Title III: DEMANDING ACCOUNTABILITY FROM FINANCIAL REGULATORS AND DEVOLVING POWER AWAY FROM WASHINGTON

Cost-Benefit Analyses

CHOICE Act 2.0 would require the Federal Reserve, CLEA, NCUA, CFTC, FDIC, FHFA, OCC, and the SEC (collectively, the "Agencies") to conduct quantitative and qualitative cost-benefit analyses when proposing new regulations. Specifically, the Agencies would not be permitted to issue a notice of proposed rulemaking without including in such notice an analysis that includes, among other factors: (i) the need and objective of the regulation and the nature and significance of the market failure, regulatory failure or other problem that necessitates regulatory action, (ii) why private, state, local or tribal authorities cannot adequately address the problem, (iii) a quantitative and qualitative assessment of direct and indirect costs and benefits of the regulation as compared to having no regulation (and a justification if benefits do not outweigh the costs); (v) alternatives to the regulation, and (vi) an assessment of whether the regulation is inconsistent, incompatible or duplicative of existing regulations.

Moreover, the Agencies would not be permitted to issue a notice of final rulemaking unless they have: (i) issued a notice of proposed rulemaking which contains the analysis described above, (ii) included regulatory impact metrics selected by the chief economists to be used in preparing the report, (iii) included data and comments provided by commenters in their analysis, (iv) provided a 90-day comment period or noted why they are not able to provide for 90 days, and (v) determined that the quantified costs are outweighed by the benefits. The Agencies would be required to make all information related to their analyses available on their public website, while preserving the confidentiality of nonpublic information.

CHOICE Act 2.0 would establish a Chief Economists Council comprised of the chief economists of each Agency that would meet quarterly and provide an annual report to Congress that covers, among other topics: (i) the benefits and costs of regulations adopted by the Agencies in the past 12 months, (ii) regulatory actions planned for the next 12 months, (iii) the cumulative effect of regulations on economic activity, innovation, international competitiveness of regulated entities and net job creation (excluding jobs created to comply with regulations), and (iv) recommendations for legislative or regulatory action to enhance the efficiency or effectiveness of financial regulation in the United States.

Within one year after enactment, and every five years thereafter, CHOICE Act 2.0 would require each Agency to submit to Congress and post on its public website, a plan to modify, streamline, expand or repeal existing regulations to make their regulatory program more effective or less burdensome. Two years after submitting the plan, each Agency would be required to submit a progress report to Congress which it would be required to post on its website.

CHOICE Act 2.0 would also provide a cause of action for any person adversely affected or aggrieved by a final rule to challenge the Agency's adherence to this process in the

Court of Appeals for the District of Columbia Circuit within one year of the rule's publication in the Federal Register.

Congressional Review of Rulemaking

In a striking deviation from current practice, and one that could shut down rulemaking in many areas, CHOICE Act 2.0 would require each "major rule" of an Agency to be approved by a joint resolution of Congress within 70 session days or legislative days of its submission to Congress. If a joint resolution is not passed in that timeframe, the rule would be deemed not approved.

A "major rule" is defined as any rule that the Office of Information and Regulatory Affairs finds has resulted in or would likely result in: (i) an annual effect on the economy of $100 million or more, (ii) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions, or (iii) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign-based enterprises in domestic and export markets. Notwithstanding any Congressional action or inaction, the President would be able to cause a rule to take effect for a 90-day period if he were to make the determination in an executive order that the rule is necessary: (i) because of an imminent threat to health, safety, or emergency, (ii) for the enforcement of criminal laws, (iii) for national security, or (iv) if it was issued pursuant to statute implementing an international trade agreement.

For each "non-major rule" (i.e., any rule that is not a "major rule,") Congress would be empowered to pass a joint resolution of disapproval. However, if Congress did not act within 60 days, the rule would become effective.

Judicial Review of Agency Actions

CHOICE Act 2.0 would eliminate the so-called *Chevron* doctrine of judicial deference for the Agencies, under which judges would generally defer to a regulatory agency's reasonable statutory and regulatory interpretations where a provision contains a gap or ambiguity. Under CHOICE Act 2.0, in reviewing any challenge to an action by an Agency, a court would be empowered to determine the meaning of terms, and provide *de novo* review of all relevant questions of law, including interpreting statutory and constitutional provisions and rules made by an Agency. The effectiveness of this section would be delayed for two years from the date of the enactment of CHOICE Act 2.0. This would not however apply to rules that concern monetary policy proposed or implemented by the Federal Reserve or the FOMC.

Leadership of FDIC

The leadership of the FDIC would be restructured so that the Comptroller of the OCC and the Director of the CFPB would no longer be members on the Board of the FDIC. All five members of the FDIC Board would be required to be appointed by the President and confirmed by the Senate.

Congressional Oversight of Appropriations

CHOICE Act 2.0 would bring the FDIC, FHFA, OCC, the examination and supervision functions of the NCUA and non-monetary functions of the Federal Reserve into the Congressional appropriations process. With respect to the FDIC, the Act would exempt the FDIC's Deposit Insurance Fund from the Congressional appropriations process. The Act would require these agencies to adopt or allocate assessments and fees to cover the amount appropriated by Congress. If enacted, this would apply to all expenses paid and fees collected on or after October 1, 2017.

International Processes

CHOICE Act 2.0 would require the Federal Reserve, FDIC, Treasury, OCC and CFTC to notify the public before participating in the processes of international standard-setting, such as at the Financial Stability Board, the Basel Committee on Banking Supervision or other similar organizations. Members or employees of such agencies involved in the international standard-setting process would be required to seek public comment on the scope of the process prior to participation, and issue a report on the topics covered during the process, as well as detailing any new or revised rulemakings or policy changes that the agency believes should be implemented as a result of the process.

Unfunded Mandates Reform

CHOICE Act 2.0 would apply the Unfunded Mandates Reform Act of 1995 to the Agencies, thereby requiring each Agency to prepare a written statement if its rulemaking would result in an annual effect on State, local or tribal governments or the private sector of $100 million or more. Such written statement should provide: (i) how the regulation can avoid undue influence, (ii) estimates of future costs of the mandate, (iii) any disproportionate budgetary effects upon particular regions, state, local, tribal, other community types or particular segments of private sector, and (iv) describe consultations with local governments and their comments, concerns or evaluations. Each Agency would also be required to develop a process to allow for the input of State, local and tribal governments in the development of regulatory proposals containing significant federal mandates. The Act would also allow courts to compel compliance with these provisions and if an Agency failed to comply, a court could invalidate the relevant Agency regulation.

Enforcement Coordination

CHOICE Act 2.0 would require that each Agency implement policies and procedures to: (i) minimize duplication of efforts with other federal and state authorities when bringing administrative or judicial action against an individual or entity, (ii) establish when joint investigations, administrative actions or judicial actions or coordination of law enforcement activities are necessary and in the public interest, and (iii) in the course of a joint investigation, administrative action or judicial action, establish a "lead agency" to avoid duplication of efforts and unnecessary burdens and to ensure consistent enforcement.

Penalties for Unauthorized Disclosures

CHOICE Act 2.0 would make it a misdemeanor offense for any employee of a Federal department or agency to disclose individually identifiable information contained in confidential agency records without authorization. The Act also makes it a misdemeanor for any person to request or receive such information knowingly, willfully or under false pretenses.

Stop Settlement Slush Funds

CHOICE Act 2.0 would forbid the Agencies, as well as the Department of Housing and Urban Development, the Department of Justice, and the Rural Housing Service of the Department of Agriculture, from agreeing to any settlement to which such Agencies or departments are a party that provides for payments to any person who is not a victim of the alleged wrongdoing.