



FINANCIAL
SERVICES
ROUNDTABLE

May 1, 2017

The Honorable Jeb Hensarling
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: FSR Perspective on H.R. 10, the Financial CHOICE Act

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the members of the Financial Services Roundtable¹ (FSR), we write to thank the House Financial Services Committee for its continued work to advance a more effective and resilient financial services sector that protects consumers and taxpayers, while also promoting economic growth. *H.R. 10, the Financial CHOICE Act*, is an important first step that will drive the process to improve the regulatory system and help promote economic growth. FSR supports the many provisions in this legislation that will help improve the regulatory system. We also look forward to working with the Committee and policymakers to refine aspects of this bill as it moves through Congress.

Below is a summary of FSR member views regarding some of the key provisions in the bill.

Price Controls

FSR members strongly support the repeal of the government-imposed price controls related to the Dodd-Frank Act's "Durbin Amendment," which caps interchange fees for debit card transactions. This price control amounts to a government-directed resource transfer from one private sector – banking – to another private sector – merchants. This distortion of the free market has had substantial downside effects on consumers. The Durbin Amendment resulted in no discernable effect on merchant prices, while certain banking products and services, such as free checking and debit rewards, have ended or been reduced as a result. To that end, FSR strongly opposes any amendment to strike the Durbin repeal language from the Choice Act.

¹ FSR is the leading advocacy organization for America's financial services industry. FSR is a CEO-driven organization with members that include the leading banking, insurance, asset management, finance and credit card companies across America. Given our breadth of membership, the majority of the Financial CHOICE Act impacts our companies, but we focus on key aspects that are particularly relevant to these members, the clients they serve, and the broader economy.

FINANCIAL SERVICES ROUNDTABLE

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Financial Stability Oversight Council Designation Authority

FSR supports H.R. 10's aim to de-designate non-bank SIFIs and remove FSOC's power to make such designations. FSOC's designation of nonbank financial companies has failed to reduce systemic risk while at the same time subjecting certain firms to duplicative and in some cases massive new regulatory burdens. Despite having several years to produce robust analysis, FSR believes that the FSOC has failed to show how insurers, asset managers, and other non-banks pose a material systemic risk or why they should be regulated under bank-centric regulatory standards.

The standards and procedures surrounding designation also have been subject to critical assessments by Congress, the GAO, and members of FSOC itself. These reports have found that FSOC has not consistently followed its own standards in making determinations and that the standards themselves either lack clarity or are completely subjective. One of the designated companies successfully challenged its designation in a federal district court, arguing that FSOC failed to consider how its designation decision would place them at a competitive disadvantage or be a possible instigator of increased systemic risk. Also, despite multiple calls for the Federal Reserve Board to develop its rules for non-bank designated companies in advance of any designations, several FSOC designations were completed without any clear knowledge of how such companies would be regulated to mitigate systemic risk or what companies could do to reduce their risk profile to avoid designation. Taken together, the non-bank designation process and resulting non-bank designations apply duplicative regulatory standards and sweep organizations into a regulatory framework that does not reflect their actual risks and impedes their ability to compete. The CHOICE Act recognizes this and fixes it.

Further, we appreciate your recognition of the need to have strong insurance expertise both on FSOC and in the federal government, including permitting the current Independent Member to remain as a voting member of FSOC until a successor is appointed and confirmed. We look forward to further defining the role or roles as the process continues.

Improving Enhanced Prudential Standards

FSR supports the CHOICE Act's improvement to the Dodd-Frank Act's Section 165 enhanced prudential standards. FSR believes a regulatory system should be tailored to reflect the unique business operations, risk and capital profile of diverse financial services providers and that targeted regulatory approaches should not be based on arbitrary thresholds, but rather on holistic measures of enterprise risk.

For institutions legitimately determined to be subject to enhanced regulation, our regulatory system should reflect appropriate reforms that simplify and bring greater transparency and predictability to stress testing requirements, the Comprehensive Capital Analysis Review (CCAR) process, and the review of annual resolution plans. By increasing clarity, we will better enable institutions to meet desired regulatory requirements by bolstering their own

risk management practices, further protecting the financial system and, most importantly, taxpayers. The CHOICE Act reflects this reality and takes steps to meet these objectives.

On resolution plans, or living wills, FSR supports The CHOICE Act's shift to biennial submissions and increased disclosure of the assessment framework regulators use to evaluate these plans. We also believe timely feedback from regulators, as outlined in the legislation, is important to successfully executing this process.

On stress testing and CCAR, FSR supports shift to one company-run stress test per year and the elimination of a mid-cycle stress test. We also believe the stress test process will be improved by the CHOICE Act's requirement that regulators release a public notice and take comments on the conditions and methodologies used in stress test scenarios. FSR also supports the CHOICE Act's elimination of the CCAR qualitative review for institutions of all sizes. FSR shares the aim of improving this process and supports the direction of the legislation.

Transparency & Administrative Actions

FSR supports the legislation's provisions requiring more transparency and accountability from federal regulatory agencies. Agencies understandably focus on their missions to faithfully execute laws passed by Congress, but transparency, balance and accountability could be improved if structural reforms were enacted.

Financial regulatory agencies would better serve the public interest with multi-member, bipartisan commission structures and more weight being placed on cost-benefit analysis for new rulemakings. These measures would facilitate important debate and improved regulation. In addition, FSR supports proposals subjecting each financial services regulator to annual Congressional appropriations to enhance oversight.

For example, we believe the Consumer Financial Protection Bureau should be a more effective and transparent advocate for consumers. The CHOICE Act improves the CFPB operations by curbing its unfettered powers and making it accountable to Congress through appropriations.

Fiduciary Standards of Customer Care

FSR unequivocally supports applying a best interest standard to all persons providing personalized investment advice and guidance to all retail investors, not just for advice related employee benefit plans, individual retirement accounts ("IRAs") and other entities treated as plans for purposes of the Code ("Retirement Investors"). For the sake of clarity and transparency, the regulation and oversight of investment advisers, broker-dealers and others engaged in providing personalized investment advice about securities to retail investors should be the primary responsibility of the Securities and Exchange Commission (the "SEC"). The SEC has the expertise, knowledge and authority to most effectively and efficiently coordinate the myriad of applicable laws and regulations pertaining to such investment

activities. State insurance authorities should take the lead on the regulation of annuities and insurance products, including life insurance companies and their agents or distributors.

Senior \$afe

FSR supports amending federal privacy laws to provide a safe channel to allow trained personnel at financial institutions to report suspected financial exploitation. Older Americans lose approximately \$3 billion each year to financial exploitation and financial institutions lose \$1 billion each year. Many financial institutions have put in place tools and programs designed to combat this problem. These include contact information forms for clients to sign before their circumstances may make them more susceptible to fraud and training programs to help their staff recognize financial misdeeds. Customer facing employees at financial institutions are often in the best position to identify suspected financial abuse. However, privacy laws limit their ability to report potential crimes. FSR supports the inclusion of language in the CHOICE Act to address these restrictions.

Small- and Medium-size Business Lending

FSR supports the CHOICE Act's effort to enhance the ability of Business Development Companies (BDCs) to help meet the capital needs of small and mid-sized businesses. BDCs are a specialized investment companies that focus on supporting the capital needs of small and mid-sized businesses. The legislation increases the allowable investment capacity of BDCs and the types of companies that qualify for BDC investments. These are important improvements that will help business across the country invest in products, people, and their future.

Volcker Rule

The original intent of the Volcker Rule was to limit threats to the safety and soundness of large bank holding companies resulting from excessive risk taking in certain trading and funds activities. The regulation implementing the Rule goes beyond this intent. It is overly broad and restricts client-oriented activities that do not pose a material risk to the safety and soundness of institutions subject to the Rule, nor the financial system.

H.R. 10 would fully repeal the Volcker rule. If that is not achieved, FSR urges reforms that refine its scope. Such changes should: (1) Better tailor the Rule; (2) Narrow the definition of a covered fund; (3) Clarify the definition of prohibited proprietary trading; (4) Simplify compliance; (5) Conform the Rule's territorial reach with traditional standards of national treatment; (6) Designate the Board as the lead agency responsible for writing and interpreting the Rule; (7) Not favor any particular business model or impact institutions without significant trading activities; and (8) Repeal the Rule's "naming prohibition."

Capital Leverage Ratio

FSR believes a more simple and appropriate regulatory system could improve the safety and soundness of the financial system. The Financial CHOICE Act provides an option to operate

within different regulatory regime if the bank meets a capital leverage ratio of 10 percent. While transparent and simple regulatory capital measures such as the leverage ratio are an appropriate way to gauge the safety and soundness of many U.S. banking organizations, the approach does not fit all banking business models. Congress and the regulatory community should continue to target regulatory reforms to tailor capital regulations to account for such unique financial institutions.

To meet the proposed capital threshold, many banks may need to make decisions that would adversely impact important functions and operations such as market making activities and custody banking services. An off-ramp from the current complex regulatory regime to a more simple, streamlined, and safer regime could be beneficial for financial institutions and, more importantly, the customers they serve. Yet, many institutions that make up substantial portions of the marketplace and offer a variety of products and services may be unlikely able to use this option.

The newly proposed legislation removes the CAMELS rating as another requirement and, importantly, changes the SLR formula from the rule's promulgation date, to date of the legislation's enactment. We see this as a positive step and we look forward to collaborating with you to refine aspects of this provision so a broader swath of the industry might participate in a simpler, safer regulatory regime.

The Financial Services Roundtable appreciates the Committee's leadership in pushing forward to improve our financial regulatory system to bolster jobs and the economy. Thank you for considering our views on this important legislation. We look forward to working with your Committee to advance key aspects of the proposal and refine areas that can help achieve the shared goal of a more effective regulatory regime for consumers, taxpayers, businesses, and economy overall.

Sincerely,

The Financial Services Roundtable