adjoining countries—and may not be from recycled or scrap sources. 77 Fed. Reg. 56274 (Sept. 12, 2012). "Adjoining countries" are defined in section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. No. 111-203, § 1502(1), 124 Stat. 1376, 2217 (2010). For the purposes of the SEC disclosure rule, SEC refers to the DRC and its adjoining countries as "covered countries."

We randomly sampled 100 of the 1,017 Forms SD submitted in 2023 to create estimated results generalizable to the population of all companies that filed in response to the SEC disclosure rule. Data shown are estimates with a margin of error of no more than plus or minus 10 percentage points at the 95 percent confidence level. In addition to the data shown, an estimated 0 percent of companies that performed due diligence determined that their minerals were not from covered countries, and an estimated 0 percent reported that all of their conflict minerals were from scrap or recycled sources.

[a]A determination that conflict minerals were not from a covered country means the company determined that (1) the conflict minerals in its products did not originate in a covered country or (2) it had no reason to believe the conflict minerals originated in a covered country.

[b]A determination that conflict minerals may have been from a covered country means the company determined that it knew or had reason to believe the conflict minerals in its products originated in a covered country.

Of companies that performed due diligence, 15 percent reported that they were able to determine whether conflict minerals in their products benefitted or financed armed groups. This percentage is higher than the percentage that reported this information in 2022 and 2021, although the difference is not statistically significant. All companies that reported such a determination also reported that their conflict minerals did not benefit armed groups.

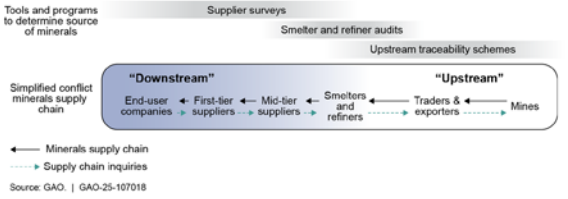
## Most Companies Used Standard Tools and Programs in 2023 to Support Due Diligence Efforts, but Limitations Persisted

Most companies that submitted disclosures in 2023 used standardized tools and programs to determine the sources of their conflict minerals and to assess the risk that the trade of these minerals had benefitted armed groups, according to our analysis and industry stakeholders. These tools and programs generally fall into one of three categories:

- **Supplier surveys.** Companies may survey their suppliers to trace conflict minerals back through the supply chain to the smelters or refiners that processed them.
- **Smelter and refiner audit programs.** Companies may use smelter and refiner audit programs to ascertain whether the processing smelters and refiner sourced the conflict minerals responsibly.
- **Upstream traceability schemes.** Companies may use these schemes to trace minerals through the upstream portion of their supply chain—that is, from the mines, traders, and exporters to the smelters and refiners. They may also use the schemes to identify risks such as human rights abuses and interference by armed groups.

Figure 12 shows these three categories of tools and programs in relation to a simplified conflict minerals supply chain.

**Figure 12: Tools and Programs That Companies May Use to Determine Sources of Conflict Minerals, in Relation to Simplified Supply Chain**




Source: GAO. | GAO-25-107018

Supplier Surveys

To collect information about the presence and source of conflict minerals in their products, some companies survey the suppliers in the downstream portion of their supply chains. According to our analysis, an estimated 95 percent of companies reported surveying suppliers. Among companies that reported using a supplier survey, 93 percent indicated using the Conflict Minerals Reporting Template.[103]

However, using supplier surveys to determine minerals' origins may involve challenges, according to industry stakeholders and filings we reviewed. Our analysis of companies' 2023 disclosures found that an estimated 66 percent of companies identified navigating complex supply chains or not receiving product-level information as a challenge. For example:

- Collecting supply chain information, including through a supplier survey, can be difficult for companies that are many tiers removed from the processing smelter or refiner, according to industry stakeholders. We have previously reported that, according to an industry stakeholder, companies may work with about 1,000 suppliers throughout many tiers in the supply chain.[104] Industry stakeholders told us that some supply chains, such as those for electronics components, feature arrangements in which products cycle between two or three facilities repeatedly before advancing to the next stage, making it difficult to identify minerals' chain of custody.
- Some suppliers completing the survey provide information about all of their products, regardless of whether they supplied these products to the company requesting the survey, according to industry stakeholders. Consequently, the company may receive sourcing information that is not relevant to its products.
- Suppliers' lack of response to survey requests may hamper the use of surveys. An industry stakeholder told us that some distributors did not complete the surveys, arguing they did not need to participate because they were not the manufacturer. Our analysis of companies' 2023 disclosures found that among companies that conducted a survey, an estimated 42 percent reported a response rate of less than 100 percent.

[103]The Conflict Minerals Reporting Template was developed by the Responsible Minerals Initiative, which provides tools and resources to facilitate companies' sourcing decisions and to support responsible sourcing from conflict-affected and high-risk areas.

[104]GAO-21-531.

- Suppliers may respond to survey requests but provide incomplete or erroneous information. Our analysis of 2023 disclosures found that an estimated 43 percent of companies identified incomplete or inaccurate survey responses as a challenge. Some companies that reported receiving such responses described directing the suppliers to training resources to improve their understanding of reporting requirements.

Smelter and Refiner Audit Programs

To better understand risks associated with smelters and refiners, many companies refer to information provided by smelter and refiner audit programs. These programs provide companies with reasonable assurance that conflict minerals sourced from a particular smelter or refiner did not benefit or finance armed groups. As we reported in 2016, smelters and refiners represent a "choke point" in the supply chain because a limited number of such facilities process conflict minerals worldwide.[105]

Some smelter and refiner audit programs, such as the Responsible Minerals Assurance Process (RMAP), maintain lists of facilities found to conform to the program's responsible sourcing standards.[106] Filing companies often cross-reference audit program conformance lists against lists of smelters and refiners in their supply chain to determine which facilities source responsibly. According to our analysis, an estimated 79 percent of companies that filed in 2023 reported using data from a smelter and refiner audit program, such as the RMAP, as part of their efforts to determine the source of conflict minerals in their products. Further, an estimated 42 percent of companies reported the number or percentage of smelters and refiners in their supply chains that conformed to the RMAP standards.

However, industry stakeholders said that the withdrawal of some smelters and refiners from audit programs creates uncertainty about supply chain risks. An industry stakeholder told us that some smelters and refiners argue they do not need to participate in audit programs because the SEC disclosure rule does not apply to many companies that purchase conflict minerals directly from smelters and refiners. Another stakeholder said downstream companies that conduct due diligence may be putting less

[105]GAO, *SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups*, GAO-16-805 (Washington D.C.: Aug. 25, 2016).

[106]The Responsible Minerals Initiative's RMAP uses independent third-party assessments of smelters' or refiners' management processes and sourcing practices to validate the smelters' and refiners' conformance with the program's standards for responsible mineral procurement.

pressure on smelters and refiners to participate in the audit programs. On the other hand, we heard that some companies continue to require conformance from smelters and refiners. For example, one company reported removing from its supply chain all processing facilities that did not conform to RMAP standards.

In addition to providing lists of conforming processing facilities, some audit programs provide information about the countries from which smelters and refiners source minerals. This information can help companies identify the countries from which they ultimately sourced their conflict minerals and, as relates to the rule, determine whether they sourced their minerals from any covered countries.

However, because smelters and refiners consider such details to be commercially sensitive, organizations conducting audit programs may limit the information they share with downstream companies, according to industry stakeholders. To address sensitivity concerns, some organizations conducting audit programs categorize certain countries as high-risk or low-risk sources, among other categories. The organizations then designate risk categories for sources used by a particular smelter or refiner but do not identify the countries from which minerals are sourced. A stakeholder told us that other organizations conducting audit programs provide an aggregated list of all countries from which the smelters and refiners in their audit programs source minerals, so that a company cannot know the specific countries where its minerals originated.

### Upstream Traceability Schemes

Many companies' due diligence processes involve upstream traceability schemes. Some schemes involve a "bag-and-tag" process, in which minerals from a validated conflict-free mine site are placed in a bag with an identifying tag. This documentation establishes the minerals' chain of custody from the mine site to the point of export and facilitates the collection of data that may be useful for evaluating upstream risks.

These schemes can provide companies with information about the minerals' chain of custody through the upstream supply chain. For example, some upstream traceability schemes collect data on incidents, such as improper chain-of-custody protocol, interference by armed groups, or use of forced labor, that occur at the mine sites and in the supply chains the schemes monitor. Upstream traceability schemes may release these data publicly, including the location and a brief summary of the incident, or send risk alerts to members of the scheme when incidents occur.

In general, smelters and refiners, rather than the companies required to file with SEC, participate in upstream traceability schemes.[107] Some smelters may use data provided by upstream traceability schemes to meet audit programs' requirements, according to industry stakeholders. However, stakeholders told us that several factors limit the effectiveness of upstream traceability schemes. For example:

- Smuggling persists despite the presence of traceability schemes, according to stakeholders.
- Upstream traceability schemes provide less coverage of supply chains for gold than for tantalum, tin, and tungsten because of the challenges involved in tracing gold, according to stakeholders.
- Some countries limit access to mine sites, which can hinder efforts to assess upstream risks, according to an industry stakeholder.
- Mine locations are often remote and difficult to access, and visiting them can therefore be expensive, according to experts.

Industry stakeholders told us that blockchain technology may support upstream traceability efforts.[108] According to an industry expert, this technology can allow companies to compile supply chain information, including mine-level sourcing data, in the form of a secure digital trail. However, some industry stakeholders noted that the use of blockchain technology as a due diligence tool has potential weaknesses, such as its reliance on the accuracy of information initially entered in the system. Further, some stakeholders noted that blockchain technology can be expensive and that few companies may be willing to take on this cost.

According to an industry stakeholder, upstream traceability efforts specific to gold have been enhanced by the development of a "geoforensic passport"—a scientific tool used to validate the claimed origin of any

[107]Membership in traceability schemes is not exclusive to smelters and refiners and may include mining cooperatives, trading companies, or manufacturing companies, among others.

[108]A blockchain is a type of distributed ledger technology consisting of digital information (blocks) recorded in a public or private database in the format of a distributed ledger (chain). The ledger permanently records the history of transactions that take place among the participants in the network in a chain of cryptographically secured blocks. Distributed ledger technology allows users across a computer network to verify the validity of transactions, potentially without a central authority.

mined gold and monitor supply chain risks.[109] The tool generates a complex georeferenced profile of the composition and characteristics of gold by analyzing samples of gold ore from mine sites. Gold in the supply chain can then be compared to these georeferenced profiles to authenticate its claimed origin.

## Some Companies Report Limited Information, Citing SEC Staff Guidance, while Others Report More Than Disclosure Rule Requires

Companies' disclosures and industry stakeholders indicated that guidance issued by SEC staff in 2014 and 2017 may have contributed to some companies' limiting the information in their conflict minerals disclosures or choosing not to file.[110] We found that of the 1,017 companies that submitted conflict minerals disclosures in 2023, approximately 1 percent (seven companies) submitted an independent private sector audit (IPSA).[111] Conversely, 11 percent (114 companies) reported that, pursuant to SEC guidance, the company did not file an IPSA of their due diligence activities. None of the 100 companies that submitted the disclosures in our sample labeled their products "DRC conflict free," and therefore, according to the 2014 guidance, none were required to file an IPSA.[112]

Some industry stakeholders told us that companies have interpreted the 2017 SEC staff guidance to mean that SEC will not enforce penalties related to the rule. Consequently, some companies may choose not to comply with the conflict minerals disclosure requirements. Conversely, some stakeholders said they had not observed reporting changes as a result of the 2017 SEC guidance. For example, an industry stakeholder told us that companies continue reporting information about conflict minerals because of market pressure and fear of losing business.

[109]Metalor Technologies and the University of Lausanne developed the tool in collaboration and, according to a Metalor press release, unveiled it in March 2021. See Metalor, "Press Release: 'Geoforensic Passport' to Validate the Origin of Every Gold Doré," Mar. 16, 2021, https://metalor.com/geoforensic-passport-to-validate-the-origin-of-every-gold-dore/.

[110]As we reported in 2021, SEC staff stated that the 2017 staff guidance is not binding on the commission, which can initiate enforcement action if companies do not report on their due diligence in accordance with the rule. See GAO-21-531.

[111]We analyzed the disclosures of all 1,017 companies that reported in 2023, to determine the number that conducted an IPSA. To conduct this analysis, we searched the content of all submitted filings to find any mention of "IPSA" or "independent private-sector audit." We then reviewed those filings to identify those that included IPSAs.

[112]One of the companies that submitted the disclosures in our sample also submitted an IPSA.

Although some companies may limit the information they report, others have reported more than the SEC conflict minerals disclosure rule requires—for example, collecting information about minerals, such as cobalt, that are not covered by the rule. We found that of the 1,017 companies that submitted a disclosure in 2023, 42 companies (about 4 percent) reported due diligence efforts related to cobalt and 12 companies (about 1 percent) reported using the Extended Minerals Reporting Template, an extension of the Conflict Minerals Reporting Template.[113]

Moreover, an industry stakeholder told us that some companies reported on the conflict-affected and high-risk areas defined in the European Union Conflict Mineral Regulation.[114] Industry stakeholders noted that some companies may share this broader information with customers directly or post it on their websites rather than report it in their SEC disclosures.

[113]The Responsible Minerals Initiative developed the Extended Minerals Reporting Template for the collection of due-diligence information in the cobalt and mica supply chains. According to the initiative, it formally launched the template in October 2021.

[114]The EU Conflict Mineral Regulation, also known as Regulation (EU) 2017/821, came into effect in January 2021. According to the European Commission, the regulation aims to ensure that EU importers of tin, tungsten, tantalum, and gold meet international responsible sourcing standards set by the OECD. 2021 O.J. (L130) 1.

## Sexual Violence Persists in DRC and Adjoining Countries, and Governments Have Taken Some Steps to Address It

Sexual violence in the DRC and adjoining countries remains a significant concern,[115] according to surveys and reports published by the UN, USAID, State, academic researchers, and others since April 2022.[116] U.S. agencies and the UN have also documented some steps that the DRC and adjoining countries have taken to address sexual violence as well as factors that have hindered their progress.

### Population-Based Data about Rates of Sexual Violence Are Limited, but Case-File Reports Suggest Rates Have Risen

#### Prior-Year Data Show Consistent or Decreasing Rates of Sexual Violence in DRC, Rwanda, and Uganda, but New Data Are Not Available

Available data from population-based Demographic and Health Surveys (DHS) indicate that the incidence of sexual violence in the DRC, Rwanda,

[115]Our analysis of information about sexual violence in adjoining countries focused on the three countries that adjoin eastern DRC—Rwanda, Uganda, and Burundi. We last reported on sexual violence in the DRC and adjoining countries in September 2022, discussing information that had become available from April 2020 through March 2022 (see GAO-22-105411). For our current report, we reviewed existing population-based survey data and new information that became available from April 2022 through March 2024. For more information about our scope and methodology, see appendix I.

[116]Two types of information quantify sexual violence in eastern DRC and adjoining countries: (1) data from population-based surveys and (2) case-file data, such as data collected by international entities, law enforcement agencies, or medical service providers on sexual violence victims. Of these two types, data from population-based surveys provide a more appropriate basis for deriving a rate of sexual violence because such surveys are conducted with random sampling techniques and their results are generalizable to the target population from which a representative sample was surveyed. Several factors make case-file information unsuitable for estimating rates of sexual violence. For example, because case-file data are not aggregated across various sources and because the extent to which various reports overlap is unclear, it is difficult to obtain complete data or a sense of magnitude from case files. However, case-file data can provide indicators that sexual assaults are occurring in certain locations.

and Uganda has remained consistent or decreased since 2007.[117] The most recent DHS data for the DRC were published in 2014; for Rwanda, in 2021; and for Uganda, in 2018. The only DHS data for Burundi were published in 2017. We did not identify any new reports or other population-based surveys providing comprehensive rates of sexual violence in eastern DRC and the three countries that adjoin it—Burundi, Rwanda, or Uganda—that had been published since our September 2022 report.[118]

Figure 13 shows information from DHS reports published from 2007 through 2021 about the incidence of sexual violence in the DRC, Burundi, Rwanda, and Uganda. The host country governments conducted these population-based surveys with technical assistance from ICF.[119] Five surveys found statistically significant decreases.[120]

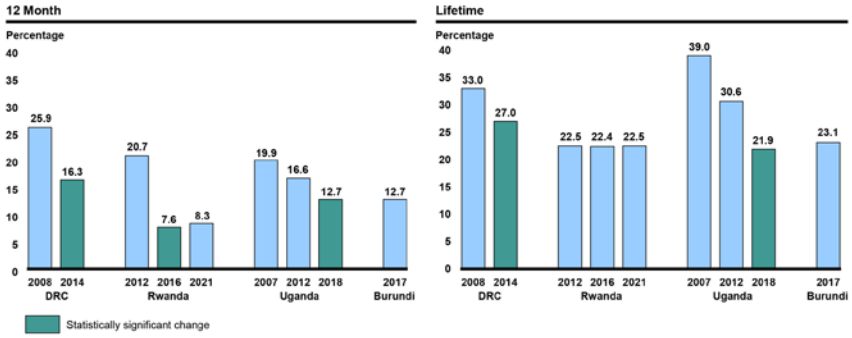
[117]The DHS Program, which USAID launched in 1984, has provided technical assistance for more than 450 surveys in over 90 countries, according to USAID. The program collaborates with survey implementers, national governments, and international organizations to collect, analyze, and disseminate accurate and representative demographic and health data in countries worldwide. Because only one DHS survey has been conducted for Burundi since 2007, we cannot comment on changes in the rate of sexual violence in the country over time.

[118]We have reported on sexual violence rates derived from DHS reports and other population-based surveys for the DRC, Burundi, Rwanda, and Uganda since 2011. See the list of related GAO products at the end of this report.

[119]ICF, a global consulting and technology services provider, is the prime contractor for the DHS Program, according to USAID.

[120]As we reported in 2022, ICF calculated the statistical significance of the increase for Rwanda between 2016 and 2021, and we calculated statistical significance for all other years. See GAO-20-595 and GAO-22-105411. Statistical significance was calculated at the 95 percent confidence level for all years.

**Figure 13: Demographic Household Survey (DHS) Data Showing Percentages of Women in the DRC, Burundi, Rwanda, and Uganda Who Reported Experiencing Sexual Violence in Previous 12 Months (Left) and in Their Lifetime (Right), 2007–2021**




Legend: DRC = Democratic Republic of the Congo.

Source: GAO analysis of DHS data. I GAO-25-107018

Notes: The data shown are the percentages of women, aged 15 to 49 years, who responded to the survey in each of the four countries and reported having experienced sexual violence in the previous 12 months (left) and in their lifetime (right). The years shown are the years of publication of the most recent DHS reports, as of May 2024, for each country since 2007. These data are generalizable to the populations of the respective countries. We did not calculate the statistical significance in the change in sexual violence rates in Uganda between 2007 and 2012 because the necessary data were not available. Statistical significance was calculated at the 95 percent confidence level.

## Reports and Experts Described Continuing Sexual and Gender-Based Violence in DRC and Continued Abuses in Adjoining Countries since 2022

The UN, State, USAID, and others, including experts we interviewed, have documented additional information about cases of sexual violence and gender-based violence as well as other abuses in the DRC and the three countries adjoining eastern DRC since we last reported on this topic in 2022.

**UN Agencies Addressing Sexual Violence in the DRC and Adjoining Countries**

The **United Nations (UN) Joint Human Rights Office**, created in February 2008, consists of the MONUSCO Human Rights Division and the former Office of the UN High Commissioner for Human Rights in the Democratic Republic of the Congo (DRC) and functions in response to that division's and former office's mandates.

The **UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict**, which was established by resolution in 2009, consists of the UN Team of Experts on Rule of Law and Sexual Violence in Conflict as well as UN Action Against Sexual Violence in Conflict, a network of 25 UN entities.

The **UN Protection Cluster in Democratic Republic of the Congo**, established in 2006, is led by the UN High Commissioner for Refugees and comprises the Gender-Based Violence Area of Responsibility for the DRC and other areas of responsibility.

The **UN Population Fund** leads the Gender-Based Violence Area of Responsibility for the DRC, which coordinates the collection and validation of gender-based violence incident data.

Source: GAO analysis of UN documents. | GAO-25-107018

## DRC

According to the UN and numerous other sources, gender-based violence remains a concern in the DRC.[121] In eastern provinces, the main risk factors for gender-based violence are armed conflict and armed groups, internal displacement, and food insecurity, according to the UN.[122] In addition, the UN reported that economic precariousness contributes to survival sex and prostitution among women and girls in internally displaced and returnee populations.

The resurgence of M23 in eastern DRC, which has prompted people to flee conflict areas, has triggered an increase in the number of internally displaced persons and a resulting increase in sexual violence, according to sexual violence experts.[123] More specifically:

- In 2023, the UN High Commissioner for Refugees reported an increased number of brothels in North Kivu Province.[124] According to the report, mapping of certain territories in North Kivu Province, including the city of Goma, identified 145 brothels, 67 of them located in camps for internally displaced persons.
- A 2023 State cable noted that the UN and nongovernmental organizations have reported allegations that some FARDC members or relatives own and operate certain brothels established in North Kivu Province since the M23 resurgence.
- An expert on sexual violence from a USAID implementing partner in eastern DRC told us that families in camps for internally displaced persons use sex with young girls and women as currency to acquire resources.

Further, the UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict reported that MONUSCO had

[121]UN reporting on gender-based violence includes both sexual violence and other types of nonsexual violence against women.

[122]Protection Cluster République Démocratique Du Congo, *Cluster Protection DR Congo: Annual Report 2023*, accessed Apr. 5, 2024, https://globalprotectioncluster.org/publications/1820/reports/annual-report/rapport-annuel-du-cluster-protection-en-republique.

[123]According to the UN Office of the High Commissioner, people forced to flee or leave their homes, particularly in situations of armed conflict, are generally subject to heightened vulnerability in a number of areas, including sexual violence.

[124]Global Protection Cluster, *Sexual Exploitation of Minors in Brothels and Survival Sex in North-Kivu* (ReliefWeb, June 30, 2023).

documented 701 confirmed cases of conflict-related sexual violence affecting women, young girls, and men in 2022 as well as 733 confirmed cases in 2023.[125] Most violations occurred in the context of clashes between armed groups and FARDC or retaliatory attacks against civilians by Congolese security forces or armed groups, according to the reports.

In addition, State's 2022 and 2023 Human Rights Reports for the DRC described significant human rights issues.[126] These issues include sexual violence as a tactic of war, perpetrated by FARDC soldiers, the Congolese national police, the Congolese national intelligence agency, and armed groups.[127] Up to 18 percent of conflict-related sexual violence in the first 6 months of 2022 and approximately 17 percent of such violence in the first 6 months of 2023 was attributable to Congolese security forces, according to the reports.

Moreover, 119,394 survivors of gender-based violence were treated in 2022 and 122,960 survivors were treated in 2023, according to the Global Protection Cluster's Gender-Based Violence Area of Responsibility for the DRC.[128] Women and girls accounted for 96 percent of survivors who received treatment in 2022, and 70 percent of these survivors had been raped. In a 2023 report, Médecins Sans Frontières (MSF)—also known

[125]For 2022 data, see UN Security Council, *Report of the Secretary-General: Conflict-Related Sexual Violence* (June 2023); for 2023 data, see UN Security Council, *Report of the Secretary-General: Conflict-Related Sexual Violence* (April 2024). According to the UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "conflict-related sexual violence" refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls, or boys that is directly or indirectly linked to a conflict.

[126]Department of State, Bureau of Democracy, Human Rights, and Labor, *2022 Country Reports on Human Rights Practices: Democratic Republic of the Congo* (Washington, D.C.: Mar. 20, 2023); *2023 Country Reports on Human Rights Practices: Democratic Republic of the Congo* (Washington, D.C.: Apr. 22, 2024). The reports for the DRC do not enumerate specific cases of sexual violence.

[127]According to State, gender-based violence includes domestic and intimate partner violence; sexual violence; workplace violence; child, early, and forced marriage; female genital mutilation or cutting; and other forms of such violence.

[128]Protection Cluster République Démocratique Du Congo, *Protection Cluster Annual Report, Year 2022: Democratic Republic of Congo*, accessed April 6, 2024, https://globalprotectioncluster.org/publications/reports/annual-report; *Cluster Protection DR Congo: Annual Report 2023*. The 2022 and 2023 reports collected data from an additional four provinces in the DRC. According to the UN Population Fund, the Gender-Based Violence Area of Responsibility, in collaboration with the DRC Ministry of Gender and service providers, coordinates the collection of incident data, which are validated through a multi-step process to ensure accuracy.

as Doctors without Borders—stated that the number of patients who accessed care for sexual violence in 2022 remained high in DRC provinces where MSF had dedicated projects for victims. Over 10,000 victims of sexual violence in the DRC received medical or psychological care from MSF during 2022.[129] However, continued armed conflict and intercommunal violence posed major challenges by limiting humanitarian groups' ability to reach vulnerable populations exposed to gender-based violence, according to the Global Protection Cluster's 2023 Gender-Based Violence Area of Responsibility report for the DRC.

Representatives of eight of the nine organizations that administer programs addressing sexual violence in the region told us during interviews that they had seen an increase in cases of sexual violence in 2024, particularly conflict-related sexual violence in eastern DRC. According to one of these experts, various armed groups use sexual violence as a form of collective punishment for communities suspected of supporting opposing armed groups.

**Burundi**

State's 2022 and 2023 Human Rights Reports for Burundi described significant human rights concerns, including sexual violence.[130] Both reports stated that rape and other forms of sexual violence were serious problems in the country and that the government did not enforce laws against rape consistently.

In addition, a 2023 annual report from EngenderHealth—the implementing partner of USAID's GIR'ITEKA (Be Respected) Health Activity, a program intended to reduce sexual violence in Burundi—documented the provision of services to 5,864 survivors of sexual violence. Of these survivors, 86 percent were female.

[129]Médecins Sans Frontières, *International Activity Report 2022* (July 13, 2023).

[130]Department of State, Bureau of Democracy, Human Rights, and Labor, *2022 Country Reports on Human Rights Practices: Burundi* (Washington, D.C.: Mar. 20, 2023); *2023 Country Reports on Human Rights Practices: Burundi* (Washington, D.C.: Apr. 22, 2024). The reports for Burundi do not enumerate specific cases of sexual violence.

**Rwanda**

State's 2023 Human Rights Report for Rwanda described significant human rights concerns, including sexual violence.[131] State's 2022 report observed that although no laws criminalize sexual orientation or consensual same-sex conduct between adults, law enforcement officials were previously reported to have abused LGBTQI+ persons, targeting transgender persons in particular with sexual violence. The Rwandan government did not report investigating these cases.

State's 2023 report noted that the Rwandan government had supported M23 forces that committed human rights abuses in eastern DRC, including conflict-related sexual violence, and had not prosecuted these abuses.

**Uganda**

State's 2022 and 2023 Human Rights Reports for Uganda described significant human rights concerns, including sexual violence.[132] For example, according to the 2022 report, human rights organizations and political opposition parties had documented rape and sexual abuse of detainees committed by government agents. Additionally, State and USAID reported that the Ugandan government's Anti-Homosexuality Act in 2023 expressly criminalizes consensual same-sex sexual conduct between adults and prescribes the death penalty for "aggravated homosexuality" and life imprisonment for "homosexuality."[133] According to State, the act did not address "corrective rape" of LGBTQI+ persons, which, according to a Ugandan civil society organization, may be inflicted

[131]Department of State, Bureau of Democracy, Human Rights, and Labor, *2022 Country Reports on Human Rights Practices: Rwanda* (Washington, D.C.: Mar. 20, 2023); *2023 Country Reports on Human Rights Practices: Rwanda* (Washington, D.C.: Apr. 22, 2024). The reports for Rwanda do not enumerate specific cases of sexual violence.

[132]Department of State, Bureau of Democracy, Human Rights, and Labor, *2022 Country Reports on Human Rights Practices: Uganda* (Washington, D.C.: Mar. 20, 2023); *2023 Country Reports on Human Rights Practices: Uganda* (Washington, D.C.: Apr. 22, 2024). The reports for Uganda do not enumerate specific cases of sexual violence.

[133]U.S. Agency for International Development, Office of Press Relations, "U.S. Urges Uganda to Reconsider Dangerous Law Targeting LGPTQI+ that Jeopardizes Assistance," press release, May 30, 2023; Department of State, Bureau of Democracy, Human Rights, and Labor, *2023 Country Reports on Human Rights Practices: Uganda* (Washington, D.C.: Apr. 5, 2024).

on lesbian and transgender women in attempts to alter their sexual identity.

In a 2023 report, MSF reported treating 1,760 survivors of sexual violence in the seven regions of Uganda where it provided assistance in 2022.[134] The report also noted that MSF sent a team to southwest Uganda to set up a health center and assist Congolese refugees from North Kivu Province.

### Recently Published Academic Research Discusses Sexual Violence in the DRC and Adjoining Countries

Academic researchers have continued to publish articles and studies about sexual violence in the DRC and adjoining countries since we last reported in 2022.[135] We reviewed 63 abstracts and, from these, identified six articles and studies relevant to sexual violence in the DRC and adjoining countries. These studies discuss recurring concerns, such as lack of access to support services for victims of sexual violence; stigmatization; and the multigenerational negative impacts of sexual violence on women, men, and their families. For example, a quantitative study conducted in eastern DRC discusses perceptions of rape as a weapon of war as well as rape's impact on communities. The study found that over 70 percent of rapes took place at the victims' homes in the presence of family members and were perpetrated by members of the military or armed groups.[136]

For a population-based study conducted in Uganda, the authors interviewed male refugees, primarily from North and South Kivu Provinces in eastern DRC, about their experiences with sexual violence, among other indicators. The study found that a quarter of the men had been raped, half of these victims had been raped on multiple occasions, and about three quarters of the victims had been gang raped.[137]

[134]Médecins Sans Frontières, *International Activity Report 2022*.

[135]GAO-22-105411.

[136]Mapendo M. Koya and Emmanual K. Mpinga, "Perceptions of the Rape Crisis in the Eastern Democratic Republic of Congo: A Community-Based Approach Using an Opportunistic Design," *African Journal of Reproductive Health*, vol. 26, no. 4 (April 2022): 42–56.

[137]The study also reported experiences of nonsexual violence, such as beatings and torture. Wolfgang Hladik et al., "Sexual and Nonsexual Violence and Mental Health Among Male Refugees from the Democratic Republic of Congo Residing in Kampala, Uganda: A Population-Based Survey," *Medicine, Conflict and Survival*, vol. 39, no. 4 (Oct. 2023) 389–411.

## DRC and Adjoining Countries Have Taken Some Steps to Address Sexual Violence since 2022, but Several Factors Have Hindered Progress

The governments of the DRC, Burundi, Rwanda, and Uganda have taken some steps to address sexual violence since we last reported in 2022, but several challenges—underreporting, limited capacity, and limited political will—have hindered their efforts.

### Steps Countries Have Taken to Address Sexual Violence

**DRC**

State's 2022 Human Rights Report for the DRC observed that the national police had increased training to address sexual and gender-based violence, providing training to mining police and community policing programs. In 2023, the national police and FARDC continued nationwide efforts to eliminate gender-based violence perpetrated by state security forces, including reducing impunity for such offenses, according to State's 2023 Human Rights report. However, the report noted that few efforts were made to implement a national action plan against gender-based violence.

Recently, the DRC government has taken actions to strengthen accountability for high-level military officials, according to UN officials. For example:

- Many FARDC unit commanders signed commitments not to perpetrate sexual violence, following a UN Joint Communiqué in 2013 and an addendum in 2019, according to UN officials. In December 2022, the DRC government adopted legislation that defined the implementation plan for the Joint Communiqué, established legal protection for victims and witnesses of sexual violence, and established a reparations fund for victims, according to the UN.[138]
- The DRC government, through a military court supported by the UN, has prosecuted members of state security forces and armed groups for committing acts of sexual violence, according to UN officials. In 2023, DRC judicial authorities prosecuted 47 members of the Congolese military and police forces and 20 members of armed groups in cases involving conflict-related sexual violence, according to

[138]United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict, *Interim Narrative Report Democratic Republic of the Congo*, accessed May 1, 2024, https://mptf.undp.org/.

a UN report.[139] In May 2023, the DRC national court prosecuted the crime of forced pregnancy, according to the report. The prosecution resulted in the conviction and life imprisonment of a former leader of a Mai Mai group for crimes against humanity.

**Burundi**

According to State's 2022 Human Rights Report for Burundi, the country's National Independent Commission on Human Rights documented an increased number of human rights abuses, including gender-based violence, relative to previous years when the commission did not document any such abuses. The commission used its authority to summon senior officials and order corrective action, according to State's report.

**Rwanda**

State's 2022 Human Rights Report for Rwanda observed that, as in previous years, the government conducted a high-profile public awareness campaign against gender-based violence and child abuse. According to the report, the government supported a network of one-stop centers and hospital facilities that offered integrated police, legal, medical, and counseling services to victims of gender-based violence and child abuse. Additionally, the report stated that training addressing gender-based violence was required for police and military at all levels.

State's 2023 Human Rights Report for Rwanda also noted that the police and military were required to undergo gender-based violence training. Further, according to the report, the Rwandan police maintained free gender-based violence hotlines, a public outreach program, and staffed police stations nationwide with officers trained to handle gender-based violence cases.

**Uganda**

State's 2022 Human Rights Report for Uganda observed that Uganda's Minister of Gender, Labor, and Social Development had complained that judicial officers denied justice to victims of gender-based violence by choosing to pursue out-of-court settlements or by delaying adjudication. Subsequently, according to the report, judicial officials introduced special

[139]United Nations Security Council, *Conflict-Related Sexual Violence: Report of the Secretary-General*, S/2024/292 (April 4, 2024).

month-long court sessions to hear exclusively gender-based violence cases and increase victims' access to justice.

According to State's 2023 Human Rights Report for Uganda, local government leaders collaborated with women's rights activists to identify practitioners of female genital mutilation and hold them accountable. Local government leaders also worked with civil society organizations to identify girls at risk of mutilation and relocate them to shelters.

### Challenges That Have Hindered Steps to Address Sexual Violence

State has documented credible reports that investigation of, and accountability for, sexual violence were lacking in each of these countries in 2022 and 2023. For example, according to State, Ugandan authorities did not effectively enforce the law in cases of rape, and local media reported that alleged perpetrators were often local government officials, police, or intelligence and military officers.[140] Although rape is criminalized in the DRC and Burundi, the governments did not consistently enforce the laws, according to State.[141]

In addition, State, USAID, and the UN have reported challenges to documenting sexual violence and providing services to survivors. These challenges include absence of faith in government institutions, according to State;[142] fear of authorities, according to USAID;[143] and poor infrastructure in rural areas as well as fear of stigmatization and retaliation, according to the UN.[144] The UN report states that limited infrastructure is a long-standing challenge that prevents survivors of sexual violence from accessing services, and the MONUSCO withdrawal from eastern DRC has exacerbated the challenge. Moreover, sexual violence experts described police and judicial capacity in North Kivu as

[140]Department of State, *2023 Country Reports on Human Rights Practices: Uganda* (April 22, 2024).

[141]Department of State, *2023 Country Reports on Human Rights Practices: Democratic Republic of the Congo; 2023 Country Reports on Human Rights Practices: Burundi* (April 22, 2024). In contrast, State reported the Rwandan government handled rape cases as a judicial priority. Department of State, *2023 Country Reports on Human Rights Practices: Rwanda* (April 22, 2024).

[142]Department of State, *2022 Country Reports on Human Rights Practices: Uganda.*

[143]USAID, *USAID/Burundi Integrated Country Strategy Gender Analysis Report* (Aug. 10, 2022).

[144]United Nations Security Council, *Conflict-Related Sexual Violence: Report of the Secretary-General.*

deficient and said that weak state governance in eastern DRC provinces results in impunity for perpetrators of sexual violence.

## Concluding Observations

The DRC has faced years of ongoing violence that has resulted in significant hardships for the Congolese people. A complex patchwork of armed groups and the Congolese security forces have contributed to this violence, battling each other and committing human rights violations against civilians. The DRC's neighboring countries have also continued to participate in the conflict both directly and indirectly. Sensing that the exploitation and trade of conflict minerals from the DRC was helping to finance this conflict, Congress, through the Dodd-Frank Act, required SEC to promulgate a conflict minerals disclosure rule. Proponents of the rule that SEC later finalized believed the disclosure process would contribute to greater transparency about conflict minerals' origins and would pressure companies to ensure that the mining and trade of minerals in their supply chains were not benefiting armed groups in the DRC.

However, 10 years after companies first submitted disclosures under the SEC rule, conflict persists and evidence indicates that the rule has not contributed to a measurable improvement in peace and security in the DRC. This result is likely driven by the fact that although conflict minerals play an important role in the conflict's dynamics, they are but one of a number of interdependent factors. Experts on the DRC have noted that even if the SEC rule had successfully cut off armed groups' access to revenues from the minerals trade, conflict would persist until other entrenched issues—such as a lack of economic opportunities, lack of capacity in the DRC government, corruption, ethnic tensions, and geopolitical competition between the DRC and its neighbors—were more comprehensively addressed. Further, even if armed groups' revenues from the conflict minerals trade were reduced, evidence indicates that such groups would find other means of financing themselves, such as extorting residents of the areas they control.

The U.S. government has noted its commitment to partner with the DRC government in efforts to address the range of factors contributing to the conflict. Promoting transparency in conflict minerals supply chains and encouraging the private sector to adopt reliable due diligence systems will likely continue to be important aspects of these efforts. However, the accumulation of evidence since SEC implemented its rule indicates that the rule alone has not been sufficient to meaningfully improve peace and security for the Congolese people.

## Agency Comments and Our Evaluation

We provided a draft of this report to SEC, State, and USAID for review and comment. SEC and USAID provided comments that we have summarized below and reproduced in appendixes V and VI, respectively. SEC, State, and USAID also provided technical comments that we incorporated as appropriate.

**SEC**. In its comments, SEC raised concerns about several aspects of our findings, methodology, and analysis. We addressed these concerns by making certain adjustments to our report; however, these adjustments did not materially affect our findings.

The following summarizes SEC's comments and our evaluation of them. (See app. V for more details.)

- SEC commented that many of our report's conclusions about violence in the DRC and adjoining countries are improperly attributed to the SEC conflict minerals disclosure rule rather than to Section 1502 of the Dodd-Frank Act. The act requires us to assess the effectiveness of section 13(p) of the Securities Exchange Act of 1934, as added by section 1502(b) of the Dodd-Frank Act, in promoting peace and security in the DRC and adjoining countries. Section 13(p) requires SEC to promulgate regulations requiring disclosure about certain conflict minerals, which the SEC did when it adopted its conflict minerals disclosure rule in 2012. Therefore, we assessed the effectiveness of the disclosure rule in promoting peace and security in the DRC and adjoining countries. Once the act was enacted in 2010, companies, governments, and others began to take action in anticipation of the rule. To capture all of the rule's effects, we focused our analysis on the period following July 2010—the month when the Dodd-Frank Act was enacted—as do most relevant peer-reviewed empirical studies. In discussing our analysis and its results in the report, we clearly state this methodological choice and its rationale.
- SEC commented that our statistical analyses are flawed, lack transparency, and inappropriately infer causation. We based these analyses on four peer-reviewed studies, and we met with the authors of all four studies to gather further information about their methodologies, limitations, and results. In addition, we consulted with other GAO economists and technical experts to validate our analytical approach. Conducting empirical analysis to assess the effect of particular policies or actions in complex, real-world situations is inherently challenging and comes with limitations; however, we maintain that our model is appropriately designed and sufficiently robust to support the findings presented in our report. In addition, we

have conducted a range of checks to assess the consistency of our results across different scenarios and methodological assumptions.

To further strengthen our analysis, we made certain changes to our model in response to SEC's technical comments. For example, we revised our main treatment variable to more closely reflect similar, peer-reviewed, empirical studies. We also added new robustness tests, including limiting the time period to understand the potential effect of increased violence beginning in 2017. We believe the changes SEC proposed helped strengthen our analysis. However, these changes did not significantly affect our results.

In response to SEC's comment about the need for further transparency, we have included the statistical model's underlying equations and summary statistics in appendix II. Finally, in response to SEC's comments, we have reviewed and adjusted our presentation of our analyses' results, where appropriate, to make certain that the statements are proportionate to the evidence.

- SEC commented that our report selectively cites studies that support our conclusions and omits or inaccurately references studies that reach different conclusions. Our report cites quantitative data from other reports and findings from empirical studies that we determined were relevant and objective and that met our evidentiary standards. Other studies that SEC cited in its comments did not meet these standards or were not relevant to our analysis.
- SEC commented that our report fails to fully discuss the limitations of the ACLED data we used in our analysis. We used these data because they are the most comprehensive conflict data available. Notwithstanding, we agree that the data have limitations, as we note throughout the report. We accounted for the evolution of the measurement of violence in ACLED's data over time by including a robustness test designed to determine the effect of violence reports contributed by ACLED's primary partner in the DRC—an important local reporting organization. This robustness test supported our findings. In addition, in response to SEC's comment, we expanded our discussion of the potential effects of measurement error in the ACLED data, including our discussion of the robustness test examining the potential effect of the data from ACLED's primary DRC partner. We also added more information about the ACLED data's limitations and the reasons we used the data.

**USAID**. In its comments, USAID stated that it concurred with the observations in our report and appreciated our extensive work. In

addition, USAID noted its commitment to incorporating the knowledge gained from our work into its programming. USAID also highlighted a number of ways that the observations in our report are already built into its strategies and programming for the DRC and the region more broadly.

We are sending copies of this report to the appropriate congressional committees, the Chair of the Securities and Exchange Commission, the Secretary of State, the USAID Administrator, and other interested parties. In addition, the report is available at no charge on the GAO website at https://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VII.

Kimberly M. Gianopoulos
Managing Director, International Affairs & Trade

*List of Committees*

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The Honorable Richard Neal
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House of Representatives

# Appendix I: Objectives, Scope, and Methodology

This report examines (1) what can be determined about the effectiveness of the Securities and Exchange Commission's (SEC) disclosure rule in promoting peace and security in the Democratic Republic of the Congo (DRC) and adjoining countries, (2) how companies responded to the disclosure rule when filing with SEC in 2023, and (3) what is known about the incidence of sexual violence in the DRC and adjoining countries since April 2022.[1]

To examine what can be determined about the disclosure rule's effectiveness in promoting peace and security, we collected and analyzed data from Armed Conflict Location and Event Data (ACLED) about violent events from 2004—after the Second Congo War ended—through 2022. ACLED data are based on media reports, reports from nongovernmental and international organizations, selected social media accounts, and information provided through partnerships with local conflict observatories. We used these data because ACLED, which gathers nonpublic information from local conflict observatories in addition to information from media reports, is more likely to capture events that are not covered by the media. However, while local organizations gather primary data and have coverage that is more reflective of local realities, these initiatives are often limited in scope, according to ACLED. Additionally, ACLED states that media reports may not capture all events. Consequently, ACLED may underreport events such as violent events and battles.

To assess the reliability of ACLED data, we reviewed related documentation, interviewed knowledgeable officials, and conducted electronic data testing. We found these data to be sufficiently reliable for the purpose of describing conflict trends in eastern DRC from 2004 through 2022. We excluded data for 2023 because one of the local organizations supplying conflict information to ACLED had ceased reporting; as a result, ACLED data on events in the DRC for 2023 are not comparable to such data for previous years.

[1]The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act defines "adjoining country" as a country that shares an internationally recognized border with the DRC. Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2213-18 (2010). When SEC issued its conflict minerals disclosure rule, Angola, Burundi, the Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia shared an internationally recognized border with the DRC. 77 Fed. Reg. 56, 274, 56,275 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1. For the purposes of the disclosure rule, SEC refers to these countries, along with the DRC itself, as "covered countries."

We designed statistical models to assess the effectiveness of the SEC disclosure rule in promoting peace and security. We reviewed relevant empirical studies that we identified by searching the internet and databases, including Scopus, Proquest Sociology Collection, and Social SciSearch®, to conduct a literature review. We also asked experts to recommend empirical studies. On the basis of these searches and recommendations, we identified four peer-reviewed studies designed to measure the effect of the SEC disclosure rule on violence in the DRC and adjoining countries. We interviewed the studies' lead authors regarding their methodological choices, including the types of statistical model, time periods, and geographical and temporal units used. We also discussed the studies' results and the models' data sources and potential limitations with the studies' authors.

To evaluate the effectiveness of the SEC disclosure rule in promoting peace and security in the DRC, we assessed the rule's effect on the number and occurrence of violent events in the country's eastern region.[2] We used a fixed-effects regression model to compare the number and occurrence of such events before and after the enactment of the Dodd-Frank Act in July 2010 in territories that were likely to be most or less likely affected by the SEC rule.[3] Although SEC finalized its disclosure rule in August 2012, our analysis uses the enactment of the Dodd-Frank Act as a proxy for the rule because companies, governments, and others began to take steps after the act's enactment in anticipation of the disclosure rule.

We examined the occurrence and number of violent events from July 2004 through December 2022. We used data about

- violent events and battles from ACLED;

[2]For the purpose of this analysis, we defined "violence" and "violent events" as comprising battles, explosions and remote violence, or violence against civilians. We defined eastern DRC as the second-level administrative units (i.e., territories and cities, which this report refers to collectively as territories) included in the Department of State's 2011 "Conflict Minerals Map," which identifies the mining areas affected by armed groups. The map covers Ituri, North Kivu, and South Kivu Provinces and parts of Upper Katanga, Lualaba, Upper Lomami, Maniema, Tanganyika, Tshopo, Lower Uele, and Upper Uele Provinces.

[3]Like the related empirical literature, we defined the territories likely to be most affected by the SEC rule as those in Maniema, North Kivu, and South Kivu Provinces, where the President of the DRC announced a ban on mining from September 2010 until March 2011, and those containing at least one mine with geocoordinates in State's 2011 Conflict Minerals Map.

- locations of artisanal and small-scale tantalum, tin, tungsten, and gold mines from the International Peace Information Service;
- the DRC's subnational administrative boundaries (specifically, the second administrative level), provided by the United Nations (UN) Office for the Coordination of Humanitarian Affairs from the Humanitarian Data Exchange;
- monthly rainfall totals and the average of monthly totals from 1982 through 2022, provided by the Climate Hazards group at the University of California, Santa Barbara, from the Climate Hazards Group InfraRed Precipitation with Stations; and
- monthly prices of tantalum, tin, tungsten, and gold from the Bloomberg Terminal.

To assess the reliability of these data, we reviewed related documentation and interviewed knowledgeable officials as necessary. We also conducted electronic testing of the data pertaining to mine locations, administrative boundaries, and rainfall. We found the data to be sufficiently reliable for the purposes of conducting this statistical analysis of the rule's effect on the number and occurrence of violent events in the DRC.

Our model isolated the effects of the SEC disclosure role from factors that remained constant or slowly evolved over time, such as governance, ethnic tensions, and the presence of natural resources. Similarly, the model accounted for time-specific factors that affected the territories in eastern DRC equally, such as macroeconomic conditions and the proximity to elections. Further, the model controlled for certain factors that varied across territories and time that we identified as likely affecting violence, such as mineral prices, historical violence, proximity of violence, and precipitation patterns. (Other variables for which our model did not control may also have affected violence in the DRC.) For further details of this analysis, including potential limitations, see appendix II.

To evaluate the effectiveness of the SEC disclosure rule in promoting peace and security in the countries adjoining the DRC, we assessed the rule's effect on levels of violence in eight of the nine adjoining countries from August 2010 through August 2015. We used a synthetic control model, which created a data-driven, artificial control country to represent each country's counterfactual experience without the SEC disclosure rule. Specifically, we compared the number of violent events that occurred in each of the eight countries—Angola, Burundi, the Central African Republic, the Republic of the Congo, Rwanda, Tanzania, Uganda, and

Zambia—during the 5 years after the enactment of the Dodd Frank Act with the number of violent events that would have occurred without the SEC disclosure rule. We excluded South Sudan, the ninth adjoining country, because it did not exist before the act's July 2010 enactment. We ended our analysis with August 2015 because the quality of the synthetic control degrades over time.

To create each artificial control country, we used data for January 2004 through August 2015 showing

- violent events, from ACLED;
- ethnic fractionalization, from a 2003 study;[4] and
- average gross domestic product levels and total natural resource rents as a percentage of gross domestic product, from the World Bank's World Development Indicators.

To assess the reliability of these data, we reviewed related documentation and conducted electronic data testing as necessary. We determined that the data were sufficiently reliable for the purposes of conducting this statistical analysis of the rule's effect on the levels of violence in DRC's adjoining countries. For further details of this analysis, see appendix III.

To obtain qualitative information about the effectiveness of the SEC disclosure rule, we conducted fieldwork in Kinshasa and conducted 15 semistructured interviews with experts on conflict minerals and the DRC. We identified the experts for these interviews by reviewing our prior work on the topics, conducting background research, and using an expert referral process. We selected these experts from a variety of organizations, including research institutions and international NGOs, to ensure a range and cross-section of views. Eight of the 15 interviews included more than one participant. The results of these interviews are not generalizable.

We interviewed U.S. government officials based in Kinshasa from the U.S. Department of State's Eastern Congo Unit and the U.S. Agency for International Development's (USAID) Economic Growth Office. We also interviewed DRC government officials from the Ministry of Mines and Ministry of Regional Integration. In addition, we interviewed officials from the UN Organization Stabilization Mission in the DRC. Further, we

[4]Alberto Alesina et al., "Fractionalization," *Journal of Economic Growth*, vol. 8 (2003).

interviewed DRC and conflict minerals experts from three research institutions—two based in Europe and one in the DRC—and from two nongovernmental organizations—one based in Europe and one in Washington, D.C. We interviewed additional State and USAID officials based in Washington, D.C., to obtain background information.

In addition, we reviewed reports and other sources to identify other relevant findings about conflict minerals and peace and security in the DRC. For example, we reviewed the midterm and annual reports by the UN Group of Experts from 2022 through 2024, reports from nongovernmental organizations such as the International Peace Information Service and International Crisis Group, and information from the U.S. government and UN. We also reviewed the findings of the four empirical studies we selected to design our statistical models. We selected these reports, information sources, and empirical studies after determining that they were relevant and objective and met our evidentiary standards.

To examine how companies responded to the SEC disclosure rule when filing in 2023, we analyzed disclosures downloaded from SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database.[5] To verify the completeness and accuracy of the EDGAR database, we reviewed relevant documentation, interviewed knowledgeable SEC officials, and reviewed data reliability assessments from our prior reports that used data from EDGAR for similar purposes. We determined that the EDGAR database was sufficiently reliable for identifying the universe of companies' conflict minerals disclosures.

We downloaded the specialized disclosure forms, known as Forms SD, from EDGAR filed by 1,017 companies in 2023.[6] Companies filed the forms, along with related conflict minerals reports in some instances, to

[5]Conflict minerals disclosures filed with SEC in a given year contain information about conflict minerals used in the previous year. For this report, we reviewed disclosures that companies filed in 2023 about conflict minerals used in 2022. All years cited in this report are calendar years unless otherwise noted.

[6]For 2023, companies were required to file their conflict mineral disclosure by May 31, 2023. We downloaded all disclosures filed from January 1, 2023, through October 1, 2023. Two disclosures were filed after October 1, 2023, and were not included in our analysis. We also excluded other disclosures that we determined to be outside the scope of our review, such as disclosures filed for previous reporting years or disclosures made obsolete by a subsequent updated submission.

provide information in response to the SEC disclosure rule.[7] We randomly sampled 100 of these disclosures to create estimates generalizable to the population of all companies that filed in response to the SEC disclosure rule from January 1 through September 30, 2023. We selected this sample size to achieve a margin of error of no more than plus or minus 10 percentage points at the 95 percent confidence level, which applies to all our estimates. Because we followed a probability procedure based on random selection, our sample is one of a large number of samples we might have drawn. Since each sample could have generated different estimates, we express our confidence in our sample results' precision as a 95 percent confidence interval. This interval would contain the actual population value for 95 percent of the samples we could have drawn.

We reviewed relevant portions of the Dodd-Frank Act[8] and the requirements of the SEC disclosure rule[9] to develop a data collection instrument that guided our analysis of the disclosures in our sample. The data collection instrument contained a number of questions related to companies' disclosures. Using this instrument, we reviewed the disclosures in our sample to identify, among other things, the companies' determinations of their conflict minerals' origins on the basis of their reasonable-country-of-origin inquiries and, if reported, their due diligence. We did not use the data collection instrument to conduct a compliance review of the companies' disclosures.

We categorized companies according to whether they (1) reported that their minerals came from covered countries, (2) reported that their minerals did not come from covered countries, (3) reported that their minerals came from scrap or recycled sources, (4) reported that they could not determine the origin of their minerals, or (5) did not report a clear determination. For example, we concluded that a company did not report a clear determination if it made statements related to more than one determination or if its filing—that is, its Form SD and, if applicable, its conflict minerals report—did not mention a determination. For each company in the sample, an analyst reviewed the company's filing and recorded responses to the data collection instrument. A second analyst

[7]77 Fed. Reg. 56,274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1.

[8]Pub. L. No. 111-203, § 1502.

[9]17 C.F.R. § 240.13p-1.

reviewed the filing and verified the responses recorded by the first analyst. The analysts then discussed and resolved any discrepancies.

After using the data collection instrument to analyze the sample of disclosures filed from January 1 through September 30, 2023, we compared the resulting estimates with our estimates regarding disclosures filed in prior years, to identify any statistically significant changes. We also analyzed all 1,017 disclosures submitted before October 1, 2023, to identify the number of companies that filed an independent private sector audit (IPSA). To conduct this analysis, we searched the content of all companies' disclosures for "IPSA" or "independent private sector audit." We then reviewed those disclosures to identify those that included an IPSA. Additionally, we conducted similar content searches to analyze all disclosures submitted before October 1, 2023, to identify the number of companies that used the Extended Minerals Reporting Template and the number that voluntarily reported information about cobalt in their disclosures.

In addition, we interviewed SEC staff about the SEC disclosure rule and their understanding of companies' response to the rule. We also selected and interviewed a nongeneralizable sample of 13 industry stakeholders, including representatives of filing companies, business organizations, and a nongovernmental organization, to obtain their perspectives related to meeting disclosure requirements. We identified stakeholders through our prior work on conflict minerals, background research on companies and organizations involved in responsible sourcing efforts, and their participation in an annual industry conference, as well as an expert referral process that included asking experts to recommend other experts.

To obtain information about sexual violence in the DRC and three adjoining countries—Burundi, Rwanda, and Uganda—from April 2022 through March 2024, we searched research databases, including Scopus, MEDLINE, and Policy File Index, to identify academic articles, books, and

reports and think-tank publications.[10] We identified 63 abstracts and, from these, identified six articles and studies relevant to sexual violence in the DRC and adjoining countries by considering a variety of factors. We were particularly interested in studies that included original research or primary data collection. We considered a study relevant if it

- included quantitative data about the incidence of sexual violence or information related to conflict-related sexual violence or gender-based violence other than intimate-partner violence;
- had a geographic scope that included the DRC, Burundi, Rwanda, or Uganda; and
- contained information from April 2022 or later.

We did not identify any new reports or population-based surveys providing comprehensive rates of sexual violence in the DRC, Burundi, Rwanda, or Uganda that had been published since we issued our September 2022 report.[11] We reviewed available data from our prior reports and Demographic Household Surveys that reported on rates of sexual violence for DRC, Burundi, Rwanda, and Uganda and that identified statistically significant changes in these rates between years for which the data were comparable.[12]

We reviewed documents and case-file reports published by State, USAID and its implementing partner organizations, UN agencies, and

[10]The Dodd-Frank Act includes a provision requiring us to report on the rates of sexual and gender-based violence in war-torn areas of the DRC and adjoining countries. See Pub. L. No. 111-203, § 1502(d)(1). According to UN officials, sexual violence is a form of gender-based violence. For the purposes of our analysis of information about sexual violence, we focus on the three countries that adjoin eastern DRC—Rwanda, Uganda, and Burundi. We last reported on these matters in September 2022. See GAO, *Conflict Minerals: Overall Peace and Security Has Not Improved in the Democratic Republic of the Congo since 2014*, GAO-22-105411 (Washington, D.C.: Sept. 14, 2022). Our 2022 report discussed sexual violence in the DRC, Burundi, Rwanda, and Uganda on the basis of information that had become available from March 2020 through April 2022.

[11]GAO-22-105411.

[12]The DHS Program, which USAID launched in 1984, has provided technical assistance for more than 450 surveys in over 90 countries, according to USAID. The DHS Program collaborates with survey implementers, national governments, and international organizations to collect, analyze, and disseminate accurate and representative demographic and health data in countries worldwide.

nongovernmental organizations.[13] We analyzed these documents and reports for information related to sexual violence, conflict-related sexual violence, and gender-based violence in the DRC and adjoining countries. We also analyzed these documents and reports to identify actions taken by the DRC and adjoining countries to address sexual and gender-based violence and challenges that affect their efforts.

In addition, we conducted semistructured interviews with representatives of USAID's Bureau of Humanitarian Affairs and the UN's Joint Human Rights Organization in Kinshasa as well as representatives of six international and national nongovernmental organizations in the DRC. Further, we interviewed officials of the UN's Office of the Special Representative to the Secretary-General for Sexual Violence in Conflict. We identified these organizations through our prior work regarding sexual violence in the region and our background research. Findings from these interviews are not generalizable to other officials or organizations.

We conducted this performance audit from August 2023 to October 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[13]Two types of information quantify sexual violence in eastern DRC and adjoining countries: (1) data from population-based surveys and (2) case-file data, such as data collected by international entities, law enforcement agencies, or medical service providers on sexual violence victims. Of these two types, data from population-based surveys provide a more appropriate basis for deriving a rate of sexual violence because such surveys are conducted with random sampling techniques and their results are generalizable to the target population from which a representative sample was surveyed. Several factors make case-file information unsuitable for estimating rates of sexual violence. For example, because case-file data are not aggregated across various sources and because the extent to which various reports overlap is unclear, it is difficult to obtain complete data or a sense of magnitude from case files. However, case-file data can provide indicators that sexual assaults are occurring in certain locations.

# Appendix II: Regression Analysis of SEC Conflict Minerals Disclosure Rule's Effect on Violence in Eastern DRC

This appendix describes our analysis—its methods, data, results, and limitations—of the effectiveness of the U.S. Securities and Exchange Commission's (SEC) conflict minerals disclosure rule in promoting peace and security in eastern Democratic Republic of the Congo (DRC).[1]

## Methods

We conducted a regression analysis to estimate the association of the SEC conflict minerals disclosure rule with violence in eastern DRC, controlling for related factors.[2] We focused on eastern DRC because the majority of violent events are concentrated in this region and it is the location of many mines that produce conflict minerals—tantalum, tin, tungsten, and gold.[3] We focused on artisanal mines because armed groups are more likely to interfere with them than with industrial mines.[4]

[1]The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) defines conflict minerals as columbite-tantalite (coltan), cassiterite, wolframite, gold, or their derivatives, or any other mineral or its derivatives that the Secretary of State determines to be financing conflict in the DRC or an adjoining country. See Pub. L. No. 111-203, § 1502(e)(4), 124 Stat. 1376, 2218. Tantalum, tin, and tungsten—the derivatives of columbite-tantalite (coltan), cassiterite, wolframite, respectively—and gold are used in industrial and other applications. In this appendix, "conflict minerals" refers to either these ores or these metals.

[2]The Dodd-Frank Act required us to assess the effectiveness of section 13(p) of the Securities Exchange Act of 1934, as added by section 1502(b) of the Dodd-Frank Act, in promoting peace and security in the DRC and adjoining countries. Pub. L. No. 111-203, § 1502. Section 13(p) requires SEC to promulgate regulations requiring disclosure about certain conflict minerals, which the SEC did when it adopted its conflict minerals disclosure rule in 2012. Pub. L. No. 111-203, § 1502(b). Therefore, we assessed the effectiveness of the SEC disclosure rule in promoting peace and security in the DRC and adjoining countries. SEC's rule can be found at 77 Fed. Reg. 56,274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1. For our analysis of the disclosure rule's effectiveness in promoting peace and security, we defined "violent events" and "violence" as comprising battles, explosions and remote violence, or violence against civilians.

[3]We define eastern DRC as the territories and cities shown on the Department of State's 2011 "Conflict Minerals Map," which identifies mining areas affected by armed groups. The map covers Ituri, North Kivu, and South Kivu Provinces and parts of Upper Katanga, Lualaba, Upper Lomami, Maniema, Tanganyika, Tshopo, Lower Uele, and Upper Uele Provinces. The International Peace and Information Service, a Belgian research institute, has mapped approximately 2,800 gold, tantalum, tin, and tungsten mines in eastern DRC. Throughout this appendix, "mines" refers to artisanal mines. During the period we studied, approximately 95 percent of the violent events and battles in the DRC occurred in the eastern region, according to our analysis of data from Armed Conflict Location and Event Data (ACLED) data.

[4]Artisanal and small-scale mining sites are small, typically labor-intensive mining operations characterized by a lack of mechanization and capital investment.

Similar to previous empirical studies, our analysis examined violence in second-level administrative units.[5]

The analysis allowed us to isolate the SEC disclosure rule's association with violence in eastern DRC from factors, such as geographical characteristics, that remained constant across time within second-level administrative units and from time-specific factors, such as elections, that affected each unit. The model also held constant other factors associated with violence—specifically, rainfall patterns; spillovers of violence across time and space; mineral prices; and the interactive effects between mines, policy, and mineral prices.

We selected these control variables because previous empirical literature found them to be associated with violence, both in the DRC and more generally.[6] Table 1 lists the variables we used in the regression analysis.

[5]For previously published studies that used the second-level administrative unit as the unit of analysis, see Bok Baik et al., "The Real Effects of Supply Chain Transparency Regulation: Evidence from Section 1502 of the Dodd–Frank Act," *Journal of Accounting Research*, vol. 62, no. 2 (May 2024); Jeffrey R. Bloem, "Good Intentions Gone Bad? The Dodd-Frank Act and Conflict in Africa's Great Lakes Region," *Economic Development and Cultural Change*, vol. 71, no. 2 (Chicago: January 2023); Dominic P. Parker and Bryan Vadheim, "Resource Cursed or Policy Cursed? U.S. Regulation of Conflict Minerals and Violence in the Congo," *Journal of the Association of Environmental and Resource Economists*, vol. 4, no. 1 (Dec. 7, 2016); and Nik Stoop, Marijke Verpooten, and Peter van der Windt, "More Legislation, More Violence? The Impact of Dodd-Frank in the DRC," *PLoS ONE* (Aug. 9, 2018).

[6]For previously published studies, see Parker and Vadheim, "Resource Cursed or Policy Cursed?" and Stoop, Verpoorten, and van der Windt, "More Legislation, More Violence?"

**Table 1: Variables Used in Regression Analysis to Estimate Association between SEC Conflict Minerals Disclosure Rule and Violence in Eastern DRC**

| Outcome (or dependent) variable | Description | Source |
|---|---|---|
| Violent event indicator | We measured violent events by using the "event_type" variable, which we created by combining the "Battles," "Explosions/Remote violence," and "Violence against civilians" categories. | ACLED |
| Battle indicator | We measured battles by using the "event_type" variable. | ACLED |
| Number of violent events | We measured violent events by using the "event_type" variable, which we created by combining the "Battles", "Explosions/Remote violence," and "Violence against civilians" categories. | ACLED |
| Number of battles | We measured battles by using the "event_type" variable. | ACLED |
| Independent variable | Description | |
| Policy indicator | The variable takes non-zero values for policy-treated second-level administrative units, beginning in July 2010. In the month, the variable takes a value of 0.33 because the Dodd-Frank Act—which required the U.S. Securities and Exchange Commission (SEC) to promulgate the conflict minerals disclosure rule—was enacted July 21, 2010.[a] For subsequent months, the variable takes a value of one. | N/A |
| Interaction between policy indicator and number of gold mines | The variable is the product of the policy indicator and the total number of artisanal gold mines within the second-level administrative unit. We used the count of unique mines in 2004–2022. | IPIS |
| Interaction between policy indicator and number of 3T mines | The variable is the product of the policy indicator and the total number of artisanal tantalum, tin, or tungsten mines with the second-level administrative unit. We used the count of unique mines in 2004–2022. | IPIS |
| Interaction between mineral prices and number of mines | The variable is the product of the monthly price of each mineral and the total number of artisanal mines of the same mineral within the same second-level administrative unit. We used the count of unique mines in 2004–2022. For each unit, there are separate variables for tantalum, tin, tungsten, and gold. | Bloomberg Terminal and IPIS |
| Number of violent events in neighboring locations | The variable is the sum of violent events in contiguous second-level administrative units. | ACLED |
| Number of battles in neighboring locations | The variable is the sum of battles in contiguous second-level administrative units. | ACLED |
| Rainfall levels | The variable is the difference between monthly precipitation and the monthly average specific to each second-level administrative unit for 1982–2022. | CHIRPS |
| Wet season indicator | The variable takes a value of 1 for the 3 months with the greatest average precipitation, based on unit-specific monthly precipitation averages for 1982–2022. | CHIRPS |
| Dry season indicator | The variable takes a value of 1 for the 3 months with the lowest average precipitation, based on unit-specific monthly precipitation averages for 1982–2022. | CHIRPS |
| Location indicators | There is a variable for each of the 90 second-level administrative units. | ACLED |
| Time indicators | There is a variable for each month except the first, which is omitted. | N/A |

Legend: ACLED = Armed Conflict Location and Event Data; CHIRPS = Climate Hazards group InfraRed Precipitation with Stations; DRC = Democratic Republic of the Congo; IPIS = International Peace Information Service; N/A = not applicable; SEC = Securities and Exchange Commission.

Source: GAO analysis of data from ACLED, CHIRPS, Bloomberg Terminal, and IPIS. | GAO-25-107018

Note: The variables are measured for second-level administrative units for each month from July 2004 through December 2022. The policy-treated second-level administrative units are Bafwasende; Kalemie; Mambasa; Manono; Nyunzu; and all of the second-level administrative units in Maniema, North Kivu and South Kivu.

[8]Pub. L. No. 111-203, 124 Stat. 1376 (2010).

We used July 2010—the enactment date of the Dodd-Frank Act, which required SEC to promulgate the conflict minerals disclosure rule—as the intervention's starting date.[7] We chose this date because, although SEC finalized the rule in 2012 and began requiring disclosures in 2014, stakeholders began taking actions in anticipation of the rule immediately after the act's enactment.[8] Using July 2010 as the intervention's starting date allowed us to estimate the disclosure rule's overall association with violence.[9] We defined the preintervention period as July 2004 through June 2010 and the postintervention period as August 2010 through December 2022.[10]

We analyzed two sets of outcomes:

- **Indicator outcomes.** Following the empirical literature we reviewed, we used a linear probability regression model with indicator outcomes of (1) the occurrence of any violent event and (2) the occurrence of any battle.[11] Using the estimated model coefficients allowed us to quantify a positive or negative association with the occurrence of violent events or battles as well as the strength of that relationship.

[7]Pub. L. No. 111-203, § 1502.

[8]77 Fed. Reg. 56,274 (Sept. 12, 2012). For example, President Joseph Kabila announced a ban on artisanal mineral exploitation in eastern DRC that lasted from September 2010 until March 2011. Similarly, two global coalitions of major electronic companies announced in 2011 that they had stopped buying affected minerals from smelters that could not prove their source minerals were not connected to conflict in the DRC. Moreover, during our interviews with industry stakeholders, company representatives said they began preparing for the SEC disclosure rule before 2012.

[9]Because of the absence of systematic data on peace and security, we focus on the rule's association with violence, including any associated diplomatic efforts and responses by governments, companies, and actors, to the extent that these are not captured by the fixed effects.

[10]We began our analysis with 2004 to avoid including violence from the Second Congo War, which ended in 2003. We use July 2004 as the starting date because data about mineral prices was not available for earlier dates. Similar empirical studies also begin with 2004. See Bloem, "Good Intentions Gone Bad?"; Parker and Vadheim, "Resource Cursed or Policy Cursed?"; and Stoop, Verpoorten, and van der Windt, "More Legislation, More Violence?"

[11]Bloem, "Good Intentions Gone Bad?"; Parker and Vadheim, "Resource Cursed or Policy Cursed?"; and Stoop, Verpoorten, and van der Windt, "More Legislation, More Violence?"

- **Count outcomes.** We also modeled the number of violent events and battles using a generalized linear count model. Specifically, the Poisson model provides an estimated ratio of event rates between two groups (i.e., an incidence rate ratio). This estimate quantifies the magnitude and direction of the association with the number of violent events and battles. To test the sensitivity of our results to this choice, we used ordinary least squares regressions.

The linear probability model with indicator outcomes was our preferred specification because it minimized the effect that any changes in reporting due to the enactment of the Dodd-Frank Act might have had on our analysis.[12] For example, increased reporting could have led us to conclude erroneously that violence increased over time. A linear probability model reduces vulnerability to measurement error because its outcome measures the presence of any violence rather than the number of violent events.

Our model draws on a 2013 study that examines the effect of Section of 1502 of the Dodd-Frank Act[13] on violence in eastern DRC.[14] Specifically, we estimated variants of the following:

$$E(violence_{itk}) = \delta_i + \mu_t + \beta_1 policy_{it} + \beta_2(policy_{it} * gold_i) + \beta_3(policy_{it} * 3T_i) + \sum_{m=1}^{4} \lambda_m(mine_{im} * price_{tm}) + \sum_{k=1}^{3} \gamma_k season_i + \sum_{x=0}^{2} \eta_x rain_{i,t-x} + \sum_{x=1}^{3} \alpha_x violence_{i,t-x} + \sum_{x=0}^{1} \theta_x adj.violence_{i,t-x}$$

Here, *i* denotes the 90 second-level administrative units; *t* denotes the maximum 222 months spanning July 2004 through December 2022; *k* denotes the season (wet, dry, neither); and *m* denotes the four minerals—gold, tantalum, tin, and tungsten. E(.) is the expectation of the relevant outcome distribution, conditional on the covariates and parameters.

The notation $\delta_i$ represents the maximum 90 second-level administrative unit fixed effects and $\mu_t$ represents the maximum 222 month time fixed effects. (The fixed-effects model controls for factors that remained

[12]The empirical literature used indicator outcomes for similar reasons. See Bloem, "Good Intentions Gone Bad?"; Parker and Vadheim, "Resource Cursed or Policy Cursed?"; and Stoop, Verpoorten, and van der Windt, "More Legislation, More Violence?"

[13]Pub. L. No. 111-203, § 1502.

[14]Parker and Vadheim, "Resource Cursed or Policy Cursed?"

constant across time within each second-level administrative unit, such as geographical characteristics, and for time-specific countrywide factors that affected each unit, such as elections.)

The coefficients $\lambda_m$ measure the relationships between violence and monthly world mineral prices for each of the *m* minerals—tantalum, tin, tungsten, and gold—interacted with the number of each type of mine in the second-level administrative unit. The coefficients $\gamma_k$ measure seasonal rainfall patterns, while the $\eta_x$ coefficients measure the effects of contemporaneous and lagged rainfall anomalies on violence.[15] Finally, $\alpha_x$ and $\theta_x$ respectively control for the local persistence of violence by including lags for the amount of violence in previous months and potential spatial spillovers, using the aggregate amount of violence in all adjacent units.[16] Our regression analysis clustered standard errors at the second-level administrative unit to account for possible serial correlation within units.[17]

The primary factors of interest in our regression models were as follows:

- **Policy indicator.** The $\beta_1$ coefficient represents the average association of the SEC disclosure rule with violence—whether the presence of any violence or the amount of violence—in each "treated"

[15]Rainfall anomalies were measured using deviations from normal rainfall conditions for each unit. We included the deviation and its square. See Table 1 for further information.

[16]The use of dynamic and spatial lags of violence in our model tests for robustness of the estimated effect of the policy, and our results are robust to the exclusion of these variables. However, the use of these lags also introduces bias in the estimates of the lags. The use of dynamic lags introduces the "Nickell Bias." To the extent to which violence across time is positively serially correlated, the estimated effect of lagged violence will understate the true persistence of violence by a factor that decreases with the number of time periods. Because the number of time periods is relatively large in our case, this bias is likely small. The use of spatial lags of violence also introduces a simultaneity or reflection problem. If violence among neighbors is positively serially correlated, the estimated effect of spillovers of violence will overstate the true effect of violence in the neighboring territories. Controlling for total violence in adjacent areas could also understate the estimated effect of the policy variable if the policy indicator is positively correlated with adjacent violence. For more information about Nickell Bias, see Stephen Nickell, "Biases in Dynamic Models with Fixed Effects," *Econometrica*, vol. 49, no. 6 (1981); and Luc Anselin, "Under the Hood: Issues in the Specification and Interpretation of Spatial Regression Models," *Agricultural Economics*, vol. 27 (2002).

[17]Serial or autocorrelation occurs in time-series data when the residual error for one time period is correlated with that of another time period. This could occur due to a relationship between a variable in one time period and the same variable in earlier time periods. For example, the current value of a mineral partially reflects its value in prior time periods. Not accounting for serial correlation could result in estimates of variance which are too small, which increases the chance of detecting a significant effect when the effect is not actually significant.

second-level administrative unit, all else equal, from July 2010 through December 2022.[18] The coefficient assigns "treatment" to the units that were likely to be most affected by the disclosure rule. We followed the empirical literature by defining treatment as the union of second-level administrative units for which mining was banned and the units containing at least one mine with geocoordinates as shown in State's 2011 Section 1502 map of conflict mining zones.[19]

- **Interaction of the policy indicator and the number of gold mines.** The $\beta_2$ coefficient represents the additional effect of the SEC disclosure rule for each additional gold mine within a treated second-level administrative unit. This coefficient allows the association of the disclosure rule with violence to vary on the basis of the number of gold mines.
- **Interaction of the policy indicator and the number of tantalum, tin, and tungsten (3T) mines.** The $\beta_3$ coefficient represents the additional effect of the SEC disclosure rule for each 3T mine within the treated second-level administrative unit. This coefficient allows the association of the disclosure rule with violence to vary on the basis of the number of 3T mines. Table 2 provides summary statistics for the variables we used in the regression analysis.

**Table 2: Summary Statistics of Variables Used in Regression Analysis to Estimate Association between SEC Conflict Minerals Disclosure Rule and Violence in Eastern DRC**

Number of observations: 19,710

| Variable | Mean | Standard deviation | Minimum value | Maximum value |
|---|---|---|---|---|
| Violent event indicator | 0.18 | 0.38 | 0 | 1 |
| Battle indicator | 0.11 | 0.32 | 0 | 1 |
| Number of violent events | 0.87 | 3.94 | 0 | 96 |
| Number of battles | 0.44 | 2.22 | 0 | 79 |

[18]In the models with indicator outcomes, a statistically significant positive coefficient indicates an associated increase in the likelihood of any violence. In the ordinary least squares models with count outcomes, a statistically significant positive coefficient indicates an associated increase in the amount of violence. In the negative binomial and Poisson models with count outcomes, a statistically significant coefficient greater than one indicates an association with increased rate of violence. This also applies for the interactions between the policy indicator and the number of mines. We use the 5 percent level as the threshold for statistical significance in the analysis.

[19]Mining was banned in all of the second-level administrative units in Maniema, North Kivu and South Kivu Provinces. Bafwasende, Kalemie, Mambasa, Manono, and Nyunzu had at least one mine with geocoordinates with State's map of conflict mining zones.

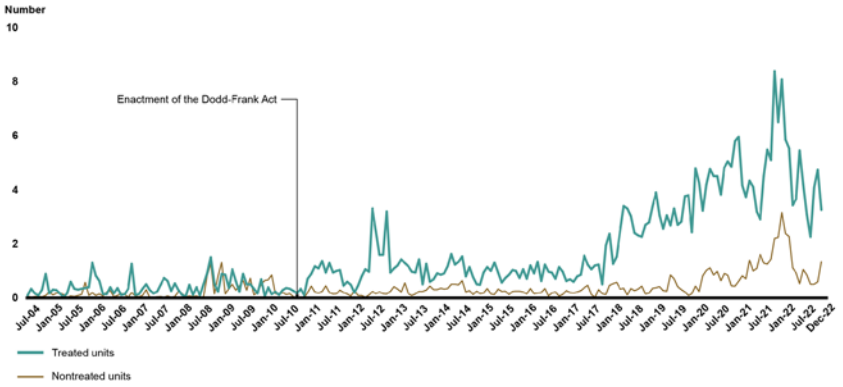
| Variable | Mean | Standard deviation | Minimum value | Maximum value |
|---|---|---|---|---|
| Policy indicator | 0.27 | 0.44 | 0 | 1 |
| Interaction between policy indicator and number of gold mines | 13.04 | 45.13 | 0.00 | 279.00 |
| Interaction between policy indicator and number of 3T mines | 6.58 | 20.96 | 0.00 | 131.00 |
| Interaction between gold prices and number of gold mines | 536.24 | 669.64 | 0.00 | 1975.86 |
| Interaction between tantalum prices and number of tantalum mines | 17.45 | 32.87 | 0.00 | 131.00 |
| Interaction between tin prices and number of tin mines | 2.63 | 4.38 | 0.00 | 20.49 |
| Interaction between tungsten prices and number of tungsten mines | 39.58 | 100.70 | 0.00 | 473.00 |
| Number of violent events in neighboring locations | 3.80 | 9.89 | 0 | 149 |
| Number of battles in neighboring locations | 1.97 | 5.46 | 0 | 82 |
| Rainfall levels | -0.01 | 0.36 | -1.91 | 2.89 |
| Wet season indicator | 0.25 | 0.44 | 0 | 1 |
| Dry season indicator | 0.25 | 0.43 | 0 | 1 |

Source: GAO analysis of data from Armed Conflict Location and Event Data, Climate Hazards group InfraRed Precipitation with Stations, Bloomberg Terminal, and International Peace Information Service. | GAO-25-107018

Note: The SEC Disclosure Rule can be found at 77 Fed. Reg. 56,274 (Sept 12, 2012), codified at 17 C.F.R. § 240.13p-1.

The identifying assumption is the parallel trends assumption: In the absence of treatment, the difference in violence between the treated and nontreated groups would remain constant over time. Figures 14 and 15 show the average monthly number of violent events and battles, respectively, for treated and nontreated second-level administrative units. As the figures show, we found no evidence of an upward trend in the period immediately preceding the enactment of the Dodd-Frank Act. While there is no one-to-one relationship, we generally found similar trends in violent events and battles before the Dodd-Frank Act's enactment. After its enactment, the number of violent events and battles in treated units increased compared with nontreated units.

**Figure 14: Average Monthly Number of Violent Events in Treated and Nontreated Second-Level Administrative Units of Eastern DRC, July 2004–Dec. 2022**

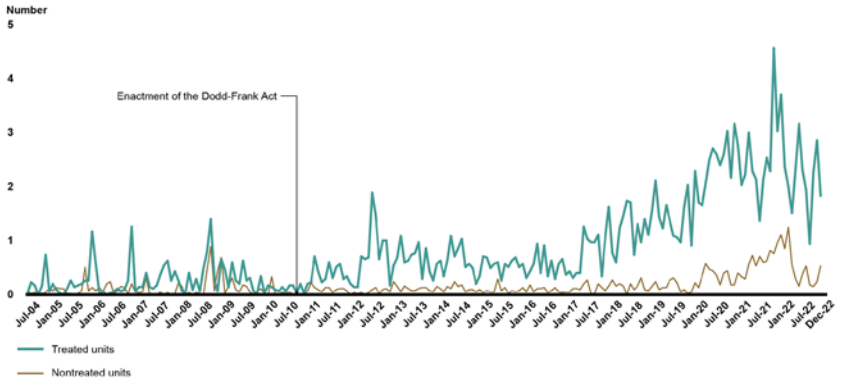



DRC = Democratic Republic of the Congo.

Source: GAO analysis of data from the Armed Conflict Location & Event Data. I GAO-25-107018

Note: Violent events are measured at the second-level administrative unit (i.e., territory or city). Treated units are the second-level administrative units that were likely to be most affected by the Securities and Exchange Commission's conflict minerals disclosure rule. 77 Fed. Reg. 56,274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1. Nontreated units are those that were likely to be less affected by the rule.

**Figure 15: Average Monthly Number of Battles in Treated and Nontreated Second-Level Administrative Units of Eastern DRC, July 2004–Dec. 2022**




DRC = Democratic Republic of the Congo.

Source: GAO analysis of data from the Armed Conflict Location & Event Data. I GAO-25-107018

Note: Battles are measured at the second-level administrative unit (i.e., territory or city). Treated units are the second-level administrative units that were likely to be most affected by the Securities and Exchange Commission's conflict minerals disclosure rule. 77 Fed. Reg. 56,274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1. Nontreated units are those that were likely to be less affected by the rule.

## Results

To analyze the association of the SEC conflict minerals disclosure rule with violence in eastern DRC, we used both indicator and count outcomes for violent events and battles. Our analysis found that the rule was not associated with an overall decrease in the occurrence of any violence and was associated with an increased spread of violence in second-level administrative units containing gold mines treated by the policy.

### Analysis of the Spread of Violence

Our preferred model, a linear probability model, estimated the association of the SEC disclosure rule with the occurrence of any violent event. The estimated coefficient for the policy indicator was not statistically significant, which implies that the rule was not associated with an overall

increase in the occurrence of any violence. In second-level administrative units with gold mines, the effect of the rule was associated with an additional spread of violent events, with an estimated 69 percent increase in treated areas with an average number of gold mines.[20]

We examined the robustness of the results from the linear probability model by testing alternative assumptions and found broadly comparable results.

- **Kivu Security Tracker.** We examined whether the disclosure rule's association with the spread of violence was due to the ACLED database's reliance on events data sourced from the Kivu Security Tracker.[21] Established in 2017, the tracker quickly became one of the most important sources of events data in the ACLED database. Specifically, the percentage of data on violent events in eastern DRC in the ACLED database sourced from the tracker rose from 6 percent in 2017 to 38 percent in 2018.[22] When we removed the events reported only by the Kivu Security Tracker, the estimated coefficient for the marginal effect of gold mines was similar in magnitude to the main specification.
- **Mines visited prior to 2011.** We examined the potential effect of violence on mining operations and on visits by teams from the International Peace Information Service. For instance, increases in violence might have precluded the organization from visiting particular areas, or violence may have affected whether new mines were opened.[23] To minimize the potential effect of violence arising from the

[20]The 95 percent confidence interval for the additional spread of violent events is between 43 and 95 percent. The average occurrence of violent events for treated units with gold mines prior to July 2010 was 0.143. For treated areas with gold mines, the average number of gold mines was 74.8.

[21]Launched in 2017, the Kivu Security Tracker—a joint project of the Congo Research Group, Bridgeway Foundation, Human Rights Watch, and Ebuteli—maps violence in the eastern DRC to better understand trends, causes of insecurity, and serious violations of international human rights and humanitarian law.

[22]The Kivu Security Tracker was the sole source of data for these events. The tracker was the only source of data for 25 percent or more of violent events, ranging as high as 44 percent in 2021, that were reported annually in eastern DRC from 2018 through 2022. In addition, the tracker was the only source of data for 4 percent of battles reported in the east in 2017, ranging up to 45 percent of battles reported in the east in 2021.

[23]Officials from the International Peace Information Service explained that donor funding determined the number of mines that teams visited in a particular year and that most, but not all, mines were already operational before 2008. While teams initially collected data about the start date of mining at each mine, teams stopped asking the question because responses were not always consistent, according to organization officials.

SEC disclosure rule on the mining data, we limited the mining variable to mines that the teams visited before 2011. When we limited the mining variable, the estimated coefficient for the marginal effect of gold mines was notably larger than in the main specification. The estimated coefficient for the policy indicator became statistically significant, with a magnitude similar to the main specification.

- **Mining quartile.** The specification of the main regression, the linear probability model, assumed that the effect of additional mines was linear. We relaxed this assumption by dividing the variables for the interaction between policy and number of mines into quartiles, the first of which contained 25 percent of the second-level administrative units with the smallest number of mines. This resulted in no statistically significant difference in the strength of the rule's association with the likelihood of violence. We found an association with an increased likelihood of violent events for treated units with the smallest and largest number of 3T mines and those with the largest number of gold mines.
- **Medium run effects.** Our model used data from July 2004 through December 2022. We examined whether the associations were similar in the medium-term by limiting the time period to July 2004 through December 2016. We found that the marginal effect of gold mines for treated units remained significantly associated with increases in the likelihood of violence.
- **Linear time trends.** We included linear time trends for each second-level administrative unit to control for the possibility that violence in the unit was trending in a particular direction before the Dodd-Frank Act's enactment in July 2010. The estimated coefficient for the marginal effect of gold mines was similar in magnitude to the main specification.

Table 3 presents the estimation results for our linear probability model and alternative specifications.

**Table 3: Results for Linear Probability Model Used to Estimate Association between SEC Conflict Minerals Disclosure Rule and Occurrence of Any Violent Events in Eastern DRC, July 2004–Dec. 2022**

| Dependent variable: indicator variable for any violent events | | | | | | |
|---|---|---|---|---|---|---|
| | **Full sample** | **Without Kivu Security Tracker** | **Mines, pre-2011** | **Mining quartiles** | **2016 and earlier** | **Linear trends** |
| Policy indicator | 0.061* | 0.053 | 0.083** | 0.111** | 0.010 | -0.049 |
| | (0.035) | (0.032) | (0.038) | (0.052) | (0.029) | (0.045) |
| Policy indicator x number of 3T mines | -0.001 | -0.001 | -0.002 | — | 0.000† | 0.001 |
| | (0.001) | (0.001) | (0.003) | — | (0.001) | (0.001) |
| Policy indicator x number of gold mines | 0.001*** | 0.001*** | 0.006*** | — | 0.001*** | 0.001** |
| | (0.000) | (0.000) | (0.002) | — | (0.000) | (0.000) |
| Policy indicator x quartile 1 of 3T mines | — | — | — | -0.176*** | — | — |
| | — | — | — | (0.063) | — | — |
| Policy indicator x quartile 2 of 3T mines | — | — | — | -0.015 | — | — |
| | — | — | — | (0.093) | — | — |
| Policy indicator x quartile 3 of 3T mines | — | — | — | -0.099 | — | — |
| | — | — | — | (0.067) | — | — |
| Policy indicator x quartile 4 of 3T mines | — | — | — | -0.140** | — | — |
| | — | — | — | (0.063) | — | — |
| Policy indicator x quartile 1 of gold mines | — | — | — | 0.054 | — | — |
| | — | — | — | (0.074) | — | — |
| Policy indicator x quartile 2 of gold mines | — | — | — | 0.035 | — | — |
| | — | — | — | (0.070) | — | — |
| Policy indicator x quartile 3 of gold mines | — | — | — | 0.012 | — | — |
| | — | — | — | (0.075) | — | — |
| Policy indicator x quartile 4 of gold mines | — | — | — | 0.308*** | — | — |
| | — | — | — | (0.063) | — | — |
| Number of observations | 19,710 | 19,710 | 19,710 | 19,710 | 13,230 | 19,710 |

Legend: * = statistically significant at the 10 percent level; ** = statistically significant at the 5 percent level; *** = statistically significant at the 1 percent level; † = absolute value less than 0.0004; — = not applicable; 3T = tantalum, tin, and tungsten; DRC = Democratic Republic of the Congo; SEC = Securities and Exchange Commission.

Source: GAO analysis of data from Armed Conflict Location and Event Data, Climate Hazards group InfraRed Precipitation with Stations, Bloomberg Terminal, and International Peace Information Service. | GAO-25-107018

Note: The variables are measured for second-level administrative units for each month from July 2004 through December 2022. The models also include variables for the rainfall patterns, spillovers of violence, and mineral prices as well as location and time fixed effects. Standard errors are clustered by the second-level administrative unit. For the purpose of this analysis, violent events consist of battles, explosions and remote violence, or violence against civilians. The SEC disclosure rule can be found at 77 Fed. Reg. 56,274 (Sept 12, 2012), codified at 17 C.F.R. § 240.13p-1.

We also used the linear probability model to estimate the association of the SEC disclosure rule with the occurrence of any battle. As table 4 shows, the estimated coefficient for the policy indicator was not statistically significant in any model specifications. In contrast, with the exception of the estimation with linear trends, the estimated coefficient for the effect of an additional gold mine was consistently statistically significant and implied an estimated 102 percent increase in the occurrence of any battle for policy-affected areas with the mean level of gold mines.[24] Similar to the results of our linear probability analysis for violent events, when we introduced the interaction between the policy indicator and mining quartiles, we found an association of the SEC disclosure rule with battles in areas with the lowest number of tantalum, tin, and tungsten mines and areas with the greatest number of gold mines. We also found that the effect varied across quartiles for both sets of variables.

**Table 4: Results for Linear Probability Model Used to Estimate Association between SEC Conflict Minerals Disclosure Rule and Occurrence of Any Battle in Eastern DRC, July 2004–Dec. 2022**

Dependent variable: indicator variable for any battles

| | Full sample | Without Kivu Security Tracker | Mines, pre-2011 | Mining quartiles | 2016 and earlier | Linear trends |
|---|---|---|---|---|---|---|
| Policy indicator | 0.032 | 0.035 | 0.052 | 0.073 | 0.020 | -0.017 |
| | (0.030) | (0.029) | (0.034) | (0.046) | (0.027) | (0.036) |
| Policy indicator x number of 3T mines | 0.000 | 0.000 | 0.000 | — | 0.000 | 0.001 |
| | (0.001) | (0.001) | (0.003) | — | (0.000) | (0.001) |
| Policy indicator x number of gold mines | 0.001*** | 0.001*** | 0.005*** | — | 0.001*** | 0.000* |
| | (0.000) | (0.000) | (0.001) | — | (0.000) | (0.000) |
| Policy indicator x quartile 1 of 3T mines | — | — | — | -0.155*** | — | — |
| | — | — | — | (0.056) | — | — |
| Policy indicator x quartile 2 of 3T mines | — | — | — | -0.034 | — | — |
| | — | — | — | (0.077) | — | — |
| Policy indicator x quartile 3 of 3T mines | — | — | — | -0.032 | — | — |
| | — | — | — | (0.060) | — | — |
| Policy indicator x quartile 4 of 3T mines | — | — | — | -0.077 | — | — |
| | — | — | — | (0.058) | — | — |
| Policy indicator x quartile 1 of gold mines | — | — | — | 0.073 | — | — |
| | — | — | — | (0.063) | — | — |

[24]The 95 percent confidence interval for the additional spread of battles was between 66 and 137 percent. The mean for all areas with gold mines prior to July 2010 was 0.085.

| | Full sample | Without Kivu Security Tracker | Mines, pre-2011 | Mining quartiles | 2016 and earlier | Linear trends |
|---|---|---|---|---|---|---|
| Policy indicator x quartile 2 of gold mines | — | — | — | 0.010 | — | — |
| | — | — | — | (0.054) | — | — |
| Policy indicator x quartile 3 of gold mines | — | — | — | 0.010 | — | — |
| | — | — | — | (0.072) | — | — |
| Policy indicator x quartile 4 of gold mines | — | — | — | 0.279*** | — | — |
| | — | — | — | (0.046) | — | — |
| Number of observations | 19,710 | 19,710 | 19,710 | 19,710 | 13,230 | 19,710 |

Legend: * = statistically significant at the 10 percent level; *** = statistically significant at the 1 percent level; 3T = tantalum, tin, and tungsten; — = not applicable; DRC = Democratic Republic of the Congo; SEC = Securities and Exchange Commission.

Source: GAO analysis of data from Armed Conflict Location and Event Data, Climate Hazards group InfraRed Precipitation with Stations, Bloomberg Terminal, and International Peace Information Service. | GAO-25-107018

Note: The variables are measured at the second-level administrative unit for each month from July 2004 through December 2022. The models also include variables for the rainfall patterns, spillovers of violence, and mineral prices as well as location and time fixed effects. Standard errors are clustered by the second-level administrative unit. The SEC disclosure rule can be found at 77 Fed. Reg. 56,274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1.

## Analysis of the Levels of Violence

We used a Poisson regression to estimate the association of the SEC disclosure rule with the number of violent events, and we examined the robustness of the results in two ways. First, we tested the sensitivity of the results to the model specification itself by also using ordinary least squares regressions. Second, as when we analyzed the spread of violence, we tested the potential effects of including the Kivu Security Tracker reporting data and limiting the time period to the years before 2017. We also tested the potential effects of violence on mining operations and visits from the International Peace Information Service.

The estimated coefficient in the main specification implied that the SEC disclosure rule was associated with a higher rate of violent events.[25] However, the estimated coefficient was not consistently statistically significant across the robustness checks.

In contrast, the estimated coefficients for the interaction between the policy indicator and the number of gold mines was statistically significant across specifications, with the exception of the ordinary least squares

[25]The 95 percent confidence interval for the estimated association between the disclosure rule and the rate of violent events is 1.26 to 5.08 and is statistically significant at the 0.01 level.

specification (see table 5).[26] The estimated coefficient for the interaction between the policy indicator and the number of tantalum, tin, and tungsten mines was not consistently statistically significant across specifications.

**Table 5: Results for Count Models Used to Estimate Association between SEC Conflict Minerals Disclosure Rule and Number of Violent Events in Eastern DRC, July 2004–Dec. 2022**

| | | Poisson (IRR) | | | |
|---|---|---|---|---|---|
| | Poisson (IRR) | Ordinary least squares | Without Kivu Security Tracker | Mines, pre-2011 | 2016 and earlier |
| Policy indicator | 2.528*** | 0.242 | 1.963* | 1.950* | 1.369 |
| | (0.901) | (0.160) | (0.692) | (0.771) | (0.400) |
| Policy indicator x number of 3T mines | 0.994** | 0.000 | 0.994** | 0.982 | 0.997 |
| | (0.003) | (0.002) | (0.003) | (0.024) | (0.003) |
| Policy indicator x number of gold mines | 1.004*** | -0.001 | 1.004*** | 1.039*** | 1.006*** |
| | (0.001) | (0.001) | (0.001) | (0.013) | (0.001) |
| Number of observations | 17,739 | 19,710 | 17,739 | 17,739 | 11,319 |

Legend: * = statistically significant at the 10 percent level; *** = statistically significant at the 1 percent level; 3T = tantalum, tin, and tungsten; DRC = Democratic Republic of the Congo; IRR = incidence rate ratio; SEC = Securities and Exchange Commission.

Source: GAO analysis of data from Armed Conflict Location and Event Data, Climate Hazards group InfraRed Precipitation with Stations, Bloomberg Terminal, and International Peace Information Service. | GAO-25-107018

Note: The variables are measured at the second administrative-level unit for each month from July 2004 through December 2022. The models also include variables for the rainfall patterns, spillovers of violence, and mineral prices as well as location and time fixed effects. Standard errors are clustered by the second administrative-level unit. For the purpose of this analysis, violent events consist of battles, explosions and remote violence, or violence against civilians. The SEC disclosure rule can be found at 77 Fed. Reg. 56,274 (Sept 12, 2012), codified at 17 C.F.R. § 240.13p-1.

We found similar results when we analyzed the number of battles. The estimated coefficient for the policy indicator was statistically significant in the main specification but was not statistically significant in the robustness checks (see table 6).[27] The estimated coefficients for the interaction between the policy indicator and the number of gold mines was statistically significant across specifications, with the exception of the

[26]The 95 percent confidence interval for the estimated association between the disclosure rule and the marginal effect of gold mines is 1.001 to 1.007 and is statistically significant at the 0.01 level.

[27]The 95 percent confidence interval for the estimated association between the disclosure rule and the rate of battles is 1.08 to 5.86 and is statistically significant at the 0.01 level.

ordinary least squares specification.[28] The estimated coefficient for the interaction between the policy indicator and the number of tantalum, tin, and tungsten mines was never statistically significant.

**Table 6: Results for Count Models Used to Estimate Association between SEC Conflict Minerals Disclosure Rule and Number of Battles in Eastern DRC, July 2004–Dec. 2022**

Dependent variable: count variable for the number of battles

| | | Poisson (IRR) | | | |
|---|---|---|---|---|---|
| | Poisson (IRR) | Ordinary least squares | Without Kivu Security Tracker | Mines, pre-2011 | 2016 and earlier |
| Policy indicator | 2.515** | 0.169 | 2.089* | 1.697 | 1.545 |
| | (1.085) | (0.114) | (0.914) | (0.793) | (0.570) |
| Policy indicator x number of 3T mines | 0.994 | 0.001 | 0.995 | 0.996 | 0.999 |
| | (0.004) | (0.002) | (0.004) | (0.029) | (0.004) |
| Policy indicator x number of gold mines | 1.006*** | 0.000 | 1.006*** | 1.050*** | 1.007*** |
| | (0.002) | (0.001) | (0.002) | (0.018) | (0.002) |
| Number of observations | 17,301 | 19,710 | 17,301 | 17,301 | 10,584 |

Legend: * = statistically significant at the 10 percent level; ** = statistically significant at the 5 percent level; *** = statistically significant at the 1 percent level; 3T = tantalum, tin, and tungsten; DRC = Democratic Republic of the Congo; IRR = incidence rate ratio; SEC = Securities and Exchange Commission.

Source: GAO analysis of data from Armed Conflict Location and Event Data, Climate Hazards group InfraRed Precipitation with Stations, Bloomberg Terminal, and International Peace Information Service. | GAO-25-107018

Note: The variables are measured at the second-level administrative unit for each month from July 2004 through December 2022. The models also include variables for the rainfall patterns, spillovers of violence, and mineral prices as well as location and time fixed effects. Standard errors are clustered by the second-level administrative unit. The SEC disclosure rule can be found at 77 Fed. Reg. 56,274 (Sept 12, 2012), codified at 17 C.F.R. § 240.13p-1.

## Limitations

Like all regression models, ours was subject to limitations, including the following:

- **Measurement of violence**. ACLED data are based on several sources: reports published by the media, reports by nongovernmental and international organizations, selected social media accounts, and information obtained through partnerships with local conflict observatories. However, ACLED may underreport violence, because, according to ACLED, local observatories' initiatives—although they gather primary data reflecting local realities—are often limited in

[28]The 95 percent confidence interval for the estimated association between the disclosure rule and the marginal effect of gold mines is 1.003 to 1.009 and is statistically significant at the 0.01 level.

scope, and media reports may not capture all events. Further, violence may be recorded more frequently in areas with artisanal mines because of additional attention due to the SEC conflict minerals disclosure rule. Measurement error is inherent in survey data.[29] For the measurement error to undermine our overall conclusions, violence would need to be better measured after the enactment of the Dodd-Frank Act.[30] For example, if ACLED data underreported violence prior to the enactment of the act in July 2010 and increased reporting of violence afterward, that would distort the overall trend of violence before and after the act's enactment and would bias our conclusions. The available evidence suggests that the opposite occurred—the ACLED data underreport violent events after the act's enactment.[31] Moreover, we accounted for the possibility of inaccurate reporting of violent events in our robustness checks by accounting for the possibility of increased reporting of data by the Kivu Security Tracker after 2017.

- **Specifications**. Our model captured an average association over the time period for the measures of violence we used. Other measures of violence or time periods could produce different results. However, our

[29]While measurement error can be addressed through higher quality data, there are a limited number of conflict datasets. In the context of conflict minerals in the DRC, peer-reviewed studies use ACLED data. A 2024 working paper uses data from the Uppsala Conflict Data Program as a robustness check and finds broadly similar results. Because the program's data record only deadly events, some studies view these data as less comprehensive but potentially more accurate than the ACLED data. The distinction between fatal and nonfatal events may be particularly relevant in the DRC due to the proliferation of sexual violence related to the conflict and forced recruitment of youth. For the 2024 working paper, see Samuel Chang and Hans B. Christensen, "Can Audits Shift the Battleground? Supply Chain Certifications and Conflict Dynamics in the Congo," Working Paper no. 2023-144 (Chicago: University of Chicago, Becker Friedman Institute of Economics, June 2024). For comparisons of data from ACLED and the Uppsala Conflict Data Program, see Kristen Eck "In Data We Trust? A Comparison of UCDP GED and ACLED Conflict Events Datasets," *Cooperation and Conflict*, vol. 47, no. 1 (March 2012).

[30]More broadly, our analysis addresses several other potential concerns. For instance, it is unlikely that we are incorrectly concluding that violence spread in treated second-level administrative units. The estimated coefficient is consistently statistically significant at the 1 percent level. Similarly, our results are statistically significant and similar across multiple models, which suggests that the results are not caused by the models' specifications.

[31]A 2019 study compares ACLED conflict data, aggregated to the annual level, with villager recollections of conflict in eastern DRC. For the sample of villages surveyed, the ACLED data track villager recollections very closely for 2008 and 2009. However, for 2010 and 2011, the ACLED data underreport conflicts relative to villager recollections. For further information, see Raul Sanchez de la Sierra, "On the Origins of the States: Stationary Bandits and Taxation in Eastern Congo," *Journal of Political Economy,* vol. 128, no. 1 (2020).

results are broadly consistent with other empirical studies that used different measures of violence and time periods.

- **Types of mines**. Like other empirical studies, our analysis examined the SEC disclosure rule's association with violence around artisanal mines. We did not consider the potential effects of industrial mines, which could change the results our analysis.
- **Omitted variable bias**. Since we had access to only a selected set of possible variables, our model may not have accounted for other important variables associated with levels of violence. For example, our estimates assume that violence did not spill over from areas with mines to areas without mines. If there were a spillover of violence, we would underestimate the true association of the SEC disclosure rule with violence in areas with artisanal mines. However, the use of fixed effects partially accounted for this by controlling for some of these and other variables, particularly variables that do not change over time.
- **Comparison group**. The model assigns treatment over time and across second-level administrative units likely to be most directly affected by the SEC disclosure rule. The model compares these "treated" units with those likely to be less affected by the rule while controlling for other factors that could be associated with violence. Consequently, the estimated model coefficients capture the differential effect between the units likely to be more and less directly affected. To the extent that the SEC disclosure rule increased violence in areas classified as nontreated, we underestimate the overall effect of the rule.

# Appendix III: Synthetic Control Method Analysis of SEC Conflict Minerals Disclosure Rule's Effect on Violence in Countries

This appendix describes our synthetic control method analysis—its methods, data, results, and limitations—of the effectiveness of the Securities and Exchange Commission's (SEC) conflict minerals disclosure rule in promoting peace and security in the countries adjoining the Democratic Republic of the Congo (DRC). We focused this analysis on eight of the nine countries adjoining the DRC: Angola, Burundi, the Central African Republic, the Republic of the Congo, Rwanda, Tanzania, Uganda, and Zambia.[1] We did not examine the effect of the rule on violent events in South Sudan or Sudan, because the boundary changes resulting from South Sudan's 2011 succession from Sudan made it difficult to compare the rule's effect in those countries before and after the Dodd-Frank Act's enactment.

## Methods

We used the synthetic control method to estimate the SEC conflict minerals disclosure rule's effect on violence in the countries adjoining the DRC (i.e., the treated countries).[2] This method allowed us to compare the adjoining countries with counterfactuals—that is, with hypothetical countries (i.e., the synthetic control countries) that had various characteristics similar to those of the treated countries but were not affected by the SEC disclosure rule (i.e., the intervention).

We matched the adjoining countries and the synthetic control countries on several variables—the outcome and selected covariates in the preintervention period—to minimize the mean squared prediction error

[1]The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) defines "adjoining country" as a country that shares an internationally recognized border with the DRC. Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217 (2010). When SEC finalized its disclosure rule, Angola, Burundi, the Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia shared an internationally recognized border with the DRC. 77 Fed. Reg. 56,274, 56,275 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1.

[2]The synthetic control method has two advantages. First, it allows for transparency and objectivity in the selection of controls. Second, by creating the synthetic control to match the case closely in the pre-intervention period, it safeguards against extrapolation bias that can occur when units with different pre-intervention characteristics are combined. For a discussion of the methodology, see Alberto Abadie, "Using Synthetic Controls: Feasibility, Data Requirements, and Methodological Aspects," *Journal of Economic Literature*, vol. 59, no. 2 (2021). For discussions of inference testing, see Alberto Abadie, Alexis Diamond, and Jens Hainmueller, "Synthetic Control Methods for Comparative Case Studies: Estimating the Effect of California's Tobacco Control Program," *Journal of the American Statistical Association,* vol. 105, no. 490 (2010); "Comparative Politics and the Synthetic Control Method," *American Journal of Political Science*, vol. 59, no. 2 (2005).

(MSPE) of the covariates.[3] We then interpolated changes in the number of violent events in the synthetic control countries after July 2010, when the Dodd-Frank Act was enacted, assuming it was never implemented. The key result of this analysis was the difference in outcome—the number of violent events—after the intervention between each adjoining country and its synthetic control. This difference served as an estimate of the extent to which the disclosure rule affected the number of violent events in the adjoining country.

We used July 2010—the enactment date of the Dodd-Frank Act, which required SEC to promulgate the conflict minerals disclosure rule—as the intervention's starting date.[4] Although SEC finalized the rule in 2012 and began requiring disclosures in 2014, stakeholders began taking actions in anticipation of the rule immediately after the act was enacted.[5] For example, DRC President Joseph Kabila announced a ban on artisanal mineral exploitation in eastern DRC from September 2010 until March 2011. Similarly, two global coalitions of major electronic companies announced in 2011 that they had stopped buying affected minerals from smelters that could not prove their source minerals were not connected to conflict in the DRC. Moreover, during our interviews with industry stakeholders, company representatives said they began preparing for the disclosure rule before 2012. Using July 2010 as the intervention's starting date allowed us to estimate the overall association of the SEC conflict minerals disclosure rule with violence.[6]

We defined the preintervention period as January 2004 through June 2010 and defined the postintervention period as August 2010 through August 2015, the 5 years that followed the Dodd-Frank Act's enactment. We estimated effects for a longer postintervention period, from August 2010 through December 2022, as a robustness test, but we used the

[3]The MSPE is a measure of the difference between the outcome that our model predicts and the true or observed outcome. We averaged the covariates over the preintervention period and divided the outcome into seven equal time periods with the exception of the last time period, which had one additional month. We used shorter time periods for the outcome to create a better preintervention match.

[4]Pub. L. No. 111-203, § 1502.

[5]77 Fed. Reg. 56, 274.

[6]Because of the absence of systematic data on peace and security, we focused on the association with violence.

shorter period as our main specification because the quality of the synthetic control degrades over time.

## Data

Our outcome was the monthly number of violent events in each country adjoining the DRC.[7] We used data from Armed Conflict Location and Event Data (ACLED) on political violence, including events involving armed groups and one-sided violence against civilians. To select covariates relevant to violent events, we used a prominent theory on civil conflict, particularly Collier and Hoeffler's "Greed versus Grievance" model, as well as knowledge of the specific context.[8] We selected the following covariates:

- **Ethnic fractionalization.** This variable is widely used in the empirical conflict literature and represents the probability that two randomly selected individuals from a population belong to different ethnic groups (one minus the Herfindahl Index).[9] We used data from a 2003 study.[10]
- **Gross domestic product (GDP) per capita.** This variable measures the opportunity cost of recruiting armed combatants. We used the World Development Indicators (WDI) data collected by the World Bank, measured in constant 2015 prices and U.S. dollars.
- **Total natural resources rent as a percentage of GDP.** This variable measures the contribution of natural resources to economic output, as

[7]For the purpose of this analysis, we defined "violence" and "violent events" as comprising battles, explosions and remote violence, or violence against civilians.

[8]In Collier and Hoeffler's model, "greed" stands for the argument that combatants in armed conflicts are motivated by a desire to better their situation and perform an informal cost-benefit analysis of whether the rewards of joining a rebellion are greater than not joining. "Grievance" stands for the argument that people rebel over issues of identity, such as ethnicity, religion, or social class, rather than over economics. See Paul Collier and Anke Hoeffler, "Greed and Grievance in Civil War," *Oxford Economic Papers*, vol. 56, no. 4 (2004).

[9]The Herfindahl Index is a commonly accepted measure of market concentration that considers the relative size distribution of firms in a market.

[10]Alberto Alesina et al., "Fractionalization," *Journal of Economic Growth*, vol. 8 (2003).

collected in the WDI data.[11] Natural resources, including minerals, are often viewed as a "resource curse" that can lead to conflict.

To create the counterfactual for each adjoining country, the synthetic control method selected a weighted combination of countries from the global set of low-income and lower-middle-income countries as defined by the WDI.[12] We then calculated the difference between each adjoining and nonadjoining country and its matched synthetic country to determine whether adjoining countries' rates of violence changed after the Dodd-Frank Act's enactment.

## Results

Our analysis found that, compared with the number of violent events in the synthetic control countries, the number of violent events in the DRC-adjoining countries likely did not change in the 5 years after the Dodd-Frank Act's enactment. Specifically, the changes in violence in the adjoining countries after July 2010 were similar to the changes in violence in the low-income and lower-middle income countries.

To test whether the results in each adjoining country were likely to be found by chance, we conducted a series of placebo studies to estimate the rule's effect by iteratively applying the synthetic control method to the countries that do not adjoin the DRC from the global set of low-income and lower-middle-income countries as defined by the WDI.[13] In each iteration, we reassigned the intervention to each of these countries as if the rule applied to that country instead of the DRC-adjoining countries. We then computed the estimated effect associated with each placebo run. This iterative procedure produced a distribution of estimated differences between each placebo and its synthetic control after the intervention. If the placebo results resembled the differences we had found between the number of violent events in the adjoining countries and

[11]According to the WDI, total natural resources rent is the sum of oil rents, natural gas rents, coal rents (hard and soft), mineral rents, and forest rents. The WDI calculated estimates of natural resource rents as the difference between the price of a commodity and the average cost of producing it. This calculation consisted of estimating the price of units of specific commodities and subtracting estimates of average unit costs of extraction or harvesting costs. The WDI then multiplied these unit rents by the physical quantities that countries extract or harvest to determine the rents for each commodity as a percentage of GDP.

[12]Our analysis omitted any country without data for violent events throughout the selected time period or without preintervention data for any of the covariates.

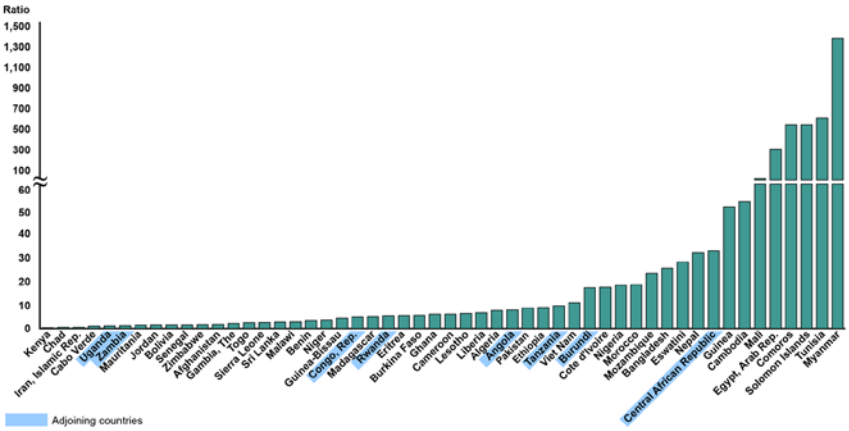
[13]The synthetic control method does not generate a simple test statistic to determine whether the difference between the treated and synthetic control country is statistically significant.

the original synthetic control countries, then we could not dismiss the possibility that these differences had occurred by chance rather than as an effect of the SEC conflict minerals disclosure rule.

To compare results across countries, we calculated the MSPE for each DRC-adjoining and nonadjoining countries both before and after the intervention. This provided a measure of the difference between the level of violence that our model predicts and the true or observed level of violence. We then calculated the ratios of post- and pre-intervention MSPEs. If the SEC disclosure rule changed the number of violent events in the adjoining countries, these countries would have the highest ratios.

The results showed that the number of violent events in the countries adjoining the DRC likely did not change in the 5 years after the Dodd-Frank Act's enactment, compared with the number of violent events in similar countries. Specifically, the DRC-adjoining countries did not have the highest ratios in comparison with other low-income and lower-middle income countries during the period from January 2004 through August 2015 (see fig. 16). We found a similar result when we extended the period through December 2022 or limited the sample to African low-income and lower-middle-income countries.

**Figure 16: Ratio of Post-Intervention MSPE to Pre-Intervention MSPE for Countries Adjoining the Democratic Republic of the Congo and Other Low- or Lower-Middle-Income Countries, Jan. 2004–Aug. 2015**




Source: GAO analysis of data from Armed Conflict Location & Event Data, the World Bank, and Alberto Alesina et al. | GAO-25-107018

Notes: Mean squared prediction error (MSPE) is a measure of the difference between the level of violence our model predicts and the true or observed level of violence.

We analyzed included data from Alesina et al., "Fractionalization," *Journal of Economic Growth*, vol. 8 (2003): 155–194.

We conducted a series of placebo studies by iteratively applying the synthetic control method, which we had used to estimate the effect of the Securities and Exchange Commission's (SEC) conflict minerals disclosure rule in the countries adjoining the DRC (i.e., the intervention), to every other country in a global set of low-income and lower-middle-income countries as defined by the WDI. In each iteration, we reassigned the intervention to one of these other countries and calculated the estimated gap in levels of violent events. This iterative procedure provided a distribution of estimated gaps for the countries where no intervention took place. To compare results across countries, we plotted the ratios of the postintervention to preintervention MSPEs for the adjoining countries and the other low- and lower-middle-income countries. We anticipated that if the 2010 enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act—which required SEC to promulgate the disclosure rule—changed the levels of violent events in the DRC's adjoining countries, these countries would have the highest ratios. Pub. L. No. 111-203, § 1502(b), 124 Stat. 1376, 2213 (2010).

## Limitations

Like all observational studies, ours was subject to limitations, including the following:

- **Measurement of violence.** ACLED data are based on reports published by the media and by nongovernmental and international organizations as well as on selected social media accounts and information obtained through partnerships with local conflict observatories. However, ACLED may underreport violence because, according to ACLED, local observatories' initiatives—although they gather primary data reflecting local realities—are often limited in scope, and media reports may not capture all events. Consequently, to the extent that ACLED underreports violence, our results are underestimates of violence and our ability to detect actual differences is reduced.
- **Sensitivity to analytical choices.** Various analytical choices—for example, the selected time period, the pool of potential control countries, selected covariates, or model specification—could affect our results. To assess the extent of such potential effects, we assessed alternate models using a longer time period and different model specification as part of our robustness checks. We found no evidence that our results were sensitive to these factors.

# Appendix IV: Related GAO Reports and Recommendations

From 2010 through 2023, we published 17 reports, with six recommendations, related to the Democratic Republic of the Congo and conflict minerals (see table 7).

**Table 7: GAO Reports Related to Conflict Minerals in the DRC, including Recommendations and Status of Implementation, 2010–2023**

| Year | Report number and title | Recommendations | Agency concurrence | Status of recommendation implementation |
|---|---|---|---|---|
| 2010 | GAO-10-1030 *The Democratic Republic of the Congo: U.S. Agencies Should Take Further Actions to Contribute to the Effective Regulation and Control of the Minerals Trade in Eastern Democratic Republic of the Congo* | To respond to the urgent humanitarian crises and reinforce U.S. commitment to work for peace and security in eastern Democratic Republic of the Congo (DRC), in collaboration with the DRC government and international partners, the Secretary of State, in consultation with the heads of other relevant U.S. agencies, should provide Congress and other international stakeholders with concrete, actionable steps that the United States could take to help monitor, regulate, and control the minerals trade in eastern DRC, including steps to help address the challenges of lack of security, weak governance, and lack of infrastructure in eastern DRC. | The Department of State agreed with the recommendation. | Closed—implemented. In March 2010, the Secretary of State approved a strategic action plan concerning DRC conflict minerals. In July 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which required the Secretary of State to submit a strategy to Congress to (1) address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products and (2) promote peace and security in the DRC by supporting efforts to monitor and control the mineral trade and develop stronger governance to facilitate transparency within the minerals trade. State submitted an updated strategic action plan to Congress in the fall of 2010 that outlined five objectives for addressing linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products. The strategic action plan serves as a framework that guides State's activities and funding in the DRC. |

| Year | Report number and title | Recommendations | Agency concurrence | Status of recommendation implementation |
|---|---|---|---|---|
| | | Recognizing the role that timely information on mines and armed groups could play in monitoring, regulating and controlling the conflict minerals trade in eastern DRC, the Secretary of State, in consultation with the Secretary of Defense and working with other relevant international stakeholders, should make every effort to periodically update information based on the best available data on mines, armed groups, and mineral trading routes subject to illicit taxation by illegal armed groups or Congolese military units. | State agreed with the recommendation. | Closed—implemented. The Dodd-Frank Act required the Secretary of State to produce and periodically update a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the DRC. State produced such a map for the first time in early 2010, before the act was enacted. State has since updated the map three times—in June 2011, May 2012, and June 2013. |
| 2011 | GAO-11-702 *The Democratic Republic of Congo: Information on the Rate of Sexual Violence in War-Torn Eastern DRC and Adjoining Countries* | — | — | — |
| 2012 | GAO-12-763 *Conflict Minerals Disclosure Rule: SEC's Actions and Stakeholder-Developed Initiatives* | To address the delay and uncertainty in finalizing a conflict minerals disclosure rule regarding what covered companies will be required to do, the Chairman of the Securities and Exchange Commission (SEC) should identify the remaining steps it needs to take and the associated time frames to finalize and issue such a conflict minerals disclosure rule. | SEC neither agreed nor disagreed with the recommendation. | Closed—implemented. SEC stated that it would continue its endeavor to complete the rule-making expeditiously to provide certainty. SEC reported that the recommended action had been completed and that SEC had adopted a final conflict minerals disclosure rule, which was published in the Federal Register on September 12, 2012. The new rule was effective November 13, 2012, with compliance required for covered companies beginning on January 1, 2013. |
| 2013 | GAO-13-689 *SEC Conflict Minerals Rule: Information on Responsible Sourcing and Companies Affected* | — | — | — |

| Year | Report number and title | Recommendations | Agency concurrence | Status of recommendation implementation |
|---|---|---|---|---|
| 2014 | GAO-14-575 *Conflict Minerals: Stakeholder Options for Responsible Sourcing Are Expanding, but More Information on Smelters Is Needed* | To give Congress a sense of the Department of Commerce's efforts to produce a listing of all known conflict minerals processing facilities worldwide, as required by section 1502 of the Dodd-Frank Act, the Secretary of Commerce should provide to Congress a plan that outlines the steps, with associated timeframes, to develop and report the required information about smelters and refiners of conflict minerals worldwide. | Commerce agreed with the recommendation. | Closed—implemented. In early September 2014, Commerce sent a letter to relevant congressional committees indicating that it had developed and sent a list of all known conflict mineral processing facilities worldwide to Congress on August 29, 2014. Commerce subsequently published this list on its website. The list includes all known processing facilities that process the minerals tantalum, tin, tungsten, or gold. |
| 2015 | GAO-15-561 *SEC Conflict Minerals Rule: Initial Disclosures Indicate Most Companies Were Unable to Determine the Source of Their Conflict Minerals* | — | — | — |
| 2015 | GAO-16-200T *SEC Conflict Minerals Rule: Insights from Companies' Initial Disclosures and State and USAID Actions in the Democratic Republic of the Congo Region* | — | — | — |

| Year | Report number and title | Recommendations | Agency concurrence | Status of recommendation implementation |
|---|---|---|---|---|
| 2016 | GAO-16-805 *SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups* | To improve the effectiveness of the SEC's conflict minerals disclosure rule, the Secretary of Commerce should submit to the appropriate congressional committees a plan outlining steps that Commerce will take, with associated time frames, to (1) assess the accuracy of the independent private sector audits (IPSA) and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934; (2) develop recommendations for the process used to carry out such audits, including ways to improve the accuracy of the audits and establish standards of best practices for such audits; and (3) acquire the necessary knowledge, skills, and abilities to carry out these responsibilities. | Commerce agreed with the recommendation. | Open. Commerce indicated in October 2016 that it had developed a three-step approach that paralleled the recommendation's three distinct elements. To fully implement this recommendation, Commerce needs to submit the said three-step plan, including associated timeframes for completing the steps, to the appropriate congressional committees. In 2018, a Commerce official said the agency had reviewed the IPSAs filed by companies in 2016 and planned to review the audits filed in 2017 by the end of fiscal year 2018. However, the official noted that the department would "not undertake the development of recommendations and best practices while the SEC is revising its rule." Commerce officials cited SEC staff's updated guidance and ongoing reviews, as well as judicial rulings as their primary reason for not implementing the recommendation. In 2021, Commerce officials stated that the department had not assessed IPSAs submitted to SEC from 2018 through 2020 and could not confirm how many were submitted in each of those years. In April 2024, Commerce reported that the status of the agency's response to our recommendation had not changed. |
| 2017 | GAO-17-544T *Conflict Minerals: Insights from Company Disclosures and Agency Actions* | — | — | — |
| 2017 | GAO-17-517R *SEC Conflict Minerals Rule: 2017 Review of Company Disclosures in Response to the U.S. Securities and Exchange Commission Rule* | — | — | — |
| 2017 | GAO-17-733 *Conflict Minerals: Information on Artisanal Mined Gold and Efforts to Encourage Responsible Sourcing in the Democratic Republic of the Congo* | — | — | — |

| Year | Report number and title | Recommendations | Agency concurrence | Status of recommendation implementation |
|---|---|---|---|---|
| 2018 | GAO-18-457 *Conflict Minerals: Company Reports on Mineral Sources in 2017 Are Similar to Prior Years and New Data on Sexual Violence Are Available* | — | — | — |
| 2019 | GAO-19-607 *Conflict Minerals: 2018 Company Reports on Mineral Sources Were Similar in Number and Content to Those Filed in the Prior 2 Years* | — | — | — |
| 2020 | GAO-20-595 *Conflict Minerals: Actions Needed to Assess Progress Addressing Armed Groups' Exploitation of Minerals* | The Secretary of State, in consultation with the Administrator of USAID, should develop performance indicators that would enable State to assess progress toward the strategic objectives and goal of the U.S. conflict minerals strategy going forward. | State agreed with the recommendation. | Open. In February 2023, State said that department officials would be considering potential revisions to the 2011 conflict minerals strategy and that the department would seek to develop performance indicators, with support from USAID, as part of any updates to the strategy. In June 2024, State indicated that no further action had been taken regarding the strategy. |
| 2021 | GAO-21-531 *Conflict Minerals: 2020 Company SEC Filings on Mineral Sources Were Similar to Those from Prior Years* | — | — | — |
| 2022 | GAO-22-105411 *Conflict Minerals: Overall Peace and Security in Eastern Democratic Republic of the Congo Has Not Improved since 2014* | — | — | — |
| 2023 | GAO-23-106295 *Conflict Minerals: 2022 Company Reports on Mineral Sources Were Similar to Those Filed in Prior Years* | — | — | — |

Legend: — = not applicable.
Source: GAO. | GAO-25-107018

# Appendix V: Comments from the U.S. Securities and Exchange Commission

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

August 27, 2024

Kimberly M. Gianopoulos
Managing Director
International Affairs & Trade
U.S. Government Accountability Office
411 G Street, NW
Washington, DC 20548

Dear Ms. Gianopoulos:

Thank you for giving the Securities and Exchange Commission ("SEC" or "Commission") staff the opportunity to share our significant concerns with the draft report entitled CONFLICT MINERALS: SEC DISCLOSURE RULE HAS NOT IMPROVED PEACE AND SECURITY IN THE DEMOCRATIC REPUBLIC OF THE CONGO (GAO-24-107018) ("Report") submitted by the Government Accountability Office ("GAO") to the SEC on July 23, 2024. The Report states that it assesses, among other things, the effectiveness of the SEC's Conflict Minerals rule ("Rule" or "SEC Rule"),[1] adopted in August 2012, in promoting peace and security in the Democratic Republic of the Congo ("DRC") and adjoining countries.

The Rule was adopted by the Commission to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA") Section 1502,[2] which specifically mandates that the Commission promulgate regulations requiring, among other matters, disclosure about "conflict minerals" (as defined by DFA Section 1502), including whether such conflict minerals originated in the DRC and "adjoining countries" (as defined by DFA Section 1502), and, if so, submission of a report relating to those conflict minerals, the requirements of which are detailed in DFA Section 1502.

Section 1502 of the DFA also requires the GAO to submit annually to the "appropriate congressional committees" a report that includes, among other things: (A) an "assessment of the effectiveness of section 13(p) of the Securities Exchange Act of 1934," which directed the Commission to adopt the Rule, "in promoting peace and security in the [DRC] and adjoining countries;" and (B) a "description of issues encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(p)."[3] The first GAO report relating

[1] Conflict Minerals, Release No. 34-67716 (Aug. 22, 2012), 77 Fed. Reg. 56,273 (Sept. 12, 2012) (codified at 17 CFR §§ 240.13p-1, 249b.400).
[2] Pub. L. 111-203, § 1502, 124 Stat. 1376, 2213-18 (2010).
[3] DFA § 1502(d)(A), (B).

See comment 1.

See comment 2.



to the SEC was submitted in 2012. In recent years, Congress modified the annual reporting requirement and designated 2024 as the last year for GAO to submit a report.[4]

The 2024 Report makes assertions and reaches conclusions that rest on several erroneous factual assumptions, draws causal inferences that are not supported by the GAO's statistical analyses, and deviates significantly from the GAO's previously issued reports. As discussed in more detail below, the SEC staff have serious concerns about the Report that it shared with GAO staff through the commenting process. Because GAO has declined to share its revised draft in response to our technical comments, we cannot evaluate the degree to which GAO has addressed our many serious concerns. Our concerns with the draft provided to us include the following:

- Many conclusions expressed in the Report about violence in the DRC and adjoining countries are improperly attributed to the SEC Rule, as opposed to DFA Section 1502.
- The Report selectively cites studies that support GAO's conclusions, while omitting or inaccurately referencing studies (identified by SEC staff to GAO staff) that reach different conclusions.
- The statistical analyses are critically flawed and lack transparency. They inappropriately infer causation—that DFA Section 1502 was a sole or contributing cause of violence in the DRC—without sufficient evidence to establish causality. Moreover, multiple findings in the Report, including conclusions contained in section headings and on the Highlights page, are based on critically flawed statistical analyses.
- The Report fails to fully discuss important limitations of the ACLED data it uses.

The Commission's primary concerns with the Report are described in more detail below.

1. *The Report Misleadingly Conflates the Enactment of DFA Section 1502 and the SEC Disclosure Rule.*

The Report's statistical analyses on violence use "July 2010—the enactment date of the Dodd-Frank Act, which required the SEC to promulgate the conflict minerals disclosure rule—as the [policy] intervention's starting date."[5] To be clear, July 2010 is the date that Congress enacted DFA Section 1502. By contrast, the SEC Rule was proposed in December 2010, adopted in August 2012, and did not require any disclosures until June 2014.[6] Timing matters a great deal when making claims that disclosures caused effects in the real world. It is challenging to see how required disclosures caused impacts before those disclosures were made. Thus, the Report is mistaken in discussing the statistical results for the July 2010 policy intervention in terms of the "SEC rule."

[4] GAO Mandates Revision Act of 2016, Pub. L. 114-301, § 3(b), 130 Stat. 1514, 1515 (2016).
[5] Report at 71. The statistical models in Appendix II include a policy indicator variable, which is defined in Table 1 to take "a value of 1 for every month after July 2010. It takes a value of 0.33 for July 2010" and is presumably equal to zero for every month before July 2010. The statistical analyses in Appendix III use July 2010 as the intervention starting date. Id. at 82.
[6] The Rule required affected companies to file their first specialized disclosure report on June 2, 2014, and annually on May 31 thereafter.

See comment 3.

To the extent that the statistical analyses purport to capture any associations at all, they are associations between the enactment of DFA Section 1502 and violence. The Report attempts to elide the distinction between the statute and the subsequent regulation by stating, "[a]lthough the SEC finalized its disclosure rule in 2012, our analysis used the enactment of the Dodd-Frank Act as a proxy for the rule because companies, governments, and others began to take action after the act's enactment in anticipation of the SEC's disclosure rule."[7] The clearer interpretation of any effects measured between 2010 and 2014 is that the Report's analysis has captured effects of DFA's Section 1502 being enacted, not anticipatory effects of the SEC Rule.[8]

See comment 4.

The Report purports to cite studies attributing increases in violence in the DRC to the SEC Rule, when those studies do not make such an attribution. For example, the Report inaccurately invokes. (1) a Parker and Vadheim (2017) study that clearly associates any effects with DFA Section 1502 and a DRC governmental mining ban, not the SEC Rule;[9] and (2) a Bloem (2023) study that associates any effects with DFA Section 1502, not the SEC Rule.[10]

See comment 5.

*2. The Report Omits Studies in Conflict With Conclusions Reached in the Report*

The Report selectively cites the academic literature, omitting evidence and conclusions in competition with those claimed by the Report.[11] The Report omits multiple important studies that criticize the studies it does cite or from which it draws conclusions, including the following: (1) a Koch and Kinsbergen (2018) study, which analyzes the extent to which existing literature, including Parker and Vadheim (2017), has exaggerated unintended effects of conflict minerals legislation;[12] and (2) a Christensen (2022) study,[13] which highlights limitations, caveats, and

[7] Report at 16 n.42.
[8] The Report selectively discusses one study that specifically examines the SEC Rule and finds that "the average number of conflicts in mining regions of covered countries declined by about 35% relative to other regions during the post-implementation period [after issuers were mandated to comply with the SEC Rule in 2014], suggesting that firms' actions help mitigate conflicts." Bok Baik et al., The Real Effects of Supply Chain Transparency Regulation: Evidence from Section 1502 of the Dodd-Frank Act, 62 J. Accounting Research 551, 556 (2024). The Report misleadingly omits this result from its discussion of Baik et. al. (2024).
[9] Report at 17 (stating "a study examining the rule's [SEC Rule's] short-term effects (those prior to 2013) found that, rather than reducing violence, it increased the likelihood that armed groups would loot civilians and commit violence against them"); see also Dominic P. Parker & Bryan Vadheim, Resource Cursed or Policy Cursed? U.S. Regulation of Conflict Minerals and Violence in the Congo, 4 J. Ass'n Envtl. & Res. Economists 1, 2-3 (2017) (stating "[o]ne interpretation is as follows: both the mining ban and the de facto boycott (Dodd-Frank) displaced militia groups and caused them to replace lost revenue by looting," instead of attributing the finding to the SEC Rule). This study uses data from 2010 to 2012 and chooses "July 2010 as the time in which Dodd-Frank 'treatment' began" (at 22). The study mentions the SEC only twice.
[10] Report at 17 ("The study found evidence suggesting that the SEC rule caused a reduction of workers employed at tantalum, tin, and tungsten mines"); see also Jeffrey R. Bloem, Good Intentions Gone Bad? The Dodd-Frank Act and Conflict in Africa's Great Lakes Regions, 71 Econ. Dev. & Cultural Change, 634 (2023) (referring to "the passage of the Dodd-Frank Act," not the SEC Rule). Bloem (2023) defines the start date of the conflict minerals policy as July 2010, two years before the SEC Rule was adopted.
[11] The SEC staff make no representation that they conducted an exhaustive literature search, and there may be additional studies that are relevant and neither cited nor discussed in the Report.
[12] Dirk-Jan Koch & Sara Kinsbergen, Exaggerating Unintended Effects? Competing Narratives on the Impact of Conflict Minerals Regulation, 57 Res. Policy 255 (2018).
[13] Hans B. Christensen, Is Corporate Transparency the Solution to Political Failure on Our Greatest Problems? A Discussion of Darendeli, Fiechter, Hitz, and Lehmann, 74 J. Accounting & Econ. 101542, 5 (2022).

competing evidence to three studies that the Report cited in support of the Report's findings.[14] Further, the Report fails to mention an important result from a study that it does cite. The Baik, Even-Tov, Han, and Park (2024) study specifically examines the SEC Rule and finds that "the average number of conflicts in mining regions of covered countries declined by about 35% relative to other regions during the post-implementation period [after issuers were mandated to comply with the SEC Rule in 2014], suggesting that firms' actions help mitigate conflicts."[15]

*3. The Report's Statistical Analyses Have Critical Flaws.*

The Report fails to explain how its statistical analyses address the central question of causality. In asking whether the enactment of DFA Section 1502 or the SEC Rule caused or contributed to violence in the DRC, one important question is what would have been the level of violence absent a disclosure mandate: What would have happened to the affected regions of the DRC had DFA not included Section 1502? Section 1502 was adopted, in part, because of concerns that the exploitation and trade of conflict minerals by armed groups was used to finance conflict in the DRC and adjoining countries.[16] Consistent with this concern, Figure 2 in the Report shows an increase in the total incidents of violence against civilians from 2007 to 2009, which predates the enactment of DFA.

See comment 6.

In this regard, the Report does not address how its statistical analyses control for confounding temporal factors and events that could be associated with violence in the Eastern DRC. The Report states that, to control for "time-specific factors that affected the territories of Eastern DRC equally," the statistical models include time indicators, which means that "[t]here is a variable for each month except the first, which is omitted."[17] These time indicators, however, do not control for factors or events that may have differentially affected violence across geographic areas in the Eastern DRC. For example, Hanai (2021) provides evidence that specific provinces in the Eastern DRC were, in fact, differentially affected by an increase in conflicts over time, such as North Kivu and South Kivu.[18] Similarly, violence triggered by the M23 rebellion between 2012 and 2013 seemed to be concentrated around the city of Goma in the Eastern DRC.[19] Under this approach, any violence following July 2010 that is caused by confounding factors or events and concentrated in the GAO's statistical analyses' policy territories[20] would be wrongly attributed to the enactment of DFA Section 1502, according to the logic of the Report's findings.

The Report does not explain how its statistical models control for confounding factors or events, including:

[14] These studies are: Parker & Vadheim, supra note 9; Nik Stoop, Marijke Verpooten & Peter van der Windt, More Legislation, More Violence? The Impact of Dodd-Frank in the DRC, PLoS ONE, Aug. 9, 2018; and an earlier version of Bok Baik et al., supra note 8.
[15] See, e.g., Bok Baik et al., supra note 8.
[16] DFA § 1502(a).
[17] Report at 71.
[18] See Kazuyo Hanai, Conflict Minerals Regulation and Mechanism Changes in the DR Congo, 74 Res. Policy 102394 (2021).
[19] See Actor Profile: The March 23 Movement (M23), ACLED (Mar. 23, 2023), https://acleddata.com/2023/03/23/actor-profile-m23-drc/.
[20] See infra policy territories (i.e., the treatment locations).

(i) the 2008-2009 National Congress for the Defence of the People offensive in the Eastern DRC;[21]

(ii) the Organization for Economic Co-operation and Development's ("OECD") guidelines for responsible sourcing of minerals, which were already underway prior to the passage of DFA and were adopted in 2010;[22]

(iii) the DRC's governmental ban on artisanal mining from September 11, 2010, to March 2011, which covered three provinces—Maniema, North Kivu, and South Kivu;[23]

(iv) the Electronic Industry Citizenship Coalition boycott that took hold on April 1, 2011;[24]

(v) the rebellion of the armed group M23 between 2012 and 2013;[25]

(vi) the subdivision in 2015 of the DRC's six largest provinces into twenty-one new provinces, which likely differentially impacted the administrations and related services across the new provinces;

(vii) Regulation 2017/821 of the European Parliament and of the Council of May 17, 2017, laying down supply chain due diligence obligations for European Union importers of tin, tantalum, and tungsten, their ores, and gold originating from conflict-affected or high-risk areas, which obliges European Union importers to identify and mitigate risks in their supply chains;[26]

(viii) the significant increase in the level of violence in certain regions of the Eastern DRC that began in 2017 (e.g., see Figure 2 and accompanying text in the Report);[27]

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[21] See 1960–2023 Eastern Congo: A Legacy of Intervention, Council of Foreign Relations (2024). https://www.cfr.org/timeline/eastern-congo-legacy-intervention.
[22] See Melanie Gouby, The Problem with "Conflict-Free" Minerals, Foreign Policy (May 22, 2024). https://foreignpolicy.com/2024/05/22/conflict-free-minerals-traceability-schemes-congo/.
[23] See Sarah Zingg Wimmer & Filip Hilgert, Bisi. A One-Year Snapshot of the DRC's Principal Cassiterite Mine 6, Int'l Peace Info. Serv. (Nov. 28, 2011), available at https://ipisresearch.be/wp-content/uploads/2011/11/20111128__Bisie_FHilgert_SZingg.pdf ("Given the close link between the illicit mining activities and insecurity in the area, some observers believe that the just-mentioned 4-day mass rape of last summer was the trigger for President Kabila's imposition of an outright mining ban on the east of the country. Kabila had visited Walikale on 9 September and ordered the stop of mining activities in the territory the same day. Two days later, he suspended all exploitation and export of minerals from North Kivu and the neighbouring two provinces of South Kivu and Maniema, until further notice.").
[24] See, e.g., Parker & Vadheim, supra note 9, at 9 ("The boycotting of eastern DRC minerals has been more explicit since April 1, 2011, when a coalition of large electronics and high-technology companies—the Electronic Industry Citizenship Coalition (EICC)—stopped buying the 3Ts from smelters unable to prove that their source minerals did not fund DRC conflict.").
[25] See Center for Preventative Action, Conflict in the Democratic Republic of Congo, Council of Foreign Relations (updated June 20, 2024), https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo.
[26] On January 1, 2021, the Conflict Minerals Regulation, Regulation (EU) 2017/821, also came into full force across the European Union.
[27] See Report, Figure 2, and accompanying text. The Report attributes this increase in violence in part to shifting alliances among various armed groups as well as the emergence of the armed group Cooperative for the Development of the Congo (CODECO) and the strengthening of a separate group, Allied Democratic Forces (ADF), according to experts that GAO staff interviewed. See id. at 11; see also Martins Abadias do Nascimento & Richard

See comment 7.

Ms. Kimberly Gianopoulos
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(ix) the revived rebellion of the armed group M23 in 2021;[28] and

(x) any other factor or event that could have triggered an increase in violence across specific areas in the Eastern DRC following DFA's passage.

DFA Section 1502 applied across all territories in the Eastern DRC, making it impossible to distinguish locations within the Eastern DRC that were covered by DFA Section 1502 ("treatment locations") from locations *not* covered by DFA Section 1502 ("control locations"). A set of control locations is necessary to separately identify the effects of DFA Section 1502 and the effects of confounding temporal factors and events. SEC staff were informed that the policy indicator defined the policy territories (i.e., the treatment locations) as the union of territories in which mining was banned and those containing at least one artisanal mine[29] with geocoordinates falling within the U.S. State Department's Section 1502 map of conflict mining zones.[30] The basis for GAO's methodology choice is the Parker and Vadheim (2017) study, which self-reports that this designation of treatment areas is problematic, as "the composition of the control and treatment areas—that is, the policy and nonpolicy areas—unlikely remained the same because miners likely relocated across territories for income opportunities."[31] Similarly, to the extent that DFA Section 1502 was enacted as a response to rising violence, the areas that are designated as treatment areas would be exactly the areas relatively more likely to see shifts in population, shifts in mining activity, shifts in violence, or other trends absent DFA Section 1502.[32] More generally, this approach to defining the policy indicator is fundamentally flawed since all locations within the Eastern DRC were covered by Section 1502 (i.e., treated). The Report does not address these limitations.

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Apau, CODECO Violent Extremism Activities in Eastern DRC: Analysis of Vulnerabilities, Response, and Resilience, African Centre for the Study & Res. on Terrorism (Apr. 2023), available at https://au.int/sites/default/files/documents/42722-doc-CODECO_Violent_Extremism_Activities_in_Eastern_DRC_Analysis_of_Vulnerabilities_Response_and_Resilience.pdf.

[28] See 1960–2023 Eastern Congo, supra note 21.

[29] The Report states that it focuses on violence in locations with artisanal mines "because armed groups are less likely to interfere with industrial mines." Report at 69. The Report acknowledges "that the expansion of industrial mines decreased the number of battles among armed groups." Id. at 21. The Report's models fail to account for the location of industrial mining, and to the extent it is correlated with that of artisanal mining the models' results on violence would be biased. For instance, if violence decreased around industrial mines after the enactment of DFA Section 1502, and industrial mines were principally located in territories classified by the Report as "control locations," then the Report's analyses would find a relative increase in violence in the treatment locations even if violence did not increase in those areas.

[30] The Report's statistical analyses for the Eastern DRC, as of July 23, failed to distinguish between locations that were covered by DFA Section 1502 and locations not covered by Section 1502. Report Appendix II.

[31] See Parker & Vadheim (2017), supra note 9, at 44. This serious problem with the designation of treatment areas is exacerbated in the Report as it examines a longer time period following the enactment of DFA 1502. While the Parker and Vadheim (2017) study24 uses data through December 2012 (1.5 years after the enactment of DFA Section 1502), GAO's statistical analyses use data through December 2016 as well as December 2022 (5.5 years and 11.5 years, respectively, after the enactment of DFA Section 1502).

[32] As a closely related matter, to the extent that GAO's statistical models fail to control for, over time, the number of industrial mines, economic activity in general, and population patterns, the Report's methodology could misattribute the effects of these and related shifts on violence as effects of the enactment of DFA Section 1502 around artisanal gold mines on violence. The same problem applies to the Report's analyses of artisanal mines of tantalum, tin, and tungsten.

Also, the policy indicator coefficient captures only a change in the difference in likelihood of violence across different areas (controlling for some factors), and does not, in fact, measure the likelihood of violence relative to a but-for world in which DFA Section 1502 (and, later on, the SEC Rule) had not been enacted. Any attempt to interpret this change as being *caused* by DFA Section 1502 is entirely predicated on the belief that DFA Section 1502, and not any of the myriad confounding events over the event window, drove this change. Whether this belief is warranted depends not only on how closely the designation of treatment and control territories is related to the actual relative effect of DFA Section 1502, but also how *unrelated* the designation of treatment and control territories is to other alternative explanations, as well as the relative magnitude of the impacts of these events on violence. All uncontrolled factors that drove changes in violence at regions with artisanal mines and regions subject to the ban (relative to regions both without artisanal mines and not subject to the ban) over the sample period are captured in the "policy indicator" coefficient. As presented, the Report cannot exclude the hypothesis that violence would have intensified even more in the treatment territories but for the enactment of DFA Section 1502, or that Section 1502 actually decreased violence in the control territories in GAO's statistical analyses.

See comment 8.

The discussion of the statistical results in the Report improperly asserts that a causal connection on the basis of its statistical models is warranted so long as any potential confounding factors and events, such as those listed above, are plausibly *related to* the treatment being studied (in this case, enactment of DFA). For example, the Report states "We chose this date [July 2010] because, although the SEC finalized the rule in 2012 and began requiring disclosures in 2014, stakeholders began taking actions in anticipation of the rule immediately after the act was enacted. For example, DRC President Joseph Kabila announced a ban on artisanal mineral exploitation in the eastern DRC from September 2010 until March 2011."[33] In discussions with SEC staff, GAO staff confirmed that this assumption underlies the statistical analyses, stating that they are unable to rule out that the subsequent events were not themselves caused by DFA Section 1502 and the SEC Rule. This reasoning fundamentally misunderstands statistical analysis of causal relationships: Whether DFA Section 1502 (or the SEC Rule) caused these future events is a hypothesis that cannot be assumed – it must be tested and confirmed with appropriate analysis of treatment and control groups. In other words, to establish a causal relationship, the Report must demonstrate that the treatment being studied (in this case, enactment of DFA Section 1502) is a but-for cause of the outcome being studied (in this case, violence).[34] This is not feasible absent appropriately designating treatment and control groups. Doing so would require showing not only that certain events were caused by the enactment of DFA Section 1502, but also that the violence would not have increased even more absent DFA Section 1502. In sum, the statistical models in the Report do not allow for any causal inferences between DFA Section 1502 (let alone the SEC Rule) and violence.

See comment 9.

*4. The Report Fails to Fully Discuss Important Limitations of the ACLED Data It Uses.*

The Report relies on ACLED data to identify violence. The Report acknowledges measurement error in the ACLED data, also stating "the SEC disclosure rule, by focusing

[33] Report at 82.
[34] For instance, the burden of proof is on the Report to show that events such as the presidential ban on artisanal mines or the OECD guidelines for responsible sourcing of minerals were caused by DFA and were not set into motion by factors outside of DFA.

additional attention on areas with artisanal mines, may have led to more accurate reporting of violence, causing us to conclude incorrectly that violence increased when in fact there was just better recording of the violence that was occurring."[35]

The Report does not provide sufficient context on the limitations related to ACLED's dynamic sourcing of conflict data. The Report fails to address, for instance, the Raleigh, Kishi, and Linke (2023) study, which states: "ACLED's dynamic sourcing model may help to ensure that conflict coverage validity as well as reliability across conflicts is maximized, but given the changes over time in the information environment more broadly, the comprehensiveness of its data collection can only be as good as the quality of information available at a given time. The availability of in-depth information, and the media environment more largely, in 1997 (the start of ACLED coverage for many African countries) is quite different from data availability in 2022."[36]

The Report also fails to address the Eck (2012) study, which highlights important limitations of the ACLED data, including for the Report's *sub-national analyses* in Appendix II: "The aim of this article is to provide readers with some guidelines as to when these datasets should be used and when they should be avoided; it finds that *those interested in subnational analyses of conflict should be wary of ACLED's data due to uneven quality-control issues which can result in biased findings if left unchecked by the researcher*."[37] "First, ACLED's unit of analysis is the event (violent or nonviolent), yet researchers rarely theorize about events per se, but rather the production and targets of violence. . . . It is conceptually problematic for many theories of civil war when no distinction is made in the intensity and nature of violence. Second, ACLED does not provide users with the information which is often needed to study theories of civil war: it provides no information distinguishing between whether the actor is connected to the state (i.e. military or police forces), nor does it provide Actor IDs which could be used to track the behavior of a warring party."[38] Additionally, the Report fails to discuss limitations regarding the use of ACLED data that Parker and Vadheim (2017) and Chang and Christensen (2024) report.[39]

These data issues are particularly relevant to the Report's statistical analyses on the presence of *any* violence at the level of a second-level administrative unit across the Eastern

[35] Report at 79.
[36] See Clionadh Raleigh, Roudabeh Kishi & Andrew Linke, Political instability patterns are obscured by conflict dataset scope conditions, sources, and coding choices, 10 Humanities & Soc. Sciences Commc'ns 74 (2023). The Report uses ACLED data for the period 2004-2022.
[37] See Kristine Eck, In Data We Trust? A Comparison of UCDP GED and ACLED Conflict Events Datasets, 47 Cooperation & Conflict 124, 124 (2012) (emphasis added).
[38] See id. at 126.
[39] See Parker & Vadheim, supra note 9, at 44 ("[W]e recognize that the causes of violence in the eastern DRC are more complex than the theory we present (see, e.g., Autesserre 2012), and we concede that the ACLED data are not up to the task of precisely testing each alternative theory against one another."); Samuel Chang & Hans Bonde Christensen, Can Audits Shift the Battleground? Supply Chain Certifications and Conflict Dynamics in the Congo 29 (Becker Friedman Institute for Economics Working Paper 2023-144, 2024), available at https://ssrn.com/abstract=4609532 ("Eck (2012) points out various issues with ACLED including coverage inconsistencies and event coding errors which may interfere with the inference of results.").

DRC.[40] In these analyses, properly identifying the presence of *any* violence at the level of a second-level administrative unit in a given year and month is critical. Misclassification in this identification process (i.e., the presence or absence of *any* violence) that is correlated with designation of treatment locations and control locations would lead to biased and inconsistent results in the Report's statistical analyses. In particular, treatment areas are exactly the areas more likely to incorrectly have no identification of violence pre-2010 and correct identification of violence post-2010, as they are the locations more likely to have mining-related violence. In such a situation, the Report's finding that the enactment of DFA Section 1502 was likely associated with a spread of violence would not be statistically valid.

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In sum, given the limitations discussed above, the SEC staff strongly objected during the commenting process to language and conclusions in the draft Report that asserted, without sufficient support, a causal link (whether sole or contributory) between DFA—and the SEC Rule—and violence in the DRC. As GAO did not provide the SEC staff with a revised draft, we cannot know whether GAO has sufficiently addressed these objections. The final version of the report should not include any discussion of causal links between DFA Section 1502 (or the SEC Rule) and increased violence in the region because it lacks a sufficient analytical basis to reach such a conclusion. To the extent the final version of the report includes a discussion of "associations" between DFA Section 1502 (or the SEC Rule) and increased violence in the region, the final version of the report should appropriately acknowledge that these associations are not evidence of causal links.

Sincerely,

Melissa Duru
Deputy Director, Division of Corporation Finance

signing on behalf of

Erik Gerding
Director, Division of Corporation Finance

[40] See Report at 69. Specifically, at the level of a second-level administrative unit, in a given year and month, the statistical analysis' outcome variable is a 'violent event indicator', which equals 1 if there is any violence, and 0 otherwise. See also id. at 68 n.154 ("For the purpose of this analysis, we defined "violence" and "violent events" as battles, explosions and remote violence, or violence against civilians."). Figure 4 in the Report (at 18) also purports to show the geographic spread of violence across second-level administrative units in the eastern DRC from 2010 to 2022. But the figure is based on the presence or absence of any violence within each unit during the selected years, and thus it fails to show whether the geographic concentration of violence changed meaningfully over time. For transparency and greater contextual sophistication, the final report should include a table documenting the number of violent events in 2010 and 2012 in each second-level administrative units mapped in Figure 4. Lastly, in discussions with SEC staff, GAO staff stated that the words "spread of violence" are meant to convey that a consistent amount of violence was distributed in a larger geographic area rather than to suggest that the violence increased overall.

## GAO Comments

1. During the agency comment period, we met with U.S. Securities and Exchange Commission (SEC) officials to discuss their concerns about our draft report and solicited additional technical comments. Consistent with our agency protocols, we provided a document detailing the changes that we planned in response to SEC's comments on our draft report. In that document, we noted that SEC's technical comments helped to strengthen our report and that, in response, we had made several changes to the statistical analyses, conclusions, and description of our methodology. We also shared the results of the revised analyses and noted that our overall findings remained the same.
2. We agree with SEC that the timing used as the intervention date matters when determining the effects of the conflict minerals disclosure rule.[1] As we state in the body of the report and in the appendices, our analysis uses the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in July 2010 as a proxy for the SEC conflict minerals disclosure rule because once the act was signed, companies, governments, and others began to take action in anticipation of the rule that the act required the SEC to issue.[2] For example, company representatives told us that before SEC issued the rule in 2012, their companies began preparing for its issuance by mapping supply chains for the minerals in their products and developing conflict minerals policies. Such policies may require cessation of business with suppliers the companies believe pose a risk of supporting armed groups in the Democratic Republic of the Congo (DRC) or adjoining countries, as we note in the report. In addition, due diligence programs and traceability schemes to assist companies in tracing minerals' origins began prior to 2014, when SEC started requiring companies to file disclosures. Because changes in anticipation of the rule began before 2014, when the first disclosures were due, we used July 2010 as the intervention date—similar to most of the relevant peer-reviewed literature—to capture all of the rule's effects.
3. The Dodd-Frank Act requires us to assess the effectiveness of section 13(p) of the Securities Exchange Act of 1934, as added by section 1502(b) of the act, in promoting peace and security in the DRC and adjoining countries.[3] Section 13(p) requires SEC to promulgate regulations containing disclosure and reporting requirements on the

[1]77 Fed. Reg. 56,274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1.

[2]Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18 (2010).

[3]Pub. L. No. 111-203, § 1502(d)(2)(A).

use of certain conflict minerals from the DRC and adjoining countries.[4] Therefore, we assessed the effectiveness of the SEC disclosure rule in promoting peace and security in the DRC and adjoining countries. We added a footnote with this explanation on page 2 of this report.

Further, the effects of the Dodd-Frank Act's enactment and effects in anticipation of the SEC rule are essentially identical. Because section 1502(b) of the Dodd-Frank Act required that SEC promulgate a conflict minerals disclosure rule and set out key aspects of what the rule would require, actions taken by governments, companies, and others, including armed groups, can be seen as reactions to the SEC's disclosure rule.

4. We revised the report sections citing other empirical studies to clarify that these studies analyzed the effect of the Dodd-Frank Act.
5. Although we thank SEC for sharing additional literature, our report cites quantitative data from reports and findings from empirical studies that we determined were relevant and objective and that met our evidentiary standards. Some of the studies and analyses identified by SEC staff did not meet these criteria. For example, we did not cite the Baik et al. study's analysis that found the SEC conflict minerals disclosure rule was linked to a decrease in conflict in the DRC and adjoining countries, because (1) the estimated coefficient does not separate the effects in the DRC from those in the adjoining countries and (2) the analysis does not contain data for any years before the Dodd-Frank Act's enactment.[5] Consequently, the Baik et al study makes a comparison between "treated" time periods. The Koch and Kinsbergen study focuses on narratives about the *de facto* embargo on conflict minerals from the DRC that followed the enactment of Dodd-Frank Act. It does not use statistical analysis to determine the effect of the act.[6]

   We believe that SEC's comments overstate the contributions of other studies it cites. For example, many of the limitations and concerns identified in the 2022 Christensen study are not relevant to our analysis, because the study focuses on how to identify the effects of conflict mining disclosures from other facets of the Dodd-Frank Act

[4]Pub. L. No. 111-203, § 1502(b).

[5]Bok Baik et al., "The Real Effects of Supply Chain Transparency Regulation: Evidence from Section 1502 of the Dodd–Frank Act," *Journal of Accounting Research*, vol. 62, no. 2 (May 2024).

[6]Dirk-Jan Koch and Sara Kinsbergen, "Exaggerating unintended effects? Competing narratives on the impact of conflict minerals regulation," *Resources Policy*, vol. 57 (2018).

and the SEC rule, such as due diligence programs.[7] Nonetheless, Christensen notes that other changes that occurred around the time of the Dodd-Frank Act's enactment—including "increased diplomatic efforts by the United States government and the introduction of a regional certification mechanism into the law of the DRC"—could also influence the estimates. In a 2024 study, Christensen and his coauthor state that the "widespread boycott of [tantalum, tin, tungsten, and gold] from the affected areas by SEC-registered companies" and the "contemporaneous ban on artisanal mining by the Congolese government" led to the adoption of the regional certification mechanism.[8] Thus the authors argue that other events are linked to the SEC rule. As we note in our report, our estimates capture the overall effects of the rule, as proxied by the enactment of the Dodd-Frank Act.

6. As we note in our report, our estimates capture the overall effects of the SEC rule, as proxied by the enactment of the Dodd-Frank Act. These effects include any associated diplomatic efforts and responses by governments, companies, and other actors (to the extent that these are not captured by the fixed effects). Many of the potentially confounding events SEC discusses in its comments, such as the boycotting of minerals and the DRC government's artisanal mining ban, can be viewed as responses to the enactment of the Dodd-Frank Act and its requirement that the SEC issue the conflict minerals disclosure rule and are therefore part of the overall effect of the rule.

   Our analysis already considers other factors discussed by SEC. For instance, the 2008 and 2009 National Congress for the Defence of the People offensive in eastern DRC predates the Dodd-Frank Act. Since the pretreatment trends for treated and nontreated areas are similar, this event does not affect our comparison. Similarly, by reproducing our main results after limiting the data to the pre-2017 period, we show that they are not caused by the 2017 surge in violence. More broadly, the peer-reviewed literature has consistently found increases in violence in treated territories with gold mines despite using different

[7]Hans B. Christensen, "Is Corporate Transparency the Solution to Political Failure on Our Greatest Problems? A Discussion of Darendeli, Fiechter, Hitz, and Lehmann," *Journal of Accounting & Economics*, vol. 74, no. 2-3 (2022).
[8]Samuel Chang and Hans B. Christensen, *Can Audits Shift the Battleground? Supply Chain Certifications and Conflict Dynamics in the Congo*, Working Paper no. 2023-144 (Chicago: University of Chicago, Becker Friedman Institute of Economics, June 2024).

time periods (thereby showing that the effects are not driven by any particular time-bound confounding factor).

7. Our methodology followed the peer-reviewed literature by comparing "treated" territories of eastern DRC with "control" territories. The treated territories represent the mining areas with armed groups, which are the territories likely to be most affected by the SEC rule. Specifically, the treated territories are those in which the President of the DRC announced a ban on artisanal mining from September 2010 through March 2011 and those containing at least one mine with geocoordinates within the Department of State's 2011 map of conflict mining zones. The DRC President announced the ban during a trip to North Kivu Province during which he reportedly stated his determination to address the violence caused by armed groups.[9] Our methodology therefore compares areas that were likely to be most affected by the policy with those that were likely to be less affected.

   This comparison probably understates the overall increases in violence. Parker and Vadheim state that "the drawback of this model is that heavily endowed territories outside the policy targeted zone are not clean counterfactuals for heavily endowed territories inside the zone, if [the] Dodd-Frank [Act] caused battles for their control."[10] According to the study, if the policy caused spatial spillovers of violence into nonpolicy territories, then "these comparisons are biased downward and understate the true effect of the policies." As SEC notes in its comments, the study further states that "the composition of the control and treatment areas—that is, the policy and nonpolicy areas—unlikely remained the same because miners likely relocated across territories for income opportunities." However, this discussion similarly concludes that this would lead the coefficients to understate the increase in violence.

8. We moderated the causal inferences in our report, choosing instead to focus on the association between the SEC conflict minerals disclosure rule and the spread of violence in territories containing artisanal gold mines. The peer-reviewed literature that uses the same methodology makes causal assertions. In the interest of being

[9]Sara Geenen, Gabriel Kamundala, and Francine Iragi, "Le Pari Qui Paralysait: la Suspension des Activités Minières Atisanales au Sud-Kivu," *L'Afrique des Grands Lacs, Annuaire 2010-2011* (Paris: 2011) 161-183.

[10]Dominic P. Parker and Bryan Vadheim, "Resource Cursed or Policy Cursed? U.S. Regulation of Conflict Minerals and Violence in the Congo," *Journal of the Association of Environmental and Resource Economists*, vol. 4, no. 1 (March 2017).

conservative, we have focused on association linkages and made the related changes in the final report.

9. Researchers have primarily used two conflict event datasets—Armed Conflict Location and Event Data (ACLED) and the Uppsala Conflict Data Program Georeferenced Events Dataset, respectively. In a 2012 study, Eck notes two main issues to consider when choosing event-level conflict datasets, one of which is the type of data needed.[11] For those interested in violent nonfatal events, as we are, Eck concludes that ACLED data are the only option to consider because data from the Uppsala program do not include such events. The distinction between fatal and nonfatal events is particularly relevant in the DRC because of the prevalence of violent but nonfatal events, including sexual violence related to the conflict and the forced recruitment of youths. Consequently, a dataset, such as the Uppsala Conflict Data Program's, that does not include violent nonfatal events would lead to an incomplete and incorrect depiction of violence in the DRC. As a result, the relevant peer-reviewed literature also uses ACLED data.

   Measurement error is inherent in survey data. For the measurement error to undermine our overall conclusions, the error would need to result in the recording of more violence in "treated" areas with artisanal gold mines after the enactment of the Dodd-Frank Act. Evidence suggests that the opposite occurred—ACLED may have underreported violence after the act's enactment. In particular, in a 2020 peer-reviewed study, Sanchez de la Sierra compared ACLED conflict data, aggregated to the annual level, with villager recollections of conflict in eastern DRC.[12] For the sample of villages surveyed, the ACLED data track villager recollections very closely for 2008 and 2009. For 2010 and 2011, however, the ACLED data underreport conflicts relative to villager recollections. Further, with respect to concerns regarding the dynamic sourcing of data, we accounted for the increased reporting of data by the Kivu Security Tracker after 2017 in our robustness checks.

   More broadly, the measurement error Eck discusses seems unlikely to undermine our results, since the "uneven quality-control" refers to miscoded location information and misuse of geoprecision codes—neither of which is systematically related to the timing of the Dodd-

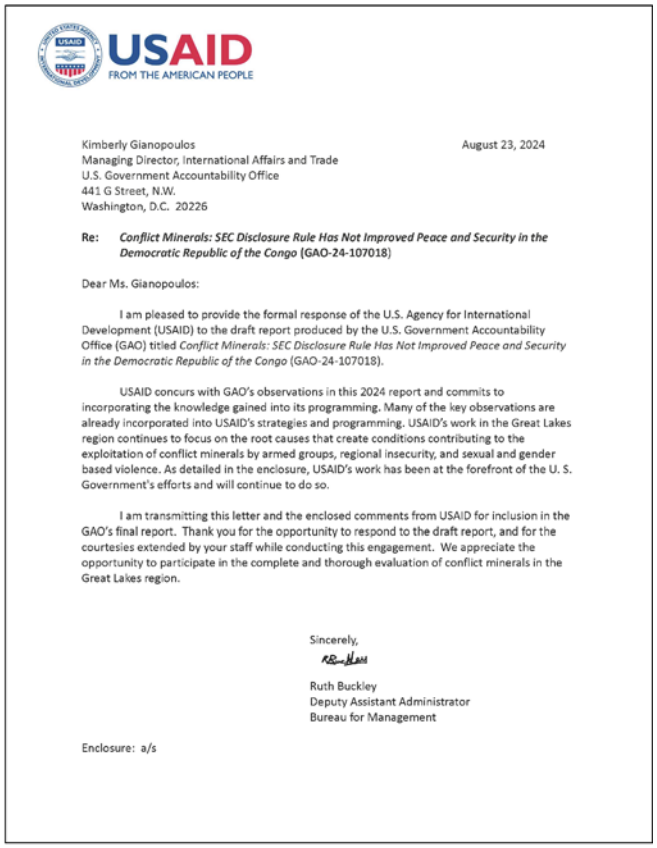
[11]Kristine Eck, "In data we trust? A comparison of UCDP GED and ACLED conflict events datasets," *Cooperation and Conflict*, vol. 47, no. 1 (2012): 124–141.

[12]Raúl Sánchez de la Sierra, "On the Origins of the States: Stationary Bandits and Taxation in Eastern Congo," *Journal of Political Economy*, vol. 128, no. 1 (2020).

Frank Act's enactment or the location of artisanal mines. Relatedly, Eck notes that the geoprecision can affect the coding of covariates, such as rainfall or the number of mines. Because our analysis aggregates covariates at the second-level administrative unit, geoprecision coding errors are similarly unlikely to affect our analysis.[13]

[13]Research also suggests that this type of measurement error in similar models would result in the underestimation of the magnitude and statistical significance of the estimated coefficients. For further information, see Yi Li, Haicheng Tang, and Xihong Lin, "Spatial Linear Mixed Models with Covariate Measurement Errors," *Statistica Sinica*, vol. 19, no. 3 (2009).

# Appendix VI: Comments from the U.S. Agency for International Development



USAID
FROM THE AMERICAN PEOPLE

Kimberly Gianopoulos
Managing Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20226

August 23, 2024

**Re:** ***Conflict Minerals: SEC Disclosure Rule Has Not Improved Peace and Security in the Democratic Republic of the Congo*** **(GAO-24-107018)**

Dear Ms. Gianopoulos:

I am pleased to provide the formal response of the U.S. Agency for International Development (USAID) to the draft report produced by the U.S. Government Accountability Office (GAO) titled *Conflict Minerals: SEC Disclosure Rule Has Not Improved Peace and Security in the Democratic Republic of the Congo* (GAO-24-107018).

USAID concurs with GAO's observations in this 2024 report and commits to incorporating the knowledge gained into its programming. Many of the key observations are already incorporated into USAID's strategies and programming. USAID's work in the Great Lakes region continues to focus on the root causes that create conditions contributing to the exploitation of conflict minerals by armed groups, regional insecurity, and sexual and gender based violence. As detailed in the enclosure, USAID's work has been at the forefront of the U. S. Government's efforts and will continue to do so.

I am transmitting this letter and the enclosed comments from USAID for inclusion in the GAO's final report. Thank you for the opportunity to respond to the draft report, and for the courtesies extended by your staff while conducting this engagement. We appreciate the opportunity to participate in the complete and thorough evaluation of conflict minerals in the Great Lakes region.

Sincerely,

Ruth Buckley
Deputy Assistant Administrator
Bureau for Management

Enclosure: a/s

**COMMENTS BY THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT ON THE DRAFT REPORT PRODUCED BY THE U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO) TITLED,** ***Conflict Minerals: SEC Disclosure Rule Has Not Improved Peace and Security in the Democratic Republic of the Congo*** **(GAO-24-107018)**

The U.S. Agency for International Development (USAID) would like to thank the U.S. Government Accountability Office (GAO) for the opportunity to respond to this draft report. We appreciate the extensive work of the GAO engagement team.

USAID applauds GAO's commitment to examining the complex nexus of conflict minerals, peace and security, and gender-based violence (GBV) in the Democratic Republic of the Congo (DRC) and Great Lakes region. Since the passing of the Dodd-Frank legislation in 2010 and continuing through the 17 previous GAO reports, USAID has welcomed GAO's efforts, findings, recommendations, and collaboration in understanding and addressing the issues.

USAID concurs with GAO's observations in this 2024 report and commits to incorporating the knowledge gained into its programming. Many of the key observations are already incorporated into USAID's strategies and programming.

At the USAID Mission, Eastern DRC is prioritized as a focal zone for USAID development and humanitarian efforts. In addition to a series of responsible mineral programs over the years, (Clean Gold, Capacity Building for a Responsible Minerals Trade, Sustainable Mine Site Validation Project, and the Africa Trade and Invest Minerals Activity), the Mission has incorporated minerals into other programming areas, such as local governance, environmental, and anti-corruption programs. This programming is consistent with the GAO observations that the factors contributing to conflict minerals are much larger and deeper than the control and management of extraction sites, value chains, and exports. In addition, DRC was prioritized for minerals-themed programming in USAID's Grand Challenge to Counter Transnational Corruption.

In addition to technical programming, USAID has contributed greatly to interagency policy formulation, driving a renewed interagency strategic approach for minerals in DRC as well as a Statement of Concern Related to Certain Minerals Supply Chains from Rwanda and Eastern DRC Contributing to the Ongoing Conflict.

Building on the findings that industry initiative and commitment, not just legal mandates, are key to creating a lasting culture of transparency, accountability, and responsibility in minerals supply chains, USAID is proud to co-lead the Public Private Alliance for Responsible Minerals Trade (PPA) since 2011. Born as a result of Dodd-Frank Legislation, the PPA has evolved to include a global mandate and minerals other than those covered under Dodd-Frank

legislation. Partnership with the private sector is a key tenant of USAID's development approach and the minerals portfolio has been at the forefront of those efforts for many years.

While the evidence does not demonstrate that the Dodd Frank Act has reduced violence in Eastern DRC, industry stakeholders, including the Government of DRC (GDRC), firmly believe that the law has had a positive impact on the ground and would like to see its continued implementation. According to GDRC officials, the Dodd Frank Act has had important impacts on the country and economy, namely reducing the benefits accrued to armed groups through illegal taxes and operations while increasing government revenues by setting up cleaner and more transparent minerals supply chains.

Outside of the minerals portfolio, USAID remains committed to advancing peace and stability in Eastern DRC, with dedicated programming solely addressing those concerns. Preventing and mitigating effects of GBV is also prioritized in USAID health programs in the DRC and Great Lakes region.

As demonstrated by decades of robust programming, USAID is committed to addressing the topics covered in this report in the DRC and Great Lakes region and will continue to be at the forefront of the U. S. Government's policies, programming, and efforts.

# Appendix VII: GAO Contact and Staff Acknowledgements

| | |
|---|---|
| GAO Contact | Kimberly M. Gianopoulos, (202) 512-8612 or gianopoulosk@gao.gov |
| Staff Acknowledgements | In addition to the contact named above, Ryan Vaughan (Assistant Director), Daniela Rudstein (Analyst-in-Charge), Marc Rockmore, Craig Rossett, Matt St. Geme, Jim Ashley, Breanne Cave, Jieun Chang, Chris Keblitis, Samantha Lalisan, Reid Lowe, Terry Richardson, Jeff Tessin, and Frances Tirado made key contributions to this report. |

# Related GAO Products

*Conflict Minerals: 2022 Company Reports on Mineral Sources Were Similar to Those Filed in Prior Years.* GAO-23-106295. Washington, D.C.: July 19, 2023.

*Conflict Minerals: Overall Peace and Security in Eastern Democratic Republic of the Congo Has Not Improved since 2014.* GAO-22-105411. Washington, D.C.: September 14, 2022.

*Conflict Minerals: 2020 Company SEC Filings on Mineral Sources Were Similar to Those from Prior Years.* GAO-21-531. Washington, D.C.: July 12, 2021.

*Conflict Minerals: Actions Needed to Assess Progress Addressing Armed Groups' Exploitation of Minerals.* GAO-20-595. Washington, D.C.: September 14, 2020.

*Conflict Minerals: 2018 Company Reports on Mineral Sources Were Similar in Number and Content to Those Filed in the Prior 2 Years.* GAO-19-607. Washington, D.C.: September 9, 2019.

*Conflict Minerals: Company Reports on Mineral Sources in 2017 Are Similar to Prior Years and New Data on Sexual Violence Are Available.* GAO-18-457. Washington, D.C.: June 28, 2018.

*Conflict Minerals: Information on Artisanal Mined Gold and Efforts to Encourage Responsible Sourcing in the Democratic Republic of the Congo.* GAO-17-733. Washington, D.C.: August 23, 2017.

*SEC Conflict Minerals Rule: 2017 Review of Company Disclosures in Response to the U.S. Securities and Exchange Commission Rule.* GAO-17-517R. Washington, D.C.: April 26, 2017.

*Conflict Minerals: Insights from Company Disclosures and Agency Actions.* GAO-17-544T. Washington, D.C.: April 5, 2017.

*SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups.* GAO-16-805. Washington, D.C.: August 25, 2016.

*SEC Conflict Minerals Rule: Insights from Companies' Initial Disclosures and State and USAID Actions in the Democratic Republic of the Congo Region.* GAO-16-200T. Washington, D.C.: November 17, 2015.

*SEC Conflict Minerals Rule: Initial Disclosures Indicate Most Companies Were Unable to Determine the Source of Their Conflict Minerals.* GAO-15-561. Washington, D.C.: August 18, 2015.

*Conflict Minerals: Stakeholder Options for Responsible Sourcing Are Expanding, but More Information on Smelters Is Needed.* GAO-14-575. Washington, D.C.: June 26, 2014.

*SEC Conflict Minerals Rule: Information on Responsible Sourcing and Companies Affected.* GAO-13-689. Washington, D.C.: July 18, 2013.

*Conflict Minerals Disclosure Rule: SEC's Actions and Stakeholder-Developed Initiatives.* GAO-12-763. Washington, D.C.: July 16, 2012.

*The Democratic Republic of Congo: Information on the Rate of Sexual Violence in War-Torn Eastern DRC and Adjoining Countries.* GAO-11-702. Washington, D.C.: July 13, 2011.

*The Democratic Republic of the Congo: U.S. Agencies Should Take Further Actions to Contribute to the Effective Regulation and Control of the Minerals Trade in Eastern Democratic Republic of the Congo.* GAO-10-1030. Washington, D.C.: September 30, 2010.

| | |
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Hurizenga

# GAO Highlights

Highlights of GAO-25-107018, a report to congressional committees

October 2024

## CONFLICT MINERALS

# Peace and Security in Democratic Republic of the Congo Have Not Improved with SEC Disclosure Rule

## Why GAO Did This Study

The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in 2010, noted that the trade of conflict minerals was helping to finance violent conflict in the DRC. Section 1502 of the act required SEC to promulgate regulations containing disclosure and reporting requirements for companies that use these minerals. SEC finalized this rule in 2012, requiring companies to begin annually filing disclosure reports in 2014. According to SEC, in requiring it to promulgate the rule, Congress sought to promote peace and security in the DRC by reducing non-state armed groups' revenue from the mining and trade of conflict minerals.

The act includes a provision for GAO to assess, among other things, the SEC rule's effectiveness in promoting peace and security in the DRC and adjoining countries. This report examines, among other things, (1) what can be determined about the SEC disclosure rule's effectiveness in promoting peace and security in the DRC and adjoining countries and (2) how companies responded to the rule when filing with SEC in 2023. GAO conducted statistical analyses of the SEC rule's effect on violence in the DRC and adjoining countries. GAO also analyzed a generalizable sample of 100 company filings from 2023. GAO interviewed DRC and U.S. government officials; UN officials; experts from nongovernmental and academic institutions; and industry stakeholders and representatives of companies that filed disclosures.

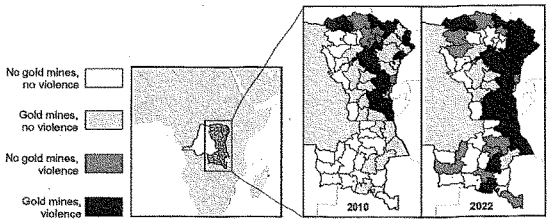
SEC disagreed with some of GAO's findings and raised concerns about some of its methodology and analyses. In response, GAO made certain adjustments that did not materially affect its findings.

View GAO-25-107018. For more information, contact Kimberly M. Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov

## What GAO Found

The U.S. Securities and Exchange Commission's (SEC) 2012 conflict minerals disclosure rule has not reduced violence in the Democratic Republic of the Congo (DRC) and has likely had no effect in adjoining countries. The rule requires certain companies to file reports on their use of tantalum, tin, tungsten, and gold, which are mined in the DRC. GAO found no empirical evidence that the rule has decreased the occurrence or level of violence in the eastern DRC, where many mines and armed groups are located. GAO also found the rule was associated with a spread of violence, particularly around informal, small-scale gold mining sites. This may be partly because armed groups have increasingly fought for control of gold mines since gold is more portable and less traceable than the other three minerals. Further, GAO found that the number of violent events in the adjoining countries did not change in response to the SEC rule.

**Locations of Violent Events and Informal Gold Mining Sites in Eastern Democratic Republic of the Congo, 2010 and 2022**




Sources: GAO, based on United Nations map and analysis of data from the Armed Conflict Location & Event Data and the International Peace Information Service. | GAO-25-107018

The SEC disclosure rule has encouraged companies to improve reporting of conflict minerals' sources by tracking the minerals' chain of custody, according to experts and industry stakeholders. In addition, though many factors contribute to conflict, stakeholders and experts said the rule has raised international awareness about the risks that minerals will benefit armed groups and thus support violence. Yet efforts to trace the origin of conflict minerals, especially gold, face obstacles such as smuggling.

The number of companies filing conflict minerals disclosures in 2023 increased for the first time since 2014, but many companies continued to report being unable to determine their minerals' origins. Companies comply with the SEC rule by submitting a disclosure describing their "reasonable country-of-origin inquiries" about the origin of conflict minerals in their products. In certain circumstances, companies must then conduct due diligence to determine their conflict minerals' source and custody. In 2023, an estimated 63 percent of companies made preliminary determinations, based on their inquiries, about their conflict minerals' origins. Of those that then performed due diligence, an estimated 62 percent reported being unable to determine the minerals' source.

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Lucas White, Immediate Past Chairman
Rebeca Romero Rainey, President and CEO

April 10, 2025

The Honorable John Rose
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Rose:

On behalf of ICBA and the nearly 45,000 community bank locations we represent, I write to thank you for introducing the Bank Loan Privacy Act (the Act). Your bill would address one of the primary risks associated with the Consumer Financial Protection Bureau's final rule under Dodd-Frank Section 1071.

The Bureau's rule requires the collection and subsequent publication of 81 points of personal, financial data on small business loan applicants. ICBA strongly opposes the Bureau's rule and the underlying statute because, among other serious objections, publication of collected data would compromise the privacy of small business loan applicants, especially in smaller communities where it is possible to connect published data with associated individuals, thereby exposing sensitive personal data.

The Act would address this privacy risk by requiring the CFPB to conduct a rulemaking with an opportunity for public comment on proposed modifications and deletions to data the Bureau will publish. The purpose of the proposed modifications or deletions would be to protect the privacy of credit applicants. Financial institutions as well as small business credit applicants should have a voice in this important determination and should understand what data will be made public before it is collected.

ICBA supports the Bank Loan Privacy Act and looks forward to working with you to advance it.

Sincerely,
/s/
Rebeca Romero Rainey
President & CEO

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MARKETS & FINANCE | STOCKS

# Want to Trade Amazon on Crypto Exchange? The Price Might Be Off by 300%

Digital tokens tracking popular stocks such as Apple deviate wildly from underlying prices and raise concerns about lack of regulatory oversight

*By Alexander Osipovich* Follow *and Vicky Ge Huang* Follow

*July 15, 2025 5:30 am ET*

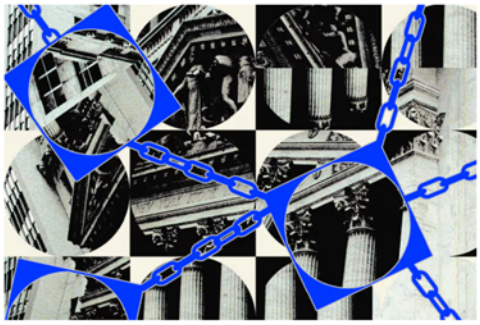

ILLUSTRATION: ALEXANDRA CITRIN-SAFADI/WSJ; GETTY

Quick Summary

- Crypto firms are trying to use blockchain to reinvent the stock market, but tokenized stocks have had a rocky start.

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Crypto companies have grand plans to reinvent the stock market using blockchain technology. They are off to a bumpy start.

Digital tokens designed to track popular stocks such as Amazon AMZN -1.41% ▼ .com and Apple have deviated wildly from the price of the underlying shares since their launch two weeks ago. Robinhood Markets HOOD 3.84% ▲ is facing scrutiny from its European regulator after it launched a token designed to let investors bet on OpenAI —without getting permission from the artificial-intelligence startup. And even some industry insiders fret that such "tokenized" stocks create opportunities for bad actors to engage in insider trading and market manipulation without getting caught.

In a flurry of announcements in late June, companies including Robinhood, Kraken, Gemini and Bybit unveiled blockchain-based versions of U.S. stocks and exchange-traded funds for non-U.S. customers. Crypto executives hailed them as a way to let people worldwide invest in Tesla, Nvidia, the SPDR S&P 500 ETF and other buzzy securities, especially in countries where it is difficult to buy U.S. stocks through a local brokerage.

"By tokenizing equities, we believe we can export U.S. capital markets anywhere in the world," said Gemini co-founder Cameron Winklevoss.

Tokenized stocks are part of a broader effort to rebuild traditional markets on the technology that underpins bitcoin and other digital assets. Investors can now buy tokens to bet on assets ranging from U.S. Treasurys to private-credit funds to shares of Elon Musk's SpaceX. Such experiments have proliferated in recent months as President Trump has installed crypto-friendly regulators and ended the Biden administration's enforcement-heavy approach to the industry.

Potentially, blockchain could accelerate the process of settling stock transactions, allow 24/7 trading and enable other innovation. But the new breed of tokenized stocks have sometimes resembled a buggy, version 1.0 product that investors should approach with caution.

On July 3, for instance, the price of AAPLX—a token tracking Apple—briefly jumped to $236.72, a 12% premium to where the stock was trading at the time, according to data provider CoinGecko. A similar token tracking Amazon surged to $891.58 on July 5, four times the stock's previous closing price, CoinGecko data shows.

The same token, AMZNX, suffered an even wilder dislocation on Jupiter, a peer-to-peer platform for crypto trading, early on July 3. Blockchain data shows that an

unknown user trying to buy about $500 worth of the token briefly sent its price to $23,781.22, more than 100 times Amazon's closing price the previous day.

Such tokens, marketed as "xStocks," are issued by Backed Finance, a Switzerland-based company that partnered with Kraken and Bybit to debut dozens of stock-tracking tokens on June 30. Backed aims to keep xStocks in line with the underlying stocks by buying shares and creating new tokens, or redeeming the tokens and selling shares.

Robinhood CEO Vlad Tenev speaks at the company's event in France, in this still image from Robinhood's YouTube channel.

But with xStocks thinly traded across multiple crypto exchanges, they are susceptible to sharp price moves when users buy or sell more than the markets can handle. Such moves can be exacerbated when the stock market is closed on nights and weekends.

"We are actively tracking any of these price dislocations and engaging with exchanges to make sure they work to fix this and follow best practices to make sure this does not happen," a Backed spokesman said.

Robinhood debuted its tokenized stocks at a splashy June 30 event in France inspired by the 1955 Alfred Hitchcock classic "To Catch a Thief." To promote the launch, which is limited to European customers, the company conducted a free giveaway of tokens tied to the performance of OpenAI and SpaceX, neither of which is publicly traded.

OpenAI disavowed the tokens, tweeting: "We did not partner with Robinhood, were not involved in this, and do not endorse it." Lithuania's central bank, which regulates Robinhood's European arm, has said that it contacted Robinhood to ask the company to explain the tokens and how they were marketed to customers.

"We're confident in our program and are in contact with regulators to address any questions," a Robinhood spokesperson said. The brokerage's chief executive, Vlad Tenev, posted on X that Robinhood has been contacted by "many private companies that are eager to join us in the tokenization revolution."

Skeptics worry that tokenized stocks could become a way to circumvent oversight. In the U.S. stock market, exchanges monitor for manipulation and other abuses, while brokerages must know the identity of their customers. That allows regulators to probe suspicious activity and identify the people behind it.

But such controls don't necessarily exist with tokenized stocks. Backed's xStocks, for instance, are "permissionless," meaning they can be moved freely between different users and trading platforms. Some platforms, such as Kraken, maintain records on their customers, but xStocks can also be traded on anonymous platforms like Jupiter.

Backed says transactions on public blockchains are more transparent than those in traditional finance, making it possible to monitor and detect illegal activity. Still, other industry players worry that tokenized stocks being traded on anonymous platforms is a recipe for trouble. Such arrangements could facilitate abuses such as insider trading, said Carlos Domingo, CEO of tokenization startup Securitize.

"It's a can of worms and it is going to explode at some point, because people will find ways to do something illegal with these tokens," Domingo said.

Write to Alexander Osipovich at alexo@wsj.com and Vicky Ge Huang at vicky.huang@wsj.com

*Appeared in the July 16, 2025, print edition as 'Stock-Tracking Tokens Go Wildly Off Course'.*

**Further Reading**

**Trump Touts Billions in Investments to Create AI Hub in Pennsylvania**

**Videos**

**Charles Crain**

*Managing Vice President,*
*Policy*

July 14, 2025

The Honorable French Hill
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

**Re: Dodd-Frank Turns 15: Lessons Learned and the Road Ahead**

Dear Chairman Hill and Ranking Member Waters:

The National Association of Manufacturers—the largest manufacturing trade association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states—appreciates the opportunity to provide this statement in advance of the Committee's July 15 hearing on "Dodd-Frank Turns 15: Lessons Learned and the Road Ahead."

The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that supports and empowers the 13 million people who make things in America. As the largest manufacturing association in the United States, the NAM's membership includes businesses of all sizes, across all industrial sectors, and in all 50 states. Manufacturers collectively contribute $2.94 trillion to the U.S. economy—and right-sized, commonsense regulations are critical to sustaining the manufacturing strength that underpins our nation's prosperity.

The NAM applauds the Committee for holding a hearing on the Dodd-Frank Act, as many manufacturers incur significant sums each year to comply with the corporate disclosure mandates that were included in that law. Funds spent on corporate disclosure are often diverted from R&D, new equipment, job creation, and worker benefits; absent a corresponding benefit to investors, these funds are not being well used to grow the company and increase investor returns.

In this letter, we will highlight several Dodd-Frank provisions that have resulted in meaningful costs for companies while mandating non-material disclosures that are not used by Main Street investors (or most investment managers) to make decisions on whether to buy, hold, or sell a company's shares or to make proxy voting decisions. These provisions include Section 953(a) ("pay versus performance" disclosure), Section 1502 ("conflict minerals" disclosure), Section 953(b) (CEO pay ratio disclosure), and Section 954 (listing standards on the recovery of erroneously awarded compensation ("clawbacks")). We encourage Congress to consider legislation that would repeal these expensive mandates or at least provide more flexibility to the

Securities and Exchange Commission to reduce the compliance burdens associated with these mandates.

## I. Repeal the Needless "Pay Versus Performance" Mandate or Direct the SEC to Allow Companies to Provide Principles-Based Narrative Disclosure

Within two years of passage of Section 953(a), it was evident that a new SEC disclosure rule was not necessary, as many public companies were already providing detailed narrative discussions within the Compensation Discussion & Analysis ("CD&A") section of their proxy materials about the linkage between the company's incentive compensation strategies and its financial performance. Many companies added additional discussions about their performance-based metrics to win support from investors (and proxy advisory firms) during the Dodd-Frank-mandated say-on-pay votes[1] on executive compensation, which started in 2011. Nevertheless, the SEC went ahead and proposed a prescriptive disclosure rule in 2015, but that rulemaking languished and was not finalized until 2022. Unfortunately, the final requirements of the SEC's 2022 rule were even more burdensome and went well beyond what was mandated by the plain text of the statute.

Section 953(a) requires disclosure of "the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions." However, the complex calculations[2] of "compensation actually paid" prescribed by the 2022 rule often overstate what executives earn in take-home pay each year. The rule's prescriptive calculations force many companies to incur the additional expense of hiring outside consultants just to produce this disclosure each year. In addition, these "compensation actually paid" disclosures have been of limited utility to investors and proxy firms, which generally use "realized pay" or "realizable pay" in their analysis of pay and performance.[3] The rule also requires companies to provide

[1] We suggest that Congress also amend Section 951(a)(2) of Dodd-Frank to eliminate the now-unnecessary requirement that public companies hold a non-binding say-on-pay frequency vote every six years. We believe that holding repeated frequency votes would be pointless given that a majority of institutional investors (primarily because of advice from the two major U.S. proxy advisory firms) have supported annual say-on-pay votes. We also recommend excising Section 951(b)'s say-on-golden-parachute vote mandate. While these non-binding votes may provide an opportunity for some shareholders to vent about the severance payouts triggered by a change-in-control transaction, the outcome of these parachute votes has no legal impact on those exit payments, which the company still will be contractually obligated to pay out to departing executives.

[2] The SEC rule requires companies to account for changes in the actual value of stock awards (*e.g.*, stock options and restricted equity units) and defined benefit pension benefits during the covered year, which have required significant effort as these values were not previously tracked in this manner by most companies. These calculations also can change significantly based on the volatility of a company's stock price and have resulted in disclosures that often overstate (or understate) executive pay and are not understandable by the typical investor.

[3] Many companies have experienced nonsensical fluctuations in their "compensation actually paid" figures, including negative sums. One manufacturer recently told NAM that their CEO earned $51 million in "compensation actually paid" in 2021, followed by a *negative* $15 million in 2022, and a positive $31 million in 2023. In reality, the CEO's actual total pay ranged between $11 million and $14 million during each of the three years.

additional data points and comparisons that were not specified in the statute, including total shareholder return ("TSR"), peer group TSR, net income, and a series of "company-selected" metrics (between three and seven metrics), and directed companies to provide five years of data. While the rule exempted emerging growth companies, smaller reporting companies received only limited relief.[4]

We have asked[5] the Commission to scale back the significant compliance burdens of this rule by allowing public companies instead to provide a principles-based narrative discussion[6] in their CD&As of how executives' compensation relates to the company's financial performance. We also encourage Congress to consider repealing Section 953(a), a process that could take less time (and face reduced litigation risk) than a new SEC rulemaking on this topic. If this unnecessary and costly mandate is repealed, we expect that companies will reduce their compliance costs while continuing to provide thoughtful discussions in their proxy materials of how they incentivize their top executives. Over time, we expect that most companies will further refine their performance-related pay disclosures in response to feedback from investors, and there is no need for Congress or the SEC to try to micromanage these disclosures and engagement.

## II. Repeal the Conflict Minerals Rule, Which Has Resulted in Significant Costs for U.S. Manufacturers While Not Improving Conditions in Africa

Section 1502, which requires companies to disclose their use of gold, tin, tungsten, and tantalum that originate in the Democratic Republic of Congo ("DRC") and surrounding countries, has long been one of the most controversial provisions of Dodd-Frank and is evidence that no one political party[7] has a monopoly on ill-advised disclosure mandates. As SEC Commissioner Mark Uyeda noted recently, "the abject failure of this provision should give pause to further attempts to use the SEC's disclosure regime to achieve social or political goals."

The SEC's original 2012 rule, which required annual reporting of a company's usage and due diligence efforts via Form SD (Specialized Disclosure), was challenged by trade associations (including the NAM). In 2014, the U.S. Court of Appeals for the District of Columbia Circuit[8] upheld most of the rule but struck down a provision requiring companies to declare their products "DRC conflict free" (or not) on First Amendment grounds. In 2017, the SEC staff issued

[4] Smaller reporting companies ("SRCs") must provide three years' worth of data instead of five. The NAM believes that this category of companies, which include those with up to $250 million in public float, should be completely exempted from "pay versus performance" disclosure, given their limited resources for compliance.

[5] NAM Comments on the SEC's Executive Compensation Roundtable (25 June 2025), *available at* 4855-616827-1809754.pdf.

[6] As one corporate secretary for a manufacturer recently told the NAM staff, "A well-written (principles-based) CD&A should convey the pay versus performance information without the need for a PhD in mathematics to understand."

[7] Section 1502 was based on legislation introduced in 2009 by then-Rep. Jim McDermott (D-WA) and then-Senator Sam Brownback (R-KS).

[8] *National Association of Manufacturers, et al. v. SEC, et al.*, No. 13-5252 (D.C. Cir. 2014).

guidance that stated it would not recommend enforcement actions against companies that do not engage in the additional due diligence requirements imposed by Form SD Item 1.01(c). Nevertheless, companies continue to be subject to the rule's other provisions and have to make a "good faith" effort to determine the country of origin of its minerals and describe their efforts and findings in a Form SD filed annually with the SEC.

Publicly traded manufacturers report that the collection of conflict minerals data from distant entities within their supply chain is extremely difficult and time consuming and often results in inconclusive findings.[9] In addition, both public (and privately held) manufacturers that sell parts or components to public companies must devote a significant amount of time to responding to their business partners' requests for information, a process that is often administered in a rigid manner and includes additional data requests that go well beyond the Dodd-Frank statutory mandate.

Notwithstanding the efforts by U.S. manufacturers (and their securities lawyers) to comply with this costly mandate, there is little evidence that Section 1502 has helped the people of central Africa. In 2024, the U.S. Government Accountability Office ("GAO") reported to Congress that the conflict minerals rule had "not reduced violence in the [DRC] and has likely had no effect in adjoining countries."[10] The GAO found that "the rule was associated with a spread of violence" to gold mines in the eastern DRC, as armed militant groups have shifted away from the mining of tantalum, tin, and tungsten to gold. According to studies cited by the GAO, gold from the DRC is more profitable to mine, easier to conceal the origin of, and is mostly sold to jewelry buyers in Europe and the Middle East that are not subject to Dodd-Frank.

Given the ineffectiveness of the SEC's conflict minerals disclosure regime to improve the quality of life for DRC residents over the past decade, it makes no sense to impose the rule's compliance costs[11] on U.S. public companies anymore. In addition, as Commissioner Uyeda has noted, this disclosure rule has served as a *de facto* U.S. boycott of DRC minerals and has reduced American influence in central Africa. The Trump administration is currently negotiating with the DRC on an agreement for the extraction of strategic minerals, and it makes little sense

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[9] In a 2017 comment letter to the SEC when it was reevaluating the conflict minerals rule, the NAM reported: "Despite the massive effort put in by NAM companies to comply fully with the Rule, the effort has proved largely futile. Many manufacturers are forced to rely almost entirely on the due diligence of their suppliers for sourcing information, given that these minerals oftentimes represent only a small part of a final product that is not directly sourced by the issuing company. Issuers, therefore, have limited or no influence on suppliers, particularly those that are farther down the supply chain. Many of these suppliers are smaller, privately held companies that have limited resources and are themselves remote from the sourcing of the input metals." NAM Comment Letter on the SEC's Conflict Minerals Rule (16 March 2017), *available at* cll2-1645536-148285.pdf.

[10] U.S. Government Accountability Office, Peace and Security in Democratic Republic of the Congo Have Not Improved with SEC Disclosure Rule (October 2024), *available at* https://files.gao.gov/reports/GAO-25-107018/index.html.

[11] In 2011, the NAM estimated that it would cost U.S. industry between $9.4 billion and $16 billion initially to implement processes to comply with the conflict minerals rule. NAM, Comment Letter on Proposed Conflict Minerals Rule (2 March 2011), *available at* s74010-183.pdf. Since then, manufacturers have continued to incur significant compliance costs, depending on the extent of their global supply chains. In 2017, a large NAM member company reported that it incurs $2 million in recurring compliance costs each year and that its ongoing compliance efforts require as many as 4.5 full-time equivalent employees.

to maintain an ineffective SEC corporate disclosure rule that undercuts this effort and discourages U.S. companies from mining activities in the DRC.

Accordingly, the NAM supports the efforts by Rep. Bill Huizenga (R-MI) and other lawmakers to repeal Section 1502 of Dodd-Frank.

### III. Repeal the CEO Pay Ratio Mandate, As Those Disclosures Are Not Utilized by Most Investors

The NAM also encourages Congress to consider repealing Section 953(b), which directed the SEC to adopt a prescriptive rule that requires public companies to calculate and report the ratio between their CEO's annual total compensation and the total pay received by the company's median employee.[12]

This rule has resulted in significant work for corporate human resource teams (particularly at multinational companies) and generated disclosures that are of little use or relevance to institutional and Main Street investors. The pay ratios reported under this rule vary considerably based on industry, region, and corporate business model, such as whether a company relies more heavily on independent contractors or has more retail employees. As a result, ratio comparisons between companies have not been illuminative for most investors. While the ratio has been fodder for news stories and labor activists, most institutional investors do not use the CEO pay ratio disclosure to inform their buy/sell decisions or their proxy voting. Most investors (as well as the proxy firms) focus instead on a company's CD&A disclosures and its explanations of how directors selected performance metrics and incentives to better align CEO compensation with shareholder returns, rather than a single headline number.

Section 953(b), which was touted by its supporters[13] as a tool to rein in executive compensation and boost worker pay, has not met those objectives, as the gap between the pay of CEOs and workers has continued to rise. CEO pay increases are primarily driven by the tight market for top executive talent and rising stock prices, which has increased the value of equity awards.[14] As in the case of conflict minerals, manufacturers believe that Congress and the SEC should refrain from trying to use corporate disclosure mandates as a blunt instrument to advance social or political goals. We encourage Congress to repeal Section 953(b), as this mandate has not

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[12] In addition, CEO pay ratio disclosures are less informative than other metrics (such as comparisons with other CEOs in the company's industry peer group) because of the distinct ways that employees and executives are compensated. For CEOs, the largest component of their pay packages are stock grants (or options) that vest over time and are not realized in the same year they are granted, whereas the typical median employee receives a cash salary plus a year-end bonus.

[13] *See, e.g.,* Press Release from the Office of Senator Robert Menendez (12 March 2013) ("A company's treatment of their average workers is not just a reflection of their corporate values, but is also material information for investors. So, it's time Wall Street shine a light on their CEO pay.... What's too costly here are the big paydays for CEOs. And the burden is falling on workers with stagnant wages.")

[14] According to compensation data firm Equilar, median employee pay rose by 13.4% between fiscal 2020 and 2024, while median CEO compensation increased by 31.7% during that period. CEO Pay Trends: A Post Proxy Season Recap, *Harvard Law School Forum on Corporate Governance* (17 June 2025), *available at* CEO Pay Trends: A Post Proxy Season Recap.

resulted in material decision-useful information for most institutional and Main Street investors while diverting capital from more productive uses at publicly traded manufacturers.

## IV. Repeal the Dodd-Frank Clawback Mandate or Direct the SEC to Scale Back Its Burdensome Rule

Section 954, which required public companies to adopt more extensive policies to recover erroneously awarded incentive compensation after restatements, is another example of a Dodd-Frank provision that was not necessary. Companies previously were required by Section 304 of Sarbanes-Oxley Act of 2002 to adopt clawback policies to recover incentive pay from current (and former) CEOs and CFOs after restatements, and 82% of Fortune 100 companies had adopted such policies by the time that Dodd-Frank became law in 2010. Unfortunately, both Congress and the SEC went well beyond that narrowly tailored Sarbanes-Oxley provision and mandated sweeping no-fault policies that will penalize innocent executives, usurp board authority, and force companies to needlessly incur significant litigation costs that may exceed potential recoveries. While the full impact of the SEC's 2022 rule[15] is not yet apparent,[16] several securities lawyers warned at a recent SEC roundtable[17] that the clawback rule will be a "trainwreck" for public companies and would have a chilling effect on executives and corporate compensation decisions.

The NAM has asked the SEC to simplify its prescriptive rule to reduce potential compliance costs and consequences for companies. We have recommended that the SEC limit the scope of clawback actions to just the CEO and CFO, who are the only officers who actually provide certifications (as required by Sarbanes-Oxley) as to the accuracy of a company's financial results, as well as any executives who engaged in wrongdoing that triggered a restatement. Manufacturers believe that it is unfair to penalize other officers who did nothing wrong or who were not responsible for verifying a company's financials.[18] We also believe that any mandated clawback policies should apply only in the case of a material ("big R") restatement[19] of past financial results. Finally, boards should have more discretion (consistent with their fiduciary duties) to decide whether to pursue recoupment litigation.

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[15] SEC, Listing Standards for Recovery of Erroneously Awarded Compensation, 87 Fed. Reg. 73,076 (28 November 2022).

[16] The SEC's 2022 clawback rule and the associated 2023 exchange listing standards apply to incentive pay awarded after October 2023, and there is a three-year lookback period for potential recovery actions, so the consequences of this rule will not be fully apparent until after October 2026.

[17] *See, e.g.,* Comments of Marc Trevino of Sullivan & Cromwell, Ning Chiu of Davis Polk & Wardwell, and Ronald Mueller of Gibson Dunn at the SEC's Roundtable on Executive Compensation (26 June 2025), *available at* 2025 06 26 SEC Roundtable On Executive Compensation Disclosure Requirements Part 03.

[18] The clawback rule also is unnecessarily punitive as it requires companies to determine recoupment amounts without regard to any taxes already paid by executives. In such cases, executives could have to reimburse a company for the pre-tax value of equity incentives and then work to persuade federal and state tax authorities that they deserve refunds.

[19] The 2022 rule requires recovery actions following so-called "little r" restatements, which do not affect previously issued financial statements.

Given the SEC's other regulatory priorities and the considerable time needed to undertake a formal rulemaking to pare back the 2022 clawback rule, we believe that it would be more efficient for Congress to simply repeal Section 954. The boards of public companies could then choose whether to maintain their extensive Dodd-Frank-mandated policies or revert to more narrowly tailored Sarbanes-Oxley policies.

* * * *

The NAM thanks the Committee for holding this hearing, and manufacturers look forward to working with you to reduce Dodd-Frank disclosure costs for companies.

Sincerely,

Charles Crain
Managing Vice President, Policy

July 15, 2025

The Honorable French Hill
Chairman
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

**Re: Hearing Entitled "Dodd-Frank Turns 15: Lessons Learned and the Path Ahead"**

Dear Chairman Hill and Ranking Member Waters:

The Small Business Investor Alliance (SBIA) submits this letter for the scheduled July 15th hearing of the Financial Services Committee to assess the legacy of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). SBIA appreciates the ongoing work of the Committee to advance legislation that helps small business access capital and addresses misguided regulations, including those stemming from Dodd-Frank.

SBIA is a national association that develops, supports, and advocates on behalf of policies that benefit investment funds that finance small and mid-size businesses in the lower middle market, as well as the investors that provide capital to these funds. Our membership consists of the advisers of traditional 3(c)(1) and 3(c)(7) private funds, small business investment companies ("SBICs"), rural business investment companies ("RBICs"), funds registered as business development companies ("BDCs") under the Investment Company Act of 1940, and the investors that invest in these funds, banks, family offices, and fund of funds.

Passage of Dodd-Frank in 2010 launched an unprecedented wave of new regulation in the financial services sector. The law mandated that regulators implement some 400 new rules that collectively impact nearly every corner of the American economy. Troublingly, many of these rules affect entities that were not part of the causes of the 2008 financial crisis which precipitated Dodd-Frank's passage.

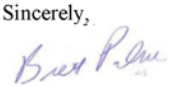
Title IV of Dodd-Frank included substantial changes to Securities and Exchange Commission (SEC) oversight of private funds. For example, Dodd-Frank replaced the longstanding private fund exemption from SEC registration requirements with a set of narrower exemption criteria.

Amongst these criteria, advisers to private funds with less than $150 million in assets under management (AUM) are exempt from full registration requirements. However, this $150 million AUM threshold was too low when it was written in 2010 and it has never been raised nor even indexed for inflation since, notwithstanding the growth of the economy and evolution of the private capital markets since 2010. As a result, Dodd-Frank has created significant costs and complications for smaller private funds which are an indispensable source of capital for thousands of businesses across the country.

Members of this Committee have previously recognized – on a bipartisan basis – that reporting requirements can place a disproportionate burden upon smaller funds. SBIA strongly supports the bipartisan legislation introduced by Reps. Barr and Velàzquez - H.R. 3673, the Small Business Investor Capital Access Act – that would adjust the $150 million inflation threshold to take into account inflation since 2010, and then every year thereafter. This adjustment will more accurately reflect growth within the economy and within the private funds space and ensure that smaller funds are not expected to comply with a set of regulations that are more appropriate for large funds.

SBIA commends the Committee for holding this hearing and advancing this important legislation. We look forward to continuing to serve as a resource for members regarding issues related to small business investing.

Sincerely,



Brett Palmer
President
Small Business Investor Alliance

Statement for the Record of the U.S. Chamber of Commerce

"Dodd-Frank Turns 15: Lessons Learned and the Road Ahead"
Hearing Before the House Financial Services Committee

July 15, 2025

The U.S. Chamber of Commerce (Chamber) is pleased to submit this statement for the record for the July 15th hearing of the House Financial Services Committee. The Chamber appreciates the Committee's ongoing work to examine the effect that the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") has had on the capital markets and the broader American economy.

Dodd-Frank was passed in the wake of the 2008 financial crisis – an event that exposed serious flaws within the U.S. regulatory structure and which severely weakened investor and consumer confidence in the financial system. Congress had a generational opportunity to address some of the supervisory and regulatory shortcomings that directly contributed to the crisis and to ensure that the type of instability which built up across the financial system in the mid-2000s would never happen again.

Instead, Congress passed Dodd-Frank, a 2,300-page behemoth that contained hundreds of new regulatory mandates, many of which were completely unrelated to the causes of the crisis. Rather than equipping regulators to oversee modern financial markets, Dodd-Frank turned into a political wish list of policy priorities that have imposed great cost on the American economy but were not adequately calibrated towards making the financial system more stable or more competitive.

Passage of Dodd-Frank in July 2010 was in many ways just the beginning: the law mandates or authorizes regulators to implement some 400 new rules, in addition to requiring agencies to issue dozens of new studies or periodic reports. For fifteen years, the federal financial regulators have proposed or finalized thousands of pages of new, often far-reaching regulations – a process that has created a great deal of uncertainty for businesses and the financial markets.

By the law's 5th anniversary, regulators had already proposed or finalized 307 new rules, spanning nearly 23,000 pages in the Federal Register.[1] Each one of these regulations presented novel questions for those affected by them, including over how to plan for changes that may be made between a proposed or final rule, or determining whether an agency will impose additional requirements that go beyond what is called for under the statute.

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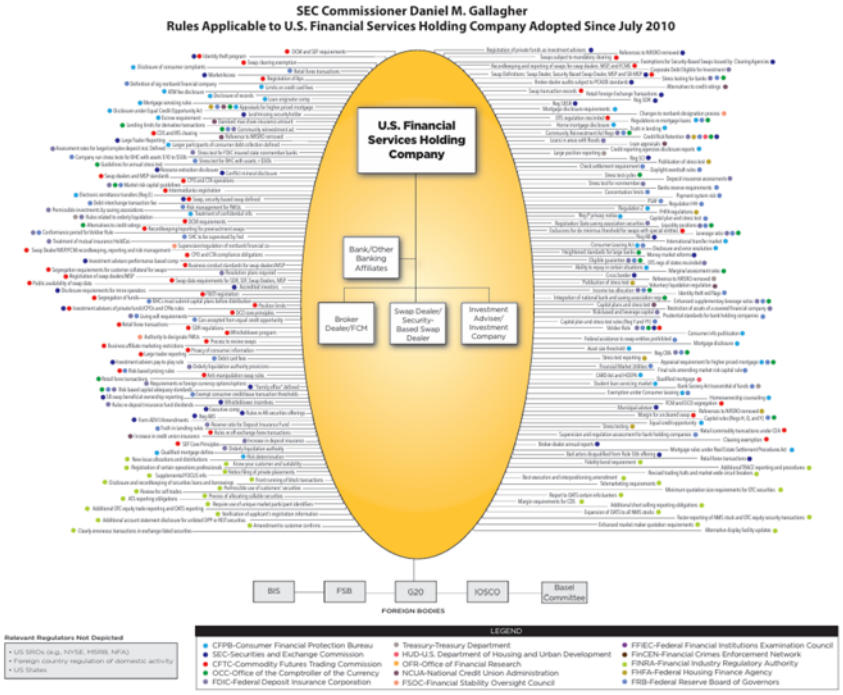
[1] Dodd-Frank Turns 5. Davis Polk (July 2015) https://corpgov.law.harvard.edu/2015/07/30/dodd-frank-turns-5/

In 2015, then-Commissioner of the Securities and Exchange Commission (SEC) Dan Gallagher released a "quilt chart" of Dodd-Frank rulemaking that put into perspective just how complex and expansive Dodd-Frank implementation had become:[2]




## Dodd-Frank and the Economy

In 2024, the U.S. Chamber launched our Growth and Opportunity Imperative, a policy agenda intended to support 3%+ annual gross domestic product (GDP) growth for the American economy.[3] It is essential that policymakers understand the real-world

[2] Crazy Quilt Chart of Regulation. Commissioner Dan Gallagher (June 2015)
https://www.sec.gov/newsroom/speeches-statements/crazy-quilt-chart-regulation
[3] https://www.uschamber.com/assets/documents/Growth-and-Opportunity-Memo.pdf

difference that 3% annual growth means for American households and businesses versus 2% annual growth.

At 3% growth, someone born today will see the size of the American economy double by the time they are in their early 20s; at 2% growth, it will take until they are in their mid-30s for the economy to double. Higher growth rates have also historically increased labor force participation and boosted production of goods and services which makes them more affordable for working Americans.

Higher growth is also essential when it comes to the national debt and decreasing the federal budget deficit. For example, if the economy increased growth by half a percentage point – from 2% to 2.5% - that would reduce the deficit by $1.2 trillion over 10 years. The opposite is also true – if growth slows from 2% to 1.5%, that translates to a $1.2 trillion increase in the deficit.

The growth priority is even more urgent given the historically weak level of growth in the U.S. economy post-financial crisis. Since 2010, GDP growth in the U.S. has averaged 2.2% per year compared to an average of 3.4% per year from 1950-2010. This included growth of just 2.1% per year from 2010-2014 – a historical anomaly given that the rates of growth coming out of a recession have typically been much higher.[4]

It is of little coincidence that this tepid period of growth coincided with the most active period of Dodd-Frank implementation. The American Action Forum estimated in 2014 that Dodd-Frank would lead to a $895 billion reduction in growth over 10 years.[5] Other research shows that overall compliance costs for Dodd-Frank exceed $50 billion annually.[6]

Dodd-Frank's contribution towards discouraging public listings on U.S. exchanges should also not be overlooked. Many of Dodd-Frank's mandates – many of them discussed in detail below – have markedly increased the reporting costs for public companies, thereby discouraging companies from undertaking an initial public offering (IPO). The U.S. is currently home to roughly half the number of public companies than existed three decades ago, and the IPO market is a fraction of what it was in the 1980s or 1990s. As a recent Chamber report described, fewer public companies translates to a drag on the overall economy as public companies have long been a source of high growth and job creation.[7]

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[4] U.S. Bureau of Labor Statistics monthly labor review (December 2015)
[5] https://www.americanactionforum.org/dodd-frank/
[6] Baker Institute (September 2019) https://www.bakerinstitute.org/research/dodd-frank-costs-compliance
[7] Unlocking America's Capital Markets: Fueling Economic Growth and Innovation. U.S. Chamber (June 2025) 20250587_CCMC-CPSummit-PublicCompanyReport_FINAL.pdf

To put this in perspective, a 2022 report from the American Council for Capital Formation found that at the end of 2019, there were at least 800 fewer public companies in the United States because of the high cost of mandatory reporting under our securities laws. The report further estimated that a 10% increase in reporting costs would have led to 80 fewer public companies which would have created a combined 51,000 employees and $60 billion in revenue.[8] Dodd-Frank's corporate disclosure mandates have only contributed to these troubling trends.

It will never be too late for Congress – or regulatory agencies through rule revisions - to address some of the more economically harmful aspects of Dodd-Frank. Indeed, the SEC recently held a roundtable on public company executive compensation disclosure requirements that examined, amongst other issues, some of the disclosures mandated by Dodd-Frank that cost public companies a lot to produce but provide almost no benefit to investors. The House Financial Services Committee also continues to consider legislation that would repeal or amend certain Dodd-Frank provisions to lessen their burden on the economy. The Chamber continues to strongly support many of these efforts and appreciate the Committee's continued interest in the economic consequences of Dodd-Frank.

Dodd-Frank and the Courts

Dodd-Frank has been the subject of frequent litigation, and several rules or authorities granted to regulators by the law have either been limited or struck down by the courts. Incorrect or inadequately justified interpretation of these new regulatory authorities has created significant uncertainty for the business community. Notable examples include:

- The SEC's 2011 proxy access rule, adopted pursuant to Section 971 of Dodd-Frank, was vacated by the United States Court of Appeals for the D.C. Circuit, with the court finding that the SEC had "once again" acted arbitrarily and capriciously in its rulemaking process.[9] The case reinforced the SEC's obligation to conduct a cost-benefit analysis with each new rulemaking it adopts.

- The SEC's 2012 conflict minerals rule, adopted pursuant to Section 1502 of Dodd-Frank, was partially struck down on First Amendment grounds by the United States Court of Appeals for the D.C. Circuit.[10]

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[8] American Council for Capital Formation – "The Declining Number of Public Companies and Mandatory Reporting Requirements" (Prepared by Ernst & Young) (June 24, 2022)
[9] *Business Roundtable and Chamber of Commerce of the United States of America vs. SEC* (July 22, 2011) https://cases.justia.com/federal/appellate-courts/cadc/10-1305/10-1305-1320103-2011-07-22.pdf?ts=1411134683
[10] *National Association of Manufacturers et al. vs. Securities and Exchange Commission* (April 14, 2014) https://cases.justia.com/federal/appellate-courts/cadc/13-5252/13-5252-2014-04-14.pdf?ts=1411135623

- A federal district court found that the Financial Stability Oversight Council's (FSOC's) designation of MetLife as a "systemically important financial institution" (SIFI) was arbitrary and capricious and therefore MetLife was not subject to the enhanced regulation that results from a SIFI designation under Title I of Dodd-Frank.[11]

- The SEC's 2023 private funds rule was vacated by the United States Court of Appeals for the Fifth Circuit in June 2024. The SEC claimed that Section 913(h) of the Dodd-Frank provided it with the authority to promulgate the rule – an argument that the court flatly rejected, finding that Congress clearly intended for Section 913(h) to apply to retail investors, not private fund investors.[12]

- The SEC's initial 2012 resource extraction rule, adopted pursuant to Section 1504 of Dodd-Frank, was vacated by a federal district court in 2013. The resource extraction requires companies involved in oil, gas, and mineral exploration to disclose certain payments made to foreign governments for extraction rights. A subsequent 2016 resource extraction rule from the SEC was vacated by Congress pursuant to the Congressional Review Act (CRA) in 2017. The SEC ultimately adopted a third iteration of the rule in 2020 that remains in place as of today.

- In 2024, the Supreme Court rolled back enforcement authorities granted to the SEC under Dodd-Frank and reaffirmed that in cases where the SEC is seeking monetary penalties against an individual, that individual has a right to a jury trial and cannot be forced to have their case heard by an in-house administrative law judge (ALJ) at the SEC.[13]

So rather than establishing brightline and lasting rules of the road for the financial system, Dodd-Frank has been a fifteen-year odyssey of constantly shifting and unpredictable rulemaking projects, litigation that has upended substantial portions of the law, and vastly different approaches towards Dodd-Frank implementation depending on which political party controls the executive branch. This environment has created enormous challenges for businesses that rely on certainty and clear rules when making decisions or long-term investments.

## Dodd-Frank and the SEC

[11] *MetLife vs. Financial Stability Oversight Council* (March 30, 2016) https://www.govinfo.gov/content/pkg/USCOURTS-dcd-1_15-cv-00045/pdf/USCOURTS-dcd-1_15-cv-00045-0.pdf
[12] *National Association of Private Fund Managers et al. vs. Securities and Exchange Commission* (June 5, 2024) https://cases.justia.com/federal/appellate-courts/ca5/23-60471/23-60471-2024-06-05.pdf?ts=1717608641
[13] *SEC v. Jarkesy* (June 27, 2024) https://www.supremecourt.gov/opinions/23pdf/22-859_1924.pdf

Under Dodd-Frank, the SEC was granted authority to implement roughly 90 rulemakings, including some rules that were required to be completed jointly with other regulators. Many of these rulemakings are not related to the 2008 financial crisis.

Title IX of Dodd-Frank contained a litany of new corporate disclosure rules and other requirements that the SEC has subsequently spent years implementing, including consequential new rules that were only adopted in the last few years and following inadequate rulemaking process.

Many of the disclosure rules mandated by Dodd-Frank are also counterintuitive to the longstanding principle of materiality that has guided public company disclosure for eight decades. The materiality standard – namely, what is important to a reasonable investor focused on investment returns – has instilled in investors and issuers alike a confidence in the accuracy and integrity of information that promotes market efficiency, competition, liquidity, and price discovery.

In recent years, however, a variety of interest groups have zeroed in on SEC disclosure by pressing for new mandatory disclosure requirements to advocate for social and political change. While some of these may be worthy causes, they are not material to investors and their voting decisions. As SEC Commissioner Hester Peirce regularly reminds the public, the SEC's disclosure authority is intended to inform investors, not drive company decision making.[14] Unfortunately, Dodd-Frank included a number of nonmaterial disclosure requirements for public companies, often seeking to drive social or political change rather than providing more useful information for investors.

The Chamber continues to have concerns about the following rules:

**Executive Compensation Rules**

Pay Ratio

Section 953(b) of Dodd-Frank directed the SEC to require that public companies disclose the ratio of their chief executive officer (CEO) compensation to that of their median employee. The intention behind the pay ratio rule was always inherently political and intended to address the issue of income inequality through

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[14] *See*, eg: Speech by Commissioner Hester Peirce, "Spare the Trees So Investors Can See the Forest: Remarks Before the Executive Compensation Roundtable, June 25, 2025. Available at: https://www.sec.gov/newsroom/speeches-statements/remarks-peirce-executive-compensation-roundtable-062625 "Executive compensation disclosure, along with other disclosures, should reflect rather than direct corporate actions."

corporate disclosure. The reality is that the rule is costly for public companies to comply with and results in information that is immaterial to investors.[15]

The pay ratio rule provides no benefits for investors, adversely impacts the ability of American companies to compete in a global economy, makes it more difficult for businesses to engage in efficient capital formation, and damages the public company model by making public companies subject to activist attacks and criticisms that are based upon misleading data.

The rule has never been about providing investors with material, decision-useful information. Pay ratio disclosures also do not accurately reflect internal pay or labor practices and are too simplistic to provide meaningful insights.

The Chamber continues to support full repeal by Congress of Section 953(b). Absent repeal, the SEC should revisit its 2015 final rule and eliminate some of the unnecessary compliance requirements of the rule that are not required by statute, including using non-U.S. and seasonal employees as part of the calculation to identify median employee compensation.

Pay Versus Performance

Section 953(a) of Dodd-Frank directed the SEC to require public companies to disclose the relationship between the pay of top executive officers and the financial performance of the company.

The relationship between pay and performance is undoubtedly information of interest to investors. However, the SEC's rule – finalized twelve years after Dodd-Frank was signed into law – does not necessarily provide information of interest to investors. In the time between when Dodd-Frank was signed into law and the rule was finalized in 2022, companies increasingly provided greater information to investors on a voluntary basis about the relationship between pay and performance.

In adopting the final rule, the SEC could have recognized this organic evolution of pay versus performance disclosures and adopted a principles-based rule to allow companies to explain pay and performance in their own words.

Instead, the SEC adopted a highly prescriptive rule that requires the disclosure of information which may conflict with other data provided by companies. As a result, public companies will have to provide additional disclosure to explain any differences

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[15] U.S. Chamber of Commerce Center for Capital Markets Competitiveness: The Egregious Costs of the SEC's Pay-Ratio Disclosure Regulation (May 2014), available at https://www.uschamber.com/assets/archived/images/documents/files/Egregious-Cost-of-Pay-Ratio-5.14.pdf

between the SEC-required disclosure and information that companies are already providing. Specifically, the SEC rule requires disclosure of "compensation actually paid," a metric that is inherently misleading because a large portion of the amounts shown include hypothetical valuations of equity awards that in many cases have not yet been earned or paid.

The Chamber has previously called on the SEC to revise its 2022 final rule to reflect existing pay disclosure practices and to ensure that investors are provided with material, decision-useful information.

Compensation Clawbacks

The Chamber believes that properly calibrated stock exchange listing standards are an integral component of good corporate governance at America's publicly listed companies, and executive compensation clawbacks are a means to help drive good governance practices if done in a balanced and responsible manner. However, we remain concerned that the SEC's final clawback rule from 2022 – adopted pursuant to Section 954 of Dodd-Frank – is contrary to the mandate under Section 954 and fails to take into account proactive clawback policies that have been implemented by companies over the last 15 years.

The final rule inappropriately encompasses reporting errors that were not material to previous reporting periods (so-called "little r" restatements) – something that is at odds with Congressional intent under Section 954. The SEC's 2022 rule also provides for clawback of compensation on a pre-tax basis, an approach that is not required by the Dodd-Frank Act and is unnecessarily burdensome on individuals who may not have committed any type of fraud or misconduct to trigger the clawback.

The SEC's clawback rule should be amended so that, at a minimum, it conforms with the statute and recovery of compensation is done on a post-tax rather than pre-tax basis.

Incentive Compensation

Section 956 of the Dodd-Frank Act requires that six agencies – the SEC, Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Housing Finance Authority (FHFA) – jointly prescribe regulations or guidance regarding incentive compensation agreements at financial services firms. These agencies together proposed rules twice – in 2011 and 2016 – but have yet to enact a regulation implementing Section 956.

The Chamber submitted previous comments outlining serious concerns with both proposed rulemakings. The Chamber has been concerned that the approach outlined in those rules is overly prescriptive and entirely at odds with the purpose of Section 956. We have cautioned the agencies from enacting anything similar to what has been previously proposed.

Instead, as the Chamber wrote in 2024, interagency guidance adopted in 2010 provides a more appropriate framework for Section 956 implementation.[16] Section 956 provides clear authority to the six agencies to issue guidance rather than a prescriptive rulemaking. The 2010 guidance was carefully developed by the federal banking regulators and has enabled these agencies to achieve their regulatory goals in their supervision of the banking industry without significantly impeding competition for talent. These agencies should consider if guidance is the more appropriate path and potential principles-based modifications to the 2010 guidance rather than a highly prescriptive regulation.

The Chamber recently submitted comments to the SEC in conjunction with the SEC's roundtable on executive compensation disclosure requirements. These comments outline in greater detail some of the Chamber's views on executive compensation disclosures generally, including some of the specific Dodd-Frank mandates mentioned above.[17]

**Additional Dodd-Frank Disclosure Rules**

Conflict Minerals, Mine Safety, and Resource Extraction Disclosure Rules

Section 1502 of Dodd-Frank directed the SEC to write rules that would require certain companies to disclose whether materials used in their manufacturing processes originated in the Democratic Republic of the Congo (DRC) and other surrounding countries. The mandate also originally required companies to disclose whether their products could be considered "conflict-free" i.e. sourced from mines and regions that were not controlled by armed militias that contribute to human rights violations in the region.

While the continuing decades old humanitarian crisis in the DRC needs to be resolved, the SEC regulation implementing Section 1502 fails to do so while imposing substantial reporting requirements upon companies, despite parts of the rule being struck down as violating the First Amendment. In fact, substantial evidence shows

[16] https://www.uschamber.com/finance/u-s-chamber-of-commerce-letter-on-section-956
[17] https://www.uschamber.com/finance/corporate-governance/u-s-chamber-comments-on-sec-request-for-information-on-executive-compensation

that the conflict minerals rule has exacerbated the humanitarian crisis on the ground in the DRC.[18][19]

SEC Commissioner Uyeda recently spoke about the ongoing consequences of the conflict minerals rule, including those laid out in 2024 GAO report on the rule:

> "You don't need to take my word with respect to the failure of the conflict mineral rules to achieve their intended objective. The U.S. Government Accountability Office (GAO) reported in 2024 that peace and security in the Democratic Republic of the Congo had not improved with the SEC disclosure rule. The GAO concluded that the SEC rules had "not reduced violence in the Democratic Republic of the Congo (DRC) and has likely had no effect in adjoining countries." In fact, the GAO found that "the rule was associated with a spread of violence."
>
> The cost of this rule has created significant regulatory compliance costs for U.S. public companies without clear corresponding benefits. By discouraging public companies from sourcing tin, tungsten, and tantalum from the DRC, the policy has acted as a de facto boycott on such mineral purchases. This result is unfortunate because tin, tungsten, and tantalum have each been classified by the U.S. Geological Survey on a list of mineral commodities critical to the U.S. economy and our national security."[20]

Title XV of Dodd-Frank includes two other mandated disclosures for public companies – a requirement that companies involved in mining provide information mine safety (Section 1503) and a requirement that companies disclose certain information about payments to foreign governments for the extraction of oil, gas, minerals. (Section 1504)

Title XV is aptly entitled "Miscellaneous Provisions." The topics these rules encompass are entirely unrelated to the financial crisis of 2008 or the stability of the financial system. The information required under these disclosures is also costly to produce yet is immaterial to investors.

The Chamber continues to support the repeal of Sections 1502, 1503, and 1504 of Dodd-Frank, and we commend the Committee for including draft legislation to repeal Sections 1502 and 1504 as part of this hearing.

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[18] How a Well Intentioned U.S. Law Left Congolese Miners Jobless. Washington Post (November 30, 2014)
[19] See 2017 U.S. Chamber letter to SEC regarding reconsideration of conflict minerals rule https://www.sec.gov/comments/statement-013117/cll2-1648731-148501.pdf
[20] Remarks at the "SEC Speaks" Conference. Commissioner Mark Uyeda (May 19, 2025) https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-051925

Regulation of Private Funds Under Dodd-Frank

Title IV of Dodd-Frank significantly expanded SEC oversight of private funds – including private equity and hedge funds – and also subjected certain funds to enhanced reporting requirements.

Title IV replaced the longstanding private fund exemption with a requirement that private funds with at least $150 million in assets under management (AUM) become subject to SEC registration and supervision. Even fifteen years ago, this $150 million AUM threshold was extremely low and encompassed many smaller funds that do not have substantial compliance resources. Very soon after Dodd-Frank was signed into law, members of the House Financial Services Committee worked on a bipartisan basis to revise this new mandate, understanding that it would create barriers to entry and inhibit the ability of many funds to invest in small and middle market businesses.[21]

However, the $150 million AUM threshold still has not been revised and remains in effect today. **The Chamber commends the recent bipartisan work of Reps. Barr and Velazquez to introduce the Small Business Investor Capital Access Act.** This bill would index the $150 million threshold for inflation dating back to 2010, and then annually thereafter.[22] This will ensure that the line determining SEC registration is more reflective of growth within the economy and within the private capital markets.

**The Chamber also supports draft legislation that would narrow the SEC's authority under Section 211(h) of the Investment Advisers Act.** The legislation would permit the SEC to apply disclosure obligation to broker-dealers and investment advisers with regard to their customers but limit the SEC's ability to impose additional obligations on brokers and advisers. This would prevent the SEC from taking an expansive view of their authority under Section 211(h), as was the case with the private funds rule that was struck down by the courts.

Accredited Investor Definition

Section 413(a) of Dodd-Frank made a substantial revision to the definition of "accredited investor" under SEC regulation. The provision prohibited using the value of an individual's primary residence when calculating their net worth to determine whether they are "accredited."

As a result, an investor today will qualify as an accredited investor if they 1) have a net worth that exceeds $1 million (excluding the value of their primary

[21] H.R. 1105, Small Business Capital Access and Job Preservation Act (113th Congress)
[22] H.R. 3673, Small Business Investor Capital Access Act

residence); or 2) have an annual income of at least $200,000 (or $300,000 jointly with a spouse). Other individuals may qualify if they hold certain professional licenses, but the income and net worth criteria are the most common ways for an individual to qualify.

Securities in early-stage, non-public companies, have a significant potential for growth, but are also considered to be higher-risk. The accredited investor definition is intended to limit investors from participating in this market. However, by equating higher wealth or income with financial sophistication, the accredited investor definition can lead to both under and over-inclusive outcomes. The definition leaves out sophisticated and savvy investors who may not meet financial thresholds while including a wealthy person with no experience in financial markets.

By excluding one's primary residence from the net worth calculation – and offering no alternative pathway towards becoming an accredited investor – Dodd-Frank severely limited the pool of individuals eligible to invest in certain offerings.

This limitation necessitates Congressional passage of the accredited investor bills recently considered by this Committee, including Chairman Hill's Fair Investment Opportunities for Professional Experts Act, which passed the House of Representatives last month. The Chamber also strongly supports other bills that would permit someone to qualify by demonstrating their financial sophistication through an exam administered by the SEC or the Financial Industry Regulatory Authority (FINRA). These types of pathways towards accreditation are a much more accurate barometer of someone's financial sophistication than their income or net worth alone.

Definition of Venture Capital Fund

The Chamber also continues to support the "Developing and Empowering our Aspiring Leaders (DEAL) Act," which would revise registered investment adviser (RIA) rules promulgated by the SEC that have disincentivized some venture capital funds from investing in emerging growth companies (EGCs). EGCs are a class of public company established by the 2012 Jumpstart Out Business Startups (JOBS) Act and which benefit from tailored regulation for a period of time once they go public.

Dodd-Frank sought to exempt venture capital funds from the costs and challenges associated with becoming an RIA. However, the definition of "venture capital fund" eventually promulgated by the SEC pursuant to Dodd-Frank was too narrow and did not reflect the Dodd-Frank statutory obligations of a full venture capital exemption.

The current definition ignores critical elements and developments related to the venture capital industry, including growth equity firms which can often be investors in EGCs around the time they are considering a public offering. Shares of EGCs, including the purchase of EGC shares on the secondary market, should be considered qualifying investments. Creating a more accurate venture capital exemption definition – which the DEAL Act would do – would expand the pool of possible investors for EGCs.

### Arbitration

Section 921 of Dodd-Frank grants the SEC authority to prohibit the use of pre-dispute agreements by broker-dealers and investment advisers. While the SEC has not implemented rules under Section 921, the Chamber would support eliminating this authority as it is based upon a fundamentally misguided view about the use of arbitration and ignores the benefits of arbitration to investors.

The availability of arbitration as a system for resolving disputes—including disputes between retail customers and their broker-dealers and investment advisers—is extremely important to all parties involved in a dispute. Arbitration of investor and consumer disputes has been common practice for decades; there are perhaps hundreds of millions of consumer contracts currently in force that include arbitration agreements – many of them relating to consumer financial or investment products or services.

Prohibiting the use of arbitration agreements would mean that investors may be forced to spend more money, time, and effort to resolve disputes through litigation. All parties benefit from the reduced expense and complexity that comes through arbitration and, most importantly, individuals can seek redress for claims that could not practically be brought in court.

**Accordingly, the Chamber supports draft legislation that would eliminate the authority granted to the SEC under Dodd-Frank Section 921.**

### SEC Enforcement After Dodd-Frank

Dodd-Frank granted the SEC the authority to seek civil monetary penalties against a defendant through the agency's in-house administrative tribunals as opposed to proceedings through Article III federal courts. Unsurprisingly, in the years immediately following Dodd-Frank, the SEC began bringing a significantly larger number of its enforcement cases through its ALJ system rather than federal courts. This ability of the SEC to play judge, jury, and prosecutor raised major due process concerns and called into question the credibility of the SEC's enforcement program.

In 2015, the Chamber released a comprehensive report on SEC enforcement, including dozens of recommendations for how the SEC could be both more transparent and effective in its enforcement efforts.[23] As the Chamber emphasized in that report, effective securities regulation depends on an SEC enforcement program that is both effective and respectful of the due process rights of individuals – goals that had been severely undermined by the SEC's overuse of its ALJ system.

While the *SEC vs. Jarkesy* Supreme Court decision has addressed many of the problems of the SEC ALJs, the Chamber will continue to work with Congress and the SEC on additional recommendations from our 2015 report to improve the SEC's enforcement program.

### Financial Stability Oversight Council

Title I of Dodd-Frank established FSOC, an interagency council chaired by the Treasury Secretary and whose voting members consist of the heads of each federal financial regulator along with an independent member with insurance expertise. FSOC is charged with identifying and responding to potential threats to the financial stability of the United States.

Dodd-Frank provided FSOC with extensive authority, including the ability to designate an institution or certain activities as "systemically important" and subject them to enhanced supervision by the Federal Reserve. Unfortunately, in the years immediately following passage of Dodd-Frank, FSOC strayed from its mandate when it embarked down a path of designating institutions for enhanced supervision without first conducting a substantive economic analysis and assessing the impact that such designation would have on financial stability and the broader economy. These flaws were eventually exposed by the 2016 *MetLife* decision.

**The Chamber strongly supports H.R. 3682, the Financial Stability Oversight Council Improvement Act**, recently reintroduced by Reps. Foster and Huizenga. The FSOC Improvement Act would require FSOC to consider alternative approaches before determining that a U.S. nonbank financial company shall be supervised by the Federal Reserve. The Chamber also supports previous legislation from Reps. Barr and Loudermilk that would enhance the transparency of FSOC operations and processes.[24]

### Additional Legislation

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[23] Examining U.S. Securities and Exchange Commission Enforcement: Recommendations on Current Processes and Practices (July 2015)
[24] H.R. 3466, 118th Congress

The Chamber supports several other bills that the Committee will consider as part of the hearing, including:

**H.R. ___, a bill to repeal certain unused authority of the Securities and Exchange Commission related to standards of conduct.** This legislation would preserve the SEC's Regulation Best Interest (Reg BI) and the standards of conduct that currently apply to broker-dealers and investment advisers in their relationships with retail investors. Reg BI is a strong, national standard that ensures financial professionals act in the best interest of their customers and it protects investor choice within the financial services market. This bill would prevent a future SEC from limiting investor choice and making access to basic investment and advisory services cost prohibitive for investors.

**H.R. 3959, a bill to exempt fixed-income securities from SEC Rule 15c2-11.** This legislation would correct the misapplication of Rule 15c2-11 to fixed income securities. In 2020, the SEC amended Rule 15c2-11 to enhance disclosures in the over the counter (OTC) equities markets. However, the SEC subsequently chose to apply the rule to fixed income securities for the first time since the rule went into effect in 1971. The bill would support capital formation by providing a permanent, statutory exemption for fixed income securities from Rule 15c2-11.

**H.R.__, the Credit Access and Inclusion Act of 2025.** This legislation would permit the use of alternative consumer payments – such as utilities, phone bills, and leases – to credit bureaus so that an individual's payment history for these services can be considered as part of their credit profile. Federal banking agencies have recognized that the use of alternative data can improve the speed and accuracy of credit decisions. It can also help lenders evaluate the creditworthiness of consumers who currently may not be able to obtain credit in the mainstream credit system. This bill would help consumers build credit histories and increase their chances of accessing more affordable credit terms.

**H.R. 3141, the CFPB Budget Integrity Act.** This bill would establish greater oversight and budget accountability for the Consumer Financial Protection Bureau (CFPB), an agency whose decisions can affect the financial wellbeing of millions of Americans. Under the bill, the CFPB would be required to report on its use of unobligated balances and it limits the amount of unobligated balances in the Bureau Fund to no more than 5% every year. The legislation would help ensure that the CFPB remains accountable to taxpayers.

**H.R. ___, a bill to amend the Consumer Financial Protection Act of 2010 to require the attestation of certain information as part of the consumer complaint submission process, and for other purposes.** The CFPB established a mechanism on

its website for consumers to report their interactions with financial services providers. The CFPB uses this data to create a publicly viewable "Consumer Complaint Database" with the ostensible goal of promoting transparency about the market of financial products to inform consumers, the business community, and policymakers. However, the CFPB has not taken the necessary action to 1) verify the credibility of complaints submitted to the database; and 2) properly explain to the public steps taken by providers to resolve many of the complaints. The legislation would require consumers submitting complaints to attest to their veracity and also would allow financial institutions to close certain complaints that are deemed duplicative, frivolous, unauthorized, or fraudulent.

**H.R. ___, a bill to amend the Consumer Financial Protection Act of 2010 to direct civil penalties to victims and transfer excess funds to the Treasury, and for other purposes.** This bill would ensure that penalties assessed and collected by the CFPB actually go directly to victims and prevent the CFPB from using those funds for any other purpose than victim compensation. Any excess funds left over after victims are compensated would have to be transferred to the U.S. Treasury's general fund.

**H.R. ___, a bill to amend the Financial Stability Act of 2010 to authorize appropriations for the Office of Financial Research and the Financial Stability Oversight Council, and for other purposes.** This bill would establish greater Congressional oversight of FSOC and the Office of Financial Research (OFR) – both of which were created by Dodd-Frank but have operated since then with little accountability towards Congress and the general public. Despite FSOC's momentous authority and weight with regard to financial regulation, there is relatively little oversight. Appropriate checks and balances lead to stronger and more effective agencies

**H.R. ___, a bill to require the Federal financial institutions regulatory agencies to jointly review the cumulative impact of regulations issued by such agencies, and for other purposes.** In the wake of Dodd-Frank, as regulators begin to propose and implement hundreds of rules, it became clear that there was very little coordination or awareness amongst agencies about the cumulative effect these rules were having on economic growth and job creation. This bill would improve the regulatory process and ensure that federal financial regulators consider the overall costs that new rules impose on the economy.

Conclusion

The Chamber commends the Committee for its continued focus on the lasting impact of Dodd-Frank. We look forward to continuing to serve as a resource for Congress on these important matters.

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**Jason Stverak**
*Chief Advocacy Officer*

**July 14, 2025**

The Honorable French Hill
Chairman, Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member, Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hill and Ranking Member Waters,

I write to you today on behalf of the Defense Credit Union Council (DCUC), which represents more than 200 credit unions serving active-duty military members, veterans, and their families. As you prepare for the upcoming hearing on Dodd-Frank regulatory reform, we would like to take this opportunity to underscore the significant compliance burdens placed on credit unions by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). We strongly believe that these burdens, particularly for smaller institutions like credit unions, hinder our ability to serve our members effectively and contribute to the economic security of military families.

Since the enactment of Dodd-Frank, credit unions have faced a dramatic rise in regulatory costs. According to studies, most credit unions reported that their compliance burdens grew following the passage of the law, with some institutions seeing their compliance budgets double. This increase in regulatory obligations has led to the need for additional staff hires, increased technology expenditures, and slowed the rollout of new services to members. These impacts have been particularly harmful to smaller credit unions, which do not have the economies of scale enjoyed by larger institutions. As a result, credit unions, particularly those in the defense sector, are being forced to divert precious resources away from serving our members and toward meeting ever-increasing compliance obligations.

Credit unions did not cause the financial crisis that led to the creation of Dodd-Frank, yet they are subject to the same regulations designed for large, for-profit financial institutions. DCUC has long argued that the regulatory regime under Dodd-Frank is disproportionately burdensome for credit unions, which are mission-driven, not-for-profit institutions focused on providing affordable financial services to their members. The financial crisis may have revealed significant risks in the banking sector, but credit unions, particularly those serving military members, have a long history of maintaining safe and sound operations without resorting to the risky practices that caused the crisis.

Dodd-Frank also created significant complexity and a lack of coordination in the regulatory landscape. The Act assigned rulemaking authority to multiple agencies, including the Consumer Financial Protection Bureau (CFPB), the National Credit Union Administration (NCUA), and the Financial Stability Oversight Council (FSOC), but without sufficient coordination between these entities. This has led to overlapping and sometimes redundant regulations that further exacerbate the compliance burden.

DCUC has consistently advocated for more streamlined and coordinated rulemaking, but this must be balanced with an eye towards avoiding overregulation and placing an unfair regulatory burden on credit unions, especially small ones. In 2025, we warned that the cumulative effect of Dodd-Frank-era mandates, alongside Bank Secrecy Act and capital rules, has created a regulatory environment that significantly limits credit unions' ability to serve their members. In particular, small credit unions lack the resources to navigate the ever-growing complexity of regulatory requirements and are therefore unable to provide the financial services their members need in a timely manner.

One of the most concerning regulations for credit unions is the CFPB's rule requiring small-business lending data to be reported under Section 1071 of Dodd-Frank. All major credit union trade associations have criticized this rule for creating significant compliance costs with little benefit. Originally designed to increase transparency in the lending market, the rule now requires credit unions to report up to 81 data fields per loan, up from the 13 originally intended.

This dramatic increase in data-reporting requirements raises technology, staffing, and training costs, which disproportionately affect smaller credit unions. For smaller institutions, these costs could ultimately result in fewer small-business loans being made, harming the very communities that credit unions are dedicated to serving. As a result, DCUC has consistently advocated for the repeal of Section 1071 or, at the very least, significant reforms to reduce the regulatory burden associated with this rule.

Another issue that has caused significant concern within the credit union community is Dodd-Frank's Section 1033, which mandates that consumers' financial data be made available to third-party applications upon request. Credit unions, particularly those serving military members, have serious concerns regarding the security and privacy risks of this mandate.

DCUC has raised alarms about the potential for third-party breaches and the reputational risks that such breaches could pose to credit unions. Credit unions operate under a trust-based model, and the possibility of their members' sensitive financial data being exposed to outside entities undermines the trust that is essential to our relationship with our members. In response to these concerns, DCUC praised the CFPB's 2025 announcement to rescind or delay the Section 1033 rule, viewing it as a much-needed rollback of overreaching regulation.

There are numerous other provisions of Dodd-Frank that have had negative impacts on credit unions, including executive compensation rules and capital standards. While credit unions were largely exempted from new capital ratios, many post-2010 standards, such as Basel III liquidity rules, still affect them. DCUC has long called for the introduction of supplemental capital solutions and more flexible, risk-based capital rules that better suit the cooperative model of credit unions.

Additionally, credit union leaders continue to advocate for a rollback of problematic Dodd-Frank regulations, including Section 1071, as well as broader regulatory tailoring that would allow for more flexible and cost-effective compliance solutions for smaller credit unions. Recent legislative proposals to raise member-business-loan caps and allow new forms of credit union capital have gained traction in Congress, and we urge your committee to continue to pursue these common-sense reforms.

In summary, while credit unions recognize the need for financial safeguards and consumer protections, the regulatory burdens imposed by Dodd-Frank have disproportionately impacted small, mission-driven institutions. The compliance costs, complexity, and lack of coordination between regulatory agencies have made it increasingly difficult for credit unions to serve their members effectively. As we continue to navigate the evolving regulatory landscape, it is essential that Congress act to provide targeted relief for credit unions, particularly in the form of regulatory tailoring, exemptions, and the repeal of certain provisions that no longer serve their intended purpose.

We appreciate your attention to these critical issues and stand ready to work with you to ensure that credit unions can continue to provide affordable, member-centered financial services to our nation's military families and all those who rely on credit unions for their financial needs. If you have any questions, please do not hesitate to email me at jstverak@dcuc.org or contact me via the phone at 202.557.8528.

Sincerely,

Jason Stverak
Chief Advocacy Officer
DCUC

CC: Members of the House Financial Services Committee

# DCUC Bill Positions and Recommendations

- **H.R. 941 – Small LENDER Act of 2025:** Requires the CFPB to allow small lenders a three-year compliance period for Dodd-Frank's small business lending data rules (Reg. B/Section 1071), followed by a two-year safe harbor with no penalties. Also lowers the revenue threshold for "small businesses" to $1 million. **Recommendation: Support.** *Rationale:* This relief gives small credit unions (many of which serve military and veteran entrepreneurs) additional time to build necessary systems and ensures they are not unfairly penalized while adapting to new reporting burdens. The safe-harbor period in particular protects resource-constrained institutions from penalties as they transition to the new rule.
- **H.R. 654 – Taking Account of Bureaucrats' Spending (TABS) Act of 2025:** Renames the CFPB as the "Consumer Financial Empowerment Agency" and transforms it into an independent agency funded through the regular appropriations process. It requires a presidentially appointed Director and implements additional structural changes to the agency. **Recommendation: Support.** *Rationale:* Subjecting the CFPB to the annual appropriations process increases Congressional oversight of its budget and operations. For credit unions (especially smaller defense credit unions), this transparency helps ensure the Bureau does not impose unfunded mandates on the industry.
- **H.R. 3445 – Bureau of Consumer Financial Protection Commission Act of 2025:** Converts the CFPB leadership into a five-member bipartisan commission with staggered, Senate-confirmed terms. It limits any party to three commissioners and requires two members to have private-sector consumer finance experience. **Recommendation: Support.** *Rationale:* A commission structure provides greater balance and accountability than a single director, reducing the risk of unchecked regulatory swings. Credit unions benefit from having a governing body that must consider diverse industry and consumer perspectives, making it less likely that CFPB rules will overlook the needs of military-serving credit unions and their members.
- **H.R. 2885 – Bank Loan Privacy Act:** Requires the CFPB to issue a formal rulemaking clarifying how small-business lending data collected under Dodd-Frank (Section 1071) will be published, and specifically mandates notice-and-comment rulemaking before any deletions or modifications of this data for privacy reasons. **Recommendation: Support.** *Rationale:* This bill simply ensures transparency before altering published credit data. Credit unions generally support consumer privacy, but also value data that helps identify underserved borrowers. Requiring a rulemaking helps all stakeholders understand and weigh privacy concerns against the benefits of public reporting.
- **H.R. 2513 – CFPB Inspector General (IG) Reform Act of 2025:** Creates a standalone Inspector General for the CFPB (separate from the Federal Reserve IG) and requires that IG to testify semi-annually before Congress. It also mandates the CFPB-IG's participation in the Council of Inspectors General on Financial Oversight and directs the President to appoint the IG within 60 days of enactment. **Recommendation: Support.** *Rationale:* An independent, confirmed IG with Congressional reporting enhances accountability of the CFPB. For credit unions – especially smaller ones – this means better oversight of the agency that regulates them. The semiannual reporting requirement helps Congress identify any CFPB overreach or coordination failures that could unfairly burden credit unions serving military members.

- **H.R. 2183 – CFPB Dual Mandate and Economic Analysis Act:** Expands the CFPB's statutory purpose to include "strengthening private sector participation in markets" and boosting competition and consumer choice. It also creates an Office of Economic Analysis in the CFPB to review all proposed rules, regulations, and orders, requiring the agency to identify the problem a rule solves and specify metrics (e.g. credit access, costs) to gauge success. **Recommendation: Support.** *Rationale:* By forcing CFPB rulemaking to include clear problem statements, metrics, and economic impact studies, this bill ensures that regulations do not inadvertently harm credit availability. Defense credit unions welcome stronger economic analysis to guard against rules that could limit access to affordable credit for service members and their families. The emphasis on competition aligns with credit union values of member choice.
- **H.R. 2331 – Transparency in CFPB Cost-Benefit Analysis Act:** Requires the CFPB to publish detailed justifications and comprehensive cost-benefit analyses for all proposed regulations. Notices of proposed rulemaking must include the necessity of the rule, duplication checks against existing rules, and analysis of alternatives. The CFPB must quantify anticipated compliance costs, economic impacts, and effects on small businesses, and identify less burdensome alternatives. **Recommendation: Support.** *Rationale:* Credit unions, including small military credit unions, benefit when regulators thoroughly assess the costs of new rules. This bill promotes balanced, well-informed regulations by forcing the CFPB to consider compliance burdens on lenders and consumers. The requirement to consult on small business impacts also resonates with credit unions' experience, ensuring rules do not unintentionally harm their operations or member services.
- **H.R. 3446 – FDIC Board Accountability Act:** Amends the FDIC Act to increase presidential appointees on the FDIC Board to four and adds expertise requirements (including at least one member with community bank experience under $10 billion). It removes the CFPB Director's vote on the FDIC board, gives the CFPB Director an observer status, and imposes two-term (12-year) limits on board members. **Recommendation: Support.** *Rationale:* This bill ensures that FDIC Board decisions reflect a wider range of banking perspectives, including smaller depository institutions. Many defense credit unions operate similarly to community banks; having voices with that background is beneficial. Removing the CFPB Director's vote keeps consumer protection focused but does not diminish credit unions' input. Term limits further encourage fresh expertise.
- **H.R. 1606 – Making the CFPB Accountable to Small Businesses Act of 2025:** Requires the CFPB, when proposing any rule, to consider the rule's impact on small entities and to justify decisions when it does not adopt less burdensome alternatives for small businesses. **Recommendation: Support.** *Rationale:* Credit unions often serve small-business owners in the military community. Ensuring that CFPB rules are "right-sized" keeps regulatory costs down for these institutions. This legislation directly addresses credit unions' longstanding concern about one-size-fits-all regulation. As America's Credit Unions notes, it would "ensure that the CFPB operates with much-needed transparency and is incentivized to produce right-sized regulations that support a thriving credit union industry".
- **H.R. 1652 – Rectifying UDAAP Act:** Clarifies and raises the standards for CFPB enforcement of unfair, deceptive, or abusive acts/practices (UDAAP). It defines

"abusive" more narrowly and prohibits the CFPB from seeking monetary penalties if a lender has made a good-faith attempt at compliance. The bill also mandates cost-benefit analysis for any proposed UDAAP rules, allows institutions to self-report minor violations for reduced penalties, and requires the CFPB to issue clear penalty rules within 180 days. **Recommendation: Support.** *Rationale:* This bill brings legal clarity that helps financial institutions (including credit unions) avoid unknowingly violating vague standards. Small credit unions benefit from knowing exactly what practices are considered abusive. Good-faith compliance and self-reporting provisions encourage better compliance without fear of severe penalties. Overall, clearer standards reduce regulatory uncertainty and allow credit unions to focus resources on serving members rather than defending against ambiguous enforcement.

- **H.R. 1653 – Civil Investigative Demand (CID) Reform Act of 2025:** Overhauls the CFPB's investigatory subpoena (CID) process to protect institutions, especially small ones. It requires more specific factual allegations in any CID, expands the grounds to challenge a CID as overly broad or burdensome, and allows institutions to immediately seek court review rather than waiting for CFPB enforcement. It also imposes a six-year statute of limitations on CFPB investigations, permits formal questions to the Bureau about CID scope, and protects confidentiality of challenge petitions. **Recommendation: Support.** *Rationale:* CIDs are often drawn broadly and can place heavy burdens on small credit unions. This reform would grant credit unions stronger due-process rights by preventing overly vague investigations. By giving regulated entities a fairer chance to contest unreasonable demands, it prevents the CFPB from tying up small institutions' staff and resources indefinitely. In short, it balances needed oversight with appropriate procedural protections for the defense credit union community.
- **H.R. ___ – Business of Insurance Regulatory Reform Act of 2025 (Steil discussion draft):** Clarifies that the CFPB may not duplicate or override insurance regulation already conducted by state insurance regulators. In effect, it limits the CFPB's authority over insurance products by deferring to existing state-based insurance rules. **Recommendation: Support (with Reservation).** *Rationale:* Many credit unions partner with insurance providers to serve members. This clarification reduces regulatory overlap and confusion. It protects insurers and their distribution partners from inconsistent federal and state rules. DCUC supports clear jurisdictional boundaries; however, we will review details to ensure consumer protection (especially for policyholders in the military community) remains strong.
- **H.R. ___ – Credit Access and Inclusion Act (Kim discussion draft):** Allows reporting of alternative payment data (timely payments on leases, utilities, telecom, etc.) to credit bureaus, with certain consumer safeguards. It limits data-provider liability and requires a GAO study on consumer impacts. **Recommendation: Support.** *Rationale:* Expanding credit data can benefit military members who may not have traditional credit histories. By giving credit unions (and members) more complete information, this bill can help military families build credit. The consumer protections ensure data sharing is done responsibly.
- **H.R. 3682 – Financial Stability Oversight Council (FSOC) Improvement Act of 2025:** Requires the FSOC to rule out alternative approaches before designating a nonbank financial institution as a systemically important financial institution (SIFI) subject to Fed supervision. The bill mandates that FSOC must determine other remedies have been

considered and found insufficient before voting on a SIFI determination. **Recommendation: Support.** *Rationale:* Although credit unions have not been targeted as SIFIs, this measure ensures that FSOC does not use its broad Dodd-Frank authorities lightly. It protects all nonbanks by requiring rigorous justification before special supervision is imposed. In the context of Dodd-Frank reform, this adds accountability and helps prevent unnecessarily expansive regulation that could eventually trickle down to smaller institutions.

- **H.R. ___ – Small Dollar Loan Certainty Act (Kim discussion draft):** Creates a safe harbor under the Truth in Lending Act for "responsible" small-dollar loans by depository institutions. It sets objective standards for loan terms, underwriting and disclosures, capping fees and penalties for loans of $3,500 or less. **Recommendation: Support.** *Rationale:* Defense credit unions often offer small-dollar loans (such as Payday Alternative Loans) to service members. This safe harbor encourages more such programs by providing clear rules and liability limits. That promotes affordable, transparent lending as an alternative to predatory loans. We fully support measures that help our members access short-term credit without falling into debt traps.
- **H.R. 3141 – CFPB Budget Integrity Act of 2025:** Limits the CFPB's reserve fund by capping unobligated balances at 5% of its total annual budget. Any excess funds must be transferred to the Treasury, and the CFPB must report on its fund usage. **Recommendation: Support.** *Rationale:* This restores a check on the CFPB's self-funding mechanism and increases Congressional oversight of unused Bureau funds. For credit unions, this discourages indefinite accumulation of funds that might signal plans for more regulation. Requiring transfer of excess to the general fund ensures taxpayer-financed banking regulation – aligning CFPB budgeting with that of other agencies.
- **H.R. ___ – American Access to Banking Act (Waters discussion draft):** Directs federal regulators to streamline and promote the creation of new banks and credit unions. It requires agencies to simplify application processes, reduce duplicative paperwork, address capital-raising challenges (in consultation with the SEC), and assign caseworkers to help applicants. Agencies must also engage in outreach programs and report regularly to Congress on these efforts. **Recommendation: Support.** *Rationale:* Credit unions are part of America's banking ecosystem. Encouraging the formation of new community institutions – including credit unions serving military personnel – enhances competition and choice. By reducing red tape for new credit unions, this bill would benefit military communities that often lack access to affordable financial services. DCUC applauds efforts to expand access to the credit union charter and support our mission of service.
- **H.R. ___ – Regulatory Cumulative Impact Review Act:** Mandates that bank and financial regulators jointly study the cumulative impact of all their regulations every three years on consumers, credit availability, market liquidity, and the economy. Agencies must identify redundancies and propose ways to streamline or repeal duplicative rules. **Recommendation: Support.** *Rationale:* Our member credit unions face the challenge of complying with many overlapping rules. A requirement to assess the aggregate burden would help Congress and regulators spot inefficiencies. This review is likely to uncover reforms that ease compliance costs for smaller institutions, ultimately helping credit unions serving service members to focus on lending and member service instead of paperwork.

- **H.R. ___ – Fed Member Community Bank Policy Act:** Assigns additional duties to the Federal Reserve Governor with community bank experience under $10 billion. That Governor must lead policy development for such banks and report semi-annually to Congress if not already the Vice Chair of Supervision. **Recommendation: Support.** *Rationale:* Many credit unions operate on scales similar to community banks. Ensuring one Fed Governor focuses on smaller institutions means credit unions' perspectives will be better represented at the Fed. Semiannual reporting also increases transparency. DCUC expects this will bring a more tailored approach to monetary and supervisory policy that benefits credit unions, including those in the military market.
- **H.R. ___ – CFPB Complaint Attestation Act:** Requires consumers filing complaints with the CFPB to attest, under penalty of perjury, that the information is accurate and legitimately within the CFPB's jurisdiction. Lenders could close complaints deemed duplicative, frivolous, or fraudulent (with notice and record-keeping). The draft also protects the confidentiality of complaint narratives while allowing publication of aggregated data. **Recommendation: Support.** *Rationale:* This measure would reduce frivolous or bogus complaints that waste credit union resources during CFPB investigations. Requiring complainants to verify their claims encourages seriousness and reduces harassment of lenders. Protecting narratives in aggregate maintains privacy while keeping statistical transparency. Overall, it balances consumer access to remedy with preventing abuse of the system.
- **H.R. ___ – CFPB Guidance Procedures Act:** Mandates that the CFPB establish formal procedures (with public input) for issuing, amending, and revoking guidance (opinions, bulletins, etc.). It also protects lenders who rely in good faith on existing guidance and requires the CFPB to issue a rulebook aligning its civil penalty framework with that of other agencies. **Recommendation: Support.** *Rationale:* Predictable processes for non-binding guidance help credit unions plan and comply. Formalizing guidance issuance (with input) prevents sudden shifts in policy. A clear penalty matrix ensures consistent enforcement. This increases confidence that credit unions won't face unexpected enforcement based on ambiguous guidance interpretations.
- **H.R. ___ – CFPB Victims' Relief Act:** Requires all civil monetary penalties collected by the CFPB to be paid directly to the victims of the violation, eliminating the CFPB's alternate uses of fines. Any remaining funds after full victim compensation must be sent to the U.S. Treasury general fund. **Recommendation: Support.** *Rationale:* This reinvests CFPB penalties where they belong – with harmed consumers. It removes an incentive for the CFPB to over-penalize firms to fund other programs. Ensuring penalties flow to affected military families and other victims is fair and reduces perceptions that CFPB fines are a revenue source.
- **H.R. ___ – CFPB Market Monitoring Elimination Act:** Strikes the CFPB's authority to initiate "market monitoring" inquiries into financial markets. **Recommendation: Support.** *Rationale:* Removing this seldom-used provision prevents unnecessary investigations of credit markets. Credit unions have no interest in CFPB intruding on healthy markets; eliminating the authority simply reduces CFPB's arsenal without harming supervision. This is a low-risk technical change to the Dodd-Frank framework.
- **H.R. ___ – CFPB Penalties Reform Act:** Restructures CFPB civil penalty tiers and caps, and explicitly makes voluntary self-reporting of violations a mitigating factor. The CFPB would be required to adopt rules reducing penalties for institutions that come

forward with issues on their own. **Recommendation: Support.** *Rationale:* This aligns CFPB with other regulators by rewarding good-faith compliance. Small credit unions may err unknowingly; knowing that prompt, voluntary disclosure can substantially reduce fines encourages transparency. It also ensures penalties are proportionate to misconduct, which is important for member-owned institutions with limited financial reserves.

- **H.R. ___ – FCRA Accuracy for Resellers Act (Lawler discussion draft):** Requires firms that resell consumer credit reports (resellers) to follow reasonable procedures to ensure maximum possible accuracy before transmitting the data. It also clarifies that a reseller who correctly passes along data from another credit reporting agency is not liable for that information. **Recommendation: Support.** *Rationale:* This would improve the integrity of credit data used by lenders. Accurate information helps credit unions make better lending decisions for members. By limiting liability for pass-through data (if accurate), it prevents resellers from over-correcting or withholding valid information. Military members and their families benefit from accurate credit records.
- **H.R. ___ – FCRA Class Action Fairness Act (Loudermilk discussion draft):** Amends the Fair Credit Reporting Act to cap total damages in class actions at the lesser of $500,000 or 1% of the defendant's net worth. It bans minimum statutory damages per class member (current FCRA provides $100–$1,000 per violation) and eliminates punitive damages, while preserving attorney's fees provisions. **Recommendation: Support.** *Rationale:* This reform protects smaller financial institutions (and their insurers) from crippling class-action liability. Credit unions typically have limited assets, and massive statutory damages in class cases can be devastating even for technical violations. Capping damages makes class actions more reasonable and prevents abuse, without harming consumers (attorneys' fees remain). This aligns with DCUC's interest in sensible enforcement.
- **H.R. ___ – Unused Dodd-Frank Authorities Report Act (Lawler discussion draft):** Directs the Treasury Secretary, within 60 days of enactment, to submit a report (to Congress) listing Dodd-Frank provisions not yet implemented by final rule, in consultation with the CFPB and other regulators. **Recommendation: Support.** *Rationale:* This provides transparency on dormant Dodd-Frank requirements. Credit unions benefit from knowing which potential regulations remain on the shelf. If Congress is considering reform of Dodd-Frank, understanding unused authorities helps prioritize which rules are unnecessary. A clear inventory can guide future policymaking and possibly prevent unintended activation of unused mandates that might affect credit unions.
- **H.R. ___ – SEC Arbitration Authority Repeal Act:** Repeals the SEC's authority (granted under Dodd-Frank Sec. 15(o) and 921) to ban or limit mandatory pre-dispute arbitration agreements in broker-dealer and investment adviser contracts. **Recommendation: Support.** *Rationale:* Arbitration is a valuable, efficient dispute-resolution mechanism for both consumers and financial firms. Congress originally protected arbitration for securities transactions. This repeal prevents the SEC from eliminating arbitration agreements in the future. Credit unions support private dispute resolution options (many CUs use arbitration clauses) and thank lawmakers for preserving members' choice to use arbitration instead of costly litigation.

- **H.R. 3484 – Business Owners Protection Act (Barr):** Terminates several unused SEC authorities created by Dodd-Frank (including consumer financial regulations under SEC purview). **Recommendation: Support.** *Rationale:* This bill rescinds outdated or never-used mandates on securities firms. Although credit unions are not direct targets of these rules, removing them simplifies the regulatory landscape and prevents potential future policy shifts. DCUC supports eliminating needless regulatory authority as part of broader Dodd-Frank reform.
- **H.R. ___ – SEC Fiduciary Authority Limitation Act:** Narrows the SEC's Dodd-Frank authority under SEAct §15(l) and IAA §211(h) by striking language directing the SEC to consider imposing additional broker-dealer or adviser obligations. **Recommendation: Support.** *Rationale:* This prevents future creation of a uniform fiduciary standard that could impose new compliance costs. While credit unions already serve members with a member-first ethos, potential SEC-imposed fiduciary rules could inadvertently bind credit union securities activities. This bill forestalls that risk.
- **H.R. ___ – SEC Standards of Conduct Repeal Act:** Repeals the SEC's authority under Dodd-Frank Sec. 913(k) to impose a uniform fiduciary standard on broker-dealers and investment advisers. **Recommendation: Support.** *Rationale:* As above, this ensures no new fiduciary standards will be imposed by the SEC on securities professionals. Credit unions typically market investments through affiliated dealers; removing this authority prevents future regulation that could complicate those activities without adding consumer benefit.
- **H.R. 3959 – Protecting Private Job Creators Act (Downing):** Permanently exempts debt securities (fixed-income) from SEC Rule 15c2-11, which currently requires information disclosure about issuers before certain secondary trades. **Recommendation: Support.** *Rationale:* This rescinds a Dodd-Frank expansion of Rule 15c2-11 that burdened smaller issuers and market makers. By exempting debt, it encourages capital formation and liquidity in the municipal and corporate bond markets. Credit unions, which often invest in and sometimes issue such securities, will find lower transaction costs and greater market access. This benefits military member investors and community development as a whole.
- **H.R. 2478 – Financial Exploitation Prevention Act (Wagner):** Amends the Investment Company Act of 1940 to allow broker-dealers and others to temporarily postpone redemptions or distributions when there is a reasonable belief of financial exploitation of an elder or vulnerable adult. **Recommendation: Support.** *Rationale:* Although this is an SEC matter, it bolsters protections against fraud targeting older Americans, including veterans. Credit unions support strong anti-fraud measures. Allowing a brief hold on suspicious transactions helps protect exploited members' accounts. This preventive tool aligns with our mission to safeguard the financial security of military families.

August 15, 2025

The Honorable French Hill
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
4340 O'Neill House Office Building
Washington, D.C. 20515

Dear Chairman Hill and Ranking Member Waters,

Thank you for the opportunity to testify at the July 15, 2025 Subcommittee on Financial Institutions hearing entitled "Dodd-Frank Turns 15: Lessons Learned and the Road Ahead." My responses to questions for the record are below.

Questions from Chairman Hill

1. *Democrats used the hearing to emphasize the CFPB's enforcement and supervisory actions to date - including $21 billion in "monetary compensation, principal reductions, canceled debts, and other consumer relief" - as an example of the Bureau operating as an effective regulator. Do you believe this is the best metric to gauge the Bureau's effectiveness?*

   Response:

   The CFPB should be measured on meeting its statutory requirements and setting clear transparent rules and guidelines. In many ways, citing this number rewards the Bureau for a lack of regulatory and enforcement clarity.

   Just as no one should evaluate the official of a basketball game by the number of fouls called or whether their favorite team won. Instead, the focus should be on whether the referee called a fair game and allowed the teams to compete within the appropriate rules.

   The same is true for evaluating the CFPB. Focusing solely on how much money a regulator extracts from industry creates incentives for the CFPB to chase enforcement actions, monetary penalties, and headlines—even if not justified.

   In some ways, the way that the Bureau has levied fines on private companies under the prior Administration demonstrates systemic problems at the Bureau. Increasingly, the CFPB has grown comfortable stretching its legal authority, branding conduct "unfair" or "abusive," after the fact, and demanding penalties without giving the market appropriate notice or the opportunity to respond. That's not regulatory rigor. It's regulatory ambush.

   And this approach ultimately hurts consumers most.

   Clear, transparent rules and guidelines help market participants understand what is expected of them, reduces regulatory uncertainty, and enhances public trust. Ultimately, this benefits consumers in a number of ways. First, it reduces the likelihood of violations and consumer

harm in the first place. Second, it reduces the need for fines that are assessed after a violation or harm has occurred. Third, it allows consumers to operate in a marketplace with greater competition and protections.

Congress has an opportunity to reboot the CFPB into a more credible and durable consumer regulator by providing permanent clarity around Bureau's use of its UDAAP authority, which has swung dramatically from one Administration to the next. This creates uncertainty and exposes institutions to retroactive penalties without clear rules. This would benefit consumers and market participants alike.

It is imperative that Congress pass the *Rectifying UDAAP Act* to provide the needed clarity on the CFPB's use of its UDAAP authority. Importantly, this legislation would prohibit the CFPB from retroactively assessing a civil money penalty for a practice that was not previously identified as being prohibited.

Questions from Rep. Fitzgerald

1. *Dodd-Frank represents a sweeping overhaul of financial regulation, fundamentally restructuring oversight of the financial system, from prudential bank supervision to derivatives markets to mortgage lending practices.*

   - *Simple question that we hit on throughout the hearing: what has happened to the total number of financial institutions since the passage of the Dodd-Frank Act and the creation of the CFPB?*

     Response:

     FDIC data presents a stark picture. In 2009, there were 6,829 insured commercial banks with 82,490 branches. In 2024, there were 3,928 insured commercial banks with 68,632 branches.[1]

   - *Can you provide some background on what has been the effect of the Dodd-Frank Act, and specifically the creation of the CFPB, on financial institutions' ability to offer consumers choices in their financial products?*

     Response:

     Implementation and enforcement of the 19 consumer financial protection statutes are necessary for the consumer financial services marketplace to function properly and competitively. However, the manner in which those statutes are being implemented is critically important. In the past, the CFPB pursued politically charged rules using novel legal theories that far exceeded the Bureau's statutory authority. This uncertainty did not foster an environment where retail banks could feel confident in the regulatory landscape to make long-term business decisions about which products and services to offer.

[1] https://banks.data.fdic.gov/explore/historical

One such example is the CFPB's overdraft rule. On December 12, 2024, in the final days of his tenure, then-Director Chopra finalized a rule that would have created a one-size-fits-all, government-mandated banking service, that operated under a separate and more restrictive regulatory framework for banks and credit unions with more than $10 billion in assets, reducing access to checking services for customers at financial institutions.

The rule went well beyond the agency's statutory authority, all to advance the previous Administration's politically driven campaign against "junk fees."

In issuing the final rule, former Director Chopra did not consider the rule's true impact on consumers, many of whom would have lost access to this important service if the rule had taken effect.[2] Further, former Director Chopra relied on data that did not include credit invisible consumers or consumers who lack traditional access to credit products. Accordingly, former Director Chopra failed to include one-fifth of Americans in its impact analysis—those who would likely have stood to lose the most—and who would have been irreparably de-banked by this rulemaking.[3]

Additionally, the final rule would have hindered innovation, limited competition, and hampered financial institutions' ability to provide this essential service to the millions of consumers who rely on it.

Former Director Chopra also failed to meet the CFPB's statutory cost-benefit analysis requirements, as he relied on data that did not include overlooked credit invisible consumers who lack traditional access to financial institution-offered credit products.

Fortunately, Congress recognized the overdraft rule's fundamental flaws and passed a Congressional Review Act resolution to reject the overdraft rule, which the President signed into law in May 2025.[4]

Another example is the CFPB's credit card late fees rule. In March 2024, the CFPB finalized its proposed rule that would reduce the Federal Reserve Board's longstanding safe harbor for credit card late fees from $30 ($41 for subsequent late payments) to $8, without an inflation adjustment.[5] The CFPB's rule was, again, part of the Biden Administration's anti-inflation political campaign against "junk fees."

The Bureau attempted to justify the late fees rule by portraying the credit card market in ways that its own data shows are false. The former CFPB Director argued that late fees

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[2] https://consumerbankers.com/press-release/new-cba-survey-illustrates-consumer-harm-of-cfpb-overdraft-proposal/; https://consumerbankers.com/press-release/what-they-are-saying-setting-government-price-controls-on-overdraft-services-ignores-market-realities-harms-consumers/

[3] https://consumerbankers.com/press-release/cba-statement-on-cfpbs-misleading-overdraft-press-release/

[4] https://www.congress.gov/bill/119th-congress/senate-joint-resolution/18. CBA led litigation challenging the CFPB's overdraft rule. https://consumerbankers.com/press-release/cba-financial-trades-and-banks-file-lawsuit-against-cfpbs-overdraft-final-rule/

[5] https://www.consumerfinance.gov/rules-policy/final-rules/credit-card-penalty-fees-final-rule/

and, by extension credit cards, "aren't subject to the normal forces of competition."[6] According to the former Director, competition had been "undermined," so the CFPB needed to intervene to ensure the credit card market is fair and competitive."[7] But the CFPB's own CARD Act Report clearly shows a highly competitive market for credit cards. CBA detailed these findings in greater detail in a four-part "Facts Matter" series.[8] As an example of the hyper-competitiveness of the credit card market, the CFPB's CARD Act report shows that there were $53 billion of balance transfers in 2022.[9] To put that number in context, the amount of balance transfers that moved from one issuer to another is greater than the total holdings of all but the top seven credit card issuers.

The Bureau also claimed that this rule could help some credit card customers, in particular those who frequently pay late. However, the Bureau acknowledged that cardholders who never pay late– which the CFPB's own data indicates is 74 percent of all Americans with credit cards and 47 percent of subprime cardholders[10]– will not benefit from the reduced fees and could experience "higher maintenance fees, lower rewards, or higher interest on interest-paying accounts," and increased costs could completely negate any benefits.[11] Further, the CFPB's rule threatened to limit overall access to credit. As card issuers adjust to manage the risk of more late payers, the rule presented risk that the supply of credit would constrict. This restriction of credit could have "de-banked" existing consumer cardholders, while also making it more difficult for consumers to get access to new credit.

CBA was a co-plaintiff on a lawsuit challenging the CFPB's credit card late fees rule. In April 2025, the court granted the CFPB's and co-plaintiffs' joint motion to vacate the rule.[12]

2. *Dodd-Frank dramatically expanded the administrative state, creating agencies like the CFPB that operate outside traditional checks and balances—often regulating through enforcement.*

   - *My bill, the Restoring Court Authority Over Litigation Act, which was noticed to the hearing, reinforces the authority of State and Federal courts over the legal profession by prohibiting Federal agencies from regulating attorneys and law firms engaged in litigation, and by barring private lawsuits against them for litigation-related conduct.*

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[6] https://www.consumerfinance.gov/about-us/newsroom/director-chopras-remarks-on-press-call-for-credit-card-late-fees-nprm/
[7] Id. and https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/
[8] CBA detailed these contradictions in greater detail in a four-part series. https://www.consumerbankers.com/cba-media-center/media-releases/facts-matter-cba-uses-cfpb-data-set-record-straight-card-act-report
[9] https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf#page=116
[10] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf
[11] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf#page=227
[12] https://consumerbankers.com/wp-content/uploads/2025/04/150-Order-and-Final-Judgment.pdf

- *How does this bill help reestablish the proper role of courts in overseeing legal conduct, particularly in pushing back against the trend of federal agencies, like the CFPB, attempting to police litigation activity that should be governed by the judiciary?*

  Response:

  The CFPB has at times sought to stretch beyond the statutory authority that Congress granted to it. Consumers– regardless of political affiliation– should be able to count on a regulator that is focused on executing its statutory mission, heeding the bounds of its statutory authority, and addressing true market failures and consumer harms. While your legislation falls outside of the core set of issues CBA has generally engaged on behalf of our members, I emphasize it is important for Congress to regularly reexamine the CFPB's authority and oversee its activities to prevent mission creep, including any attempts to police litigation activity that should be governed by the judiciary.

3. *A troubling legacy of Dodd-Frank has been the vast and often ambiguous expansion of regulatory authority into areas far beyond its original intent, including the legal profession itself. We have seen agencies like the CFPB attempt to assert jurisdiction over attorneys engaged in traditional litigation activities, which not only raises serious constitutional concerns but also creates regulatory uncertainty for financial institutions and legal practitioners alike.*

   - *Do you believe legislation like the Restoring Court Authority Over Litigation Act is necessary to restore balance and protect the integrity of our legal and financial systems?*

     Response:

     While I cannot speak to the necessity of your legislation, I note that when Congress is considering an agency's regulatory authority, it is important to establish tight parameters and guardrails. This helps ensure the agency does not expand its activities beyond Congressional intent.

Questions from Ranking Member Waters

1. *Which of the following options best describes your self-identified race? (You may choose more than one)*

   a. *White or Caucasian*
   b. *Black or African American*
   c. *Hispanic/Latinx*
   d. *Asian*
   e. *Middle Eastern/North African*
   f. *Choose not to answer*
   g. *Prefer to self-describe (please specify)*

Response: I choose not to answer. I testified during this hearing not on behalf of myself, but on behalf of the Consumer Bankers Association, our member banks, and the broader industry.

2. *Which of the following options best describes your gender identity?*

   *a. Woman*
   *b. Man*
   *c. Non-binary*
   *d. Transgender Man*
   *e. Transgender Woman*
   *f. Choose not to answer*
   *g. Prefer to self-describe (please specify)*

   Response: I choose not to answer. I testified during this hearing not on behalf of myself, but on behalf of the Consumer Bankers Association, our member banks, and the broader industry.

**QFRs & Answers**

**Rep Wagner:**

**Q:** *Mr. Quaadman, in light of references made at the hearing to stablecoins and money market funds, could ICI supplement the record with its views on these two investment products?*

**A:** Money market funds are arguably the most closely regulated investment vehicles in the United States, designed to offer investors stability, liquidity, and transparency while earning a market-based rate of return. Over the years, the Investment Company Institute (ICI) has worked constructively with the Securities and Exchange Commission (SEC) to strengthen the money market fund industry for the benefit and further protection of investors and the performance of broader financial markets and the economy more generally. These efforts have resulted in robust standards around credit quality, liquidity, valuation, and disclosure—ensuring that money market funds remain a low cost, efficient, transparent cash management vehicle for both retail and institutional investors. In 2024, over 64 million retail investors as well as corporations, municipalities and other institutional investors relied on the money market fund industry, which today is worth over $7.18 trillion. Money market funds also are an important source of direct financing for governments (federal, state and local), businesses, and financial institutions, and of indirect financing for households.

In contrast, stablecoins are still an emerging financial product. Through the leadership of the House Financial Services Committee, the recently enacted *Genius Act* is an important step forward in providing a foundational platform for stablecoins to be used as payment vehicles, signaling a broader recognition of their potential role in the financial system. As stablecoins become more integrated into mainstream financial markets, there is a critical opportunity—and need—for collaboration between legislators, regulators, and the private sector to develop a regulatory structure that ensures these digital assets are reliable, transparent, and stable. Just as with money market funds, the long-term viability of stablecoins as trusted financial instruments will require a commitment to thoughtful, proactive regulation.

**Rep Nunn:**

**Q:** *The Credit Rating Agency Reform Act and Dodd-Frank intended to strike a balance: holding rating agencies accountable while encouraging competition and fairness in the marketplace. But it appears the SEC has imposed disproportionately higher penalties on smaller firms, some more than 40 times smaller than their dominant competitors, for similar violations. Without a public methodology explaining how penalties are calculated, it's hard to avoid the conclusion that this has a chilling effect on competition.*
*Would you agree that the SEC's enforcement framework should be modernized to promote greater transparency and ensure smaller rating agencies aren't unfairly disadvantaged, especially when we're trying to encourage more competition in a market still dominated by just a few players.*

**A:** While the Investment Company Institute (ICI) does not represent credit rating agencies, we recognize the important role they play in helping investors assess risk and allocate capital. A sound regulatory framework should hold all market participants accountable, but enforcement must also be transparent, proportionate, and not discourage competition. In any area of financial regulation, we believe oversight should encourage accountability without reinforcing market concentration or stifling innovation.

BETTER MARKETS

December 12, 2025

Chairman French Hill
House Financial Services Committee
2120 Rayburn House Office Building
Washington, DC 20515

Dear Honorable Chairman Hill,

Thank you very much for the invitation to testify at the Committee's hearing on July 15, 2025, entitled "Dodd-Frank Turns 15: Lessons Learned and the Road Ahead." As requested by your letter dated August 1, 2025, attached are my responses to the questions submitted to me.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Dennis M. Kelleher
Co-founder, President, and CEO

cc: The Honorable Maxine Waters, Ranking Member

Mr. Dennis Kelleher,

1. Which of the following options best describes your self-identified race? (you may choose more than one)
    a. White or Caucasian
    b. Black or African American
    c. Hispanic/Latinx
    d. Asian
    e. Middle Eastern/North African
    f. Choose not to answer
    g. Prefer to self-describe (please specify)

2. Which of the following options best describes your gender identity?
    a. Woman
    b. Man
    c. Non-binary
    d. Transgender Man
    e. Transgender Woman
    f. Choose not to answer
    g. Prefer to self-describe (please specify)

3. As we all know, the Dodd-Frank Act was passed in the wake of a financial crisis fueled, in part, by legacy credit rating agencies that handed out AAA ratings like candy, often with little accountability and at great cost to families, retirees, and communities across this country. And yet, more than a decade later, our corporate bond market remains deeply concentrated, with just two legacy firms still each controlling over 94% of the ratings space.
    a. a. If investors are still left in the dark, unable to fairly compare credit rating performance, how can we say with a straight face that we've achieved the transparency goals Congress intended in Dodd-Frank? Have you considered the positive benefits of implementing a transparent mapping framework, like those used in the EU, UK, Canada, and Australia, to finally give investors the tools they need to assess the credibility of these ratings?
    b. b. Second, let's talk about the ballooning private credit market, which has now grown to over $2.1 trillion globally, with three-quarters of that right here in the U.S. Yet private credit ratings remain confidential, shielding this massive and opaque part of our financial system from scrutiny. Don't the American people and regulators, including state insurance regulators, deserve to know whether these ratings are reliable? Have you considered that mapping rating performance, including in the private credit space, would provide much-needed transparency in a market that is increasingly systemically important?

**RESPONSES FROM DENNIS M. KELLEHER**
**TO QUESTIONS FOR THE RECORD**
August 18, 2025

**HOUSE COMMITTEE ON FINANCIAL SERVICES**
**HEARING**
**"DODD-FRANK TURNS 15: LESSONS LEARNED AND THE ROAD AHEAD"**
July 15, 2025

**Responses to Questions 1 and 2**

As I testified in response to Congresswoman Beatty's question at the hearing, there are many very important benefits from diversity. Different views, perspectives, and life experiences can add significant and distinctive if not unique value to the decision-making process and to the decisions themselves. Diversity helps ensure that key issues are not overlooked, that blind spots are avoided, and that the individuals and communities impacted have input, which increases the quality, credibility, sustainability, and durability of decisions and actions.

Diversity, as envisioned here, does not exclude any views, prioritize any views above others, and does not devalue merit. It actually makes decisions based on the merits materially more likely because it improves the quality of decision-making and decisions.

That's why diversity should be welcomed and embraced, including importantly socio-economic diversity, which should not be overlooked. I'm biased. I grew up in single parent home, in a housing project surviving on food stamps, welfare, free school lunches, and surplus government food; not being able to afford a car, we took the bus to get around, in the heat, rain, sleet and often deep snow; I enlisted in the Air Force in high school, served four years active duty, achieved the rank of Sergeant, served as a crash rescue firefighter, and worked my way through community college at night, then college and law school; I worked two jobs while in the military and virtually nonstop while going to college and law school full time. I still graduated with very substantial student loans that took me years to pay off (back when few cared about such things). I nevertheless resigned a partnership at one of the most prestigious law firms in the world, turning down tens of millions of dollars in future income, and took an immediate pay cut of more than 90% to join the staff of a U. S. Senator. Years later, when I left the Senate staff, I again turned down multi-million-dollar annual salaries in lobbying and law to cofound and run a nonprofit to fight for economic justice for all Americans, including in particular the voiceless, powerless and often forgotten hardworking Americans like those I grew up with in and around Worcester, Massachusetts.

Caring about the powerless, people with nothing, those with the deck stacked against them, as well as the hardworking Main Street Americans who just want a fair shake – and a shot at the American Dream - aren't abstract concepts to me. Nor is how the wealthy, well-connected, and powerful have virtually unlimited access and influence throughout Washington and how they get those in government to put their special interests above the public interest (while claiming that their special interest actually advances the public interest). Those diverse experiences inform and fuel my advocacy in Washington. Everyone - including the voiceless, exhausted, discouraged, and all Americans without money, access, influence,

connections, or an army of lawyers and lobbyists - deserves to have their voices heard, know that their lives matter, and have a seat at the table when the decisions are being made that affect their lives and livelihoods. That is possible in several ways, but diversity in all its forms helps ensure that is the case, which is why it is so important.

**Question 3 and Responses**

Question 3: As we all know, the Dodd-Frank Act was passed in the wake of a financial crisis fueled, in part, by legacy credit rating agencies that handed out AAA ratings like candy, often with little accountability and at great cost to families, retirees, and communities across this country. And yet, more than a decade later, our corporate bond market remains deeply concentrated, with just two legacy firms still each controlling over 94% of the ratings space.

a. If investors are still left in the dark, unable to fairly compare credit rating performance, how can we say with a straight face that we've achieved the transparency goals Congress intended in Dodd-Frank? Have you considered the positive benefits of implementing a transparent mapping framework, like those used in the EU, UK, Canada, and Australia, to finally give investors the tools they need to assess the credibility of these ratings?

b. Second, let's talk about the ballooning private credit market, which has now grown to over $2.1 trillion globally, with three-quarters of that right here in the U.S. Yet private credit ratings remain confidential, shielding this massive and opaque part of our financial system from scrutiny. Don't the American people and regulators, including state insurance regulators, deserve to know whether these ratings are reliable? Have you considered that mapping rating performance, including in the private credit space, would provide much-needed transparency in a market that is increasingly systemically important?"

**Background**

Credit ratings have become an extremely important fixture in our capital markets. They are heavily relied upon by investors, issuers, and all those who participate in and depend on our markets and financial system. When credit ratings are honest, independent, thorough, and accurate, they help promote transparency, accurate assessment of investment opportunities, investor confidence, market efficiency, capital formation, price discovery, and liquidity in corporate, municipal, and sovereign debt offerings.

However, flawed, deficient, conflicted, or fraudulent credit ratings can cause grievous harm to investors, markets, our financial system and economy, and all Americans. Indeed, that's exactly what happened when credit ratings played a major role in incubating and spreading the 2008 financial crisis that crippled our financial system and caused the worst economic downturn since the Great Depression. That crisis cost the United States over $20 trillion in dollar terms and resulted in a lost generation of Americans economically speaking. In the Dodd-Frank Act of 2010, Congress adopted a series of reforms to help address the concerns surrounding credit ratings.

- It built on the ***regulatory requirements*** that were initially implemented in the Credit Rating Agency Reform Act of 2006, adding new provisions on corporate governance, disclosure of methodologies and performance, training standards, and conflicts of interest, including measures to prevent marketing or sales considerations from influencing ratings. It created the SEC's Office of Credit Ratings to oversee the Nationally Recognized Statistical Rating Organizations ("NRSROs").

- It sought to ***reduce reliance*** upon credit ratings by requiring the SEC and other federal agencies to remove any references to credit ratings in regulations and to substitute appropriate standards of creditworthiness in their place.
- It sought to ***increase accountability*** among credit rating agencies by eliminating a long-standing rule, 436(g), that insulated the NRSROs from liability for their ratings. And it required the SEC Office of Credit Ratings to conduct annual examinations of the NRSROs and publicly report the findings.
- And in Section 939F, to ***mitigate the persistent and powerful conflicts*** of interest (detailed by Better Markets here) inherent in the issuer-pay model, especially for complex structured or asset-backed securities, Congress required the SEC to study the feasibility of establishing a system in which a public or private utility would assign NRSROs to determine the initial credit ratings for structured finance products. That provision also imposed an unequivocal mandate: It required the SEC either to establish such an assignment system (which would prevent the issuer or underwriter of the structured finance product from selecting the NRSRO) or to pursue an alternative system if the SEC found one that would better serve the public interest and the protection of investors.

Unfortunately, and inexcusably, the implementation of these reforms remains incomplete, with the SEC being derelict in its duties to faithfully implement the law as Congress mandated. For example, the SEC has failed to implement the assignment system for the rating of structured products that would mitigate conflicts of interest. Further, the SEC has essentially negated Congress's intended repeal of Rule 436(g), thus allowing the NRSROs to remain largely insulated from liability for deceptive ratings. Reports reflecting the annual exams of the NRSROs fail to identify the firms that have committed violations, depriving the public and investors of transparency and greater accountability among the NRSROs. The SEC has failed to vigorously enforce the laws and rules applicable to the NRSROs. And finally, the credit rating marketplace remains extremely anticompetitive, with two large firms, S&P and Moody's, providing the vast majority of ratings. Many believe that the financial market turmoil associated with the 2020 covid crisis proved that systemically flawed credit ratings were a persistent problem that once again contributed to market uncertainty and instability.

Given the importance of credit ratings, coupled with their potential to harm the markets and investors if deceptive or inaccurate, it is clear that any measures designed to increase the reliability of credit ratings and address the list of problems surrounding credit ratings will benefit investors, markets, and fair competition. At a minimum, the SEC should implement the law as mandated.

**Specific response to 3.a.**

Better Markets supports the adoption of a mapping framework for credit ratings. It represents one important step that the SEC's Office of Credit Ratings can and should take to help address a number of persistent problems in the credit rating industry. Indeed, the SEC's staff has previously discussed the possibility of having the NRSROs map their ratings to a standardized scale. Specifically, a reliable mapping framework would help promote the accuracy and comparability of credit ratings for the benefit of investors; increase market efficiency and capital formation; and foster more fair competition among the rating agencies. In addition, as discussed above, ensuring the integrity of credit ratings is essential for preventing another financial crisis.

Mapping generally consists of establishing a standardized correspondence or equivalence among the different rating symbols used by the different NRSROs, based upon empirically-grounded metrics of rating accuracy. A reliable credit rating mapping system offers numerous benefits:

- It would promote the accuracy of ratings by exposing distortions in the ratings produced by a given rating firm relative to other firms' ratings, ultimately enabling investors to better compare and evaluate the relative risks of debt instruments.
- It would enhance the comparability of credit ratings, making them more useful tools for investors.
- It would incentivize rating firms to increase the quality of their ratings by accounting for and addressing significant deviations from the ratings of other firms.
- It would promote market efficiency and accurate debt pricing by increasing the accuracy of ratings, thus enhancing confidence in ratings and ultimately leading to more efficient capital allocation, increased opportunities for companies to attract capital, and better pricing.
- It would enhance fair competition by enabling the smaller rating agencies to demonstrate the consistent accuracy and reliability of their ratings and underlying methodologies.

Credit rating mapping frameworks have been validated in other countries, including Canada, the European Union, the UK, and Australia. Finally, we note that the principal objections to a credit rating mapping framework are unfounded. For example, evaluating and describing rating equivalence and performance across the rating agencies with respect to different markets and debt instruments does not impose any requirements as to credit rating methodologies. While the mapping framework may reveal differences in the performance of various methodologies, it does not seek to alter the choice of methodology. Nor would a mapping framework expand the SEC's limited ability to regulate the substance of credit rating methodologies.

**Specific response to Question 3.b.**

Better Markets also supports the use of mapping in the private credit markets. The reliability of ratings that grade private credit products is increasingly being called into question. Mapping is one way to address the deviations in ratings in this sector. This is important for protecting investors, promoting efficiency, and limiting systemic risk. It generally offers the same benefits listed above with respect to public debt offerings.

A reliable mapping framework would be especially valuable in this financial sector. Given the lack of information, transparency, regulation, and investor protections in the private markets, objective and reliable evaluations of these debt instruments would be especially important to investors, pricing, and efficient markets. Moreover, the need for transparent and accurate credit ratings in the private markets is becoming increasingly urgent given the increased participation of retail investors as well the push by promoters of private equity and private credit for access to the retirement accounts of hardworking Americans.

A hallmark of private credit is the lack of complete, reliable, comprehensible, and readily accessible information for investors. They are literally in the dark when making investments in private markets. And retail investors typically lack the bargaining power or sophistication to negotiate for access to the information they need before making a decision to invest in private credit. The availability of reliable credit ratings, enhanced through a mapping framework, could be an especially vital investor protection tool in this market. In addition, the absence of reliable ratings is likely to exacerbate the potential systemic risks private credit poses to the financial system. In short, as the private markets increasingly become more "public" and more everyday investors participate, they should become more transparent.

From Ranking Member Waters:

1. Which of the following options best describes your self-identified race? (you may choose more than one)

a. White or Caucasian
b. Black or African American
c. Hispanic/Latinx d. Asian e. Middle Eastern/North African
f. Choose not to answer
g. Prefer to self-describe (please specify)

2. Which of the following options best describes your gender identity?

a. Woman
b. Man
c. Non-binary
d. Transgender Man
e. Transgender Woman
f. Choose not to answer
g. Prefer to self-describe (please specify)

3. Dodd-Frank made progress, but let's be clear: the corporate bond market, which makes up nearly 90% of global capital markets, is still dominated by just two rating agencies, with each one enjoying over 94% market share. Do you agree that Congress should take steps to address this concentration and bring more accountability and diversity of opinion into corporate credit ratings?

Answer: I am not an expert on the industrial organization structure of the NRSRO industry. While less market concentration is generally a good thing, there may be underlying factors that limit the number of competing firms. The Dodd-Frank Act specifically set up a special department within the Securities and Exchange Commission to provide NRSRO oversight and encourage competition. I would recommend that the Congress woman's staff consult with that department to get their views on factors that may be limiting competition in the NRSRO industry---I have not studied the issue in depth and consequently do not have a well-informed opinion or recommendation to offer the Congress woman on her important question.

**[DISCUSSION DRAFT]**

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Equal Credit Opportunity Act to provide for an effective date and a temporary safe harbor for compliance with certain small business lending data collection rules, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. HILL of Arkansas introduced the following bill; which was referred to the Committee on _____

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# A BILL

To amend the Equal Credit Opportunity Act to provide for an effective date and a temporary safe harbor for compliance with certain small business lending data collection rules, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Small Lenders Exempt from New Data and Excessive Reporting Act" or the "Small LENDER Act".

**SEC. 2. SMALL BUSINESS LOAN DATA COLLECTION.**

Section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) is amended—

(1) in subsection (c)—

(A) by striking "Any applicant" and inserting the following:

"(1) IN GENERAL.—Any applicant";

(B) by striking the period at the end and inserting the following: ", and the financial institution may, when requesting such information, inform the applicant in writing that—

"(A) the Bureau of Consumer Financial Protection requires the financial institution to ask, collect, and report such information to the Federal Government annually pursuant to section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2);

"(B) the applicant is not required to provide such information; and

"(C) the applicant's response will not affect the financial institution's evaluation of the request for credit.

"(2) MODEL FORM.—The Director of the Bureau of Consumer Financial Protection shall establish a model form to be used in providing the information required to

be provided to an applicant under paragraph (1). Such form shall—

"(A) be in plain English; and

"(B) to the extent practicable, be no longer than a single page.";

(2) by striking subsection (d);

(3) by redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively; and

(4) in subsection (d), as so redesignated—

(A) in paragraph (2)—

(i) by striking subparagraphs (C), (G), and (H);

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively;

(iii) in subparagraph (D), as so redesignated, by adding "and" at the end; and

(iv) in subparagraph (E), as so redesignated, by striking the semicolon and inserting a period;

(B) in paragraph (3), by striking "paragraph (1)(E)" and inserting "paragraph (1)(D)"; and

(C) by adding at the end the following:

"(5) PROHIBITION ON INFORMATION NOT REPORTED BY AN APPLICANT.—A financial institution may not compile and maintain information described under subsection (b) that was determined by the financial institution using visual observation or any other manner other than being provided by an applicant.".

(5) in subsection (f), as so redesignated, by adding at the end the following:

"(4) INITIAL COMPLIANCE DATE.—

"(A) IN GENERAL.—The Bureau may not require a financial institution to comply with this section, or any rule issued under this section, until June 1, 2031.

"(B) SAFE HARBOR.—The Bureau may not enforce compliance with the requirements of this section during the 2-year period beginning on the date described in subparagraph (A).

"(5) EXEMPTION FOR SMALL FINANCIAL INSTITUTIONS.—A financial institution is exempt from the requirements of this section if the financial institution—

"(A) in each of the 2 previous calendar years, originated less than 2,500 credit transactions for small businesses; or

"(B) has less than $10,000,000,000 in assets.

"(6) TREATMENT OF RESPONSE RATE.—The percentage of applicants providing a financial institution with the information described under subsection (b) may not be used as a factor in determining whether a financial institution is in compliance with the requirements under this section."; and

(6) in subsection (g), as so redesignated, by striking paragraph (2) and inserting the following:

"(2) SMALL BUSINESS.—The term 'small business' means any entity with gross annual revenues of $1,000,000 or less in the most recently completed fiscal year.".

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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119TH CONGRESS
1ST SESSION

# H. R. 654

To change the Bureau of Consumer Financial Protection into an independent agency named the Consumer Financial Empowerment Agency, to transition the Agency to the regular appropriations process, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 2025

Mr. BARR introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To change the Bureau of Consumer Financial Protection into an independent agency named the Consumer Financial Empowerment Agency, to transition the Agency to the regular appropriations process, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Taking Account of Bureaucrats' Spending Act of 2025" or the "TABS Act of 2025".

**SEC. 2. CONSUMER FINANCIAL EMPOWERMENT AGENCY.**

(a) MAKING THE BUREAU AN INDEPENDENT CONSUMER FINANCIAL EMPOWERMENT AGENCY.—The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1011—

(A) in the heading of such section, by striking "**BUREAU OF CONSUMER FINANCIAL PROTECTION**" and inserting "**CONSUMER FINANCIAL EMPOWERMENT AGENCY**";

(B) in subsection (a)—

(i) in the heading of such subsection, by striking "BUREAU" and inserting "AGENCY";

(ii) by striking "in the Federal Reserve System,";

(iii) by striking "independent bureau" and inserting "independent agency"; and

(iv) by striking "'Bureau of Consumer Financial Protection'" and inserting "'Consumer Financial Empowerment Agency' (hereinafter in this section referred to as the 'Agency')";

(C) in subsection (b)(5), by amending subparagraph (A) to read as follows:

"(A) shall be appointed by the President; and";

(D) in subsection (c), by striking paragraph (3);

(E) in subsection (e), by striking ", including in cities in which the Federal reserve banks, or branches of such banks, are located,"; and

(F) by striking "Bureau" each place such term appears and inserting "Agency"; and

(2) in section 1012—

(A) in subsection (a)(10), by striking "examinations,"; and

(B) by striking subsection (c).

(b) DEEMING OF NAME.—Any reference in a law, regulation, document, paper, or other record of the United States to the Bureau of Consumer Financial Protection shall be deemed a reference to the Consumer Financial Empowerment Agency.

(c) CONFORMING AMENDMENTS.—

(1) DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.—The Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) is amended—

(A) in the table of contents in section 1(b)—

(i) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Financial Empowerment Agency"; and

(ii) in the table of contents relating to title X, in the items relating to subtitle B, subtitle C, and section 1027, by striking "Bureau" each place such term appears and inserting "Agency";

(B) in section 2, by amending paragraph (4) to read as follows:

"(4) AGENCY.—The term 'Agency' means the Consumer Financial Empowerment Agency established under title X.";

(C) in section 342 by striking "Bureau" each place such term appears in headings and text and inserting "Agency";

(D) in section 1400(b)—

(i) by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Financial Empowerment Agency"; and

(ii) in the subsection heading, by striking "BUREAU OF CONSUMER FINANCIAL PROTECTION" and inserting "CON-

SUMER FINANCIAL EMPOWERMENT AGENCY";

(E) in section 1411(a)(1), by striking "Bureau" and inserting "Agency"; and

(F) in section 1447, by striking "Director of the Bureau" each place such term appears and inserting "Director of the Consumer Financial Empowerment Agency".

(2) ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Financial Empowerment Agency"; and

(B) in the subsection heading of subsection (d) of section 804 (12 U.S.C. 3803(d)), by striking "BUREAU" and inserting "AGENCY".

(3) ELECTRONIC FUND TRANSFER ACT.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(A) by amending the second paragraph (4) (defining the term "Bureau") to read as follows:

"(4) the term 'Agency' means the Consumer Financial Empowerment Agency;";

(B) in section 916(d)(1), by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Financial Empowerment Agency"; and

(C) by striking "Bureau" each place that term appears in heading or text and inserting "Agency".

(4) EQUAL CREDIT OPPORTUNITY ACT.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(A) in section 702 (15 U.S.C. 1691a), by amending subsection (c) to read as follows:

"(c) The term 'Agency' means the Consumer Financial Empowerment Agency."; and

(B) by striking "Bureau" each place that term appears in heading or text and inserting "Agency".

(5) EXPEDITED FUNDS AVAILABILITY ACT.—The Expedited Funds Availability Act (12 U.S.C. 4001 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term ap-

pears and inserting "Consumer Financial Empowerment Agency"; and

(B) in the heading of section 605(f)(1), by striking "BOARD AND BUREAU" and inserting "BOARD AND AGENCY".

(6) FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.—The Fair and Accurate Credit Transactions Act of 2003 (Public Law 108–159) is amended by striking "Bureau" each place such term appears in heading and text and inserting "Agency".

(7) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(A) by amending section 603(w) to read as follows:

"(w) AGENCY.—The term 'Agency' means the Consumer Financial Empowerment Agency."; and

(B) by striking "Bureau" each place such term appears, other than in sections 626 and 603(v), and inserting "Agency".

(8) FAIR DEBT COLLECTION PRACTICES ACT.—The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(A) by amending section 803(1) to read as follows:

"(1) The term 'Agency' means the Consumer Financial Empowerment Agency."; and

(B) by striking "Bureau" each place such term appears in heading or text and inserting "Agency".

(9) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(A) in the second paragraph (6) (with the heading "Referral to bureau of consumer financial protection") of section 8(t) (12 U.S.C. 1818(t))—

(i) in the paragraph heading, by striking "BUREAU OF CONSUMER FINANCIAL PROTECTION"; and inserting "CONSUMER FINANCIAL EMPOWERMENT AGENCY"; and

(ii) by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Financial Empowerment Agency";

(B) by amending clause (vi) of section 11(t)(2)(A) (12 U.S.C. 1821(t)(2)(A)(vi)) to read as follows:

"(vi) The Consumer Financial Empowerment Agency.";

(C) in section 18(x) (12 U.S.C. 1828(x)), by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Financial Empowerment Agency";

(D) by striking "Bureau" each place such term appears and inserting "Agency"; and

(E) in section 43(e) (12 U.S.C. 1831t(e)), by amending paragraph (5) to read as follows:

"(5) AGENCY.—The term 'Agency' means the Consumer Financial Empowerment Agency.".

(10) FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended—

(A) in section 1004(a)(4), by striking "Consumer Financial Protection Bureau" and inserting "Consumer Financial Empowerment Agency"; and

(B) in section 1011, by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Financial Empowerment Agency".

(11) FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.—The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73; 103 Stat. 183) is amended—

(A) in section 1112(b) (12 U.S.C. 3341), by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Financial Empowerment Agency";

(B) in section 1124 (12 U.S.C. 3353), by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Financial Empowerment Agency";

(C) in section 1125 (12 U.S.C. 3354), by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Financial Empowerment Agency"; and

(D) in section 1206(a) (12 U.S.C. 1833b(a)), by striking "Federal Housing Finance Board" and all that follows through "Farm Credit Administration" and inserting "Federal Housing Finance Agency, the Con-

sumer Financial Empowerment Agency, and the Farm Credit Administration".

(12) FINANCIAL LITERACY AND EDUCATION IMPROVEMENT ACT.—Section 513 of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702) is amended by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Financial Empowerment Agency".

(13) GRAMM-LEACH-BLILEY ACT.—Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Financial Empowerment Agency"; and

(B) in section 505(a)(8) (15 U.S.C. 6805(a)(8)), by striking "Bureau" and inserting "Agency".

(14) HOME MORTGAGE DISCLOSURE ACT OF 1975.—The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term ap-

pears and inserting "Consumer Financial Empowerment Agency";

(B) by striking "Bureau" each place such term appears and inserting "Agency"; and

(C) in section 303, by amending paragraph (1) to read as follows:

"(1) the term 'Agency' means the Consumer Financial Empowerment Agency;".

(15) HOMEOWNERS PROTECTION ACT OF 1998.—Section 10(a)(4) of the Homeowners Protection Act of 1998 (12 U.S.C. 4909(a)(4)) is amended by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Financial Empowerment Agency".

(16) HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994.—Section 158(a) of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note) is amended by striking "Bureau" and inserting "Consumer Financial Empowerment Agency".

(17) INTERSTATE LAND SALES FULL DISCLOSURE ACT.—The Interstate Land Sales Full Disclosure Act (12 U.S.C. 1701 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Agency";

(B) in section 1402, by amending paragraph (12) to read as follows:

"(12) 'Agency' means the Consumer Financial Empowerment Agency."; and

(C) in section 1416, by striking "Bureau" each place such term appears and inserting "Agency".

(18) REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.—The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Financial Empowerment Agency";

(B) by striking "Bureau" each place such term appears and inserting "Agency"; and

(C) in section 3, by amending paragraph (9) to read as follows:

"(9) the term 'Agency' means the Consumer Financial Empowerment Agency.".

(19) REVISED STATUES OF THE UNITED STATES.—Section 5136C(b)(3)(B) of the Revised Statutes of the United States (12 U.S.C. 25b(b)(3)(B)) is amended by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Financial Empowerment Agency".

(20) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(A) by amending subparagraph (B) of section 1101(7) (12 U.S.C. 3401(7)(B)) to read as follows:

"(B) the Consumer Financial Empowerment Agency;"; and

(B) by striking "Bureau of Consumer Financial Protection" each place such term appears in heading or text and inserting "Consumer Financial Empowerment Agency".

(21) S.A.F.E. MORTGAGE LICENSING ACT OF 2008.—The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(A) in section 1507, by striking "Bureau, and the Bureau of Consumer Financial Protection" each place such term appears and insert-

ing "Consumer Financial Empowerment Agency";

(B) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Financial Empowerment Agency";

(C) by striking "Bureau" each place such appears, other than in sections 1505(a)(1), 1507(a)(2)(A), and 1511(b), and inserting "Agency";

(D) in section 1503, by amending paragraph (1) to read as follows:

"(1) AGENCY.—The term 'Agency' means the Consumer Financial Empowerment Agency.";

(E) in the heading of section 1508, by striking "**BUREAU OF CONSUMER FINANCIAL PROTECTION**" and inserting "**CONSUMER FINANCIAL EMPOWERMENT AGENCY**"; and

(F) in the heading of section 1514, by striking "**BUREAU**" and inserting "**AGENCY**".

(22) TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.—The Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.) is amended by striking "Bu-

reau of Consumer Financial Protection" each place such term appears in heading or text and inserting "Consumer Financial Empowerment Agency".

(23) TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(A) in section 552a(w)—

(i) in the subsection heading, by striking "BUREAU OF CONSUMER FINANCIAL PROTECTION" and inserting "CONSUMER FINANCIAL EMPOWERMENT AGENCY"; and

(ii) by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Financial Empowerment Agency";

(B) in section 609(d)(2), by striking "Consumer Financial Protection Bureau of the Federal Reserve System" and inserting "Consumer Financial Empowerment Agency"; and

(C) in section 3132(a)(1)(D), by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Financial Empowerment Agency".

(24) TITLE 10, UNITED STATES CODE.—

(A) SECTION 987.—Section 987(h)(3)(E) of title 10, United States Code, is amended by striking "Bureau of Consumer Financial Pro-

tection'' and inserting ''Consumer Financial Empowerment Agency''.

(B) NDAA FY 2015.—Section 557(a) of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–29; 128 Stat. 3381; 10 U.S.C. 1144 note), is amended by striking ''Consumer Financial Protection Bureau'' each place such term appears and inserting ''Consumer Financial Empowerment Agency''.

(25) TITLE 44, UNITED STATES CODE.—Title 44, United States Code, is amended—

(A) in section 3502(5), by striking ''the Bureau of Consumer Financial Protection,''; and

(B) in section 3513(c), by striking ''Bureau of Consumer Financial Protection'' and inserting ''Consumer Financial Empowerment Agency''.

(26) TRUTH IN LENDING ACT.—The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

(A) by amending section 103(b) (15 U.S.C. 1602(b)) to read as follows:

"(b) AGENCY.—The term 'Agency' means the Consumer Financial Empowerment Agency.";

(B) by amending section 103(c) (15 U.S.C. 1602(c)) to read as follows:

"(c) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.";

(C) in section 128(f) (15 U.S.C. 1638(f)), by striking "Board" each place such term appears and inserting "Agency";

(D) in sections 129B (15 U.S.C. 1639b) and 129C (15 U.S.C. 1639c), by striking "Board" each place such term appears and inserting "Agency";

(E) in section 140A (15 U.S.C. 1651), by striking "in consultation with the Bureau" and inserting "in consultation with the Federal Trade Commission";

(F) by striking "Bureau" each place such term appears in heading or text and inserting "Agency"; and

(G) by striking "BUREAU" and inserting "AGENCY" in the paragraph headings for—

(i) section 122(d)(2) (15 U.S.C. 1632(d)(2));

(ii) section 127(c)(5) (15 U.S.C. 1637(c)(5));

(iii) section 127(r)(3) (15 U.S.C. 1637(r)(3)); and

(iv) section 127A(a)(14) (15 U.S.C. 1637a(a)(14)).

(27) TRUTH IN SAVINGS ACT.—The Truth in Savings Act (12 U.S.C. 4301 et seq.) is amended—

(A) by amending paragraph (4) of section 274 (12 U.S.C. 4313(4)) to read as follows:

"(4) AGENCY.—The term 'Agency' means the Consumer Financial Empowerment Agency.";

(B) by striking "National Credit Union Administration Bureau" each place such term appears and inserting "National Credit Union Administration Board"; and

(C) by striking "Bureau" each place such term appears and inserting "Agency", except in section 233(b)(4)(B).

**SEC. 3. BRINGING THE AGENCY INTO THE REGULAR APPROPRIATIONS PROCESS.**

Section 1017 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5497) is amended—

(1) in subsection (a)—

(A) by amending the heading of such subsection to read as follows: "BUDGET, FINANCIAL MANAGEMENT, AND AUDIT.—";

(B) by striking paragraphs (1), (2), and (3);

(C) by redesignating paragraphs (4) and (5) as paragraphs (1) and (2), respectively; and

(D) by striking subparagraphs (E) and (F) of paragraph (1), as so redesignated;

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as subsections (b) and (c), respectively; and

(4) in subsection (c), as so redesignated—

(A) by striking paragraphs (1), (2), and (3) and inserting the following:

"(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this title for each of fiscal years 2026 and 2027."; and

(B) by redesignating paragraph (4) as paragraph (2).

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119TH CONGRESS
1ST SESSION

# H. R. 3445

To amend the Consumer Financial Protection Act of 2010 to make the Bureau of Consumer Financial Protection an independent agency led by a commission, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2025

Mr. HUIZENGA (for himself, Mr. BARR, Mr. MEUSER, Mr. FITZGERALD, Mr. ROSE, Mr. MOORE of North Carolina, and Mr. TIMMONS) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To amend the Consumer Financial Protection Act of 2010 to make the Bureau of Consumer Financial Protection an independent agency led by a commission, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Bureau of Consumer Financial Protection Commission Act".

**SEC. 2. MAKING THE BUREAU AN INDEPENDENT AGENCY LED BY A COMMISSION.**

The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1011—

(A) in subsection (a)—

(i) by striking "in the Federal Reserve System,"; and

(ii) by striking "independent bureau" and inserting "independent agency";

(B) by striking subsections (b), (c), and (d);

(C) by redesignating subsection (e) as subsection (j);

(D) in subsection (j), as so redesignated, by striking ", including in cities in which the Federal reserve banks, or branches of such banks, are located,"; and

(E) by inserting after subsection (a) the following new subsections:

"(b) AUTHORITY TO PRESCRIBE REGULATIONS.—The commission of the Bureau may prescribe such regulations and issue such orders in accordance with this title as the Bureau may determine to be necessary for carrying out this title and all other laws within the Bureau's jurisdiction and shall exercise any authorities granted under

this title and all other laws within the Bureau's jurisdiction.

"(c) COMPOSITION OF THE COMMISSION.—

"(1) IN GENERAL.—The management of the Bureau shall be vested in a commission, which shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate, and—

"(A) at least 2 of whom shall have private sector experience in the provision of consumer financial products and services; and

"(B) at least 1 of whom shall have been employed as a State bank supervisor (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1803)).

"(2) STAGGERING.—The members of the commission shall serve staggered terms, which initially shall be established by the President for terms of 1, 2, 3, 4, and 5 years, respectively.

"(3) TERMS.—

"(A) IN GENERAL.—Except with respect to the initial staggered terms described under paragraph (2), each member of the commission, including the Chair, shall serve for a term of 5 years.

"(B) REMOVAL.—The President may remove any member of the commission for inefficiency, neglect of duty, or malfeasance in office.

"(C) VACANCIES.—Any member of the commission appointed to fill a vacancy occurring before the expiration of the term to which that member's predecessor was appointed (including the Chair) shall be appointed only for the remainder of the term.

"(D) CONTINUATION OF SERVICE.—Each member of the commission may continue to serve after the expiration of the term of office to which that member was appointed until a successor has been appointed by the President and confirmed by the Senate, except that a member may not continue to serve more than 1 year after the date on which that member's term would otherwise expire.

"(E) OTHER EMPLOYMENT PROHIBITED.—No member of the commission shall engage in any other business, vocation, or employment.

"(d) AFFILIATION.—Not more than 3 members of the commission shall be members of any one political party.

"(e) CHAIR OF THE COMMISSION.—

"(1) INITIAL CHAIR.—The first member and Chair of the commission shall be the individual serving as Director of the Bureau of Consumer Financial Protection on the day before the date of the enactment of this subsection. Such individual shall serve until the President has appointed all 5 members of the commission in accordance with subsection (c).

"(2) SUBSEQUENT CHAIR.—Of the 5 members appointed in accordance with subsection (c), the President shall appoint 1 member to serve as the subsequent Chair of the commission.

"(3) AUTHORITY.—The Chair shall be the principal executive officer of the commission, and shall exercise all of the executive and administrative functions of the commission, including with respect to—

"(A) the appointment and supervision of personnel employed under the commission (other than personnel employed regularly and full time in the immediate offices of members of the commission other than the Chair);

"(B) the distribution of business among personnel appointed and supervised by the Chair and among administrative units of the commission; and

"(C) the use and expenditure of funds.

"(4) LIMITATION.—In carrying out any of the Chair's functions under the provisions of this subsection, the Chair shall be governed by general policies of the commission and by such regulatory decisions, findings, and determinations as the commission may by law be authorized to make.

"(5) REQUESTS OR ESTIMATES RELATED TO APPROPRIATIONS.—Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the commission may not be submitted by the Chair without the prior approval of the commission.

"(6) DESIGNATION.—The Chair shall be known as both the 'Chair of the commission' of the Bureau and the 'Chair of the Bureau'.

"(f) INITIAL QUORUM ESTABLISHED.—For the 6 month period beginning on the date of enactment of this subsection, the first member and Chair of the commission described under subsection (e)(1) shall constitute a quorum for the transaction of business until the President has appointed all 5 members of the commission in accordance with subsection (e). Following such appointment of 5 members, the quorum requirements of subsection (g) shall apply.

"(g) NO IMPAIRMENT BY REASON OF VACANCIES.—No vacancy in the members of the commission after the establishment of an initial quorum under subsection (f) shall impair the right of the remaining members of the commission to exercise all the powers of the commission. Three members of the commission shall constitute a quorum for the transaction of business, except that if there are only 3 members serving on the commission because of vacancies in the commission, 2 members of the commission shall constitute a quorum for the transaction of business. If there are only 2 members serving on the commission because of vacancies in the commission, 2 members shall constitute a quorum for the 6-month period beginning on the date of the vacancy which caused the number of commission members to decline to 2.

"(h) SEAL.—The Bureau shall have an official seal.

"(i) COMPENSATION.—

"(1) CHAIR.—The Chair shall receive compensation at the rate prescribed for level I of the Executive Schedule under section 5313 of title 5, United States Code.

"(2) OTHER MEMBERS OF THE COMMISSION.—The 4 other members of the commission shall each receive compensation at the rate prescribed for level

II of the Executive Schedule under section 5314 of title 5, United States Code.";

(2) in section 1012(c)—

(A) in the heading, by striking "AUTONOMY OF THE BUREAU" and inserting "COORDINATION WITH THE BOARD OF GOVERNORS";

(B) by striking "(1) COORDINATION WITH THE BOARD OF GOVERNORS.—"; and

(C) by striking paragraphs (2), (3), (4), and (5); and

(3) in section 1014(b), by striking "Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis." and inserting "Not fewer than half of all members shall have private sector experience in the provision of consumer financial products and services.".

**SEC. 3. DEEMING OF NAME.**

Any reference in a law, regulation, document, paper, or other record of the United States to the Director of the Bureau of Consumer Financial Protection, except in subsection (e)(1) of section 1011 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5491), as added by this Act, shall be deemed a reference to the commission leading and governing the Bureau of Consumer Financial

Protection, as described under section 1011 of the Consumer Financial Protection Act of 2010.

**SEC. 4. CONFORMING AMENDMENTS.**

(a) CONSUMER FINANCIAL PROTECTION ACT OF 2010.—

(1) IN GENERAL.—Except as provided under paragraph (2), the Consumer Financial Protection of 2010 (12 U.S.C. 5481 et seq.) is amended—

(A) by striking "Director of the Bureau" each place such term appears, other than where such term is used to refer to a Director other than the Director of the Bureau of Consumer Financial Protection, and inserting "Bureau";

(B) by striking "Director" each place such term appears and inserting "Bureau", other than where such term is used to refer to a Director other than the Director of the Bureau of Consumer Financial Protection; and

(C) in section 1002, by striking paragraph (10).

(2) EXCEPTIONS.—

(A) IN GENERAL.—The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(i) in section 1013(c)(3)—

(I) by striking "Assistant Director of the Bureau for" and inserting "Head of the Office of"; and

(II) in subparagraph (B), by striking "Assistant Director" and inserting "Head of the Office";

(ii) in section 1013(g)(2)—

(I) by striking "ASSISTANT DIRECTOR" and inserting "HEAD OF THE OFFICE"; and

(II) by striking "an assistant director" and inserting "a Head of the Office of Financial Protection for Older Americans";

(iii) in section 1016(a), by striking "Director of the Bureau" and inserting "Chair of the Bureau"; and

(iv) by striking section 1066.

(B) CLERICAL AMENDMENT.—The table of contents for the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the item relating to section 1066.

(b) DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.—The Dodd-Frank Wall Street

Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) is amended—

(1) in section 111(b)(1)(D), by striking "Director" and inserting "Chair"; and

(2) in section 1447, by striking "Director of the Bureau" each place such term appears and inserting "Chair of the Bureau".

(c) ELECTRONIC FUND TRANSFER ACT.—Section 921(a)(4)(C) of the Electronic Fund Transfer Act (15 U.S.C. 1693o–2(a)(4)(C)), as added by section 1075(a)(2) of the Consumer Financial Protection Act of 2010, is amended by striking "Director of the Bureau of Consumer Financial Protection" and inserting "Chair of the Bureau of Consumer Financial Protection".

(d) EXPEDITED FUNDS AVAILABILITY ACT.—The Expedited Funds Availability Act (12 U.S.C. 4001 et seq.), as amended by section 1086 of the Consumer Financial Protection Act of 2010, is amended by striking "Director of the Bureau" each place such term appears and inserting "Bureau".

(e) FEDERAL DEPOSIT INSURANCE ACT.—Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812), as amended by section 336(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended by striking "Director of the Consumer Financial Protec-

tion Bureau" each place such term appears and inserting "Chair of the Bureau of Consumer Financial Protection".

(f) FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.—Section 1004(a)(4) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)(4)), as amended by section 1091 of the Consumer Financial Protection Act of 2010, is amended by striking "Director of the Consumer Financial Protection Bureau" and inserting "Chair of the Bureau of Consumer Financial Protection".

(g) FINANCIAL LITERACY AND EDUCATION IMPROVEMENT ACT.—Section 513 of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702), as amended by section 1013(d)(5) of the Consumer Financial Protection Act of 2010, is amended by striking "Director" each place such term appears and inserting "Chair".

(h) HOME MORTGAGE DISCLOSURE ACT OF 1975.—Section 307 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2806 et seq), as amended by section 1094(6) of the Consumer Financial Protection Act of 2010, is amended by striking "Director of the Bureau of Consumer Financial Protection" each place such term appears and inserting "Bureau of Consumer Financial Protection".

(i) INTERSTATE LAND SALES FULL DISCLOSURE ACT.—The Interstate Land Sales Full Disclosure Act (15

U.S.C. 1701 et seq), as amended by section 1098A of the Consumer Financial Protection Act of 2010, is amended—

(1) in section 1402—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (12) as paragraphs (1) through (11), respectively;

(2) in section 1403(c)—

(A) by striking "him" and inserting "the Bureau"; and

(B) by striking "he" and inserting "the Bureau";

(3) in section 1407—

(A) in subsection (c), by striking "he" and inserting "the Bureau"; and

(B) in subsection (e), by striking "Director or anyone designated by him" and inserting "Bureau";

(4) in section 1411(a)—

(A) by striking "his findings" and inserting "the findings of the Bureau"; and

(B) by striking "his recommendation" and inserting "the recommendation of the Bureau";

(5) in section 1415—

(A) in subsection (a), by striking "he may, in his discretion," and inserting "the Bureau may, in the discretion of the Bureau,";

(B) in subsection (b)—

(i) by striking "in his discretion" each place such term appears and inserting "in the discretion of the Bureau";

(ii) by striking "he deems" and inserting "the Bureau determines"; and

(iii) by striking "he may deem" and inserting "the Bureau may determine"; and

(C) in subsection (c), by striking "the Director, or any officer designated by him," and inserting "the Bureau";

(6) in section 1416(a)—

(A) by striking "Director of the Bureau of Consumer Financial Protection who may delegate any of his" and inserting "Bureau of Consumer Financial Protection, which may delegate any";

(B) by striking "his administrative" and inserting "administrative"; and

(C) by striking "himself" and inserting "the commission of the Bureau";

(7) in section 1418a(b)(4), by striking "Secretary's determination" and inserting "determination of the Bureau"; and

(8) by striking "Director" each place such term appears and inserting "Bureau".

(j) REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.—Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604), as amended by section 1450 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended—

(1) by striking "The Director of the Bureau of Consumer Financial Protection (hereafter in this section referred to as the 'Director')" and inserting "The Bureau of Consumer Financial Protection (hereafter in this section referred to as the 'Bureau')"; and

(2) by striking "Director" each place such term appears and inserting "Bureau".

(k) S.A.F.E. MORTGAGE LICENSING ACT OF 2008.—The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.), as amended by section 1100 of the Consumer Financial Protection Act of 2010, is amended—

(1) by striking "Director" each place such term appears in headings and text and inserting "Bureau of Consumer Financial Protection"; and

(2) in section 1503, by striking paragraph (10).

(l) TITLE 44, UNITED STATES CODE.—Section 3513(c) of title 44, United States Code, as amended by section 1100D(b) of the Consumer Financial Protection Act of 2010, is amended by striking "Director of the".

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119TH CONGRESS
1ST SESSION

# H. R. 2885

To require the Bureau of Consumer Financial Protection to issue a rule before deleting or modifying certain small business loan data, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2025

Mr. ROSE (for himself and Ms. DE LA CRUZ) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To require the Bureau of Consumer Financial Protection to issue a rule before deleting or modifying certain small business loan data, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Bank Loan Privacy Act".

**SEC. 2. RULEMAKING REQUIREMENT.**

Section 704B(e)(4) of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2(e)(4)) is amended—

(1) by striking "The Bureau may," and inserting:

"(A) IN GENERAL.—The Bureau may,"; and

(2) by adding at the end the following:

"(B) RULEMAKING REQUIREMENT.—The Bureau shall, before deleting or modifying data under this paragraph issue, through advance notice and comment, a rule that includes a description of what modifications and deletions the Bureau intends to make to the data and how such modifications and deletions will advance a privacy interest.".

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119TH CONGRESS
1ST SESSION

# H. R. 2513

To require Senate confirmation of Inspector General of the Bureau of Consumer Financial Protection, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 2025

Mr. MEUSER (for himself, Mr. HUIZENGA, Mr. BARR, Mr. WILLIAMS of Texas, Mrs. KIM, Mr. DONALDS, and Ms. SALAZAR) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# A BILL

To require Senate confirmation of Inspector General of the Bureau of Consumer Financial Protection, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Bureau of Consumer Financial Protection-Inspector General Reform Act of 2025" or the "CFPB–IG Reform Act of 2025".

**SEC. 2. APPOINTMENT OF INSPECTOR GENERAL.**

Chapter 4 of title 5, United States Code, is amended—

(1) in section 401—

(A) in paragraph (1), by inserting "the Bureau of Consumer Financial Protection," after "the Export-Import Bank of the United States,"; and

(B) in paragraph (3), by inserting "the Director of the Bureau of Consumer Financial Protection;" after "the President of the Export-Import Bank of the United States;"; and

(2) in section 415—

(A) in subsection (a)(1), by striking "and the Bureau of Consumer Financial Protection";

(B) in subsection (c), by striking "For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this

Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System."; and

(C) in subsection (g)(3), by striking "and the Bureau of Consumer Financial Protection".

**SEC. 3. REQUIREMENTS FOR THE INSPECTOR GENERAL FOR THE BUREAU OF CONSUMER FINANCIAL PROTECTION.**

(a) ESTABLISHMENT.—Section 1011 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5491) is amended—

(1) in subsection (b)—

(A) in the subsection heading, by striking "AND DEPUTY DIRECTOR" and inserting ", DEPUTY DIRECTOR, AND INSPECTOR GENERAL"; and

(B) by inserting after paragraph (5) the following:

"(6) INSPECTOR GENERAL.—There is established the position of the Inspector General."; and

(2) in subsection (d), by striking "or Deputy Director" each place it appears and inserting ", Deputy Director, or Inspector General".

(b) HEARINGS.—Section 1016 of such Act is amended by inserting after subsection (c) the following:

"(d) ADDITIONAL REQUIREMENT FOR INSPECTOR GENERAL.—On a separate occasion from that described in subsection (a), the Inspector General of the Bureau shall appear, upon invitation, before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives at semiannual hearings regarding the reports required under subsection (b) and the reports required under section 405 of title 5, United States Code.".

(c) FUNDING FOR OFFICE OF INSPECTOR GENERAL.—Section 1017(a)(2) of such Act is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

"(C) FUNDING FOR OFFICE OF INSPECTOR GENERAL.—Each fiscal year, the Bureau shall dedicate 2 percent of the funds transferred pursuant to paragraph (1) to the Office of the Inspector General.".

(d) PARTICIPATION IN THE COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—Section

989E(a)(1) of such Act is amended by adding at the end the following:

"(J) The Bureau of Consumer Financial Protection.".

(e) DEADLINE FOR APPOINTMENT.—Not later than 60 days after the date of the enactment of this Act, the President shall appoint an Inspector General for the Bureau of Consumer Financial Protection in accordance with section 403 of title 5, United States Code.

**SEC. 4. EFFECTIVE DATE.**

(a) IN GENERAL.—The amendments made by this Act shall take effect on the date on which the first Inspector General of the Bureau of Consumer Financial Protection is confirmed by the Senate.

(b) APPOINTMENT.—The President may appoint, and the Senate may confirm, an Inspector General of the Bureau of Consumer Financial Protection before the amendments made by this Act take effect.

(c) TRANSITION.—The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall, upon the date on which the first Inspector General of the Bureau of Consumer Financial Protection is confirmed by the

Senate, become the Inspector General of the Board of Governors of the Federal Reserve System.

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119TH CONGRESS
1ST SESSION

# H. R. 2183

To amend the Consumer Financial Protection Act of 2010 to update the purpose of the Bureau of Consumer Financial Protection, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2025

Mr. EMMER introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To amend the Consumer Financial Protection Act of 2010 to update the purpose of the Bureau of Consumer Financial Protection, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "CFPB Dual Mandate and Economic Analysis Act".

**SEC. 2. PURPOSE.**

Section 1021(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5511(a)) is amended—

(1) by striking "fair, transparent, and competitive" and inserting: "fair and transparent"; and

(2) by adding at the end the following: "In addition, the Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of strengthening private sector participation in markets, without Government interference or subsidies, to increase competition and enhance consumer choice.".

**SEC. 3. OFFICE OF ECONOMIC ANALYSIS.**

(a) IN GENERAL.—Section 1013 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493) is amended by adding at the end the following:

"(i) OFFICE OF ECONOMIC ANALYSIS.—

"(1) ESTABLISHMENT.—The Director shall establish an Office of Economic Analysis.

"(2) REVIEW AND ASSESSMENT OF PROPOSED GUIDANCE, ORDERS, RULES AND REGULATIONS.—The Office of Economic Analysis shall—

"(A) review all proposed guidance, orders, rules and regulations of the Bureau;

"(B) assess the impact of such guidance, orders, rules and regulations on consumer choice, price, and access to credit products; and

"(C) publish a report on such reviews and assessments in the Federal Register.

"(3) MEASURING EXISTING RULES, REGULATIONS, GUIDANCE, AND ORDERS.—The Office of Economic Analysis shall—

"(A) review each rule, regulation, guidance, and order issued by the Bureau after 1, 2, 5, and 10 years;

"(B) measure the rule, regulation, guidance, or order's success in solving the problem that the rule, regulation, guidance, or order was intended to solve when issued; and

"(C) publish a report on such review and measurement in the Federal Register.".

(b) CONSIDERATION OF REVIEW AND ASSESSMENT; RULEMAKING REQUIREMENTS.—Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended by adding at the end the following:

"(5) CONSIDERATION OF REVIEW AND ASSESSMENT BY THE OFFICE OF ECONOMIC ANALYSIS.—

"(A) IN GENERAL.—Before issuing any guidance, order, rule, or regulation, the Director shall consider the review and assessment of such guidance, order, rule, or regulation carried out by the Office of Economic Analysis.

"(B) NOTICE OF DISAGREEMENT.—If the Director disagrees with any part of a review and assessment described under subparagraph (A) with respect to any guidance, order, rule, or regulation, the Director shall accompany any such guidance, order, rule, or regulation with a statement explaining why the Director so disagrees.

"(6) IDENTIFICATION OF PROBLEMS AND METRICS FOR JUDGING SUCCESS.—

"(A) IN GENERAL.—The Director shall, in each proposed rulemaking of the Bureau—

"(i) identify the problem that the particular rule or regulations is seeking to solve; and

"(ii) specify the metrics by which the Bureau will measure the success of the rule or regulation in solving such problem.

"(B) REQUIRED METRICS.—The metrics specified under subparagraph (A)(ii) shall include a measurement of changes to consumer access to, and cost of, consumer financial products and services.".

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119TH CONGRESS
1ST SESSION

# H. R. 2331

To enhance rulemaking requirements for the Bureau of Consumer Financial Protection, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2025

Mr. LOUDERMILK (for himself and Mr. BARR) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To enhance rulemaking requirements for the Bureau of Consumer Financial Protection, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Transparency in CFPB Cost-Benefit Analysis Act''.

**SEC. 2. TRANSPARENCY IN COST-BENEFIT ANALYSIS.**

Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended by adding at the end the following:

"(5) ADDITIONAL RULEMAKING REQUIREMENTS.—

"(A) IN GENERAL.—Each notice of proposed rulemaking issued by the Bureau shall be published in its entirety in the Federal Register and shall include—

"(i) a statement of the need for the proposed regulation;

"(ii) an examination of why the Bureau must undertake the proposed regulation and why the private market, State, local, or tribal authorities cannot adequately address the problem;

"(iii) an examination of whether the proposed regulation is duplicative, inconsistent, or incompatible with other Federal regulations and orders;

"(iv) if the proposed regulation is found to be duplicative, inconsistent, or incompatible with other Federal regulations and orders, a discussion of—

"(I) why the proposed regulation is justified;

"(II) how the proposed regulation can coexist with the existing regulations; and

"(III) how the Bureau plans to reduce the regulatory burden associated with the duplicative, inconsistent, or incompatible proposed regulation;

"(v) a quantitative and qualitative assessment of all anticipated direct and indirect costs and benefits of the proposed regulation, including—

"(I) compliance costs for all regulated entities, including small businesses;

"(II) effects on economic activity, efficiency, competition and capital formation;

"(III) regulatory and administrative costs of implementation; and

"(IV) costs imposed on State, local and tribal entities;

"(vi) an identification of reasonable alternatives to the regulation, including modification of an existing regulation;

"(vii) an analysis of the costs and benefits, both quantitative and qualitative, of any alternative identified pursuant to clause (v);

"(viii) if the Bureau determines the proposed regulation would increase costs for small businesses, then the Bureau shall consult the Office of Advocacy within the Small Business Administration to determine ways to minimize the effect of direct and indirect costs imposed on small businesses by the proposed regulation;

"(ix) if quantified net benefits of the proposed action do not outweigh the quantified net benefits of the alternatives, a justification of the regulation;

"(x) if quantified benefits identified pursuant to clause (iv) do not outweigh the quantified costs of the regulation, a justification of the regulation;

"(xi) an assessment of how the burden imposed by the regulation will be distributed; including whether consumers, or small businesses will be disproportionately burdened; and

"(xii) when feasible, and using appropriate statistical techniques, a probability distribution of the relevant outcomes of the proposed regulation.

"(B) ASSUMPTIONS AND STUDIES USED.—With respect to the information required to be included under subparagraph (A), the Bureau will include—

"(i) a discussion of underlying assumptions used as a basis for such information; and

"(ii) a description of any studies or data used in preparing such information, and whether such studies were peer-reviewed.".

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119TH CONGRESS
1ST SESSION

# H. R. 3446

To amend the Federal Deposit Insurance Act to revise the membership requirements for the Board of Directors of the Federal Deposit Insurance Corporation, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2025

Mr. HUIZENGA (for himself, Mr. BARR, Mr. MEUSER, and Mr. ROSE) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To amend the Federal Deposit Insurance Act to revise the membership requirements for the Board of Directors of the Federal Deposit Insurance Corporation, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "FDIC Board Accountability Act".

**SEC. 2. FDIC BOARD OF DIRECTORS.**

Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in subparagraph (A), by adding "and" at the end; and

(ii) by striking subparagraphs (B) and (C) and inserting the following:

"(B) 4 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience, and separately 1 of whom shall have demonstrated primary experience working in or supervising depository institutions having less than $10,000,000,000 in total assets."; and

(B) by adding at the end the following:

"(3) NON-VOTING STATUS OF THE DIRECTOR OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—The Director of the Bureau of Consumer Financial Protection shall serve as a non-voting observer to the Board of Directors of the Corporation.";

(2) in subsection (c)—

(A) in paragraph (1), by adding at the end the following: "No individual may be appointed as a member for more than two terms."; and

(B) by adding at the end the following:

"(4) MAXIMUM LENGTH OF SERVICE.—Notwithstanding any other provision of this Act, no person shall serve as a member for more than twelve years in total.";

(3) in subsection (d)(2)—

(A) by striking "Consumer Financial Protection Bureau" each place such term appears and inserting "Bureau of Consumer Financial Protection"; and

(B) by inserting "or observer, as the case may be," after "member"; and

(4) in subsection (f)(2), by striking "or of the Consumer Financial Protection Bureau".

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119TH CONGRESS
1ST SESSION

# H. R. 1606

To impose additional requirements for covered agencies in regulatory flexibility analysis.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2025

Mr. FITZGERALD (for himself and Mr. FALLON) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Small Business, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# A BILL

To impose additional requirements for covered agencies in regulatory flexibility analysis.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Making the CFPB Accountable to Small Businesses Act of 2025".

**SEC. 2. RULEMAKING UNDER DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.**

Section 1022(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5512(b)(2)(A)) is amended—

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the semicolon at the end and inserting "; and"; and

(3) by adding at the end the following:

"(iii) the impact of proposed rules on small entities, in accordance with section 609 of title 5, United States Code;".

**SEC. 3. INITIAL REGULATORY FLEXIBILITY ANALYSIS.**

Section 603(d)(1) of title 5, United States Code, is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(D) where the covered agency does not adopt any alternatives described in paragraphs (1) through (4) of subsection (c), a detailed justification of the covered agency's determination that the relative size and resources of small en-

tities should have no bearing on the rule, supported by factual, policy and legal reasons.".

**SEC. 4. FINAL REGULATORY FLEXIBILITY ANALYSIS.**

Section 604(a) of title 5, United States Code, is amended in the second paragraph (6) to read as follows:

"(7) for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities and, where no significant alternatives for small entities was adopted, a detailed justification of the covered agency's determination that the relative size and resources of small entities should have no bearing on the rule, supported by factual, policy and legal reasons.".

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119TH CONGRESS
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# H. R. 1652

To amend the Consumer Financial Protection Act of 2010 to clarify standards for UDAAP enforcement actions brought by the Bureau of Consumer Financial Protection, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2025

Mr. BARR introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To amend the Consumer Financial Protection Act of 2010 to clarify standards for UDAAP enforcement actions brought by the Bureau of Consumer Financial Protection, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Rectifying Undefined Descriptions of Abusive Acts and Practices Act" or the "Rectifying UDAAP Act".

**SEC. 2. MITIGATING FACTORS IN ASSESSING CIVIL PENALTIES.**

Section 1055(c) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5565(c)) is amended by adding at the end the following:

"(6) RULEMAKING.—The Bureau shall, not later than 180 days after the date of the enactment of this paragraph, issue a rule that establishes policies and procedures relating to the imposition of civil monetary penalties sought under this subsection, including the application of the mitigating factors described in paragraph (3).".

**SEC. 3. RULEMAKING RELATING TO UNFAIR, DECEPTIVE OR ABUSIVE ACTS OR PRACTICES.**

(a) IN GENERAL.—Section 1031 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5531) is amended by striking subsection (b) and inserting the following:

(b) RULEMAKING.—

"(1) IN GENERAL.—The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section

may include requirements for the purpose of preventing such acts or practices.

"(2) COST BENEFIT ANALYSIS REQUIRED.—Any final rule issued by the Bureau relating to abusive, unfair, or deceptive acts or practices shall include a cost-benefit analysis.

"(3) DEFINITION OF ABUSIVE ACT OR PRACTICE.—The Bureau shall, not later than 180 days after the date of the enactment of this subsection, issue a rule that defines the term 'abusive act or practice' for the purposes of this section.".

(b) OPPORTUNITY FOR COMMENT.—The Bureau of Consumer Financial Protection shall, not later than 180 days after the date of the enactment of this subsection, allow the public to submit comments with respect to any confusion about how the Bureau of Consumer Financial Protection uses its authority with respect to unfair, deceptive, or abusive acts or practices.

**SEC. 4. AUTHORITY TO DECLARE AN ACT UNLAWFUL BASED ON DISCRIMINATION.**

The Bureau of Consumer Financial Protection may not interpret the authority of the Bureau of Consumer Financial Protection relating to unfair, deceptive, or abusive acts and practices, as such term is used in section 1031

of the Consumer Financial Protection Act of 2010, to include discriminatory practices.

**SEC. 5. CLARIFYING THE ABUSIVE STANDARD FOR THE BUREAU OF CONSUMER FINANCIAL PROTECTION.**

Section 1031 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5531) is amended by striking subsection (d) and inserting the following:

"(d) ABUSIVE.—

"(1) IN GENERAL.—The Bureau shall have no authority to declare an act or practice of a covered person abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

"(A) intentionally and materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

"(B) takes unreasonable advantage of—

"(i) a lack of understanding by the consumer with respect to the possible impact, material risks, costs, or conditions of the product or service, or the likelihood of the risks, costs, or conditions of the prod-

uct or service negatively affecting the consumer; and

"(ii) the reasonable reliance the consumer places on an affirmative action or representation of such covered person to induce such consumer to rely on such action or representation.

"(2) ABUSIVE ACTIONS.—Conduct of a covered person shall be considered abusive if—

"(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers, provided, however, that if the act or practice was timely, clearly and conspicuously disclosed to consumers, the injury is presumed to be reasonably avoidable; or

"(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

"(e) GOOD-FAITH EFFORT TO COMPLY.—

"(1) IN GENERAL.—The Bureau may not seek monetary relief from a covered person under this section unless the covered person has not established by a preponderance of the evidence that they made a good-faith effort to comply.

"(2) AUTHORITY TO SEEK LEGAL OR EQUITABLE REMEDIES.—The limitation described in subparagraph (A) shall not restrict the authority of the Bureau to seek legal or equitable remedies, such as damages and restitution, to redress an identifiable consumer injury caused by the abusive acts or practices of such covered person.".

**SEC. 6. NOTICE AND OPPORTUNITY TO CURE.**

Section 1031 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5531) is amended by adding at the end the following:

"(g) NOTICE AND OPPORTUNITY TO CURE.—

"(1) IN GENERAL.—If a covered person self-identifies a potential unfair, deceptive, or abusive act or practice carried out by such covered person, the Bureau shall, not later than 90 days after such self-identification, provide a written notice in the form of a potential action and request for response letter or a notice and opportunity to respond and advise letter of the potential unfair, deceptive, or abusive act or practice to such covered person and inform the covered person that such person has 180 days after the date the covered person receives such notice to cure such potential unfair, deceptive, or abusive act before the Bureau may pursue other legal action.

"(2) TOLLING OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations that applies to conduct under which the Bureau has given notice and an opportunity to cure shall not toll until—

"(A) the covered person cures the potential abusive, unfair, or deceptive act or practice and notifies the Bureau that such act or practice has been cured;

"(B) the covered person notifies the Bureau that such covered person will not cure the act or practice; or

"(C) the 180-day period to cure ends.".

**SEC. 7. ABUSIVE, UNFAIR, OR DECEPTIVE ACTS OR PRACTICES ENFORCEMENT ACTIONS.**

(a) IN GENERAL.—Subtitle E of title X of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5561 et seq.) is amended by adding at the end the following new section:

**"SEC. 1059. UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES ENFORCEMENT ACTIONS.**

"Enforcement actions brought by the Bureau under section 1031 under this title shall be brought in—

"(1) the United States district court located where the covered person has its headquarters location; or

"(2) the United States District Court for the District of Columbia.".

(b) ACTIONS UNDER SECTION 1031.—Section 1031 of the Consumer Financial Protection Act of 2010 is amended by adding at the end the following:

"(g) ENFORCEMENT ACTIONS.—

"(1) IN GENERAL.—If the Bureau brings an enforcement action under this section, the Bureau shall state with particularity the circumstances that the Bureau alleges constitute violation of this section.

"(2) ALTERNATIVE CLAIMS.—If the Bureau brings an enforcement action under this section—

"(A) claiming that an activity is unfair or deceptive, the Bureau may not claim in the alternative that the activity is abusive; and

"(B) claiming that an activity is abusive, the Bureau may not claim in the alternative that the activity is unfair or deceptive.".

**SEC. 8. LOOK-BACK PROVISIONS FOR THE CONSUMER FINANCIAL PROTECTION BUREAU.**

Subtitle B of title X of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5511 et seq.) is amended by adding at the end the following new section:

**"SEC. 1029B EXAMINATION PERIOD LIMITATIONS.**

"(a) IN GENERAL.—When enforcing Federal consumer financial laws, the Bureau may not seek a civil money penalty for any violating conduct that occurred prior to the most recent assignment of a consumer compliance rating.

"(b) RULE OF CONSTRUCTION.—This limitation described in subsection (a) may not be construed to restrict the ability of the Bureau to seek other forms of legal or equitable relief available under subparagraphs (A) through (G) of section 1055(a)(2) for any violating conduct that occurred prior to the most recent assignment of a consumer compliance rating.".

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119TH CONGRESS
1ST SESSION

# H. R. 1653

To reform the civil investigative demand process of the Bureau of Consumer Financial Protection.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2025

Mr. BARR (for himself, Mr. VICENTE GONZALEZ of Texas, and Mr. MOSKOWITZ) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To reform the civil investigative demand process of the Bureau of Consumer Financial Protection.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Civil Investigative Demand Reform Act of 2025".

**SEC. 2. CIVIL INVESTIGATIVE DEMANDS.**

(a) DEMAND PERIOD.—Section 1052(c)(1) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5562(c)(1)) is amended by inserting after "before the institution of any proceedings under the Federal consumer

financial law'' the following: '', but not later than 6 years after the date of such violation''.

(b) DEMAND REQUIREMENTS.—Section 1052(c)(2) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5562(c)(2)) is amended by inserting after ''conduct'' the following: '', with specific reference to particular facts,''.

(c) ATTORNEY REPRESENTATION.—Section 1052(c)(13)(D) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5562(c)(13)(D)) is amended by adding at the end the following:

''(v) QUESTION AND RESPONSE.—

''(I) ADVISING ATTORNEY.—An attorney advising a person described in clause (i) may submit to the Bureau questions related to the scope or breadth of the demand.

''(II) BUREAU RESPONSE.—The Bureau shall submit to the attorney advising a person described in clause (i) a response to any question submitted under subclause (I) during the shorter of—

"(aa) a period that is 20 days after the date that the questions are submitted; or

"(bb) a period equal to the period beginning on the date of service of the civil investigative demand and ending on the return date specified in the demand.

"(III) EXTENSION OF RETURN DATE AND PETITION DEADLINE.—In a case in which questions are submitted under subclause (I), the Bureau may include with the response required under subclause (II) an extension of the return date and the deadline to file a petition with the Bureau for an order modifying or setting aside the demand.".

(d) CONFIDENTIAL TREATMENT OF PETITIONS.—Section 1052(d)) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5562(d)) is amended—

(1) in the subsection heading, by inserting "and petitions" after "demand material"; and

(2) in paragraph (1), strike "and tangible things" and insert ", tangible things, and the con-

tents of any petition submitted to the Bureau in accordance with subsection (f)".

(e) SPECIFIC GROUNDS TO SET ASIDE.—Section 1052(f)(3) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5562(f)(3)) is amended by striking "upon any failure" and all that follows through the period at the end and inserting the following: "upon any—

"(A) failure of the demand to comply with the provisions of this section;

"(B) constitutional or other legal right or privilege of such person; or

"(C) demonstration that the demand is—

"(i) unduly burdensome, disproportionately expensive, and outside the scope of the inquiry; or

"(ii) unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.".

(f) JUDICIAL REVIEW.—Section 1052(f) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5562(f)) is amended by adding at the end the following:

"(4) JUDICIAL REVIEW OF PETITION TO MODIFY OR SET ASIDE A DEMAND.—In the case that the Bureau de-

nies a petition to modify or set aside a demand, such denial shall be subject to judicial review.".

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[118H7000]

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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Consumer Financial Protection Act of 2010 to clarify the authority of the Bureau of Consumer Financial Protection with respect to persons regulated by a State insurance regulator, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. STEIL introduced the following bill; which was referred to the Committee on _____

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# A BILL

To amend the Consumer Financial Protection Act of 2010 to clarify the authority of the Bureau of Consumer Financial Protection with respect to persons regulated by a State insurance regulator, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Business of Insurance Regulatory Reform Act of 2025".

**SEC. 2. CLARIFICATION TO THE AUTHORITY OF THE BUREAU WITH RESPECT TO PERSONS REGULATED BY A STATE INSURANCE REGULATOR.**

Section 1027(f) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5517(f)) is amended—

(1) in paragraph (2)—

(A) by striking "DESCRIPTION OF ACTIVITIES.—Paragraph (1)" and inserting: "EXCEPTIONS.—

"(A) AUTHORITY.—Paragraph (1)"; and

(B) by inserting after subparagraph (A) (as added by this Act) the following new subparagraph:

"(B) LIMITATION.—With respect to a person regulated by a State insurance regulator—

"(i) and if such person is offering or providing a consumer financial product or service, the Bureau may not enforce this title with respect to such person to the extent such person is engaged in the business of insurance; or

"(ii) and if such person is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, the authority of the Bureau to enforce such law with respect to

such person shall be narrowly construed to the extent such person is engaged in the business of insurance."; and

(2) by adding at the end the following new paragraph:

"(4) RULE OF CONSTRUCTION.—The enforcement of this title shall be broadly construed in favor of the authority of a State insurance regulator with respect to a person regulated by a State insurance regulator.".

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119TH CONGRESS
1ST SESSION

# H. R. 3213

To protect State and Federal courts' primary and inherent authority to regulate and oversee the legal profession by prohibiting Federal agencies from regulating licensed attorneys and law firms engaged in litigation activities, prohibiting opposing parties in legal actions from bringing private rights of action against such attorneys and law firms for their litigation activities, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2025

Mr. FITZGERALD introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# A BILL

To protect State and Federal courts' primary and inherent authority to regulate and oversee the legal profession by prohibiting Federal agencies from regulating licensed attorneys and law firms engaged in litigation activities, prohibiting opposing parties in legal actions from bringing private rights of action against such attorneys and law firms for their litigation activities, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Restoring Court Authority Over Litigation Act of 2025".

**SEC. 2. FINDINGS; SENSE OF CONGRESS.**

(a) IN GENERAL.—Congress finds the following:

(1) For many decades, attorneys engaged in the practice of law have been regulated and disciplined primarily by the highest court of the State in which the attorney is licensed or admitted to practice, attorney disciplinary agencies overseen by those courts, and other State and Federal courts of competent jurisdiction pursuant to the applicable statutes, rules of civil procedure, and rules of professional conduct and disciplinary procedure duly adopted in those jurisdictions, and not by Congress, Federal agencies, or private litigants.

(2) State supreme courts have promulgated and enforced extensive and effective regulations governing all aspects of the practice of law, including admission requirements, strict attorney rules of professional conduct, disciplinary rules, and litigation procedural rules. In addition, Federal courts have adopted local rules governing the conduct of attorneys appearing before them. As a result, State and Federal courts have extensive authority and tools to address attorney misconduct that occurs during the

course of litigation before them, including monetary sanctions, striking offending pleadings or other papers, or referring the matter to disciplinary authorities, which could lead to a reprimand, censure, license suspension, disbarment, or other available disciplinary sanctions.

(3) Consistent with the longstanding principle of judicial regulation and oversight of attorneys and the legal profession, numerous Federal agencies have included broad practice of law exclusions in major rules, including the Federal Trade Commission's "Mortgage Assistance Relief Services" Rule issued in November 2010 and the Department of Housing and Urban Development's "Secure and Fair Enforcement for Mortgage Licensing Act" Rule issued in June 2011.

(4) Also consistent with the principle of judicial regulation of attorneys and the legal profession, Congress has generally declined to enact legislation regulating the practice of law, including litigation activities of attorneys.

(5) Congress has also incorporated broad practice of law exclusions into certain Federal statutes. For example, section 1027(e) of the Consumer Financial Protection Act of 2010 excludes most attor-

neys engaged in the practice of law from the Consumer Financial Protection Bureau's regulatory and enforcement authority, while the Fair Debt Collection Practices Act of 1977 originally contained a complete exemption for attorneys engaged in the practice of law.

(6) Although Congress removed the complete attorney exemption from the Fair Debt Collection Practices Act in 1986 based in part on its belief that the revised Act would only apply to attorneys' non-litigation collection activities and that State courts would continue to regulate attorneys' litigation activities, the United States Supreme Court held in Heintz v. Jenkins, 514 U.S. 291 (1995), that attorneys could be subject to the Act even when they are engaged in litigation activities. As a result, many attorneys now are routinely sued for litigation activities in State court that are alleged to be technical violations of the Act, even when consumers suffer no harm.

(7) In each of its annual reports to Congress on the Fair Debt Collection Practices Act from 1998 through 2006, the Federal Trade Commission formally recommended that Congress reexamine and amend the definition of "debt collector" in the Act

to exempt "attorneys who pursue debtors solely through litigation (or similar 'legal' practices)."

(8) In recent years, the Consumer Financial Protection Bureau has also aggressively sought to regulate attorneys' collection activities, including their litigation activities, despite the broad practice of law exclusion in section 1027(e) of the Consumer Financial Protection Act. The Bureau's aggressive actions could also lead to other Federal agencies adopting rules or practices regulating attorneys' litigation activities in other types of court cases.

(9) These developments have undermined State and Federal courts' primary and inherent authority to regulate and oversee attorneys engaged in the practice of law by creating multiple conflicting sets of rules and standards for attorneys, resulting in unfair lawsuits against attorneys pursuing valid legal claims for clients in court, increased attorney malpractice insurance rates, difficulty in obtaining legal representation, and reduced access to justice.

(10) On January 26, 2011, the Conference of Chief Justices adopted Resolution 1 ("In Support of Preserving Traditional State Court Regulation of Lawyers and Opposing Expanded Federal Agency Regulation of Lawyers and the Practice of Law"),

affirming that primary regulation and oversight of attorneys and the legal profession should continue to be vested in the State courts, not Federal agencies or Congress, and that the courts are in the best position to fulfill that important function. The Resolution also expressed support for Congress and Federal agencies' decisions to include broad practice of law exclusions in certain Federal statutes and agency rules, and opposition to Federal legislation or rules intended to establish or expand the Federal regulatory jurisdiction of attorneys engaged in the practice of law.

(11) While the activities constituting the practice of law are determined by the State in which an attorney is licensed or admitted to practice, litigation activities in connection with a legal action in State or Federal court are considered to be part of the practice of law in every State.

(12) To protect and restore State and Federal courts' primary and inherent authority to regulate and oversee attorneys and the legal profession, Federal legislation is needed to clarify that—

(A) attorneys engaged in litigation should be regulated and disciplined exclusively by State supreme courts, their attorney disciplinary

agencies, and other State and Federal courts of competent jurisdiction;

(B) Federal agencies shall have no regulatory authority over litigation activities of attorneys; and

(C) no party in a legal action shall have a Federal private right of action against the opposing attorney for the attorney's litigation activities.

(13) On February 5, 2020, the Conference of Chief Justices also adopted a second Resolution 1, entitled "In Support of Preserving the Courts' Authority to Regulate and Oversee Lawyers Engaged in Litigation and Opposing Federal Agency Regulation of Lawyers' Litigation Activities", which expressed support for Federal legislation that would implement the three proposed reforms described in paragraph (12).

(14) On April 12, 2023, the Consumer Financial Protection Bureau published its Statement of Policy Regarding Prohibition on Abusive Acts or Practices that explains its interpretation of those prohibitions contained in the Consumer Financial Protection Act of 2010 and the actions that providers of consumer financial products or services, in-

cluding attorneys engaged in debt collection, must take or avoid in order to comply with the Act. However, by requiring attorneys representing creditors in debt collection litigation to act in the interests of consumers instead of the interests of their own clients, and by requiring attorneys to take other steps inconsistent with their ethical duties, the Consumer Financial Protection Bureau Statement of Policy directly conflicts with the courts' well-established attorney rules of professional conduct, attorney disciplinary rules, and litigation procedural rules, thus further undermining the courts' primary and inherent authority to regulate and oversee attorneys engaged in the practice of law.

(b) SENSE OF CONGRESS.—It is the sense of Congress that attorneys engaged in litigation activities should be regulated and disciplined exclusively by the courts and other authorities of the State in which the attorney is licensed or admitted to practice, attorney disciplinary agencies overseen by those courts, and other State and Federal courts of competent jurisdiction pursuant to the applicable statutes, rules of civil procedure, and rules of professional conduct and disciplinary procedure duly adopted in those jurisdictions.

**SEC. 3. COURT AUTHORITY OVER ATTORNEYS ENGAGED IN LITIGATION ACTIVITIES.**

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by inserting after section 1631 the following:

**"§ 1632. Preservation of State and Federal courts' primary and inherent authority to regulate and oversee attorneys engaged in litigation activities**

"(a) DEFINITIONS.—In this section:

"(1) FEDERAL AGENCY.—The term 'Federal agency' means an agency as defined in section 551(1) of title 5.

"(2) LITIGATION ACTIVITIES.—The term 'litigation activities' means any actions by a licensed attorney or a law firm in connection with a legal action in a court of law on behalf of a client, including—

"(A) serving, filing, or conveying formal legal pleadings, discovery requests, or other documents pursuant to the applicable statute or rules of civil procedure;

"(B) communicating in, or at the direction of, a court of law (including in depositions or settlement conferences) or in the enforcement of a judgment; and

"(C) any other activities engaged in as part of the practice of law, under the laws of a State in which the attorney is licensed or admitted to practice, that relate to the legal action.

"(3) STATE.—The term 'State' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

"(b) LIMITATION ON FEDERAL AGENCY AUTHORITY.—Notwithstanding any other provision of law, a Federal agency does not have any supervisory, enforcement, or regulatory authority over litigation activities of attorneys or law firms.

"(c) NO PRIVATE RIGHT OF ACTION.—Notwithstanding any other provision of law, a person may not bring a civil action in a court of the United States seeking relief for harm arising out of alleged misconduct related to the litigation activities of an opposing attorney or law firm.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 99 of title 28, United States Code, is amended by inserting after the item related to section 1631 the following:

"1632. Preservation of State and Federal courts' primary and inherent authority to regulate and oversee attorneys engaged in litigation activities.".

**SEC. 4. CONFORMING AMENDMENTS.**

(a) FAIR DEBT COLLECTION PRACTICES ACT.—Section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (G); and

(2) by inserting after subparagraph (E) the following:

"(F) any licensed attorney or any law firm, to the extent that such attorney or firm is engaged in litigation activities (as such term is defined in section 1632 of title 28, United States Code) to collect a debt on behalf of a client; and".

(b) CONSUMER FINANCIAL PROTECTION ACT OF 2010.—Section 1027(e) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5517(e)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) RULE OF CONSTRUCTION LIMITATION WITH RESPECT TO DEBT COLLECTION.—Paragraph (2) shall not apply to a licensed attorney engaging

in litigation activities to collect a debt on behalf of a client if the attorney is excluded from the term 'debt collector' under section 803 of the Fair Debt Collection Practices Act by reason of section 803(6)(F) of such Act.".

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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Fair Credit Reporting Act to clarify Federal law with respect to reporting certain full-file consumer credit information to consumer reporting agencies, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mrs. KIM introduced the following bill; which was referred to the Committee on _____

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# A BILL

To amend the Fair Credit Reporting Act to clarify Federal law with respect to reporting certain full-file consumer credit information to consumer reporting agencies, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Credit Access and Inclusion Act of 2025".

**SEC. 2. FULL-FILE REPORTING PERMITTED.**

(a) IN GENERAL.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended by adding at the end the following:

"(f) FULL-FILE CREDIT REPORTING.—

"(1) DEFINITIONS.—In this subsection:

"(A) ENERGY UTILITY FIRM.—The term 'energy utility firm' means an entity that provides gas or electric utility services to the public.

"(B) UTILITY OR TELECOMMUNICATION FIRM.—The term 'utility or telecommunication firm' means an entity that provides utility services to the public through pipe, wire, landline, wireless, cable, or other connected facilities, or radio, electronic, or similar transmission (including the extension of such facilities).

"(2) INFORMATION RELATING TO LEASE AGREEMENTS, UTILITIES, AND TELECOMMUNICATIONS SERVICES.—Subject to the limitations in paragraph (3), and notwithstanding any other provision of law, a person or the Secretary of Housing and Urban Development may furnish to a consumer reporting agency information relating to the performance of a consumer in making payments—

"(A) under a lease agreement with respect to a dwelling, including such a lease in which the Department of Housing and Urban Development provides subsidized payments for occupancy in a dwelling; or

"(B) pursuant to a contract for a utility or telecommunications service.

"(3) LIMITATION.—Information about the usage by a consumer of any utility service provided by a utility or telecommunication firm may be furnished to a consumer reporting agency only to the extent that the information relates to the payment by the consumer for the service of the utility or telecommunication service or other terms of the provision of the services to the consumer, including any deposit, discount, or conditions for interruption or termination of the service.

"(4) PAYMENT PLAN.—An energy utility firm may not report payment information to a consumer reporting agency with respect to an outstanding balance of a consumer as late if—

"(A) the energy utility firm and the consumer have entered into a payment plan (including a deferred payment agreement, an arrearage management program, or a debt for-

giveness program) with respect to such outstanding balance; and

"(B) the consumer is meeting the obligations of the payment plan, as determined by the energy utility firm.".

(b) LIMITATION ON LIABILITY.—Section 623(e) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(e)) is amended—

(1) in paragraph (2), by striking "or" at the end;

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following:

"(3) subsection (f) of this section, including any regulations issued thereunder; or".

(c) GAO STUDY AND REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the impact that furnishing information pursuant to subsection (f) of section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2), as added by subsection (a) of this section, has had on consumers.

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119TH CONGRESS
1ST SESSION

# H. R. 3682

To amend the Financial Stability Act of 2010 to require the Financial Stability Oversight Council to consider alternative approaches before determining that a U.S. nonbank financial company shall be supervised by the Board of Governors of the Federal Reserve System, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 2025

Mr. FOSTER (for himself and Mr. HUIZENGA) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To amend the Financial Stability Act of 2010 to require the Financial Stability Oversight Council to consider alternative approaches before determining that a U.S. nonbank financial company shall be supervised by the Board of Governors of the Federal Reserve System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Financial Stability Oversight Council Improvement Act of 2025".

**SEC. 2. FINANCIAL STABILITY OVERSIGHT COUNCIL.**

Section 113 of the Financial Stability Act of 2010 (12 U.S.C. 5323) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "The Council" and inserting "Subject to paragraph (3), the Council"; and

(B) by adding at the end the following:

"(3) INITIAL DETERMINATION.—The Council may not vote on a proposed determination with respect to a U.S. nonbank financial company under paragraph (1) unless the Council first determines, in consultation with the company and the primary financial regulatory agency with respect to the company, that a different action by the Council or the agency (including the application of new or heightened standards and safeguards under section 120), or by the company under a written plan that is submitted promptly to the Council, is impracticable or insufficient to mitigate the threat that the company could pose to the financial stability of the United States."; and

(2) in subsection (f)(1), by striking "subsection (e)" and inserting "subsections (a)(3) and (e)".

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[118H8356]

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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Truth in Lending Act to provide for a safe harbor for small-dollar credit products, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mrs. KIM introduced the following bill; which was referred to the Committee on _____

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# A BILL

To amend the Truth in Lending Act to provide for a safe harbor for small-dollar credit products, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Small Dollar Loan Certainty Act".

**SEC. 2. SAFE HARBOR FOR SMALL-DOLLAR CREDIT PRODUCTS.**

(a) IN GENERAL.—The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 109 the following:

**"§ 110. Safe harbor for small-dollar credit products**

"(a) IN GENERAL.—If a covered entity complies with the requirements set forth in subsections (b), (c), and (e) with respect to the offering of a small-dollar product to a consumer, such covered entity shall not be liable in connection with such offering of a small-dollar product, for—

"(1) any civil money penalties from any enforcement action brought by the Bureau, the appropriate Federal banking agency, or the National Credit Union Administration for a violation of this title; or

"(2) any damages or other monetary relief through a private right of action brought under this title.

"(b) PRODUCT STRUCTURE REQUIREMENTS.—

"(1) IN THE CASE OF AN INSTALLMENT LOAN.—If a small-dollar credit product is structured by a covered entity as an installment loan—

"(A) the repayment term shall be more than 45 days;

"(B) payments shall be fully amortized across more than one payment;

"(C) rollovers into new small-dollar credit products shall be prohibited; and

"(D) the covered entity may not issue any small-dollar credit product to a consumer if such consumer has a small-dollar credit product open with such covered entity at the time such consumer applies for a small-dollar credit product.

"(2) IN THE CASE OF A LINE OF CREDIT.—If a small-dollar credit product is structured by a covered entity as a line of credit—

"(A) the repayment term for each draw shall be more than 45 days unless a single payment is used and the draw is not more than 10 percent of the lesser of $3,500 or 20 percent of the total amount of a consumer's average monthly direct deposits during the preceding six months; and

"(B) payments for each draw shall be fully amortized across more than one payment, except in the case of any single-payment loans.

"(3) RULES OF CONSTRUCTION.—

"(A) IN GENERAL.—Nothing in this subsection may be construed to prohibit the Bureau, a Federal banking agency, or the National Credit Union Administration from issuing a cease-and-desist order or restitution order under this title against a covered entity.

"(B) ENFORCEMENT OF OTHER STATUTES.—Nothing in this subsection may be construed to prohibit the Bureau, a Federal banking agency, or the National Credit Union Administration from enforcing any provision of law not contained within this title against a covered entity.

"(c) UNDERWRITING REQUIREMENTS.—When considering whether to offer a small-dollar credit product to a specific consumer, a covered entity—

"(1) shall use sound underwriting processes; and

"(2) may analyze internal or external data sources, including consumer deposit account activity, to assess the creditworthiness of a consumer.

"(d) RULE OF CONSTRUCTION.—Nothing in this title may be construed to prohibit a covered entity from offering a small-dollar product that does not comply with the safe harbor requirements set forth under this section.

"(e) ADDITIONAL LIMITATIONS AND REQUIREMENTS.—

"(1) BALLOON PAYMENTS.—No payment required in association with a small-dollar credit product offered by a covered entity may be greater than double the amount of any other payment required in association with such product.

"(2) DISCLOSURES.—Each covered entity that offers a small-dollar credit product shall comply with all disclosure requirements set forth by this title.

"(3) PENALTIES AND FEES.—A covered entity may not impose any prepayment penalty, overdraft fee, or nonsufficient funds fee in connection with a small-dollar credit product.

"(4) TRANSFER OF AMOUNTS.—Amounts made available to a consumer through a small-dollar credit product offered by a covered entity shall be disbursed to the account of such consumer by such covered entity not later than 5 days after the approval of the consumer for the small-dollar credit product.

"(f) DEFINITIONS.—In this section:

"(1) COVERED ENTITY.—The term 'covered entity' means—

"(A) an insured depository institution;

"(B) an insured credit union;

"(C) a third party with whom an insured depository institution has contracted for products or services related to origination, servicing, or administrative management of a small-dollar credit product; or

"(D) a third party with whom an insured credit union has contracted for products or services related to origination, servicing, or administrative management of a small-dollar credit product.

"(2) FEDERAL BANKING AGENCY DEFINITIONS.—The terms 'appropriate Federal banking agency' and 'Federal banking agency' have the meaning given those terms, respectively, in section 3 of the Federal Deposit Insurance Act.

"(3) INSURED CREDIT UNION.—The term 'insured credit union' has the meaning given the term in section 101 of the Federal Credit Union Act.

"(4) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given the term in section 3 of the Federal Deposit Insurance Act.

"(5) SMALL-DOLLAR CREDIT PRODUCT.—The term 'small-dollar product' means a loan or line of credit with a value of $3,500 or less.".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 1 of the Truth in Lending Act is amended by striking the item relating to section 110 and inserting the following:

"110. Safe harbor for small-dollar credit products.".

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119TH CONGRESS
1ST SESSION

# H. R. 3141

To impose limitations on the amount of unobligated balances of the Bureau of Consumer Financial Protection, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 1, 2025

Mr. DOWNING (for himself, Mr. MEUSER, Mr. OGLES, and Mr. SESSIONS) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To impose limitations on the amount of unobligated balances of the Bureau of Consumer Financial Protection, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "CFPB Budget Integrity Act".

**SEC. 2. LIMITATION ON UNOBLIGATED BALANCES OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.**

(a) IN GENERAL.—Section 1017(a)(2) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5497(a)(2)) is amended by adding at the end the following new subparagraph:

"(D) LIMITATION ON UNOBLIGATED BALANCES.—For a fiscal year, the amount of unobligated balances of the Bureau may not exceed 5 percent of the dollar amount referred to in subparagraph (A)(iii). The Director shall transfer any excess amount of such unobligated balances to the general fund of the Treasury.".

(b) REPORT ON USE OF UNOBLIGATED BALANCES.—Section 1017(e)(4) of such Act (12 U.S.C. 5497(e)(4)) is amended by inserting "(including a description of the use of any unobligated balances)" after "funds of the Bureau".

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# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To direct certain Federal banking and credit union agencies to promote the formation of de novo regulated institutions through the review of application processes, the review of capital raising by de novo regulated institutions, and the establishment of various outreach programs, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Ms. WATERS introduced the following bill; which was referred to the Committee on _____

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# A BILL

To direct certain Federal banking and credit union agencies to promote the formation of de novo regulated institutions through the review of application processes, the review of capital raising by de novo regulated institutions, and the establishment of various outreach programs, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "American Access to Banking Act".

**SEC. 2. STREAMLINING APPLICATION PROCESS AND REVIEW OF CAPITAL RAISING BY DE NOVO REGULATED INSTITUTIONS.**

(a) IN GENERAL.—Each of the Federal financial institutions regulatory agencies shall—

(1) for the purpose of simplifying and streamlining the process of applying to become a de novo regulated institution, conduct a review of any application forms related to such process;

(2) to the extent practicable, gather information needed from applicants seeking to become a de novo regulated institution from other Federal Government agencies or public sources to minimize information requests of such applicants; and

(3) in consultation with the Securities and Exchange Commission, review how de novo regulated institutions raise capital while maintaining investor protections, including the impact of—

(A) general capital raising restrictions; and

(B) capital raising restrictions related to individuals who are not accredited investors.

(b) REPORT.—Not later than 1 year after the date of the enactment of this section, and annually for 5 years thereafter, each of the Federal financial institutions regulatory agencies shall submit to the Congress and publish

on a public website of such agency a report that contains—

(1) a description of the actions taken by such agency pursuant to subsection (a); and

(2) as appropriate, any administrative or legislative recommendations with respect to the purpose described in subsection (a)(3).

**SEC. 3. IMPROVING COMMUNICATION WITH DE NOVO REGULATED INSTITUTIONS.**

(a) IN GENERAL.—Each of the Federal financial institutions regulatory agencies shall, at the request of an applicant to become a de novo regulated institution, designate an employee of the agency as a caseworker, who may perform such duty in addition to the other duties of the employee.

(b) CASEWORKER DUTIES.—Each caseworker described in subsection (a) shall, to the maximum extent practicable—

(1) meet with the lead organizers applying to become a de novo regulated institution to provide a tutorial with respect to the application process; and

(2) be the primary point of contact of the respective Federal financial institutions regulatory agency for such organizers during the application process.

(c) NEW CASEWORKER.—Each agency described in subsection (a) may designate a new caseworker, as appropriate, to support continuity based on staffing and responsibilities assigned to the current caseworker.

**SEC. 4. DE NOVO MENTOR-PROTÉGÉ PARTNERSHIPS.**

(a) IN GENERAL.—At the request of an institution that seeks to become a de novo regulated institution, each of the Federal financial institutions regulatory agencies shall, to the maximum extent practicable, provide a list to such institution of similar types of institutions that—

(1) were recently approved to become a de novo regulated institution; and

(2) are interested in volunteering to serve as a mentor to provide advice about the de novo application process.

(b) MENTORSHIP INFORMATION.—Not later than 1 year after the date of the enactment of this section, each of the Federal financial institutions regulatory agencies shall provide public information and directions on how an institution may request a mentor or serve as a mentor as described in subsection (a).

**SEC. 5. STATE AND STAKEHOLDER ENGAGEMENT PLAN.**

(a) IN GENERAL.—Each of the Federal financial institutions regulatory agencies shall develop a plan to—

(1) regularly consult with State regulators to promote cooperation between State and Federal banking and credit union agencies in the creation of de novo regulated institutions, including responding to any State regulator that requests assistance on how a State-chartered financial institution can request Federal insurance;

(2) regularly consult with stakeholders, including applicants to become de novo regulated institutions and recently approved regulated institutions, to inform any reforms that may support the creation of de novo regulated institutions, including rural institutions, community development financial institutions, and minority depository institutions; and

(3) provide guidance, training material, and regular workshops to assist any interested parties to understand such agencies processes.

(b) SUBMISSION TO CONGRESS.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this section, and every 5 years thereafter, each of the Federal financial institutions regulatory agencies shall submit to the Congress the respective plan of such agency described in subsection (a).

(2) PUBLIC COMMENT.—With respect to developing the plan described in subsection (a), each of the Federal financial institutions regulatory agencies shall—

(A) provide an opportunity for public comments; and

(B) take such public comments into consideration.

**SEC. 6. DEFINITIONS.**

(a) IN GENERAL.—In this Act:

(1) FEDERAL BANKING AGENCY.—The term "Federal banking agency" has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES.—The term "Federal financial institutions regulatory agencies" has the meaning given the term in section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302).

(3) REGULATED INSTITUTION.—The term "regulated institution" means—

(A) with respect to a Federal banking agency, a depository institution (as such term is defined in section 3 of the Federal Deposit In-

surance Act (12 U.S.C. 1813)) for which the Federal banking agency is the appropriate Federal banking agency (as such term is defined in such section 3); and

(B) with respect to the National Credit Union Administration, an insured credit union (as such term is defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(4) STATE.—The term "State" means each of the several States, the District of Colombia, and each territory of the United States.

(5) STATE REGULATOR.—The term "State regulator" means—

(A) with respect to a Federal banking agency, a State banking regulator; and

(B) with respect to the National Credit Union Administration, the State regulatory agency having jurisdiction over a State credit union (as such term is defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(b) RULE OF CONSTRUCTION.—For purposes of this Act, the process of applying to become a de novo regulated institution shall include the process of applying for Fed-

eral deposit insurance, Federal share insurance, or membership of a Federal reserve bank.

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To require the Federal financial institutions regulatory agencies to jointly review the cumulative impact of regulations issued by such agencies, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To require the Federal financial institutions regulatory agencies to jointly review the cumulative impact of regulations issued by such agencies, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REVIEW OF REGULATIONS.**

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

**"SEC. 1012. REVIEW OF REGULATIONS.**

"(a) IN GENERAL.—The Federal financial institutions regulatory agencies shall, not later than 1 year after the date of enactment of this section, and every 3 years thereafter, jointly conduct a review of the cumulative impact of regulations issued by such agencies that—

"(1) assesses the effects of such regulations on consumers' access to financial products and services;

"(2) assesses the effects of such regulations on the availability of financial products and services to financial and nonfinancial firms;

"(3) assesses the impact of such regulations on credit availability and financial market liquidity in United States financial markets;

"(4) assesses the balance of benefits and costs of such regulations with respect to the safety and soundness of the United States financial system and overall economic activity in the United States;

"(5) to the extent practicable, quantifies the direct and indirect economic costs imposed by such regulations; and

"(6) includes recommendations to streamline, simplify, or eliminate duplicative, outdated, and unnecessarily burdensome regulations.

"(b) REPORT.—The Federal financial institutions regulatory agencies shall submit a report on the results

of each review conducted under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.".

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Federal Reserve Act to specify additional responsibilities of the member of the Board of Governors of the Federal Reserve System who was appointed as the member with experience working in or supervising community banks, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Federal Reserve Act to specify additional responsibilities of the member of the Board of Governors of the Federal Reserve System who was appointed as the member with experience working in or supervising community banks, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. COMMUNITY BANK MEMBER OF THE BOARD OF GOVERNORS.**

(a) FEDERAL RESERVE ACT.—Section 10 of the Federal Reserve Act is amended—

(1) in the first undesignated paragraph (12 U.S.C. 241), by inserting ", and such member shall play a role in the development and implementation of the Board's supervision and regulation of community banks having less than $10,000,000,000 in total assets" after "total assets";

(2) in the second undesignated paragraph (12 U.S.C. 242), by striking "The chairman" and inserting "Regardless of whether the member of the Board with demonstrated primary experience working in or supervising community banks having less than $10,000,000,000 in total assets is also the Vice Chairman for Supervision, such member shall develop policy recommendations for the Board regarding supervision and regulation of community banks supervised by the Board having less than $10,000,000,000 in total assets, and shall oversee the supervision and regulation of such banks. The Chairman"; and

(3) in paragraph (12) (12 U.S.C. 247b)—

(A) by striking "The Vice Chairman for Supervision" and inserting the following:

"(A) VICE CHAIRMAN FOR SUPERVISION.—The Vice Chairman for Supervision"; and

(B) by adding at the end the following:

"(B) COMMUNITY BANK MEMBER.—The member of the Board with demonstrated primary experience working in or supervising community banks having less than $10,000,000,000 in total assets, if different than the Vice Chairman for Supervision, shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the efforts, activities, objectives, and plans of the Board with respect to the conduct of supervision and regulation of community banks supervised by the Board having less than $10,000,000,000 in total assets.".

(b) FINANCIAL INSTITUTIONS REGULATORY AND INTEREST RATE CONTROL ACT OF 1978.—Section 1004(a)(3) of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3303(a)(2)) is amended by striking "designated by the Chairman of the Board" and inserting "with demonstrated primary experience working in or supervising community banks having less than $10,000,000,000 in total assets".

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Consumer Financial Protection Act of 2010 to require the attestation of certain information as part of the consumer complaint submission process, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Consumer Financial Protection Act of 2010 to require the attestation of certain information as part of the consumer complaint submission process, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. COLLECTING AND TRACKING COMPLAINTS.**

Section 1013(b)(3) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493(b)(3)) is amended by adding at the end the following:

"(E) CONSUMER ATTESTATION.—The Director shall require, using such verification mechanisms as the Director determines appropriate, each consumer who submits a compliant to the unit established under this paragraph to attest, under penalty of perjury, that—

"(i) the information and documentation provided in the complaint is true and accurate to the best of the consumer's knowledge;

"(ii) the complaint is being submitted directly by the consumer or by an individual authorized to act on the behalf of the consumer; and

"(iii) the complaint is not being submitted by an unauthorized third party or for any fraudulent or misleading purpose.

"(F) CLOSURE OF DUPLICATIVE, FRIVOLOUS OR UNAUTHORIZED COMPLAINTS.——

"(i) IN GENERAL.—A financial institution or service provider that receives a consumer complaint from the unit established under this paragraph may, upon reasonable determination, close such complaint without further action if the com-

plaint, as determined by such financial institution or service provider—

"(I) is duplicative of a previously submitted and resolved complaint submitted by the same consumer relating to the same issue;

"(II) is frivolous or lacking a basis in fact;

"(III) was not submitted by the consumer or an individual authorized to act on the behalf of the consumer; or

"(IV) was submitted for a fraudulent or misleading purpose.

"(ii) RECORDING.—If a financial institution or service provider closes a compliant under clause (i), such financial institution or service provider shall notify the unit established under this paragraph of such closure and the reason for such closure and such unit shall record such information in the database established under this paragraph.

"(G) CONFIDENTIALITY.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, the Bureau shall ensure that narrative content included in complaints submitted by consumers to the unit established under this paragraph and narrative content included in responses from financial institutions and services providers who receive complaints from the unit established under this paragraph remain confidential and are not published or made publicly viewable.

"(ii) AGGREGATION OF DATA.—The Bureau may publish aggregated data about complaints received from consumers and analyses of trends in such complaints if such data and analyses do not include personally identifiable information or specific narrative content that could reasonably be linked to an individual consumer, financial institution, or service provider.".

[115H5534RH]

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Consumer Financial Protection Act of 2010 to provide procedures for guidance issued by the Bureau of Consumer Financial Protection, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Consumer Financial Protection Act of 2010 to provide procedures for guidance issued by the Bureau of Consumer Financial Protection, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. PROCEDURES FOR BUREAU GUIDANCE.**

Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended by adding at the end the following:

"(5) PROCEDURES FOR BUREAU GUIDANCE.—

"(A) DEFINITIONS.—In this paragraph—

"(i) the term 'Bureau' means—

"(I) the Director of the Bureau;

"(II) the Deputy Director of the Bureau; and

"(III) any employee of the Bureau described in section 1013(a)(1)(B); and

"(ii) the term 'guidance'—

"(I) means—

"(aa) an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue; and

"(bb) any written interpretive rule, bulletin, statement of policy, letter, examination manual, frequently asked question, notice, directive, news release, blog post, small entity compliance guide, or other authoritative doc-

ument issued by the Bureau regarding compliance with a Federal consumer financial law; and

"(II) does not include—

"(aa) a purely internal Bureau policy;

"(bb) a law enforcement communication such as a complaint, consent order, judgment, legal opinion, warning letter, investigatory letter, notice of hearing, civil investigative demand, subpoena, no-action letter, advisory opinion, or any request in lieu of the foregoing;

"(cc) an individualized supervisory communication such as a supervisory letter, report of examination, memorandum of understanding, board resolution, matter requiring attention, or individualized communication or agreement pursuant to the supervisory authority of the Bureau; or

"(dd) a decision issued under subtitle E.

"(B) GUIDANCE REQUIREMENTS.—The Director shall issue guidance that is necessary or appropriate to enable the Bureau to carry out Federal consumer financial law, including facilitating compliance with such law.

"(C) RULEMAKING.—

"(i) PROPOSED RULE.—Not later than 18 months after the date of enactment of this paragraph, the Bureau shall publish in the Federal Register and on the website of the Bureau a proposed rule defining—

"(I) each type of guidance the Bureau shall provide;

"(II) the criteria the Bureau shall use for selecting each type of guidance;

"(III) the process and timelines for requests for guidance;

"(IV) the time periods for the response of the Bureau to a request for each type of guidance; and

"(V) a process for amending or revoking guidance issued under the rule, including a process for public input on any proposal to amend or revoke guidance, unless the Bureau determines public input is not required due to public exigency.

"(ii) FINAL RULE.—Not later than 1 year after the date on which the proposed rule described in clause (i) is published, the Bureau shall publish a final rule based on the proposed rule.

"(D) RELIANCE ON BUREAU GUIDANCE.—No person shall be held liable for any act done or omitted in good faith in conformity with any applicable guidance from the Bureau or any predecessor agency that was in effect at the time of the act or omission, even if the guidance is later revoked, amended, or rendered inconsistent by guidance or action by the Bureau or a determination by a court of competent jurisdiction.

"(E) DEVELOPMENT OF A PENALTY MATRIX.—

"(i) PROPOSED RULE.—Not later than 18 months after the date of the enactment of this subparagraph, the Bureau shall publish in the Federal Register and on the website of the Bureau a proposed rule establishing guidelines for determining the size of any civil monetary penalties issued by the Bureau based on the severity of the actionable conduct in violation of a Federal consumer financial law and the level of culpability. The regulations prescribed under this paragraph shall, to the extent possible, align with any chart, matrix, rule, or guideline published by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors.

"(ii) FINAL RULE.—Not later than 1 year after the date on which the proposed rule described in clause (i) is published, the Bureau shall publish a final rule based on the proposed rule.".

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Consumer Financial Protection Act of 2010 to direct civil penalties to victims and transfer excess funds to the Treasury, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Consumer Financial Protection Act of 2010 to direct civil penalties to victims and transfer excess funds to the Treasury, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. CONSUMER FINANCIAL CIVIL PENALTY FUND.**

Section 1017(d) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5497(d)) is amended—

(1) in paragraph (2)—

(A) in the first sentence, by inserting "direct" before "victims"; and

(B) by striking the second sentence; and

(2) by adding at the end the following:

"(3) TREATMENT OF EXCESS AMOUNTS.—With respect to a civil penalty described under paragraph (1), if the Bureau makes payments to all of the direct victims of activities for which that civil penalty was imposed, the Bureau shall transfer all amounts that remain in the Civil Penalty Fund with respect to that civil penalty to the general fund of the Treasury.".

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Consumer Financial Protection Act of 2010 to eliminate the market monitoring functions of the Bureau of Consumer Financial Protection, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Consumer Financial Protection Act of 2010 to eliminate the market monitoring functions of the Bureau of Consumer Financial Protection, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ELIMINATION OF MARKET MONITORING FUNCTIONS.**

The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1021(c)—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively;

(2) in section 1022, by striking subsection (c); and

(3) in section 1026(b), by striking ", and to assess and detect risks to consumers and consumer financial markets".

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Consumer Financial Protection Act of 2010 to revise the structure and maximum amounts of civil monetary penalties, and to provide incentives for the self-reporting of violations.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Consumer Financial Protection Act of 2010 to revise the structure and maximum amounts of civil monetary penalties, and to provide incentives for the self-reporting of violations.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. CIVIL MONEY PENALTIES.**

(a) IN GENERAL.—Section 1055(c) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5565(c)), is amended—

(1) in paragraph (2)—

(A) by striking subparagraph (A);

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(C) in subparagraph (B), as so redesignated—

(i) in the heading, by striking "SECOND TIER" and inserting "FIRST TIER"; and

(ii) by striking "may not exceed $1,000,000" and inserting "may not exceed $50,120"; and

(D) in paragraph (C), in the heading, by striking "THIRD TIER" and inserting "SECOND TIER"; and

(2) in paragraph (3)—

(A) in subparagraph (D), by striking "and" at the end;

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by inserting after subparagraph (D) the following:

"(E) whether the person charged self-reported the violation; and".

(b) RULEMAKING.—The Bureau of Consumer Financial Protection shall, not later than 180 day after the date of the enactment of this section, issue a rule that implements the amendments made by this section and describes how the Bureau of Consumer Financial Protection will reduce civil monetary penalties in cases where a violation is self-reported.

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Financial Stability Act of 2010 to authorize appropriations for the Office of Financial Research and the Financial Stability Oversight Council, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Financial Stability Act of 2010 to authorize appropriations for the Office of Financial Research and the Financial Stability Oversight Council, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FUNDING OF THE OFFICE OF FINANCIAL RESEARCH.**

(a) IN GENERAL.—Section 152(e) of the Financial Stability Act of 2010 (12 U.S.C. 5342(e)) is amended to read as follows:

"(e) ASSISTANCE FROM FEDERAL AGENCIES.—

"(1) IN GENERAL.—Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, and staff, as the Office may determine advisable.

"(2) FROM THE BOARD OF GOVERNORS.—The Board of Governors shall provide to the Office such services, funds, facilities, and staff necessary to carry out the collection of data by the Office that supports the daily publication of the Secured Overnight Financing Rate by the Federal Reserve Bank of New York.

"(3) DETAILEES.—Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.".

(b) FUNDING.—The Financial Stability Act of 2010 (12 U.S.C. 5311 et seq.) is amended by striking section 155 and inserting the following:

**"SEC. 155. FUNDING.**

"There are authorized to be appropriated to the Office such sums as are necessary for the Office to carry

out the duties of the Office under this title for each of fiscal years 2025 and 2026.".

**SEC. 2. FUNDING OF THE FINANCIAL STABILITY OVERSIGHT COUNCIL.**

The Financial Stability Act of 2010 (12 U.S.C. 5311 et seq.) is amended by striking section 118 and inserting the following:

**"SEC. 118. COUNCIL FUNDING.**

" 'There are authorized to be appropriated to the Council such sums as are necessary for the Council to carry out the duties of the Council under this title for each of fiscal years 2025 and 2026' ".

.....

(Original Signature of Member)

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Fair Credit Reporting Act to require resellers of information contained in consumer reports to follow reasonable procedures to assure maximum possible accuracy of such information before transmitting such information, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. LAWLER introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Fair Credit Reporting Act to require resellers of information contained in consumer reports to follow reasonable procedures to assure maximum possible accuracy of such information before transmitting such information, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ACCURACY OF INFORMATION TRANSMITTED BY RESELLERS.**

Section 607 of the Fair Credit Reporting Act (15 U.S.C. 1681e) is amended by adding at the end the following:

"(f) RESELLERS.—

"(1) IN GENERAL.—Before a reseller transmits information contained in a consumer report to an end user or another reseller, such reseller shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the information relates.

"(2) LIMITATION OF LIABILITY.—No reseller may be held liable under this title if such reseller accurately communicates information obtained from another consumer reporting agency to an end user or another reseller.

"(3) RESELLER DEFINED.—In this subsection the term 'reseller' has the meaning given the term in section 603.".

[115H2359]

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the civil liability requirements under the Fair Credit Reporting Act to include requirements relating to class actions, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

Mr. LOUDERMILK introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the civil liability requirements under the Fair Credit Reporting Act to include requirements relating to class actions, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "FCRA Liability Harmonization Act".

**SEC. 2. MAINTAINING CONSISTENCY IN CIVIL LIABILITY UNDER THE FAIR CREDIT REPORTING ACT FOR CLASS ACTIONS.**

(a) WILLFUL NONCOMPLIANCE.—Section 616 of the Fair Credit Reporting Act (15 U.S.C. 1681n) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraph (3) as paragraph (2); and

(C) in paragraph (1)(B), by inserting "and" after the semicolon;

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following new subsection:

"(d) CLASS ACTION LAWSUITS.—With respect to a class action (as such term is defined in section 1711 of title 28, United States Code), or series of class actions arising out of the same failure to comply of a person, brought by consumers against a person who willfully fails to comply with any requirement imposed under this title, such person is liable to such consumers in such an amount as a court may determine, except that—

"(1) the court may not apply a minimum amount of damages for each member of the class; and

"(2) the total recovery (excluding reasonable attorney's fees as determined by the court) of the class shall not exceed the lesser of—

"(A) $500,000; or

"(B) 1 percent of the net worth of such person.".

(b) NEGLIGENT NONCOMPLIANCE.—Section 617 of the Fair Credit Reporting Act (15 U.S.C. 1681o7) is amended by adding at the end the following new subsection:

"(c) CLASS ACTION LAWSUITS.—With respect to a class action (as such term is defined in section 1711 of title 28, United States Code), or series of class actions arising out of the same failure to comply of a person, brought by consumers against a person who negligently fails to comply with any requirement imposed under this title, such person is liable to such consumers in an amount equal to the sum of any actual damages sustained by the consumers as a result of the failure, except that the total recovery (excluding reasonable attorney's fees as determined by the court) of the class shall not exceed the lesser of—

"(1) $500,000; or

"(2) 1 percent of the net worth of such person.".

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To require the Secretary of the Treasury to submit a report that contains a list of unused authorities in the Dodd-Frank Wall Street Reform and Consumer Protection Act and in the amendments made by such Act, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To require the Secretary of the Treasury to submit a report that contains a list of unused authorities in the Dodd-Frank Wall Street Reform and Consumer Protection Act and in the amendments made by such Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REPORT ON UNUSED AUTHORITIES.**

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall, in consultation with the Federal financial insti-

tutions regulatory agencies and the Bureau of Consumer Financial Protection, submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that contains a list of unused authorities in the Dodd-Frank Wall Street Reform and Consumer Protection Act and in the amendments made by such Act.

(b) DEFINITIONS.—In this section:

(1) UNUSED AUTHORITY.—The term "unused authority" means a provision of law—

(A) that only takes effect upon the issuance of a final rule by a Federal agency; and

(B) with respect to which no final rule has taken effect as of the date of enactment of this Act.

(2) FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES.—The term "Federal financial institutions regulatory agencies" has the meaning given the term in section 1003 of the Federal Financial Institutions Examination Council Act of 1978.

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To repeal unused authority of the Securities and Exchange Commission related to restricting certain mandatory pre-dispute arbitration, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To repeal unused authority of the Securities and Exchange Commission related to restricting certain mandatory pre-dispute arbitration, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REPEAL.**

(a) IN GENERAL.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by repealing subsection (o).

(b) CONFORMING AMENDMENT.—Section 921 of the Investor Protection and Securities Reform Act of 2010 is amended by striking subsection (a).

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119TH CONGRESS
1ST SESSION

# H. R. 3484

To terminate unused authorities of the Securities and Exchange Commission that were established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2025

Mr. BARR (for himself, Mr. EMMER, Mr. WESTERMAN, and Mrs. HINSON) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To terminate unused authorities of the Securities and Exchange Commission that were established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Business Owners Protection Act of 2025".

**SEC. 2. TERMINATION OF CERTAIN UNUSED AUTHORITIES OF SECURITIES AND EXCHANGE COMMISSION.**

Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by adding at the end the following:

"(e) TERMINATION OF CERTAIN UNUSED AUTHORITIES.—

"(1) IN GENERAL.—With respect to authorities of the Commission that were established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.), any such authority that provides discretion as to whether to establish a requirement for private entities, and for which the Commission had not issued a notice of proposed rulemaking under section 553 of title 5, United States Code, or a guidance document before January 1, 2025, is terminated upon the date of enactment of this subsection.

"(2) INCLUSION OF AUTHORITIES.—The reference in paragraph (1) to authorities established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) includes authorities established for the Commission through amendments made by such Act to this Act.

"(3) LIST OF AUTHORITIES.—Not later than 180 days after the date of enactment of this subsection, the Commission shall submit to Congress and publish a publicly available list of each authority that is terminated under paragraph (1).".

○

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To remove certain authority of the Securities and Exchange Commission over other matters related to fiduciary duties, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To remove certain authority of the Securities and Exchange Commission over other matters related to fiduciary duties, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. OTHER MATTERS.**

(a) SECURITIES EXCHANGE ACT OF 1934.—The second subsection (l) of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o; relating to "Other matters") is amended—

(1) by striking "Commission shall" and all that follows through "(1) facilitate" and inserting "Commission shall facilitate";

(2) in paragraph (1), by striking "; and" and inserting a period; and

(3) by striking paragraph (2).

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 211(h) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(h)) is amended—

(1) by striking "Commission shall" and all that follows through "(1) facilitate" and inserting "Commission shall facilitate";

(2) in paragraph (1), by striking "; and" and inserting a period; and

(3) by striking paragraph (2).

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Securities Exchange Act of 1934 to repeal the disclosure requirement applicable to payments by resource extraction issuers, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Securities Exchange Act of 1934 to repeal the disclosure requirement applicable to payments by resource extraction issuers, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REPEAL.**

(a) IN GENERAL.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) by striking subsection (q); and

(2) by redesignating subsections (r) and (s) as subsections (q) and (r), respectively.

(b) CONFORMING AMENDMENT.—The Dodd-Frank Wall Street Reform and Consumer Protection Act is amended—

(1) by striking section 1504; and

(2) in the table of contents for such Act, by striking the item relating to section 1504.

# [DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

# H. R. _____

To repeal certain unused authority of the Securities and Exchange Commission related to standards of conduct.

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IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

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# A BILL

To repeal certain unused authority of the Securities and Exchange Commission related to standards of conduct.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REPEAL.**

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by repealing the second subsection (k) (relating to "Standard of Conduct").

[115H4248RH]

.....

(Original Signature of Member)

119TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Securities Exchange Act of 1934 to repeal certain disclosure requirements related to conflict minerals, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. HUIZENGA introduced the following bill; which was referred to the Committee on _____

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# A BILL

To amend the Securities Exchange Act of 1934 to repeal certain disclosure requirements related to conflict minerals, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REPEAL OF CONFLICT MINERAL REQUIREMENTS.**

(a) IN GENERAL.—Subsection (p) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is hereby repealed.

(b) CONFORMING AMENDMENTS.—The Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) is amended—

(1) by striking section 1502; and

(2) in the table of contents in section 1(b) of such Act, by striking the item relating to section 1502.

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119TH CONGRESS
1ST SESSION

# H. R. 3959

To except quotations of fixed-income securities from certain regulatory requirements, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2025

Mr. DOWNING (for himself and Mr. FIELDS) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To except quotations of fixed-income securities from certain regulatory requirements, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Protecting Private Job Creators Act".

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) On September 16, 2020, the Securities and Exchange Commission adopted a final rule amending Rule 15c2–11 under the Securities Exchange

Act of 1934 (15 U.S.C. 78a et seq.) which addresses disclosures in the OTC markets and imposes requirements upon broker-dealers who publish quotations in such markets.

(2) Rule 15c2–11 was promulgated in 1971, and has generally been understood to apply to OTC equity markets since that time.

(3) The amendments to Rule 15c2–11 were based on the economic analysis of OTC equity markets.

(4) The fixed-income markets are different in structure and function than OTC equity markets.

(5) The fixed-income markets are critical to the ability of thousands of businesses' ability to raise capital.

(6) Rule 144A requires that issuers make their financial and operational information available to qualified institutional buyers upon request.

(7) Following No-Action Letters issued on September 24, 2021, and December 16, 2021, the Securities and Exchange Commission indicated that it would apply Rule 15c2–11 to fixed-income markets in a manner that made significant changes to long-standing regulatory requirements, without a rule-making process, without analysis of the costs and

benefits of the action, and without regard for the input of the public. According to a subsequent No-Action Letter, which was issued on November 30, 2022, the Securities and Exchange Commission will apply Rule 15c2–11 to fixed-income securities sold pursuant to Rule 144A after no-action relief expired on January 4, 2025.

(8) On October 30, 2023, the Securities and Exchange Commission exempted fixed-income securities sold pursuant to Rule 144A from Rule 15c2–11 compliance, finding doing so is "appropriate in the public interest, and consistent with the protection of investors".

(9) On November 22, 2024, the Securities and Exchange Commission granted exemptive relief from Rule 15c2–11 compliance to all fixed-incomes securities that meet certain criteria.

**SEC. 3. EXCEPTION RELATING TO QUOTATIONS OF FIXED-INCOME SECURITIES.**

(a) IN GENERAL.—Section 240.15c2–11 of title 17, Code of Federal Regulations, shall not apply with respect to quotations of fixed-income securities.

(b) FIXED-INCOME SECURITY DEFINED.—In this section, the term "fixed-income security" means—

(1) any note, bond, debenture, certificate of deposit for a security, certificate of deposit, asset-backed security, or any other evidence of indebtedness; and

(2) any security described under paragraph (1) that is convertible, with or without consideration, into any equity security or carrying any warrant or right to subscribe to or purchase any equity security.

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119TH CONGRESS
1ST SESSION

# H. R. 2478

To amend the Investment Company Act of 1940 to postpone the date of payment or satisfaction upon redemption of certain securities in the case of the financial exploitation of specified adults, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2025

Mrs. WAGNER (for herself, Mr. GOTTHEIMER, Mr. GARBARINO, Mr. STEIL, Mrs. KIM, Ms. PEREZ, and Mr. LAWLER) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To amend the Investment Company Act of 1940 to postpone the date of payment or satisfaction upon redemption of certain securities in the case of the financial exploitation of specified adults, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Financial Exploitation Prevention Act of 2025".

**SEC. 2. REDEMPTION OF CERTAIN SECURITIES POSTPONED.**

(a) IN GENERAL.—Section 22 of the Investment Company Act of 1940 (15 U.S.C. 80a–22) is amended by adding at the end the following:

"(h) REQUIREMENTS WITH RESPECT TO NON-INSTITUTIONAL DIRECT AT-FUND ACCOUNTS.—

"(1) ELECTION.—

"(A) IN GENERAL.—A registered open-end investment company and a transfer agent described under paragraph (2) may elect to comply with the requirements under paragraph (2) and subsection (i) by notifying the Commission of such election.

"(B) EFFECT OF ELECTION.—Paragraph (2) and subsection (i) shall only apply to a registered open-end investment company and a transfer agent that have made the election under subparagraph (A).

"(2) REQUIREMENTS.—In the case of a customer who is a holder of a non-institutional account held directly with a registered open-end investment company and serviced by a transfer agent (a 'direct-at-fund account'), the company and transfer agent shall—

"(A) request from such customer the name and contact information of at least one individual who—

"(i) is at the time of such request an adult; and

"(ii) may be contacted with respect to such account;

"(B) document and retain the information received pursuant to subparagraph (A); and

"(C) disclose to such customer in writing (including through electronic delivery) that such company or transfer agent may contact an individual specified pursuant to subparagraph (A) with respect to the account of such customer to—

"(i) address possible financial exploitation of such customer;

"(ii) confirm the contact information or health status of the customer; or

"(iii) identify any legal guardian, executor, trustee, or holder of a power of attorney of the customer.

"(i) REDEMPTION OF CERTAIN SECURITIES POSTPONED.—

"(1) IN GENERAL.—Notwithstanding subsection (e), a registered open-end investment company or a transfer agent acting on behalf of such company may postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to such company or its agent designated for that purpose for redemption if such company or agent reasonably believes that—

"(A) the redemption is requested by a security holder who is a specified adult; and

"(B) financial exploitation has occurred, is occurring, or has been attempted with respect to such redemption.

"(2) DURATION.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), a registered open-end investment company or a transfer agent acting on behalf of such company may postpone the date of payment or satisfaction upon redemption of a redeemable security under paragraph (1) for a period of not more than 15 business days.

"(B) EXTENSION UPON DETERMINATION OF EXPLOITATION.—The period described in

subparagraph (A) may be extended by an additional 10 business days if the registered open-end investment company or a transfer agent acting on behalf of such company—

"(i) reasonably believes that—

"(I) the redemption is requested by a security holder who is a specified adult; and

"(II) financial exploitation has occurred, is occurring, or has been attempted with respect to such redemption;

"(ii) subject to subparagraph (D), not later than 2 days after making a determination under clause (i), notifies the individuals specified by such security holder under subsection (h)(2)(A) in writing (including through electronic delivery) of the extension of the period described in subparagraph (A) under this subparagraph and the reason for such extension;

"(iii) initiates an internal review of the facts and circumstances relating to the determination under clause (i);

"(iv) holds amounts related to the delayed payment or satisfaction upon redemption of the redeemable security in a demand deposit account; and

"(v) documents and retains records related to carrying out clause (iv) and includes such records in the first required account statement of the security holder provided after the date on which the determination is made under clause (i).

"(C) EXTENSION BY GOVERNMENT.—A State regulator, administrative agency of competent jurisdiction, or court of competent jurisdiction may extend the period described in subparagraph (A).

"(D) NOTIFICATION.—

"(i) EXCEPTION.—Subparagraph (B)(ii) shall not apply if a registered open-end investment company or transfer agent acting on behalf of such company reasonably believes that an individual required to be notified under such subparagraph is, has been, or will subject the security holder who identified such individual under subsection (h)(2)(A) to financial exploitation.

"(ii) REASONABLE EFFORTS.—An open-end investment company or transfer agent acting on behalf of such company shall be considered in compliance with subparagraph (B)(ii) if such company or transfer agent makes a reasonable effort to contact the individuals specified by a security holder under subsection (h)(2)(A).

"(E) INTERNAL PROCEDURES.—An open-end investment company or transfer agent acting on behalf of such company shall establish procedures to carry out the requirements under this subsection, including procedures—

"(i) related to the identification and reporting of matters related to the financial exploitation of specified adults;

"(ii) to determine whether to release or reinvest delayed redemption proceeds, taking into account the facts and circumstances of each case, should the internal review under subparagraph (B)(iii) support the reasonable belief described in subparagraph (B)(i);

"(iii) identifying each employee of the company or transfer agent with authority

to establish, extend, or terminate a period described in paragraph (1) or subparagraph (A);

"(iv) in the case of a transfer agent, that are reasonably designed to ensure that the employees of such transfer agent comply with this subsection; and

"(v) in the case of an open-end investment company, establishing periodic reporting requirements under which a transfer agent acting on behalf of such company shall notify such company of—

"(I) each extension under subparagraph (B) authorized by such transfer agent;

"(II) each finding by the transfer agent under subparagraph (B)(i);

"(III) each notification under subparagraph (B)(ii) carried out by such transfer agent; and

"(IV) the results of each internal review initiated by the transfer agent under subparagraph (B)(iii).

"(F) INFORMATION INCLUDED IN CERTAIN STATEMENTS.—An open-end investment com-

pany shall include in each prospectus or statement of additional information a notification that the company or transfer agent acting on behalf of such company may postpone redemption of certain securities under this subsection.

"(G) RECORD RETENTION.—An open-end investment company or transfer agent acting on behalf of such company shall—

"(i) document and retain records of—

"(I) each postponement of redemption under subparagraph (A), (B), and (C);

"(II) each finding under subparagraph (B)(i);

"(III) the name and position of each employee described in subparagraph (E)(iii);

"(IV) each notification carried out under subparagraph (B)(ii); and

"(V) the results of each internal review initiated under subparagraph (B)(iii); and

"(ii) make such records available to the Commission at the request of the Commission.

"(3) SPECIFIED ADULT DEFINED.—In this subsection, the term 'specified adult' means—

"(A) an individual age 65 or older; or

"(B) an individual age 18 or older who a registered open-end investment company or a transfer agent acting on behalf of such company reasonably believes has a mental or physical impairment that renders the individual unable to protect the individual's own interests.".

(b) RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this section, the Securities and Exchange Commission, in consultation with the entities specified in paragraph (2), shall submit to Congress a report that includes recommendations regarding the regulatory and legislative changes necessary to address the financial exploitation of security holders who are specified adults (as defined in subsection (i)(3) of section 22 of the Investment Company Act of 1940 (15 U.S.C. 80a–22), as added by this section).

(2) CONSULTATION.—The entities specified in this paragraph are as follows:

(A) The Commodity Futures Trading Commission.

(B) The Director of the Bureau of Consumer Financial Protection.

(C) The Financial Industry Regulatory Authority.

(D) The North American Securities Administrators Association.

(E) The Board of Governors of the Federal Reserve System.

(F) The Comptroller of the Currency.

(G) The Federal Deposit Insurance Corporation.

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