

# The Financial CHOICE Act

## *Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs*

### Summary of Bill Changes

CHOICE issues/sections	CHOICE 2.0	CHOICE 1.0
<b>Living Will Regulators</b>	Removes FDIC from Dodd-Frank’s Sec. 165 living will process to comport with the elimination of the Orderly Liquidation Authority	FDIC and the Federal Reserve responsible for bank holding company living wills under Sec. 165 of Dodd-Frank
<b>Stress Test Reforms</b>	Enhances stress test regulatory relief by (1) requiring only an annual company-run DFA Stress Test; (2) changing CCAR to a two-year cycle; (3) expanding the Federal Reserve’s CCAR qualitative relief to all banking organizations; and (4) codifying certain GAO’s recommendations for stress test improvements including requiring better understanding of the trade-offs between financial stability and cost/availability of credit and potential for model risks and pro-cyclicality	Requires Fed to (1) issue regulations, after providing for notice and comment, that provide for at least three different sets of conditions and the methodologies employed, including models to estimate losses on certain assets; (2) provide copies of such regulations to GAO and the Panel of Economic Advisors of the CBO before publishing such regulation; and (3) publish a summary of all stress test results;
<b>Apply CHOICE Act’s living will requirements to the FDIC for purposes of insured depository institutions</b>	Extends CHOICE’s updates to the living will process, including limiting them to biennial submissions, public disclosure of their assessment framework, and six month deadline for feedback, to the FDIC’s living wills for insured depository institutions	No similar provision
<b>Operational Risk Capital</b>	Restricts operational risk capital requirements to a bank’s current activities and businesses and permits adjustments for operational risk mitigants.	No similar provision

<b>SEC Penalty Increases</b>	Increases two SEC penalty provisions to ensure they were greater than the current thresholds after the January 2017 SEC inflation adjustment	Increased penalties for numerous securities law violations, including control person, insider trading and Foreign Corrupt Practices Act violations
<b>National Futures Association (NFA) out of economic analysis requirements</b>	Removes NFA from list of self-regulatory organizations required to comply with requirements	NFA, along with other SROs like FINRA, would be required to comply with these provisions
<b>Chevron Deference</b>	De novo review of agency regulations will occur two years after enactment	No two year delay
<b>FHFA, OCC, FDIC, and NCUA Structure</b>	FHFA Director removable at will by the President. No changes to current law regarding OCC and NCUA. FDIC structure same as CHOICE 1.0	Restructured the FHFA and OCC as bipartisan commissions. Reorganized FDIC as a bipartisan commission where all five commissioners are appointed by the President (removes Comptroller of Currency and CFPB Director from Board). Moved NCUA board from three members to five.
<b>Unfunded Mandated Reform Act</b>	Requires financial agencies (1) when promulgating a rule with \$100 million or more a year in impacts of state/local governments or the private sector to prepare and file a written statement on their process and evaluation and to select the least costly, most cost-effective, or least burdensome alternative, unless otherwise explained; and (2) provide state and local government and private sector with an effective process to provide input on proposals with significant mandates.	No similar provision
<b>Joint Investigations and Enforcement Action Reforms</b>	Requires financial agencies to implement policies to (1) minimize duplication between federal and state authorities in bringing enforcement actions; (2) determine when joint investigations and enforcement actions are appropriate; (3) and establish a lead agency for joint	No similar provision

	investigations and enforcement actions	
<b>Stress Test &amp; Living Will Leak Penalties</b>	Establishes criminal penalties for unauthorized disclosure of living will and stress test determinations and other individually identifiable information by federal officials	No similar provision
<b>No Third Party Payments</b>	Prohibits a financial agency, DOJ, or HUD from entering into a settlement that provides payments to any person who is not a victim of the alleged wrongdoing	No similar provision
<b>SEC Rule 701</b>	Requires SEC to increase Rule 701 threshold from \$5 million to \$20 million. Consistent with bill in the 113 <sup>th</sup> Congress	Threshold increase from \$5 million to \$10 million (House-passed version)
<b>RAISE Act</b>	Adds original RAISE Act introduced by Rep. McHenry in 2015	No similar provision
<b>Business Development Companies</b>	Amends language relating to eligible portfolio companies.	Committee-passed version
<b>Qualifying Venture Funds</b>	Exemption for qualifying venture funds with less than 500 persons and \$50 million in invested capital	Less than 250 persons and \$10 million in invested capital (House-passed version)
<b>Crowdfunding</b>	Repeals and replaces the JOBS Act's crowdfunding title with text more aligned with crowdfunding legislation first proposed in the 112 <sup>th</sup> Congress by Rep. McHenry	Exempted crowdfunding securities from Sec. 12(g) and permits single purpose funds to participate in crowdfunding (House-passed version)
<b>Securities Exchange Act of 1934 Sec. 12(g) shareholder thresholds</b>	Streamlines the shareholder threshold requirements for all issuers and provides SEC authority to unilaterally increase it further, removes the non-accredited investor threshold, and increases the deregistration threshold for issuers consistent with that of banks.	No similar provision
<b>Regulation A+</b>	Increases the threshold for Regulation A+ offerings from \$50 million to \$75 million, with a required increase for inflation (though SEC has authority to	No similar provision

	increase greater)	
<b>JOBS Act Title I</b>	Extends to all issuers the JOBS Act's Title I provisions for testing the waters and confidential submission of registration statement before an initial public offering	No similar provision
<b>Transferred Debt Preemption</b>	Provides that a loan that is valid when made as to its maximum rate of interest shall remain valid regardless of whether the loan is subsequently sold, assigned, or transferred. Fixes the <i>Madden v. Midland</i> decision from 2 <sup>nd</sup> Circuit	No similar provision
<b>Qualifying Banking Organization (QBO) Qualification</b>	Requires a leverage ratio of at least 10 percent Tier 1 capital	Required a 10 percent leverage ratio <b>and</b> a CAMELS score of 1 or 2 at the time of opt-in
<b>Stress Tests for QBOs</b>	Exempts QBOs from Fed's stress test regime	No exemption from stress tests for QBOs
<b>Supplemental Leverage Ratio (SLR) for QBOs (non-traditional banks)</b>	SLR formula/denominator set at the date of enactment of CHOICE	Locked-in SLR formula/denominator as of rule's promulgation date
<b>CFPB Leadership</b>	Consumer Financial Opportunity Agency: Executive agency with sole Director removable at will. Deputy Director appointed and removed by the President.	Consumer Financial Opportunity Commission: Bipartisan independent Commission serving staggered terms.
<b>CFPB Structure</b>	Office of Economics reports directly to the Director and reviews rulemaking and enforcement. DFA-mandated offices are now optional. Eliminated all mandatory advisory boards; advisory boards now are at the Director's discretion.	Office of Economics established and reviews rulemaking. Added new mandatory advisory boards.
<b>CFPB Authorities</b>	Enforcement agency only, without supervision functions. Power to enforce enumerated consumer protection laws only; no UDAP authority of any kind. Consumer complaint database cannot be published. Market monitoring	Supervisory and enforcement agency. Power to enforce enumerated consumer protection laws and UDAP (without the "abusive" prong). Consumer complaints in the database must be verified before they are

	eliminated.	published. Market monitoring separated from Enforcement.
<b>SEC Authorization</b>	Six year authorization from FY17-FY22 (extended from FY21 to ensure full five year reauthorization)	Reauthorized from FY17-FY21
<b>SEC Headquarter Lease Obligations</b>	Prohibits the SEC from obligating funds to move its headquarters, and thus from receiving over \$200 million in escrow funding in FY18 for such purpose	No similar provision
<b>SEC Investor Advisory Committee (IAC)</b>	Adds term limits for members of the IAC and for its chairman, vice chairman, secretary, and assistant secretary	Provision largely conformed the IAC with the new Small Business Capital Formation Advisory Committee by requiring coordination and making the Small Business Advocate a member of the IAC
<b>SEC Risk Controls for Market Data</b>	Extended requirements to safeguard market data to FINRA and the operator of the Consolidated Audit Trail (CAT)	Provision only applied to the SEC
<b>SEC Pilot Programs</b>	Requires SEC pilot programs be codified or sunset after five years, with an additional three year extension available, if necessary.	No similar provision
<b>Source Code</b>	Prohibits SEC from compelling the production of source code or similar intellectual property without a subpoena. Consistent with Rep. Duffy's amendment to CEA Reauthorization in 1/2017	No similar provision
<b>SEC Enforcement Advisory Committee (Wells Committee 2.0)</b>	Requires SEC Chairman to establish an advisory committee on the SEC's enforcement policies and practices. The advisory committee will offer recommended reforms within 1 year and the SEC must either codify them or report to Congress on its reasons for not doing so.	No similar provision
<b>SEC Enforcement Report</b>	Includes additional requirements for the SEC's annual enforcement report including emerging trends in enforcement and how they are	Annual SEC enforcement report to Congress regarding enforcement and examination priorities and assessment of

	communicated to regulated entities and a description of novel legal theories employed by SEC	previous year's priorities. Required to be published for public comment.
<b>Whistleblower Awards for Co-conspirators</b>	Prohibits co-conspirators from receiving SEC whistleblower rewards	No similar provision
<b>Investment Company Act Sec. 36(b) securities litigation reforms</b>	Requires private claims for a breach of fiduciary duty against an investment company be stated with particularity and raises the burden of proof to clear and convincing evidence	No similar provision
<b>PCAOB Investor Advisory Committee</b>	Eliminates the PCAOB Investor Advisory Committee	No similar provision
<b>Universal Proxy Ballot</b>	Prohibits the SEC from requiring use of a universal proxy ballot. Consistent with Rep. Garrett Amendment to FY17 FS&GG bill	No similar provision
<b>Retail Investor Protection Act (DOL Fiduciary)</b>	Requires that, if the DOL promulgates a fiduciary rule, it must be substantially similar to the SEC's rule	Only restricted the DOL's actions based on time (60 days after SEC rule), not substance
<b>Shareholder Proposals</b>	Changes the SEC shareholder proposal structure to (1) require 1% ownership over a three year period (vs. 1% or \$2000 for one year) to submit a proposal; (2) increase resubmission thresholds consistent with previous SEC proposal; and (3) prohibit proposal by a proxy other than the shareholder	No similar provision
<b>Sarbanes-Oxley Act Sec. 404(b) exemptions</b>	Increases the threshold for 404(b) compliance to \$500 million market capitalization or \$1 billion in assets for banks	Exemption increased to \$250 million market capitalization or \$1 billion in assets for banks
<b>SEC Exemptive Approval for Products/Services under the Investment Company Act</b>	Streamlines a process for exemptive relief for new products, such as ETFs, under the Investment Company Act by establishing formal process for applications and approvals.	No similar provision
<b>Nationally Recognized Statistical Rating Organizations (NRSRO) Examinations</b>	SEC not required to conduct annual examinations of NRSROs, thereby moving to a risk-based	Kept annual examinations while moving to a risk-based model on the evaluations conducted in each

	model of examinations	examination
<b>NRSRO reports</b>	Streamlines the content of information that NRSROs must provide when taking ratings action to eliminate cross-references to SEC rules	No similar provision
<b>NRSRO CEO attestations</b>	Eliminates NRSRO CEO attestations for internal controls and conflict management policies and procedures	No similar provision
<b>NRSRO Look Back</b>	Tailors the “look back” requirement to apply to lead underwriter and clarify date at which it applies	No similar provision
<b>NRSRO Methodology Approval</b>	Allows the chief credit officer, in addition to the Board, to approve of the NRSRO’s rating methodologies	No similar provision
<b>NRSRO Thought Crime</b>	Provides a limited safe harbor to NRSRO employees exchanging material information, or information believed in good faith to be material, to the issuance or maintenance of a credit rating	No similar provision
<b>Accredited Investor</b>	Includes a grandfather clause for current accredited investors as of date of enactment	Current accredited investors who lost their accredited status would not be grandfathered
<b>SEC/CFTC Inter-affiliate Margin Requirements</b>	Provides commercial end-users and financial institutions with a workable framework for the treatment of their inter-affiliate transactions under Title VII of Dodd-Frank. Consistent with Rep. Lucas Amendment to the CEA Reauthorization in 1/2017	No similar provision
<b>SEC Office of Advocate for Small Business Capital Formation (no longer in bill)</b>	Removes provision as it was enacted into law on 12/16/2016, as Public Law 114-284	Established the SEC’s Office of Advocate for Small Business Capital Formation and Capital Formation Advisory Committee
<b>Annual Study and Testimony related to Housing Finance Reform (no longer in bill)</b>	HERA requires annual testimony by the Federal Housing Finance Oversight Board (Sec. of Treasury, Sec. of HUD, SEC Chair, and FHFA Director)	Required Treasury to annually submit, and testify on, a report and recommendations for housing finance reform

<b>CFTC Reform Provisions (no longer in bill)</b>	Removes provisions related to the Commodity End-User Relief Act (CEA Reauthorization)	Inclusion of these provisions
<b>CFPB Credit Union Advisory Council (no longer in bill)</b>	Removes provision because the bill eliminates mandatory CFPB advisory committees	Established CFPB Credit Union Advisory Council
<b>Credit Union Examination Reform (no longer in bill)</b>	Removes provision because NCUA already has implemented	Extended exam cycle to 18 months for credit unions under \$1 billion in assets