

Choice 2.0...Again

May 10, 2017 | [Michael A. Benoit](#)

The House Financial Services Committee's (HFSC) worked on the Financial Choice Act ("Choice Act 2.0") in April, based on an earlier version from the last Congress (Choice Act 1.0). As often is the case in Washington, what is true today may not be tomorrow, and the landscape for financial reform has - not surprisingly - changed once more. I expect it will change several more times before - or if - we see any Dodd Frank reforms, but for now, a latest version of Choice Act 2.0 ("New 2.0") suggests the HFSC is considering a simpler and broader approach.

Let's review. New 2.0 - a document attributed (rightly or wrongly) to the HFSC - attempts a more elegant approach to financial reforms. It begins by changing the name of the agency to the Consumer Financial Opportunity Agency ("CFOA"), and adopts some of the earlier proposals for changing the Consumer Financial Protection Bureau, including:

- Retaining its sole director structure, but making the director removable at will by the President;
- Limiting its rulemaking authority to the statutes enumerated in Title 10 of the Dodd Frank Act (e.g., Truth in Lending Act, Consumer Leasing Act, etc.);
- Repealing its UDAAP authority entirely;
- Eliminating its supervisory authority;
- Repealing its market monitoring authority; and
- Eliminating mandatory advisory boards.

Where Choice 2.0 eliminated the CFPB's consumer education functions, New 2.0 makes all of the Dodd-Frank mandated offices optional, at the discretion of the director. These would include the Office of Fair Lending and Equal Opportunity, the Office of Financial Education, the Office of Servicemember Affairs, and the Office of Financial Protection for Older Americans.

New 2.0 does a few other things as well:

- The CFOA's Deputy Director would be appointed, and subject to removal, by the President;

- It would not repeal the consumer complaint database provisions, but would prohibit the CFOA from publishing and data collected;
- It would limit the CFOA's enforcement authority to the enumerated statutes; and
- It would eliminate mandatory advisory boards, but permit the Director to seat advisory boards at his or her discretion.

Finally, and perhaps most importantly, New 2.0 would, like its predecessor, establish an Office of Economics that would review rulemaking as envisioned in Choice Act 2.0, but New 2.0 would now have that office also review enforcement actions and report directly to the director. Currently, economists are embedded in various units and answer to lower level leadership that is often looking for a particular outcome. Bypassing assistant and associate directors, and their deputies, and giving the economists freedom to provide their unvarnished analysis to the director will arguably create better rules and enforcement based on pure analysis, as opposed to predetermined outcomes. It would cause the bureau to operate more like the data-driven agency it fancies itself than has been possible up to now.

Will New 2.0 take hold? Who knows. It's a long road to the Oval Office for a signature on a piece of legislation. The Republican majority in the House has yet to show its ability to govern and pass legislation, despite its lack of need for Democrat votes. Healthcare and tax reform seem to be higher on the list of priorities - the scuttlebutt about town is that financial reform won't see activity until 2018 - though the goalposts seem to move every day.

Even if the House were to successfully pass New 2.0 - or any other financial reform legislation - it would still have to get through the Senate. With a mere two seat majority, the Republicans need at least eight Democrats or Independents to pass legislation, and it's hard to identify eight of them anxious to climb on the financial reform bus with Republicans. Of course, this assumes Senator McConnell will restrain himself from leading his party to eliminate the legislative filibuster and push this and all future legislation through on a simple majority vote. I think both parties recognize the danger of passing legislation on a simple majority - i.e., today's majority will one day be the minority - and the irreparable harm it would do to the Senate's role and reputation as the "deliberative" body. But, stranger things have happened.

One thing is for certain: It wouldn't be Washington without all the crazy. Stay tuned.

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