Financial CHOICE Act 2.0 Passes House Financial Services Committee

May 8, 2017

A revised version of the Financial CHOICE Act (commonly referred to as CHOICE Act 2.0) was passed by the House Financial Services Committee last week on a strictly partisan vote and will now move to a vote by the full House of Representatives. The HFSC majority has provided both an **Executive Summary** and a **Comprehensive Summary** of the bill on its website. Many of the concepts in CHOICE Act 2.0 are consistent with the Core Principles for Regulating the United States Financial System contained in the President's Executive Order of February 3, 2017 and could influence the work of the Treasury Secretary as he prepares to report to the President on the extent to which existing laws and regulations promote the Core Principles. Indeed, the Comprehensive Summary, with its highly developed arguments, copious explanations and resort to commentators from both sides of the aisle, seems expressly designed to influence the Treasury Secretary's ongoing work.

On the legislative front, the prospects of CHOICE Act 2.0 being approved in its current form by the Senate are slim, but Rep. Hensarling, Chairman of the House Financial Services Committee and the key sponsor of the bill, has indicated that he plans to work with the Senate to move portions of CHOICE Act 2.0 as narrower bills that might be more likely to gain Senate support. As a result, as the only developed bill in the mix, CHOICE Act 2.0 will likely continue to be the leading driver in the debates over how best to rebalance the financial regulatory landscape, and some portions of it may be reflected in Senate bills in the coming months.

The chart below summarizes the major provisions of CHOICE Act 2.0 by updating our **summary of the original CHOICE Act**.

Summary of Key CHOICE Act 2.0 Provisions

Readers' Guide

This chart indicates ***material changes*** from the original CHOICE Act and provides commentary or analysis about the provision or the changes. The types of changes described in the chart include ***new provisions*** and ***modifications to provisions from the original CHOICE Act*** (referred to as CHOICE 1.0 in the chart) as well as ***[deletions]*** to provisions that were included in the original CHOICE Act.

Title	Topic	Summary of CHOICE Act 2.0	Commentary and Analysis
Major Complete Repeals			
IX	Volcker Rule	▪ Complete repeal of the Volcker Rule statute.	This would mean that banking entities would again be permitted to engage in market-making, hedging, underwriting and similar activities, as well as sponsoring, investing in and having credit relationships with covered funds, without the strict limitations and compliance burdens of the Volcker Rule.
VII.C	Durbin Amendment	▪ Complete repeal of the Durbin Amendment to the Dodd-Frank Act, which imposed price controls for interchange fees on debit card transactions.	
VIII.B	DOL Fiduciary Duty Rule	▪ Complete repeal of the fiduciary duty rule issued by the DOL under the Employee Retirement Income Security Act of 1974 (ERISA). ▪ Prohibits the DOL from prescribing any regulation under ERISA defining the circumstances under which an individual is considered a fiduciary until after the SEC issues a final rule relating to standards of conduct for a broker, dealer or investment adviser to provide personalized investment advice about securities to a retail customer under Section 15(k) of the Securities Exchange Act of 1934. The SEC would need to provide a detailed report to Congress before issuing a rule. ▪ ***If the DOL issues a fiduciary duty rule after the SEC issues such a final rule, the DOL's rule must have a substantially identical definition of what constitutes fiduciary investment advice and impose substantially identical standards of care and conditions as the SEC has imposed on brokers, dealers and investment advisers.***	The DOL would retain authority to issue a fiduciary rule, but would be prohibited from doing so unless and until the SEC adopted a uniform fiduciary duty rule for investment advisers and broker-dealers pursuant to Section 913 of the Dodd-Frank Act. The SEC is authorized, but not obligated, to adopt a fiduciary rule. ***If the DOL decides to adopt a fiduciary rule if and after the SEC does so, the DOL's rule would need to be substantially identical to the SEC's rule.***

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I.A	Orderly Liquidation Authority	▪ Complete repeal, but would be replaced with a new Subchapter V to Chapter 11 of the Bankruptcy Code (also known as new Chapter 14).	An alternative to the complete repeal of the Orderly Liquidation Authority might be amendments that would make it a more rule-based statute with constraints imposed on the FDIC's discretion.
I.E	OFR	▪ Complete repeal.	
Dodd-Frank Prudential Regulation Off-Ramp			

VI	Regulatory Relief for QBOs	▪ A qualifying banking organization (QBO) would be eligible to opt into a lighter regulatory framework.
		▪ To be treated as a QBO, a banking organization must:
		  ▪ Maintain an average leverage ratio of 10% or more, based on the four most recent quarterly leverage ratios (additional detail below); and
		  ▪ Elect to be treated as a QBO.
		  ▪ ***[CHOICE 2.0 dropped the condition that the QBO's insured depository institution subsidiaries must have composite CAMELS ratings of 1 or 2.]***
		▪ The definition of leverage exposure for purposes of the leverage ratios relevant to qualification as a QBO would vary depending on the complexity of the banking organization.
		  ▪ All but the simplest banking organizations would use a modified supplementary leverage ratio (mSLR), equal to the ratio of tangible equity to Basel III total leverage exposure (as defined under the applicable capital rules for the SLR).
		  ▪ Tangible equity is defined as the sum of CET1 capital (as defined under the applicable capital rules), AT1 capital (as defined under the applicable capital rules) consisting of instruments issued on or before CHOICE 2.0's enactment, and for certain smaller holding companies their grandfathered trust preferred securities.
		  ▪ Certain simple banking organizations, i.e., insured credit unions and banking organizations with no trading activities and no
			The QBO standard poses a high bar, and its practical utility is uncertain. ***Dropping the CAMELS rating condition in CHOICE 2.0 would eliminate a major source of uncertainty and unpredictability that would have existed in CHOICE 1.0 because of the discretionary and non-transparent nature of the CAMELS rating process.*** Even so, to meet the 10% mSLR criterion based on their current activities, large banking organizations, including the U.S. G-SIBs and most regional banking organizations, would need significantly more capital. Moreover, it is unclear whether AT1 capital issued after the date of enactment of CHOICE 2.0 would continue to count as tangible equity or whether the limitation only applies to types of instruments issued prior to that date.
			
			Smaller banking organizations able to meet the QBO criteria would mostly receive relief from requirements that either do not apply to them or have no impact on them as a practical matter (e.g., EPS, living wills and concentration limits on M&A transactions).
			
			A U.S. IHC of a foreign banking organization would meet the

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		swaps activities (except for *de minimis* interest rate and FX swaps)—would use an alternative leverage ratio based on the same definition of tangible equity but a definition of leverage exposure consisting of total assets (minus CET1 capital deductions) as reported on applicable regulatory filings or, for credit unions, as defined under applicable regulations. ▪ QBOs would be exempt from: ▪ All capital requirements, other than the 10% leverage ratio described above; ▪ All liquidity requirements, including the LCR and net stable funding ratio (NSFR); ▪ All federal laws or regulations permitting a federal banking agency to object to a capital distribution (including CCAR); ▪ ***Stress testing***; ▪ Living wills; ▪ Enhanced prudential standards (EPS) relating to contingent capital, concentration limits (including single counterparty credit limits), short-term debt limits, risk committee, and debt-to-equity leverage limits; ▪ Any consideration by regulators of the financial stability factor with respect to their general examination authority, review of M&A applications (provided that a quarterly leverage ratio of at least 10% is satisfied after closing) and notices to engage in non-banking activities; ▪ Prohibition on approval of M&A transactions resulting in >10% deposit concentration limit; and ▪ Prior approval requirements for any financial holding company to acquire any company with total assets > $10 billion and for any BHC with total assets ≥ $50 billion to acquire any company other than an IDI. ▪ QBOs would be deemed to be "well-capitalized" for purposes of the prompt corrective action, brokered deposit, interstate merger and financial subsidiary provisions of the Federal Deposit Insurance Act.	definition of a "banking organization" for purposes of QBO eligibility. ***CHOICE 2.0 drops CHOICE 1.0's partial relief from stress testing for QBOs in favor of a complete exemption from any stress testing requirement.***

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		▪ QBOs would still be subject to EPS requiring public disclosures on risk and the inclusion of off-balance sheet activities in computing leverage exposures. ▪ All other BHCs with $50 billion or more in total assets would continue to be subject to the existing Dodd-Frank EPS and living will requirements.	
		Restructuring of the CFPB	
VII.A VII.B VII.C	Consumer Financial Protection	<u>Structure</u>: ▪ ***The CFPB would be renamed the Consumer Law Enforcement Agency (CLEA) instead of the Consumer Financial Opportunity Commission as in CHOICE 1.0.*** ▪ ***The agency would continue to be headed by a single Director, but it would be converted into an executive agency outside the Federal Reserve System, instead of being an independent agency within the Federal Reserve System governed by a multi-member, bipartisan commission as in CHOICE 1.0.*** ▪ ***CHOICE 2.0 would accomplish this conversion by preserving the single Director governance system, removing the agency from the Federal Reserve System and deleting the provision under which the Director is removable by the President for inefficiency, neglect of duty or malfeasance in office would be deleted.*** ▪ ***The Deputy Director would be appointed by the President (instead of by the Director).*** ▪ Funding would become subject to Congressional appropriations process. ▪ Would establish an independent inspector general. <u>Authority</u>: ▪ A dual mandate would be imposed on the agency to strengthen participation and increase competition in markets, in addition to consumer protection. ▪ ***Would eliminate all of the agency's***	***CHOICE 2.0 would significantly change the agency's governance structure and strip it of many of its most controversial powers. CHOICE 2.0 would convert the CFPB into an executive agency and reconceptualize it as a law enforcement agency more akin to the FTC. Its supervisory powers would be eliminated or transferred to other regulators, it would lose its power to regulate UDAAP (which is converted back into UDAP and transferred to the prudential regulators) and its enforcement powers would be limited to non-depository institutions. Like CHOICE 1.0, however, CHOICE 2.0 would retain most of the provisions of the Consumer Financial Protection Act, including the agency's rulemaking powers over enumerated consumer financial protection statutes.*** ***CHOICE 2.0 would convert the CFPB into an executive agency instead of preserving it as an independent agency and converting its governance structure into a multi-member bipartisan commission. The new bill would do so by keeping the single Director goverance structure and deleting the provision that authorized the***

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		supervisory and examination authority – i.e., with respect to depository institutions, non-depository covered persons and their service providers. No inclusion of agency staff in exams by prudential regulators. ▪ ***Would eliminate the agency's enforcement authority with respect to insured depository institutions and insured credit unions of any size; prudential regulators would have exclusive enforcement authority for these institutions.*** ▪ ***The agency would retain enforcement authority with respect to non-depository covered persons and their service providers.*** ▪ ***Would eliminate the agency's rulemaking and enforcement authority with respect to "unfair, deceptive, or abusive acts or practices" (UDAAP).*** ▪ ***Would eliminate the prohibition on engaging in UDAAP.*** ▪ ***Would require the FDIC, OCC, Federal Reserve and NCUA to regulate and enforce against "unfair or deceptive acts or practices" (UDAP), but not "abusive" acts or practices, with respect to depository institutions. These agencies also would generally be required to issue a substantially similar UDAP rule whenever the FTC does. Each agency must report annually to Congress on its UDAP enforcement activities.*** ▪ Would require each of those agencies to consider the impact of a potential rule on the financial safety or soundness of insured depository institutions. ▪ Would repeal the agency's 2013 indirect auto financing guidance. Would require public notice and comment, a study and consultation with the Federal Reserve, DOJ and FTC for any issuance of indirect auto financing guidance. ▪ ***Would eliminate the agency's rulemaking and enforcement authority with respect to payday, vehicle title and similar small-dollar loans.*** ▪ ***Would prohibit the publication of consumer complaint information while retaining the requirement to share such information with***	***President to remove the Director, presumably making the Director removable by the President at will. The Deputy Director would also presumably be removable by the President at will.*** ***The purpose of this new structure is to bring the agency more into line with the unitary executive theory of our three-branch system of government, making the CFPB more accountable to the President. This new structure would also be consistent with the decision in PHH v. CFPB.*** ***Although CHOICE 2.0 still describes the agency as an "independent agency" in the initial paragraph of its enabling statute and did not delete the agency from the list of independent agencies in the Paperwork Reduction Act, we believe these references were inadvertent drafting oversights since the House Financial Services Committee's Executive Summary of CHOICE 2.0 describes the restructured agency "as an Executive Branch agency with a single director removable by the President at will." In addition, CHOICE 2.0 would make the agency's cost-benefit analysis of its rulemaking reviewable by OIRA just like that of any other executive agency.*** ***The original provision described the CFPB as being an "independent bureau" that was "established in the Federal Reserve System." In dropping the reference to the Federal Reserve System, CHOICE 2.0 simply changed***

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		other federal and state agencies. - ***Would eliminate the function of the agency to collect, research, monitor and publish information relevant to the functioning of markets for consumer financial products and services.*** - The agency's authority to obtain information from regulated entities would be greatly narrowed, e.g., by restricting access to exam reports and requiring consumer consent for access to nonpublic personal information. Oversight/Challenges: - New rulemakings would be subject to cost-benefit analysis and additional review by the Office of Economic Analysis (OEA), newly established within the agency, for impact on consumer price, choice and access. Public reports would be required for analyses related to rulemakings. ***CHOICE 2.0 would extend OEA's cost-benefit analysis mandate to any proposed administrative enforcement action, civil lawsuit or consent order, and the Director would be required to consider the analysis before initiating any such action.*** - ***Would repeal the Dodd-Frank provision requiring courts to defer to the agency's interpretation of federal consumer financial law regardless of whether another agency is also authorized to interpret the same statute.*** - ***The Office of Information and Regulatory Affairs (OIRA) would have the same cost-benefit analysis and other duties and authorities over the agency as it has over any other agency that is not an independent regulatory agency (i.e., over any executive agency).*** - Would require the OEA to conduct a retrospective review of each rule's effectiveness after 1, 2, ***6 [instead of 5]*** and ***11 [instead of 10]*** years, with public reports required. - Would permit a respondent to compel the ***agency*** to bring a civil action in court instead of an administrative proceeding. - Would permit a respondent who receives a civil investigative demand to petition in federal court for an order modifying or setting aside the	***"bureau" to "agency" instead of also changing "independent" to "executive."*** ***CHOICE 2.0 also goes further than CHOICE 1.0 in limiting the agency's regulatory and supervisory powers. Among other things, CHOICE 2.0 would eliminate the agency's supervisory and examination authority, whereas CHOICE 1.0 would have retained the agency's supervisory and examination powers while reducing the scope of its supervisory power.*** ***CHOICE 2.0 would also eliminate the agency's enforcement power with respect to all depository institutions, shifting this authority to the prudential regulators, whereas CHOICE 1.0 would have retained the agency's enforcement authority with respect to larger depository institutions.*** ***Perhaps most importantly, CHOICE 2.0 would strip the agency of its power to regulate UDAAP, instead of merely excluding the "abusive" acts or practices component of UDAAP from the agency's scope of authority, as under CHOICE 1.0.*** ***CHOICE 2.0 would, however, require the FDIC, Federal Reserve, OCC and NCUA to regulate UDAP (but not "abusive" acts or practices) with respect to depository institutions.*** ***CHOICE 2.0's requirement of a cost-benefit analysis by the agency for any proposed administrative enforcement action, civil lawsuit or consent order would***

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		demand. ▪ Would require the ***Director [instead of the chair of a commission]*** to issue advisory opinions upon request, which would be made public.	***introduce a new component to the federal financial enforcement regime.*** ***CHOICE 2.0 would also eliminate the agency's public consumer complaints database, although such information would still have to be shared with other agencies, and would remove the agency's rulemaking and enforcement authority regarding payday and other small-dollar loans.***
VII.C	Arbitration	▪ Would repeal the CFPB's authority to restrict arbitration.	In 2016, the CFPB proposed a rule that would limit mandatory arbitration clauses.
		Repeals of Executive Compensation Provisions	
VIII.B	Executive Compensation	▪ Would repeal requirement that publicly traded companies disclose the ratio of median employee vs. CEO pay. ▪ Would repeal the requirement that publicly traded companies disclose whether their employees and directors can hedge their company equity securities. ▪ Would amend the requirement that publicly traded companies have a "say on pay" vote as frequently as annually, such that it would occur only when the company has made a material change to its executive compensation; therefore it would also eliminate the "say when on pay" vote. ▪ Would limit clawbacks of compensation to those current or former executive officers of a publicly traded company who had control or authority over the company's financial reporting that resulted in the accounting restatement. ▪ Would repeal interagency rulemaking requirement to prohibit incentive compensation of covered financial institutions from being excessive or from leading to material financial loss to the institution; current proposed rule would require mandatory deferrals and clawback for sizable populations at institutions with more than $50 billion in assets. Would retain interagency guidance that compensation must be	Would repeal and modify many key Dodd-Frank Act executive compensation measures. Nevertheless, we expect public companies would remain under pressure from investors in designing compensation programs that are tied to pay for performance. Financial institutions would continue to be subject to "safety and soundness" review, which has resulted in many financial institutions adopting, in connection with such reviews, deferrals and metrics that are intended to minimize the risk of driving short-term goals, without regard for long-term risks. Proxy advisory firms and many institutional investors will still pressure public companies to disclose hedging policies and to prohibit hedging by directors and executive officers. Proxy advisory firms and many institutional investors will likely pressure public companies to have annual "say on pay" votes,

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		consistent with safety and soundness standards.	due to corporate governance concerns. Failure to have annual votes could make directors subject to "no" or "withhold" votes for pay practices not favored by investors.
Federal Reserve Monetary Policy and Regulatory Authorities			
I.E	Federal Reserve Supervision of Nonbank Financial Companies	▪ Would repeal the Federal Reserve's authority to supervise and issue regulations for U.S. and foreign nonbank financial companies, including registration, reports and examinations, enforcement authority, authority to require the formation of nonbank financial company intermediate holding companies, and exemptive authority.	These provisions complement the repeal of the FSOC's authority to designate U.S. and foreign nonbank financial companies as nonbank SIFIs regulated by the Federal Reserve. See "FSOC Authority and Other Regulatory Authority over Nonbank SIFIs," below.
I.E	Federal Reserve Supervision of BHCs	▪ Would repeal the Federal Reserve's authority, on a determination of a threat to U.S. financial stability and a favorable vote by FSOC members, to limit the ability of a Large BHC (that is, a BHC with ≥ $50 billion of total assets) to enter into M&A transactions or offer financial products, require a Large BHC to terminate or impose conditions on activities, or require a Large BHC to sell or transfer assets to third parties. ▪ Would repeal prohibition against the Federal Reserve's use of its authority to permit management interlocks between Large BHCs and nonbank SIFIs. ▪ Would repeal the Federal Reserve's authority to prescribe early remediation requirements for Large BHCs and nonbank SIFIs. ▪ Would repeal the Federal Reserve's authority to issue regulations pursuant to Subtitle C of Title I of Dodd-Frank Act, which would include the authority to issue regulations under sections that are not repealed, such as Sections 165 (enhanced prudential standards (EPS)) and 171 (Collins Amendment) except to the extent those provisions themselves authorize the Federal Reserve, on its own or with other agencies, to issue implementing regulations. ▪ Would repeal the Federal Reserve's authority, pursuant to a recommendation by FSOC, to increase the $50 billion asset threshold for the	Some of these provisions complement the repeal of the FSOC's authority to make recommendations for new and stricter prudential standards for both nonbank SIFIs and large BHCs. The repeal of the Federal Reserve's authority to issue regulations pursuant to all of Subtitle C of Title I seems to be overbroad, as it would include provisions that are not repealed by CHOICE 2.0. Would not increase the $50 billion threshold for D-SIB designation and would retain the EPS (including concentration limits) for banking organizations that do not qualify as QBOs under Title VI, but grants the Federal Reserve the authority to tailor EPS based on risk-related factors. QBOs are exempted from most EPS under Title VI of CHOICE 2.0. See "Regulatory Relief for QBOs" above. Would retain the Collins Amendment and its capital floor requirements, which: (1)

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		application of EPS. ▪ Would permit the Federal Reserve, in prescribing EPS, to differentiate among companies on an individual basis or by category, taking into consideration their corporate structure, riskiness, complexity, financial activities, size and other risk-related factors. ▪ Would amend the provisions of the BHC Act relating to concentration limits to exclude their applicability to nonbank SIFIs, but would otherwise leave them intact with respect to their applicability to banking organizations. ▪ Would exempt entities that are QBOs from consideration of the financial stability factor in connection with certain nonbanking acquisitions and would also exempt proposed acquisitions by QBOs from Section 165 of Dodd-Frank.	prevent the federal banking agencies from reducing risk-based capital and leverage requirements below the levels in effect at the time the Dodd-Frank Act was enacted; and (2) as implemented by the federal banking agencies, require certain large and complex banking organizations to comply with the greater of risk-based capital and leverage requirements calculated using both advanced approaches and the standardized approach. The exemption of QBO acquisitions of certain nonbanking companies from consideration of the financial stability factor under Section 163 of the Dodd-Frank Act is consistent with Title VI's exemption of QBOs from Section 163. The exemption of QBO acquisitions from Section 165 of the Dodd-Frank Act seems to be intended to complement the exemption of QBOs from most of the EPS under Section 165. The reference to any "proposed acquisition" may be intended to exempt QBO acquisitions from any consideration of whether the QBO in question complies with any of the EPS from which it is exempt. See "Regulatory Relief for QBOs" above. Would retain the prior notice requirement for entities other than QBOs for acquisitions by large BHCs of companies engaged in Section 4(k) financial activities with assets of $10 billion or more. Would not include Glass-Steagall-like separations between commercial and investment banking.

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I.E	Federal Reserve's Stress Testing and CCAR Requirements	***Dodd-Frank Act Stress Testing (DFAST)*** ▪ Would require the Federal Reserve to issue regulations, after public notice and comment, relating to at least three different conditions for evaluating stress testing efforts (including baseline, adverse and severely adverse) and methodologies, including loss estimation models, ***and to wait at least 60 days after the issuance of these regulations before conducting stress testing.*** ▪ ***Would require the Federal Reserve, in establishing the severely adverse condition under which DFAST is to be conducted, to provide detailed consideration of the model's effects on financial stability and the cost and availability of credit.*** ▪ ***Would require the Federal Reserve, in developing models and methodologies for DFAST, to publish a process to test the models and methodologies for their potential to magnify systemic and institutional risks instead of facilitating increased resiliency.*** ▪ ***Would require the Federal Reserve to design and publish a process to test and document the sensitivity and uncertainty associated with the DFAST model system's data quality, specifications and assumptions.*** ▪ ***Would require the Federal Reserve to communicate the range and sources of uncertainty arising from DFAST models and methodologies.*** ▪ ***Would require a Large BHC to conduct a company-run stress test once, not twice, annually.*** ▪ ***Would require a BHC, but not other types of financial companies, with more than $10 billion in total assets to conduct annual company-run stress tests.*** ***Comprehensive Capital Analysis and Review (CCAR)*** ▪ ***Would apply the DFAST stress testing requirements described above for test parameters and consequences to CCAR.*** ▪ ***Would prohibit the Federal Reserve from subjecting a company to CCAR more than***	***CHOICE 1.0 included a more limited requirement for stress testing rulemaking subject to notice and comment. The use of notice-and-comment rulemaking to establish stress testing scenarios and models would, in addition to making the process more transparent:*** ▪ ***Permit BHCs, as well as academics, activists and other interested parties who might argue for assumptions that are more or less severely adverse than those proposed by the Federal Reserve, to provide feedback on proposed scenarios and models; and*** ▪ ***Subject the process of scenario development to new avenues of legal potential legal challenge (e.g., whether adequate notice was provided if the final rule differs significantly from the proposed rule, whether all significant comments were considered, etc.).*** ***Many of the DFAST, CCAR and company-run stress testing provisions implement recommendations made by the GAO in its November 2016 report on CCAR and DFAST, as well as comments, recommendations and feedback from BHCs and trade organizations over the years. CHOICE 2.0 effectively confirms a statutory basis for CCAR, which had not been explicitly identified in Section 165 of the Dodd-Frank Act as being part of the DFAST stress testing framework. The elimination of a***

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		once every two years, but would permit a company to voluntarily submit a new capital plan through an off-cycle submission—to cure an objection or voluntarily amend its plan. ▪ ***Would prohibit the Federal Reserve from objecting to a company's capital plan under CCAR on the basis of qualitative deficiencies in the company's capital planning process.*** ▪ ***Would prohibit the Federal Reserve, in making a quantitative assessment of a company's capital plan under CCAR, from taking into account the company's DFAST stress tests.*** ▪ ***Would require the Federal Reserve to establish and publish procedures, including time frames, for responding to inquiries from companies subject to CCAR, and make such procedures publicly available.***	***qualitative CCAR assessment mirrors a change the Federal Reserve has made to CCAR for "large and noncomplex firms" (i.e., BHCs with < $250 billion total assets, < $10 billion on-balance sheet foreign exposures, < $75 billion nonbank assets. Missing from CHOICE 2.0's DFAST and CCAR provisions are any explicit limitations on the imposition of new post-stress quantitative requirements such as the G-SIB surcharge or the use of other capital buffers. Presumably these would be covered by the required public notice and comment process.***
I.E	***Operational Risk Capital Requirements for Banking Organizations***	▪ ***Would prohibit any federal banking agency from establishing any operation risk capital requirements applicable to banking organizations unless the requirements are based on a banking organization's current activities and businesses, appropriately risk-sensitive and are determined under forward-looking assessment of potential losses that cannot be "solely based on a banking organization's historical losses." Would also require federal banking agencies to permit adjustments to operational risk capital requirements based on operational risk mitigants.***	***Responds to industry concerns that banking organizations should not be required to include in risk-weighted assets amounts attributable to operational risks for product lines or businesses they have exited.*** ***This change would only affect advanced approaches banking organizations because there is no requirement under the U.S. capital rules' standardized approach to calculate RWAs for operational risk.***
I.E	Hotel California Provision	▪ Would repeal the Hotel California provision, pursuant to which large BHCs that received TARP funds would be automatically regulated as nonbank SIFIs upon ceasing to be BHCs.	
I.E	Special FDIC Examination and Enforcement Powers	▪ Would repeal the FDIC's examination and enforcement powers for nonbank SIFIs and large BHCs for purposes of implementing its OLA authority under Title II of the Dodd-Frank Act.	This provision is consistent with CHOICE 2.0's repeal of Title II.

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X	Taylor Rules	▪ Would require the FOMC to establish so-called Taylor Rules that would set the FOMC's target interest rates as a function of changes in inflation, output, monetary aggregates or other economic conditions to achieve its dual mandate of stable prices and maximum employment. ▪ After each FOMC meeting, the FOMC would be required to disclose its then-current Taylor Rule (called a Directive Policy Rule) to the House Financial Services Committee, the Senate Banking Committee and the Comptroller General. ▪ Each such Taylor Rule would be required to: ▪ Identify the interest rate it is trying to target; ▪ Describe the strategy or rule for changing that interest rate in response to changes in inflation, output, monetary aggregates or other specified macroeconomic conditions; ▪ Include a function that models the interactive relationship between the specified macroeconomic conditions; ▪ Include the coefficients that generate the current interest rate targets when multiplied by the difference between current and target variables, and a range of predicted future values in response to changes in the macroeconomic conditions; ▪ Describe the procedure for adjusting the supply of bank reserves to achieve the relevant interest rate target; ▪ Include a statement as to whether the rule substantially conforms to a baseline Taylor Rule called the Reference Policy Rule and a justification for any material departure; ▪ Include a certification that the rule is expected to achieve stable prices and full employment over the long term; ▪ Include a calculation of the expected annual inflation rate over a 5-year period; and ▪ Include a plan to use the most accurate data. ▪ The Reference Policy Rule would be a calculation of the federal funds rate equal to the sum of: ▪ The rate of inflation over the previous 4 quarters;	The purpose of this provision is to substitute a rule-based approach for determining and implementing interest rate policies that is more transparent and predictable than the more discretionary current approach. The provision would apply to the federal funds rate, the discount rate and the rate on reserve requirements. The new process would be based on a formula associated with Stanford economist John Taylor. Such Taylor Rules multiply the differences between current and target inflation, output and other measures by chosen weights, with the weights corresponding to sensitivity of monetary policy to the relevant measure. The Reference Policy Rule would be a standardized Taylor Rule with set parameters and inputs.

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		▪ One-half of the difference between the real GDP and an estimate of potential GDP; ▪ One-half of the difference between the rate of inflation over the previous 4 quarters and 2%; and ▪ An assumed real interest rate of 2%. ▪ The Comptroller General would be required to compare each Directive Policy Rule submitted after an FOMC meeting to the most recent previous Directive Policy Rule submitted to it. ▪ If the Directive Policy Rule has changed materially, the Comptroller General would be required to submit a report to the House Financial Services Committee and the Senate Banking Committee as to whether the most recent Directive Policy Rule is in compliance with applicable requirements. ▪ If the Comptroller General decides that a Directive Policy Rule is not in compliance with applicable requirements, the Federal Reserve Chairman would be required to testify to each committee as to why it is not in compliance.	
X	FOMC Transparency	▪ All FOMC meetings would be recorded and a full transcript of those meetings made available to the public.	While FOMC transcripts are currently released after a 5-year time lag, it happens as a matter of Federal Reserve custom, not law. The proposal does not state a time period.
X	Annual Audit of the Federal Reserve	▪ The Comptroller General would audit the Federal Reserve Board and the Federal Reserve Banks annually and submit a report of its findings to Congress. ▪ Includes an annual audit of all elements of monetary policy deliberations, discussions, decisions and actions taken by the Federal Reserve. ▪ The Comptroller General may also make recommendations for legislative or administrative action.	Subjects the Federal Reserve Board to an annual audit, substantially similar to the Federal Reserve Transparency Act of 2015, H.R. 24, and other prior Republican proposals.
X	Centennial Monetary Commission	▪ Would describe the Federal Reserve's original 1913 mandate as consisting of: ▪ A monetary mandate to provide an elastic currency, within the context of the gold	Modeled on the National Monetary Commission, which Congress established after the 1907 financial panic and resulted in the formation of the

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		standard, in response to seasonal fluctuations in the demand for currency; and ▪ A financial stability mandate to serve as the lender of last resort to solvent but illiquid banks during a financial crisis. ▪ Would state that in 1977 Congress changed the Federal Reserve's monetary mandate to a dual mandate for maximum employment and stable prices. ▪ Would indicate that the Federal Reserve's dual mandate for monetary policy should be reexamined in light of the 2008 global financial crisis and its aftermath. ▪ Would therefore establish a one-year, bipartisan Centennial Monetary Commission to prepare a report for Congress on: ▪ How U.S. monetary policy has affected U.S. output, employment, prices and financial stability since the Federal Reserve was created in 1913; ▪ The use of various processes for conducting monetary policy; ▪ The use of macro-prudential supervision and regulation as a tool of monetary policy; ▪ The use of lender-of-last resort powers as a tool of monetary policy; ▪ A recommended course of action for future U.S. monetary policy; and ▪ The effects of the Federal Reserve's dual mandate to promote price stability and full employment.	Federal Reserve in 1913. Creates a Commission charged with examining the role of the Federal Reserve as a central bank.
Emergency Powers in a Financial Crisis			
I.C	FDIC Emergency Authorities	▪ Would eliminate the FDIC's authority to establish a widely available guarantee program during times of severe economic distress. ▪ Would repeal the systemic risk exemption to the least-cost test and the prohibition on the use of the Deposit Insurance Fund to cover uninsured deposits or non-deposit obligations, thereby repealing the FDIC's authority to provide assistance to an insured depository institution in receivership in order to avoid or mitigate systemic risks.	This means that the FDIC would not have the authority during a financial crisis to establish a program like the Temporary Liquidity Guarantee Program it established during the 2008 financial crisis without express Congressional approval.

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X	Federal Reserve Powers under Section 13(3) of the Federal Reserve Act	▪ Would further limit the circumstances under which this emergency lending authority could be invoked to circumstances that would "pose a threat to the financial stability of the United States" in addition to those that are "unusual and exigent."
		▪ Would further condition the ability to invoke this authority on the affirmative vote of nine Federal Reserve Bank Presidents, in addition to the affirmative vote of five members of the Federal Reserve Board.
		▪ Would require:
		  ▪ All borrowers to be certified as "not insolvent" as a condition of eligibility;
		  ▪ All loans to be made at a "penalty rate" equal to at least the sum of the discount rate plus the spread for distressed corporate debt; and
		  ▪ Collateral to satisfy certain valuation haircut conditions and to exclude any equity securities issued by the borrower.
			The proposed changes to Section 13(3) would further limit the Federal Reserve's emergency lending powers under Section 13(3) of the Federal Reserve Act. Among other things, they would hardwire Bagehot's conditions for central bank lender-of-last-resort facilities into a statute.

I.C	U.S. Treasury's Exchange Stabilization Fund	▪ Would bar the use of the Exchange Stabilization Fund to establish a guarantee program for a nongovernmental entity, such as a money market fund.	
Resolution of Financial Institutions			
I.A I.E	Living Wills	<u>Section 165(d) Living Wills</u>: ▪ Would prevent a BHC from being required to submit a Section 165(d) living will more than once every two years. ▪ Would require the Federal Reserve to provide feedback on Section 165(d) living wills within six months of submission. ▪ Would require the Federal Reserve to publicly disclose the assessment framework used to review Section 165(d) living wills and provide a notice-and-comment period before finalizing such assessment framework. ▪ ***Would remove the FDIC from the Section 165(d) living wills requirement.*** ***<u>For IDI Living Wills</u>:*** ▪ ***Would require any banking agency, including***	We believe the living will requirement will be maintained but that these proposals would make the process less burdensome and substantially more transparent. ***Exclusive authority with respect to Section 165(d) living wills would be vested in the Federal Reserve.*** ***The FDIC's removal from the Section 165(d) provisions is linked to the proposed elimination of the Orderly Liquidation Authority (OLA) in Title II of the Dodd-Frank Act, which provides for the FDIC to act as receiver of any financial company if certain***

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		the FDIC, that requires banking organizations to submit resolution plans other than those required under Section 165(d), including insured depository institution (IDIs) living wills, to: (1) disclose and seek comment on their assessment frameworks, (2) review and provide feedback on submitted plans within 6 months, and (3) comply with notice requirements concerning deficiencies. ▪ ***Would prohibit banking agencies from requiring the submission of such resolution plans more often than every two years.*** ▪ ***Would provide that any such resolution plan will have no limiting effect on a bankruptcy court or any authority authorized or required to resolve the bank, nor will it form the basis for any private right of action.***	***conditions are satisfied, including that the resolution of that company under the Bankruptcy Code would have serious adverse effects on U.S. financial stability and the use of OLA would avoid or mitigate those effects.*** ***These provisions would extend many of the changes proposed by CHOICE 1.0 for Section 165(d) living wills to the FDIC's solo IDI resolution plan requirements.*** ***A better alternative would be to eliminate the duplicative IDI solo rule, especially in light of the very limited feedback filers have received from the FDIC over the years***.
I.A I.B	New Subchapter V of Chapter 11 of the Bankruptcy Code (also known as New Chapter 14)	▪ Would add a new Subchapter V to Chapter 11 of the Bankruptcy Code, also known as new Chapter 14, to facilitate single-point-of-entry reorganizations for large financial companies. Would be a replacement for the Orderly Liquidation Authority in Title II of the Dodd-Frank Act, which would be repealed. ▪ Includes provisions that would facilitate the speedy transfer of assets to a bridge financial holding company, override cross-default provisions in subsidiary QFCs if certain conditions are satisfied and provide a safe harbor from avoidance actions for transfers of assets to recapitalize those subsidiaries.	This proposal and the pending Senate bill, S. 1840, which would add a new Chapter 14 to the Bankruptcy Code, are substantially similar to the Financial Institution Bankruptcy Act, H.R. 2947, as passed by the House in April 2016. Its provisions would reinforce the effect of the ISDA Protocol on cross-defaults and the secured support agreements and other measures that have been put in place or are being considered in the Title I resolution planning process.
Capital Formation			
VIII.B IV.B IV.E IV.F IV.G IV.K	Securities Offerings and Related Matters	▪ Would direct the SEC to revise the definition of "general solicitation" in Reg D so that it does not cover advertisements for meetings with issuers sponsored by angel investor groups, venture forums, venture capital associations and certain other entities (as long as the advertisement does not reference a specific securities offering), or apply to the meetings themselves, as long as only specified information about the issuers' securities offerings is presented at the meetings.	These provisions would make various adjustments to ease particular burdens in connection with securities offerings, prevent the SEC from imposing certain new burdens that it has proposed and expand the availability of existing exemptions from securities registration requirements.

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IV.N IV.S IV.T IV.U IV.V		▪ Would forbid the SEC from requiring the filing of general solicitation materials in a Reg D offering. Would forbid the SEC from applying the sales literature rules that apply to mutual funds to private funds. Would require the SEC to add "knowledgeable employees" of private funds to the list of accredited investors who may invest in their funds. ▪ Would repeal the Dodd-Frank mandate that may have caused the SEC to increase the dollar thresholds for accredited investor status every four years. Would create a new statutory definition of "accredited investor" that would freeze the income test at $200,000 (or $300,000 including spousal income), but would inflation-adjust the net worth test (currently $1 million, excluding primary residence) every five years. ▪ Private companies issuing equity to their employees would be able to issue up to ***$20 million (increased from $10 million in CHOICE 1.0)*** per year (compared to $5 million under current law) before more comprehensive disclosure, including financial statements, must be provided to the recipients. ▪ Would direct the SEC to establish a safe harbor for research reports on ETFs issued by broker-dealers similar to the Rule 139 safe harbor for operating companies. ▪ Would expand Form S-3 eligibility to include any registrant with listed equity securities, even those that do not meet the $75 million minimum float requirement. ▪ Would extend state Blue Sky preemption to any security that is listed on any national securities exchange, or tier or segment thereof, or to any senior security of such a listed security as opposed to granting Blue Sky preemption only to securities (and securities senior thereto) listed on NYSE, NYSE Amex and Nasdaq and any other national securities exchange whose listing standards are deemed by the SEC to be substantially similar to NYSE, NYSE Amex and Nasdaq. ▪ ***Would liberalize the Securities Act exemption contained in Section 4(a)(7) (the exemption for private resales adopted as part of the FAST Act) to eliminate information requirements and permit general solicitation,***	A separate bill relating to the proposed ETF research report safe harbor passed the House on May 1, 2017 and was previously approved by the Senate Banking Committee but has not yet been voted on by the full Senate.

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		so long as sales are made through a platform available only to accredited investors. ▪ ***Would amend the triggers under Section 12(g) of the Exchange Act pursuant to which a private company must register its securities with the SEC (1) to amend the trigger from 500 non-accredited holders to 2,000, and (2) permit companies to deregister once they have less than 1,200 holders, up from 300.*** ▪ ***Would increase the "Regulation A+" threshold under the JOBS Act from offerings of up to $50 million during a 12-month period to $75 million, and index the threshold for inflation.*** ▪ ***Would extend certain of the "IPO on-ramp" provisions of the JOBS Act, currently available only to emerging growth companies, to all issuers, including (1) the pre-registration statement "testing the waters" provisions, and (2) the ability to submit an IPO registration statement for confidential review by the SEC staff. The new provisions would also reduce the timeframe prior to the first road show (from 21 day to 15 days) by which the confidential filings must be made public.***	
VIII.B	Credit Ratings in Prospectuses	▪ Would reinstate Securities Act Rule 436(g) and therefore allow an issuer to include a security rating from a credit rating agency in a prospectus for that security, without filing with the SEC a consent of the credit rating agency (which no credit rating agency will typically provide due to the resulting statutory liability).	***This provision would have minimal impact on market practice because Dodd-Frank continued to permit credit ratings in term sheets.***
VIII.B	Conflict Minerals Disclosure	▪ Would repeal conflict minerals, resource extraction and mine safety disclosure requirements.	***Using the Congressional Review Act, Congress overrode the SEC's resource extraction payments rule on February 14, 2017.***
VIII.B	Corporate Governance	▪ Would repeal Dodd-Frank authority for the SEC to issue proxy access rules. ▪ Would repeal requirement for SEC proxy disclosure rules on whether and why the same or different persons serve as Chairman and CEO of an issuer. ▪ ***Would amend the rules for shareholder***	The repeal of the Dodd-Frank authority would have little effective impact for the many companies that have already adopted proxy access bylaws in response to shareholder pressure or on their own motion. Shareholders would be expected to continue using the

Title	Topic	Summary of CHOICE Act 2.0	Commentary and Analysis
		proposals (Exchange Act Rule 14a-8) by: ▪ ***Increasing the required voting success thresholds for when a shareholder may submit a proposal similar to one that appeared in the company's proxy statement within the last 5 calendar years to: (1) 6% (currently 3%) if proposed once in the preceding 5 years; (2) 15% (currently 6%) if proposed twice in the preceding 5 years; and (3) 30% (currently 10%) if proposed three times or more in the preceding 5 years.*** ▪ ***Changing the holding requirement for a shareholder to be eligible to submit a proposal to require 1% ownership of the company's voting securities for 3 years (currently $2000 worth of voting securities for 1 year).*** ▪ ***Would provide that an issuer may exclude from its proxy materials a shareholder proposal submitted by a person in such person's capacity as a "proxy, representative, agent, or person otherwise acting on behalf of a shareholder."*** ▪ ***Would prohibit the SEC from requiring companies to use a universal proxy ballot in contested director elections.***	shareholder proposal rule to pressure companies to adopt proxy access bylaws. ***Resubmission thresholds are rarely used to exclude consequential shareholder proposals; these changes are unlikely to affect that.*** ***On the other hand, changing the holding requirement would have a major impact by precluding most public pension funds, unions, ESG investors and individual shareholder advocates from using the shareholder proposal rule.*** ***This bill of attainder-style provision is aimed at one shareholder advocate in particular, who would likely find a way around it.*** ***Companies may still be required to use universal proxies through shareholder action under the shareholder proposal rule, as universal proxies are favored by influential institutional investors.***
IV.C IV.I IV.J IV.L IV.M IV.P VIII.B	Smaller Issuer Capital Markets Reforms	▪ Would exempt emerging growth companies and temporarily exempt companies with less than $250 million in gross revenues from the SEC's xBRL rules. ▪ Would extend the Sarbanes-Oxley Section 404(b) exemption for a company that loses emerging growth company status after five years if its average gross revenues over the preceding three years are less than $50 million, until the earlier of average gross revenues exceeding $50 million and 10 years from its IPO. ▪ Would extend the Sarbanes-Oxley Section 404(b) exemption to any issuer with total market cap of less than ***$500 million [revised from $250 million]***. ▪ Would require the SEC to review the findings	Would seek to promote capital formation by smaller issuers by expanding the availability of certain exemptions adopted under the JOBS Act, creating additional registration exemptions for small offerings, facilitating new forms of secondary market liquidity through less regulated venture exchanges and incentivizing market-making on such exchanges. ***Would replace the crowdfunding provisions of the Securities Act with a less restrictive version considered by Congress during the***

Title	Topic	Summary of CHOICE Act 2.0	Commentary and Analysis
		and recommendations of the existing Annual Government-Business Forum on Small Business Capital Formation, assess the findings and recommendations and disclose the actions, if any, it intends to take based on the findings and recommendations. ▪ Would provide for the creation of "venture exchanges" that may list smaller issuers and exempt such exchanges from certain requirements applicable to other national securities exchanges, including Regulation NMS and Regulation ATS, or any requirement to use decimal pricing increments. ▪ Would exempt from Securities Act registration and state Blue Sky laws certain "micro-offerings" of securities (less than $500,000 in a 12-month period) made to 35 or fewer purchasers having a pre-existing relationship with the issuer. ▪ Would relax certain restrictions under the crowdfunding provisions of the JOBS Act.	***original JOBS Act debate but not ultimately adopted.*** ***A separate bill requiring the SEC to review the findings and recommendations of the existing Annual Government-Business Forum on Small Business Capital Formation passed the House on May 1, 2017.***
VIII.B	Securitization Risk Retention Rules	▪ Would remove risk retention for non-residential mortgage securitizations.	Would result in only non-qualified residential mortgage securitizations, as defined in regulations, being subject to the risk retention requirements.
IV.A	M&A Broker-Dealer Registration	▪ Would exempt from broker-dealer registration certain merger and acquisition brokers intermediating the sales of privately held small- and medium-sized companies.	Adoption may have limited impact, as the SEC staff has previously issued a no-action letter, which coincided with Congress considering a prior version of this legislation, that provides similar relief, although with slightly different conditions. The no-action letter in some ways provides broader relief, in that it is available without regard to the size of the M&A target.
IV.Q	Proxy Advisory Firms	▪ Would require proxy advisory firms to register with and be subject to regulation by the SEC.	Institutional Shareholder Services (ISS), the largest proxy advisory firm, is already registered with the SEC as an investment adviser.
FSOC Reforms			
I.E	OFR	▪ Complete repeal.	

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I.E	FSOC Authority and Other Regulatory Authorities over Nonbank SIFIs	▪ Would repeal FSOC's authority to designate nonbank financial companies as nonbank SIFIs and related regulatory authorities (e.g., Federal Reserve regulatory and oversight authority over nonbank SIFIs). ▪ Would repeal FSOC's authority to recommend enhanced prudential standards and reporting and disclosure requirements for large, interconnected BHCs. ▪ Would repeal FSOC's authority to identify systemically important financial market utilities and payment, clearing and settlement activities. ▪ Would repeal FSOC's authority to issue recommendations to primary financial regulatory agencies to apply new or heightened standards to activities determined to have adverse impacts on U.S. financial markets (i.e., systemically important activities). ▪ Would repeal FSOC's authority to impose restrictions on or require divestitures by large BHCs determined to pose a grave threat to financial stability (also known as the Kanjorski Amendment).	Companies currently designated as nonbank SIFIs would shed that status and no longer be subject to Federal Reserve oversight, EPS and other consequences of being designated as nonbank SIFIs. Would turn FSOC into an interagency forum for monitoring financial stability, financial regulatory proposals and market developments, information-sharing, research, discussion and congressional reporting. FSOC would retain authority to collect information from BHCs and nonbank financial companies and make recommendations to member agencies. The Chairperson of FSOC would remain obligated to periodically carry out a study of the economic impact of financial services regulatory limitations intended to reduce systemic risk and report to Congress.
I.E	FSOC: Membership, Governance and Oversight	▪ Would change FSOC membership to include all members of multi-member agencies, with one vote per agency ***(the OCC would be represented by the Comptroller only, and the FHFA would be represented by its Director only)***. ▪ Would enhance the ability of Congress to exercise oversight over FSOC, including by permitting members of the House Financial Services Committee and Senate Banking Committee to attend all meetings. ▪ FSOC would become subject to the Sunshine Act. ▪ Would replace FSOC's funding from the OFR budget with a flat $4 million annual appropriation.	The inclusion of all members of multi-member agencies would: ▪ Significantly expand FSOC's membership; ▪ Allow minority party members to voice objections and concerns; and ▪ Decrease the influence of the agencies' chairs. Would not alter which financial regulatory agencies are represented on FSOC. GAO would retain authority to audit FSOC activities.

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I.D	SIFMU Designation	▪ Complete repeal.	As a result, access to the Federal Reserve's discount window would be eliminated.
XI	Insurance	▪ Would establish a new Independent Insurance Advocate within Treasury, which would consolidate and replace FSOC's independent member with insurance expertise and Treasury's Federal Insurance Office. ▪ Would require Treasury and the U.S. Trade Representative to publish for comment proposed agreements with non-U.S. authorities concerning prudential measures involving insurance or reinsurance.	FSOC would continue to have a designated voting member with insurance expertise.
SEC and CFTC Regulation and Structural Reforms			
VIII.C	OTC Derivatives	▪ Would require the CFTC and SEC to harmonize Title VII derivatives rules. ▪ ***Would exempt interaffiliate swaps and security-based swaps between majority owned affiliates from Title VII swap or security-based swap regulations, except for reporting risk management and anti-evasion provisions.*** ▪ ***[Deletes the CHOICE 1.0 requirement that the CFTC engage in Title VII cross-border rulemaking and pursue substituted compliance with non-U.S. regimes.]***	While the Dodd-Frank Act statutory derivatives reforms would remain intact, the harmonization and rulemaking requirements may result in substantive changes to Title VII regulations. ***The interaffiliate exemption would expand upon existing relief under the CEA and CFTC staff guidance for inter-affiliate swaps.***
VIII.A VIII.B IV.H IV.O	Investment Advisers and Investment Companies	▪ Would require the SEC to exempt advisers to PE funds from Advisers Act registration and reporting. ▪ Would eliminate FSOC's authority to obtain Form PF filings from the SEC and the requirement for the SEC to consult with FSOC. ▪ Would amend Section 3(c)(1) of the Investment Company Act to permit qualifying venture capital funds beneficially owned by no more than ***500*** persons (up from 100 under existing law ***and from 250 in CHOICE 1.0)***, to qualify for the 3(c)(1) exemption. The definition of qualifying venture capital fund would include a fund with up to ***$50 million*** of committed capital ***(up from $10 million in CHOICE 1.0)***. ▪ Would reform regulation of business development companies with respect to	Would ease registration and regulatory requirements for limited types of investment advisers and investment funds and would refocus Form PF on investor protection and away from systemic risk considerations. ***Would streamline the Investment Company Act exemptive order application process and increase requirements for plaintiffs in bringing claims for a breach of fiduciary duty with respect to compensation under Section 36(b) of the Investment Company Act.***

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		permissible holdings and proxy and offering rules. ▪ ***Would require a plaintiff alleging a breach of fiduciary duty with respect to compensation under Section 36(b) of the Investment Company Act to plead with particularity and to prove the breach by clear and convincing evidence.*** ▪ ***Would streamline the application process for Investment Company Act exemptive orders under Section 6(c).***	
VIII.B	Credit Rating Agencies / NRSROs	▪ Would give the SEC authority to exempt a credit rating agency from any Exchange Act or SEC NRSRO regulatory requirement upon a determination that requirement creates a barrier to entry or impedes competition among NRSROs.	Responds to criticisms that current NRSRO regulatory model is anti-competitive.
VIII.A	SEC and CFTC Regulation and Rulemaking Process	▪ APA requirements would apply to all SEC policy statements, guidance, interpretive rules or other procedural rules that have the ultimate effect of law. ***Removes analogous CHOICE 1.0 provision for CFTC.*** ▪ Would require the SEC, ***FINRA and other SROs*** to develop comprehensive internal risk controls to safeguard and govern the storage of market data. ***Removes analogous CHOICE 1.0 provision for CFTC.*** ▪ ***Would prohibit the SEC from approving a national market system plan to establish a consolidated audit trail unless operator of the system has developed comprehensive internal risk control mechanisms to safeguard and govern the storage of market data, all market data-sharing agreements, and academic research performed using the market data. The wording of this provision seems not to take into account that a plan has already been approved.*** ▪ ***[Eliminates CHOICE 1.0 provision permitting suit to initially be brought against the CFTC in the DC Court of Appeals rather than DC District Court.]***	***Would impose additional procedural requirements on formal SEC rulemaking and interpretations, but would not impose such requirements on formal guidance and interpretative relief provided by the SEC staff.***

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IV.A	SEC Organizational Changes	▪ Would require the SEC to implement results of 2011 Boston Consulting Group (BCG) reorganization study. ▪ Would restructure Office of Credit Ratings and Office of Municipal Securities to report to Director of Division of Trading and Markets, rather than SEC Chair. ▪ Would provide that the Investor Advocate Ombudsman would be appointed by, and would report to, the Commissioners rather than the head of the Investor Advocate office. ▪ ***[Eliminates CHOICE 1.0 proposal to establish a small business advocate and an SEC small business capital advisory committee to assist small businesses in capital formation by reviewing SEC and self-regulatory organization regulations for areas of concern and improvement.]***	Would require the SEC to engage in systematic and potentially significant organizational restructuring. ***The SEC Small Business Advocate Act of 2016 which became Public Law No. 114-284 in December 2016 creates the small business advocate and the advisory committee and thus CHOICE 2.0 eliminated these provisions.***
VIII.A IV.D	SEC Budget	▪ Would provide for five years of SEC appropriations. ▪ Would eliminate the SEC reserve fund. ▪ Would require the SEC, upon notice from FINRA or a national securities exchange, to credit back any overpayments of Section 31 transaction fees that were paid to the SEC. ▪ Would require the SEC to deposit as general revenue of the Treasury certain fees that have been collected by the SEC in excess of the amount provided in appropriation Acts for the fiscal year.	Generally would provide for greater Congressional constraints on SEC funding.
VIII.A	***SRO Pilot Programs***	▪ ***Would automatically terminate SRO-established pilot programs after 5 years, unless SEC issues a rule to permanently continue the program or otherwise approve the program on a permanent basis.***	***Designed to require the SEC to finalize pilot programs which usually do not expire automatically.***
Enforcement Reforms			

VIII.A
VIII.B
	SEC Enforcement	▪ Would increase congressional and other oversight over SEC enforcement activities.
		  ▪ Would require annual reports to Congress on enforcement priorities.
		  ▪ Would create Enforcement Ombudsman who
			These provisions would generally decrease the authority of SEC enforcement staff and require greater oversight of enforcement activities by the Commissioners and Congress. ***CHOICE 2.0 would further***

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		reports to Congress. ▪ Would require the SEC Division of Enforcement to publish its enforcement manual ***and an annual enforcement report*** online. ▪ Adds substantive requirements for the annual enforcement plan and report. ▪ ***Would require the SEC Chair to establish an advisory committee to analyze the SEC's current enforcement practices and provide a report to Congress and the Commissioners regarding the committee's recommendations for more effective enforcement.*** ▪ Would limit authority and toolbox of Enforcement Division. ▪ Would permit a respondent to require the SEC to terminate any administrative proceeding and authorize the SEC to instead bring a civil action in court. ▪ Would repeal SEC authority to impose D&O bars. ▪ Would limit the duration of subpoenas and would require renewal by Commissioners (an analogous provision applies to the CFTC). ▪ Would require SEC process for timely closing of investigations. ▪ Would require the SEC to establish a process to verify that enforcement actions are within SEC authority and consistent with the APA. ▪ Would provide potential defendants / respondents access to Commissioners at the Wells process stage (before the matter is formally considered by the SEC). ▪ Would eliminate certain automatic disqualifications triggered by SEC and various enforcement actions. ▪ Would appear to require the SEC to consider the economic consequences of imposing a civil money penalty on an issuer, including whether the alleged violation resulted in direct economic benefit to the issuer and the penalty would harm the shareholders of the issuer.	***restrict the SEC's enforcement authority***.

<table>
<tr><th>Title</th><th>Topic</th><th>Summary of CHOICE Act 2.0</th><th>Commentary and Analysis</th></tr>
<tr><td></td><td></td><td>Would prohibit the SEC from enforcing any securities laws or regulations against a person who did not have adequate notice of the law or regulation; would require the SEC to publish an interpretation of what is adequate notice for this purpose.
Would make complicit or responsible whistleblowers ineligible for a whistleblower award.
Would prohibit the SEC from obtaining source code without a Commissioner-approved subpoena (analogous requirement for the CFTC).</td><td></td></tr>
<tr><td>II</td><td>Increased Monetary Penalties</td><td>Would increase maximum statutory penalties that can be assessed:
For various violations of the federal securities laws;
For violations of various provisions of the federal banking laws;
For certain violations of the FCPA;
In PCAOB actions; and
Against controlling persons in connection with insider trading.
Would increase third-tier SEC penalties. The SEC would be allowed to impose a penalty equal to the greatest of:
An increased statutory cap;
Three times the gross amount of pecuniary gain to the person who committed the act or omission; and
The amount of losses incurred by victims as a result of the act or omission.
Would add a fourth tier for SEC penalties to impose treble damages on recidivists.</td><td>Would increase maximum penalties available in cease and desist proceedings under the federal securities and banking laws; authority for imposition of such penalties was first granted in Section 929P of the Dodd-Frank Act.

Third-tier SEC civil penalties are currently limited to the greater of a statutory cap or the gross amount of pecuniary gain to the person who committed the act or omission (without tripling).</td></tr>
<tr><td colspan="4">Oversight of and Restrictions on Agency Action</td></tr>
<tr><td>I.E</td><td>International Policy Coordination</td><td>Would repeal a provision authorizing the President, FSOC and the Federal Reserve to coordinate and consult with foreign regulators.</td><td></td></tr>
</table>

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III.A	Cost-Benefit Analysis	▪ The Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA (covered agencies) would be required to perform and publish a cost-benefit analysis of all proposed and final rules.
		▪ If a proposed rule's quantified costs outweigh its quantified benefits, the covered agency must justify the regulation.
		▪ If a final rule's quantified costs outweigh its quantified benefits, the final rule cannot be published unless Congress waives the requirement by joint resolution.
		▪ Proposed and final rules would be required to:
		  ▪ Identify the need for the regulation;
		  ▪ Explain why the private market or State, local, or tribal authorities cannot adequately address the problem;
		  ▪ Analyze the adverse impacts to regulated entities, other market participants, economic activity or agency effectiveness;
		  ▪ Include a quantitative and qualitative assessment of all costs and benefits of the regulation, including compliance and regulatory administrative costs, effects on economic activity, job creation, efficiency, competition and capital formation and costs imposed on state, local and tribal governments;
		  ▪ Identify and assess all available alternatives to the regulation and explain why the regulation is more effective than these alternatives;
		  ▪ Assess how the burden imposed by the regulation will be distributed among market participants;
		  ▪ Assess whether the regulation is inconsistent with or duplicative of existing domestic or international regulations;
		  ▪ Describe any studies, surveys or other data relied upon in preparing the analysis; and
		  ▪ Explain predicted changes in market structure and infrastructure and in behavior by market participants, including consumers and investors.
		▪ Would require a covered agency to incorporate data and analyses provided by commenters into
			Would subject rulemaking by the covered agencies to requirements for cost-benefit analysis that are even more rigorous than those currently applicable to executive agencies by executive order, except that, under this subtitle, there would be no monitoring body like the Office of Information and Regulatory Affairs (OIRA) to ensure the quality of such cost-benefit analyses other than Congress itself or the courts. Other provisions of CHOICE 2.0 would convert the FHFA and CFPB into executive agencies, thus making them subject to executive orders and the OIRA review process.
			
			These cost-benefit analysis provisions are more stringent than those of any other bill passed by the House with respect to any of the covered agencies.
			
			Where existing regulations are overridden by statute, these cost-benefit requirements would not apply. However, if a new rulemaking is necessary to amend or repeal outstanding rules, the new rulemaking would be subject to these requirements.

Title	Topic	Summary of CHOICE Act 2.0	Commentary and Analysis
		the cost-benefit analysis and the other assessments required as part of the final rulemaking. ▪ Each covered agency would be required to examine the economic impact of each rule within five years of its adoption, and submit a report of the examination to the appropriate congressional oversight committees. ▪ Within one year of the bill's enactment, and every five years thereafter, each covered agency must develop a plan to amend or repeal existing regulations so as to make the regulatory program of the covered agency more effective or less burdensome. ▪ Would require a reviewing court to vacate a regulation upon finding that the promulgating covered agency has not complied with cost-benefit analysis requirements, unless the covered agency shows by clear and convincing evidence that vacating the rule would result in irreparable harm.	

III.G	***Unfunded Mandates Reform***	▪ ***For any proposed or final rulemaking (or within 6 months of any final rule that was not subject to a notice of proposed rulemaking) by a covered agency that includes a federal mandate that may have an annual effect on state, local, or tribal governments, or on the private sector, in the aggregate of $100 million or more, such covered agency would be required to publish a written statement that includes:***
		  ▪ ***The text of the proposed or final rule;***
		  ▪ ***Cost-benefit analysis of the rule as required by Subtitle III.A of CHOICE 2.0;***
		  ▪ ***Description of how the rule avoids undue interference with state, local and tribal governments;***
		  ▪ ***Estimates of future compliance costs and disproportionate budgetary effects on particular regions and communities, particular state, local, and tribal governments, or particular segments of the private sector;***
		  ▪ ***Detailed summaries of consultations with affected state, local and tribal representatives and private parties;***
			Would effectively extend the agency requirements of the Unfunded Mandates Reform Act of 1995 (UMRA) to the independent federal financial agencies (only the OCC currently adheres to UMRA requirements), thereby reinforcing the cost-benefit analysis requirements of Subtitle III.A with respect to major rules.
			
			Would provide a significant role for the Executive Branch in rulemakings by the covered agencies by mandating that OIRA monitor compliance with this subtitle.
			
			Would be triggered if a rule is estimated to result in an aggregate annual effect on the private sector or state, local or tribal governments of $100 million (without inflation adjustments). Currently, UMRA only applies to executive agency

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		comments by state, local or tribal governments; and ▪ *The covered agency's evaluation of these comments.* ▪ *Would require a covered agency to identify and consider a reasonable number of regulatory alternatives, and to promulgate the least costly, most cost-effective, or least burdensome alternative with respect to state, local and tribal governments (in the case of a rule containing a federal intergovernmental mandate) or the private sector (in the case of rules containing a federal private sector mandate), unless the head of the relevant covered agency publishes an explanation of why such alternative was not adopted.* ▪ *Would require a covered agency to develop a written plan to provide small governments notice, opportunity to comment, and education on compliance requirements regarding rules that would significantly or uniquely affect small governments.* ▪ *Would require a covered agency to consult with a wide variety of state, local, and tribal officials, as well as impacted parties within the private sector to:* ▪ *Allow those parties to provide meaningful and timely input in the development of regulatory proposals;* ▪ *Seek out the views of such parties with respect to the costs, benefits and risks of the proposal; and* ▪ *Solicit ideas about alternative methods of compliance and potential flexibilities.* ▪ *Would require OIRA to provide meaningful guidance and oversight of the rulemaking requirements imposed by this subtitle, review agency reports for compliance with this subtitle, and request that a covered agency remediate any identified non-compliance prior to issuing a regulation. OIRA would annually publish a report to Congress regarding each covered agency's compliance.* ▪ *If a reviewing court finds that a covered agency failed to comply, or complied*	*rulemakings if a rule is estimated to have either a private sector or intergovernmental mandate of more than $156 million (the inflation-adjusted threshold as of 2017).* *Unlike UMRA, which prohibits reviewing courts from staying, enjoining or invalidating rules for noncompliance with UMRA requirements, CHOICE 2.0 would specifically allow a court to take such actions with respect to rules issued by any of the covered agencies.*

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		inadequately, with certain provisions of this subtitle, would allow the court to stay, enjoin or invalidate the related rule.	
III.B	Congressional Review of Federal Financial Agency Rulemaking	▪ Before any rule may take effect, the Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA would be required to publish in the Federal Register a list of information, including data and cost-benefit analyses, on which the rule is based, and submit to each house of Congress and the Comptroller General (the head of the Government Accountability Office) a detailed report regarding the rule. ▪ Major rules (generally those that produce $100 million or more of impact on the U.S. economy) could only take effect if Congress enacts a joint resolution of approval within 70 session or legislative days after the detailed report on the rule is submitted; after 70 days, the same rule may not be reconsidered in the same Congress. ▪ Non-major rules take effect upon (1) adoption by the relevant agency and (2) submission of specified reports to Congress and the Comptroller General; however, non-major rules may be rendered ineffective by a joint resolution of disapproval. ▪ Major rules may take effect for one 90-day period, if the President issues an Executive Order stating that the rule is necessary (1) due to an emergency, (2) to enforce criminal laws or (3) for national security, or if the rule was issued pursuant to a statute implementing an international trade agreement.	This proposal is substantially similar to the REINS Act, H.R. 26, which was passed by the House in January 2017. Could significantly impede a covered agency's ability to promulgate major rules, particularly due to constraints on Senate floor time. With respect to non-major rules, would likely have little effect beyond the already-existing Congressional Review Act.
III.C	Scope of Judicial Review of Agency Actions	▪ All actions by the Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA would be subject to de novo judicial review on all questions of law, including the interpretation of constitutional and statutory provisions and rules issued by those agencies.	This proposal would effectively undo *Chevron* deference for statutory interpretations by the Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA. ***Provision would not be effective until two years after the date of enactment.*** *Chevron* deference would remain unaffected for statutory interpretations by other agencies.

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III.D	Leadership of Financial Regulators	▪ Would transform the FHFA ***into an executive agency by allowing the President to remove the FHFA director at will***. ▪ ***[CHOICE 1.0 would have restructured the FHFA's governance structure as a 5-member board.]*** ▪ ***[Eliminates structural changes to the NCUA and OCC that were proposed in CHOICE 1.0.]***	
III.E	Congressional Oversight of Appropriations	▪ ***Would require the FDIC, FHFA, NCUA, OCC and Federal Reserve to adopt assessments and fees designed to cover the full annual congressional appropriations to these agencies—or, in the case of the Federal Reserve, the full administrative cost of its non-monetary policy functions.*** ▪ ***[Modifies the CHOICE 1.0 provisions that would have subjected the functions of the FDIC, FHFA, NCUA and OCC and the non-monetary policy functions of the Federal Reserve to budget restrictions.]*** ▪ ***Would not apply these requirements to fees associated with the Deposit Insurance Fund or National Credit Union Share Insurance Fund.***	The CFPB is separately put under appropriations elsewhere in CHOICE 2.0.
V	Regulations Appropriate to Business Models	▪ Would require agencies to tailor regulatory action based on risk profiles and business models of institutions in a manner that limits regulatory impact and costs. ▪ Would require agencies to conduct a five-year look-back and revise regulations as appropriate to meet tailoring requirement.	
III.F	International Processes	▪ Before participating in any process of setting financial standards through an international process (e.g., BCBS, FSB or IAIS), the Federal Reserve, FDIC, OCC, Treasury, SEC and CFTC would be required to first consult with the House Financial Services Committee and Senate Banking Committee, follow certain notice and comment procedures and, afterwards, make public a report on the topics discussed.	Negotiation and implementation of international standards such as Basel capital requirements would be subject to prior public notice and comment as well as congressional consultation. This proposal, together with the approach taken by EU policymakers to reject certain Basel capital standards and the unwillingness of the BCBS to compromise on certain standards, reflect widespread

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			concern over the process for setting international financial standards. The new Administration may decide to participate more lightly in international processes as a policy matter, even without statutory changes.
III.H	***Enforcement Coordination***	▪ ***Would require the Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA to implement policies and procedures to minimize duplicative efforts with federal and state authorities when bringing administrative or judicial actions and to establish joint investigations and enforcement actions where necessary and appropriate. Also would require designation of a lead agency to avoid duplication of efforts and ensure consistent enforcement.***	***Is designed to force coordination in enforcement actions and to prevent multiple agency investigations of the same set of facts.***
III.I	***Penalties for Unauthorized Disclosures***	▪ ***Would amend Section 165 of the Dodd-Frank Act and establish new criminal penalties for (1) officers and employees of federal agencies who knowingly and willfully disclose certain individually identifiable information and (2) anyone who knowingly and willfully requests or obtains such information under false pretenses.***	***According to the Comprehensive Summary, this new section is motivated by the fact that the results of living wills determinations were leaked to the press one day before being sent to the filers. The broad language creates a sweeping new set of powers for federal agencies to continue a recent trend of claiming broad authority for criminal acts over data that is claimed to be confidential. Here the data is much broader than that related to examinations.***
III.J	***Settlement Payments***	▪ ***Would prevent settlement payments to which the Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA, NCUA, HUD, DOJ or Rural Housing Service of the Department of Agriculture is a party from being used to compensate individuals who are not victims of the alleged wrongdoing underlying the settlement.***	***Designed to address the approach taken in some settlements with banks in connection with the financial crisis, in which broad consumer relief payments were required in the settlements.***

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Other Regulatory Relief			
V	Residential Mortgages	▪ Would raise thresholds for "high-cost mortgage." ▪ Would create safe harbors from ability to repay and other requirements for certain residential mortgages. ▪ Would ease certain licensing, disclosure and other requirements for mortgage originators and lenders.	
V	FFIEC Act	▪ Would allow financial institutions to seek de novo review of a material supervisory determination contained in a final exam report from the independent Director of the Office of Independent Examination Review, newly formed within the FFIEC. The financial institution could petition for judicial review of the Director's final decision.	The current appeals process for material supervisory determinations is solely intra-agency, with no express provision for third-party independent review or escalation to judicial review.
V	Small Business Loan Data Collection	▪ Would repeal requirement that financial institutions collect and report information regarding credit applications made by women-owned, minority-owned and small businesses.	
V	Federal Savings Associations	▪ Would permit a federal savings association to elect to operate as a "covered savings association" with the same powers as a national bank, but treated as a federal savings association for certain matters (such as corporate governance).	This is designed to put covered savings associations on an equal footing with national banks.
V	***Rate of Interest After Transfer of Loans***	▪ ***Would amend provisions of the National Bank Act, Home Owners' Loan Act, Federal Credit Union Act and Federal Deposit Insurance Act preempting state usury laws to specify that a loan made at a valid interest rate remains valid with respect to its interest rate regardless of whether the loan is subsequently sold, assigned or otherwise transferred to a third party.***	***Would overturn*** **Madden v. Midland Funding, LLC** ***and put statutory protection around the long-standing judicial doctrine of valid-when-made with respect to usury laws.***
N/A	Fannie Mae and Freddie Mac Conservator-ship	▪ ***[Deletes requirement for the Secretary of the Treasury to conduct annual studies on ending the conservatorship of Fannie Mae and Freddie Mac.]***	

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IX	Repeal of Certain Dodd-Frank Act Title VI Provisions	▪ A complete repeal of those provisions in Title VI of the Dodd-Frank Act related to: ▪ Section 603 – Moratorium on FDIC deposit insurance for ILCs and study on credit card banks, industrial banks, and similar companies (the study and report were issued in 2012 and by statute the moratorium sunset in 2013); ▪ Section 618 – Securities holding company oversight; ▪ Section 620 – Study of and report on bank investment activities (the study and report were issued in 2016); and ▪ Section 621 – SEC conflict of interest rule for securitizations.	Other provisions of Title VI of the Dodd-Frank Act would remain unchanged, including those regarding treatment of credit exposure from derivatives in Section 608 (affiliate transaction restrictions and revisions to Section 23A of the Federal Reserve Act) and Section 610 (national bank lending limits).

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