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# THE WALL STREET REFORM ACT OF 2010 AND WHAT IT MEANS FOR JOE & JANE CONSUMER

*Cody Vitello*

## *I. Introduction*

Just eighteen months into President Obama's presidency, he signed into law the largest financial industry reform package since the Securities and Exchange Act of 1934. Although the Dodd-Frank Wall Street Reform and Consumer Protection Act's impact on the financial industry has yet to be seen, it will certainly affect consumers in far reaching ways. Before the financial reform packages of the 1930s and 1940s, our financial markets were largely unregulated. This laissez-faire environment led to the collapse of the stock market and the beginning of the Great Depression on Black Tuesday, October 29, 1929. President Roosevelt reacted to the collapse by creating the Securities and Exchange Commission to regulate the financial markets. Eventually, however, America was lured by the siren's call of Adam Smith's invisible hand and began to deregulate some of Wall Street's most complex financial instruments. As a result, laissez-faire and free market proponents enjoyed inadequate regulation and voluntary disclosure until the world's financial markets collapsed once again in 2007. Like President Roosevelt before them, President Obama and the 111th Congress were required to act swiftly and forcefully to prevent not only a global meltdown of the world's economies, but also to prevent future credit crises by eradicating the abusive and heavy-handed practices that led to it in the first place.

With this backdrop, the United States has been blessed (or cursed) with the creation of another regulator, the Consumer Financial Protection Bureau. The Consumer Financial Protection Bureau will report directly to the President, while being an

independently run agency housed within and funded by the Federal Reserve.<sup>1</sup> The 884 pages of Obama-signed legislation, sponsored by Senator Christopher Dodd and Representative Barney Frank, will reform and streamline nearly every aspect of the American financial industry. With limited exceptions, if the financial product or instrument affects retail consumers, it will have to answer to a new regulatory agency. But, what exactly does the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act” or “Act”) do and how does it work? Much of the news reporting on the Consumer Financial Protection Bureau has only been surface deep without any thorough explanation as to what the new agency will and will not do. Moreover, just what will the current regulators be required to do differently?

This note explores some of the more important aspects of the Dodd-Frank Act by focusing on its most instrumental provisions that will affect consumers of all socioeconomic classes. Part II of this article provides an overview of the structure, mission, and authority of the new financial regulators; Part III discusses how some of the current financial regulators are affected by the Dodd-Frank Act; Part IV will discuss mortgage reform and some miscellaneous provisions of the Act; and Part V will conclude the article by considering what is next to come. Remember, however, that just because the Dodd-Frank Act has been signed by the President, most of the legwork in reforming the financial industry has just begun.<sup>2</sup>

## *II. The New Sherriff and its Deputies*

The most publicized provisions of the Dodd-Frank Act are those that statutorily create new entities. This section will address the two new major regulators by examining their structure, mission, and authority. The Consumer Financial Protection Bureau will be examined in Part A, and the Financial Stability Oversight Council will be examined in Part B.

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<sup>1</sup> Sudeep Reddy, *Consumer Agency's Path Will Be Set by First Chief*, THE WALL ST. J., July 6, 2010, <http://online.wsj.com/article/SB10001424052748704699604575342992848011622.html>.

<sup>2</sup> As opposed to promulgating numerous statutory provisions, the Dodd-Frank Act authorizes the Consumer Financial Protection Bureau and the existing financial regulators to adopt regulations and investor safeguards they determine to be most effective.

## A. The Consumer Financial Protection Bureau

Like a phoenix rising from its ashes, the Consumer Financial Protection Bureau (“CFPB”) rose from the collapse of world’s credit markets – with a mission to “implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive”<sup>3</sup> – when President Obama signed House Resolution 4173 (“H.R. 4173”) into law on July 21, 2010.<sup>4</sup> The CFPB, as designated by Title X of H.R. 4173,<sup>5</sup> creates an independent financial watchdog, housed within the Federal Reserve, funded by the Federal Reserve System, and led by an independent director appointed directly by the President and confirmed by the Senate.<sup>6</sup> The CFPB creates, consolidates, and strengthens consumer protection laws currently handled by over half a dozen<sup>7</sup> existing federal regulators.<sup>8</sup>

As government officials begin to staff the \$500 million agency,<sup>9</sup> their largest undertakings are to conduct eighty-one studies, issue ninety-three reports, and write 520 new rules.<sup>10</sup> This ability to autonomously write rules to protect consumers – governing all institutions that offer financial services – is where

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<sup>3</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 1021 (2010).

<sup>4</sup> Arthur D. Postal, *Obama Signs H.R. 4173*, NAT’L UNDERWRITER LIFE & HEALTH, July 21, 2010, <http://www.lifeandhealthinsurancenews.com/News/2010/7/Pages/Obama-Signs-HR-4173.aspx>.

<sup>5</sup> H.R. 4173 § 1001 *et seq.*

<sup>6</sup> U.S. Senate Comm. on Banking, Hous., and Urban Affairs, *Brief Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act*, 2, available at [http://banking.senate.gov/public/\\_files/070110\\_Dodd\\_Frank\\_Wall\\_Street\\_Reform\\_comprehensive\\_summary\\_Final.pdf](http://banking.senate.gov/public/_files/070110_Dodd_Frank_Wall_Street_Reform_comprehensive_summary_Final.pdf) [hereinafter *Summary of the Dodd-Frank Act*].

<sup>7</sup> Specifically, the Act consolidates consumer protection responsibilities from the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve, Office of Thrift Supervision, National Credit Union Administration, The Department of Housing and Urban Development, and the Federal Trade Commission. *Id.* at 2-3.

<sup>8</sup> *Id.*

<sup>9</sup> To put that number into perspective the SEC’s budget is approximately \$1.1 billion. Reddy, *supra* note 1.

<sup>10</sup> Postal, *supra* note 4.

the CFPB will derive most of its power.<sup>11</sup> Of course, like all government agencies, the CFPB will have to abide by the Administrative Procedures Act, which requires a comment and review period before proposed rules can take effect.<sup>12</sup> But unlike many of the existing regulators, the CFPB will have jurisdiction over banks and credit unions with assets over \$10 billion,<sup>13</sup> mortgage-related businesses (e.g., lenders, servicers, brokers, and foreclosure companies), payday lenders, student lenders, and other large non-bank financial companies like debt collectors and consumer reporting agencies.<sup>14</sup> Interestingly, the CFPB, due to strong lobbying efforts, will not oversee automobile lending.<sup>15</sup> Instead, automobile lending examination will fall under the Federal Trade Commission's jurisdiction.<sup>16</sup> The CFPB will not replace any current regulators,<sup>17</sup> but will supplement them with an accountable, focused, and unitary consumer agency. This unitary focus allows for maximum congressional oversight and public accountability. Finally, the CFPB will provide consumers with a single toll-free hotline to report problems with financial products or services.<sup>18</sup> All of these provisions taken together amount to the largest overhaul of the financial industry since the Great Depression and consume most of H.R. 4173's pages.

### B. The Financial Stability Oversight Council

In addition to creating a new financial industry watchdog, the Dodd-Frank Act creates an overall economy watchdog, ominously called the Financial Stability Oversight Council ("FSOC").<sup>19</sup> The FSOC will be charged with "identifying and

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<sup>11</sup> *Summary of the Dodd-Frank Act*, *supra* note 6, at 2.

<sup>12</sup> Katie Benner, *Why Not Elizabeth Warren?*, CNN MONEY, Aug. 2, 2010, [http://money.cnn.com/2010/08/02/news/economy/Warren\\_BCFP\\_COP\\_FCIC.fortune/index.htm](http://money.cnn.com/2010/08/02/news/economy/Warren_BCFP_COP_FCIC.fortune/index.htm).

<sup>13</sup> Banks and credit unions have assets amounting to \$10 billion or less will be examined by their current regulator. *Summary of the Dodd-Frank Act*, *supra* note 6, at 2.

<sup>14</sup> *Id.*

<sup>15</sup> Donna Rosato, *How Financial Reform Will Really Work*, CNN MONEY, Aug. 23, 2010, [http://money.cnn.com/2010/08/23/pf/financial\\_reform.money/finance/index.htm](http://money.cnn.com/2010/08/23/pf/financial_reform.money/finance/index.htm).

<sup>16</sup> *Id.*

<sup>17</sup> The Office of Thrift Supervision is technically being dismantled, but its duties will be collapsed into the Office of the Comptroller of the Currency and not the CFPB. *Summary of the Dodd-Frank Act*, *supra* note 6, at 12.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R.

responding to emerging risks throughout the financial system.”<sup>20</sup> Roughly translated, the FSOC will continuously research, monitor, and, if necessary, take action upon all companies that pose a systemic risk to the financial stability of the U.S. if they were to fail.<sup>21</sup> Essentially, the FSOC will seek to prevent another global credit catastrophe by actively taking measures to prevent systemically important companies from placing the U.S. economy in danger (and effectively ending ‘too-big-to-fail’ bailouts).

The FSOC will be made up of ten financial regulator elites and five independent nonvoting members.<sup>22</sup> It will be chaired by the Treasury Secretary and include the heads of the Federal Reserve Board, Securities and Exchange Commission, Commodities Futures Trading Commission, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, National Credit Union Administration, CFPB, and an insurance expert.<sup>23</sup> The five nonvoting members of the council will include the heads of the Federal Insurance Office, Office of Financial Research, and state banking, insurance, and securities regulators.<sup>24</sup> Together these financial elites will have the power to create strict liquidity, capital, and leverage ratios; regulate nonbank financial companies; create minimum capital standards; break up large and complex companies; and prevent companies from switching regulators by amending their corporate charters in order to get a more favorable examiner (“Hotel California” provision).<sup>25</sup> FSOC will have the authority to make some of the toughest decisions that may prevent or increase the likelihood the U.S. will slip into another recession in the future.

### *III. Current Regulators that are Affected by the Dodd-Frank Act*

The Dodd-Frank Act has a tremendous effect on all the current financial regulators, but because the Act’s grasp is far too intricate and broad to comprehensively discuss, this section will examine the Act’s effects on the Federal Reserve in Part A, the Federal Deposit Insurance Corporation in Part B, and the

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4173, 111th Cong. § 111 *et seq.* (2010).

<sup>20</sup> *Summary of the Dodd-Frank Act*, *supra* note 6, at 3.

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> H.R. 4173 § 111(1).

<sup>24</sup> H.R. 4173 § 111(2).

<sup>25</sup> *Summary of the Dodd-Frank Act*, *supra* note 6, at 4.

## Securities and Exchange Commission in Part C.

## A. Federal Reserve

The U.S.'s central bank, the Federal Reserve ("Fed"), is probably the nation's most influential financial regulator and is in charge of the nation's money supply, key interest rates, and the supervision of certain banks. And, like many of the existing financial regulators, the Fed received lots of bad publicity over the past several years for acts ranging from keeping interest rates artificially low to keeping and enacting esoteric and enigmatic policies. Also, like many of the existing financial regulators, the Dodd-Frank Act seeks to address some of the Fed's shortcomings by reforming the way it conducts its business. To start, the Government Accountability Office ("GAO") will audit all the lending that the Fed made on an emergency basis during the credit crisis and publish its findings on the Fed's website.<sup>26</sup> The GAO will continue to audit, and from now on the Fed will be required to disclose all emergency loans, discount lending, and open market transactions on an ongoing basis.<sup>27</sup> Historically, the Fed has been accused of submitting to Wall Street and pandering to big business.<sup>28</sup> In response, these basic auditing and transparency procedures finally allow the public to gauge and hold the nation's most powerful financial regulator accountable.

Besides auditing the Fed's internal practices, its governance will be modified. President Obama will designate a member to the Fed's Board of Governors as Vice Chairman for Supervision ("VCS").<sup>29</sup> The VCS will "develop policy recommendations regarding supervision and regulation for the Board, and will report to Congress semi-annually on Board supervision and regulation efforts."<sup>30</sup> Member banks will no longer get to vote on Federal Reserve Bank presidents and the GAO will conduct a study on the current appointment system to identify whether it effectively represents the public's concern or whether there are material conflicts of interest.<sup>31</sup> These policies aim to reduce the influence and infiltration of Wall Street insiders

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<sup>26</sup> *Summary of the Dodd-Frank Act*, *supra* note 6, at 7.

<sup>27</sup> *Id.*

<sup>28</sup> Editorial, *Now, The Rules*, N.Y. TIMES, Aug. 22, 2010, <http://www.nytimes.com/2010/08/23/opinion/23mon2.html>.

<sup>29</sup> *Summary of the Dodd-Frank Act*, *supra* note 6, at 7.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

into the Fed's Board by eliminating member-bank suffrage. Reforms of this nature have been heralded as what are needed to create a truly independent and unbiased central bank.

### B. Federal Deposit Insurance Corporation

The Federal Deposit Insurance Corporation ("FDIC") is regarded as one of the nation's most efficient bank regulators, but unlike the Fed it does not regulate monetary policy. Instead, the FDIC insures deposit accounts in the event of a bank failure. As the nation's deposit account insurer, the FDIC takes on many other roles. One such role is that of receiver in the event of a bank failure. When a bank fails, the FDIC attempts to find a buyer to seamlessly transfer over operations. When it cannot find a buyer, the FDIC enacts its orderly liquidation procedures.

The Dodd-Frank Act has expanded among many of the FDIC's existing roles and has even added a few new ones. The FDIC will now have the power to liquidate "systemically significant financial companies," leaving the shareholders and creditors to bear the loss by preventing public bailouts and removing culpable management and directors.<sup>32</sup> In order to prevent bank runs, the FDIC may guarantee the debt of solvent banks, but only after meeting a stringent set of criteria.<sup>33</sup> Finally, the temporary increase in deposit insurance to \$250,000 for banks, thrifts, and credit unions, will become permanent and retroactive to January 1, 2008.<sup>34</sup>

### C. The Securities and Exchange Commission

The Securities and Exchange Commission ("SEC" or "Commission") is probably the most widely recognized U.S. financial regulator and has rightfully received its share of negative attention since the collapse of the world's credit markets. The SEC's mission is "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."<sup>35</sup> However, in light of Ponzi schemes (the largest and most publicized of which being the Bernie Madoff Ponzi scheme), whistleblowing employees, and obvious (yet overlooked) illegal

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<sup>32</sup> *Id.* at 5-6.

<sup>33</sup> *Id.* at 6.

<sup>34</sup> *Id.* at 16.

<sup>35</sup> U.S. Sec. and Exchange Comm'n, *About the SEC*, <http://www.sec.gov/about/whatwedo.shtml> (last visited Sept. 21, 2010).

activities it failed to adequately investigate; the Dodd-Frank Act is equipping the SEC with more accountability, transparency, and authority to more effectively carry out its first stated mission: to protect investors. In order to accomplish its newly assigned duties, the SEC will be given more resources and more funding.<sup>36</sup> A few of the more important changes to the Commission are discussed next.

First, the SEC will undergo an extensive and necessary audit by an outside consultant to study its internal supervisory controls.<sup>37</sup> This audit will be repeated on an annual basis by the GAO to ensure the mistakes of the last several years are not repeated.<sup>38</sup>

Second, the SEC will establish a whistleblower program that encourages insiders, analysts, or anyone with information on illegal activities to report the misconduct directly to the regulators by receiving rewards of up to thirty percent of the recovered funds that the tip helps to recover.<sup>39</sup> The repeated and futile attempts of Harry Markopolos<sup>40</sup> to reveal the Bernie Madoff Ponzi scheme will be avoided by creating a reporting system that also provides monetary incentives (essentially bounties) to whistleblowers that expose fraudsters. Wall Street is a small community and whistleblowers sometimes risk their entire careers by exposing fraudsters, but under this new program the benefits may outweigh the risks.

Third, the SEC will create an Office of Credit Ratings with the authority to annually examine and fine, if necessary, Nationally Recognized Statistical Rating Organizations ("Credit Rating Agencies").<sup>41</sup> Credit Rating Agencies were widely criticized for rating junk mortgage-backed securities as investment grade in order to gain repeat business. Now, Credit Rating Agencies will be required to expose their methodologies, their use of third parties to conduct due diligence investigations, and their track records.<sup>42</sup> These new regulations will also prohibit

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<sup>36</sup> *Summary of the Dodd-Frank Act*, *supra* note 6, at 14.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 13.

<sup>40</sup> For a complete recount of Harry Markopolos' attempts to notify the SEC of Bernie Madoff's Ponzi scheme see, HARRY MARKOPOLOS, NO ONE WOULD LISTEN: A TRUE FINANCIAL THRILLER (John Wiley & Sons, Inc. 2010).

<sup>41</sup> *Summary of the Dodd-Frank Act*, *supra* note 6, at 10.

<sup>42</sup> *Id.*

conflicts of interest between Credit Rating Agencies and investment banks or underwriters.<sup>43</sup> If the SEC's oversight does not prevent an illegal act from taking place, investors will now be given private rights of action to sue the Credit Rating Agencies for knowing or reckless violations.<sup>44</sup> Lastly, the Credit Rating Agencies will be required to maintain an independent board of directors, ratings analysts will have to pass standardized exams, the agencies will be subject to deregistration for continual bad ratings, and prohibited from allowing companies to shop for the best score.<sup>45</sup>

Finally, the SEC will have the authority to regulate a variety of areas that were once left up to the companies themselves to monitor. For example, the SEC can impose new fiduciary duty standards on investment advisors and brokers who give investment advice,<sup>46</sup> requiring them to only make recommendations in the best interests of their customers.<sup>47</sup> Hedge funds and private equity advisors will be required to register with the SEC as investment advisors filling in a large gap in the SEC's jurisdiction.<sup>48</sup> Similarly, the SEC may grant shareholders proxy access to nominate directors, review executive compensation packages, and review Golden Parachutes provisions.<sup>49</sup> In conjunction with the Commodities Futures Trading Commission, the SEC will have the authority to regulate over-the-counter derivatives in two ways: first, by requiring central clearing and exchange trading, improved transparency, the authority to "impose capital and margin requirements on swap dealers and major swap participants . . ."; and second, by establishing a higher standard of conduct for swap dealers and major participants when acting as counterparties to pension funds, endowment funds, or state or local governments.<sup>50</sup> Of the existing financial regulators, the SEC is affected most by the Dodd-Frank Act.

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 10-11.

<sup>46</sup> *Id.* at 13.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 9. However, this same provision raises the asset threshold from \$30 million to \$100 million requiring state regulators to handle the companies with less than \$100 million in assets. *See id.* at 9-10.

<sup>49</sup> *Id.* at 11.

<sup>50</sup> *Id.* at 8.

#### *IV. More on the Dodd-Frank Act*

The Dodd-Frank Act's scope goes far beyond creating the CFPB, FSOC, and overhauling some of our current financial regulators. The Act contains numerous provisions that expand or modify all facets of financial regulation. The following are some of the more important miscellaneous provisions.

##### A. Mortgage Reform

Before the name "Credit Crisis" was coined, the economic downturn that began in 2007 was often referred to, and for good reason, as the subprime mortgage crisis. Prior to the world's credit markets collapsing, mortgages (particularly those made to less than ideal borrowers) were being defaulted on at an increasing rate. Moreover, because these mortgages were securitized and invested in by consumers, pension funds, and governments, their failures had a tremendous impact on the savings, retirements, and wealth of millions of people.

The Dodd-Frank Act seeks to prevent this from occurring again by: requiring lenders to abide by federal standards that ensure borrowers can repay their loans, prohibiting broker financial incentives for subprime loans, prohibiting prepayment penalties, ensuring more and easier to read disclosures, and establishing an Office of Housing Counseling within the Department of Housing and Urban Development.<sup>51</sup> To address securitization issues, the Act requires "companies that sell products like mortgage-backed securities to retain at least 5% of the credit risk, unless the underlying loans meet standards that reduce riskiness."<sup>52</sup> This, in effect, causes companies that package and sell mortgage backed securities to have some proverbial "skin in the game," causing the banks to lose with the investor if the mortgage defaults.<sup>53</sup> In sum, the Dodd-Frank Act aggressively and ambitiously attempts to prevent another economic recession caused by poorly issued mortgages.

##### B. Miscellaneous Provisions

The Dodd-Frank Act contains numerous provisions that do not fit within the broader categories of reform. Some of the

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<sup>51</sup> *Id.* at 9.

<sup>52</sup> *Id.* at 14.

<sup>53</sup> *Id.*

more important ones are as follows: the Act reinstates the Volcker Rule by prohibiting proprietary trading by banks, affiliates, and holding companies.<sup>54</sup> The Volcker Rule prevents financial companies from piggybacking on their customers' orders. Within the current financial regulators, the Act establishes an Office of Minority and Women Inclusion ("OMWI").<sup>55</sup> The OMWI will coordinate with women and minority owned businesses and seek diversity within the financial regulators.<sup>56</sup> The Office of Thrift Supervision will be eliminated with its duties transferring to the Office of the Comptroller of the Currency.<sup>57</sup> The prohibition that once prevented checking accounts from paying interest will be abolished, allowing banks to pay interest on checking accounts without resorting to complicated loopholes.<sup>58</sup> Finally, the Act creates the first ever Federal office focusing on insurance;<sup>59</sup> protects small businesses from excessive debit/credit card interchange fees;<sup>60</sup> permits consumers access to their actual credit score if denied credit;<sup>61</sup> registers municipal advisors with the SEC;<sup>62</sup> and provides numerous provisions to mitigate foreclosures and provide neighborhood stabilization assistance.<sup>63</sup>

Despite the amalgamation of reforms and provisions of the Dodd-Frank Act, when fully implemented, the cost of the bill is fully paid for – largely by ending TARP three months early.<sup>64</sup> Moreover, the Congressional Budget Office estimates that over ten years the Act reduces the Federal deficit by \$3.2 billion, reduces federal spending by \$14.5 billion, and raises \$5.2 billion from the securities industry.<sup>65</sup> Therefore, the Dodd-Frank Act creates a win-win for consumers. Not only does it fill in the regulatory gaps in the financial industry, it does so while costing

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<sup>54</sup> *Id.* at 5.

<sup>55</sup> *Id.* at 8.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 12. Note, however, that the thrift charter will be preserved. *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 13.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 14.

<sup>63</sup> *Id.* at 15.

<sup>64</sup> U.S. House Comm. on Fin. Serv., *Myths vs. Facts*, 1 [http://financialservices.house.gov/FinancialSvcsDemMedia/file/key\\_issues/Financial\\_Regulatory\\_Reform/Conference\\_summaries/Myths\\_Facts.pdf](http://financialservices.house.gov/FinancialSvcsDemMedia/file/key_issues/Financial_Regulatory_Reform/Conference_summaries/Myths_Facts.pdf).

<sup>65</sup> U.S. House Comm. on Fin. Serv., *H.R. 4173: PayGo Compliant*, [http://financialservices.house.gov/FinancialSvcsDemMedia/file/key\\_issues/Financial\\_Regulatory\\_Reform/Dodd\\_Frank\\_Paygo\\_summary.pdf](http://financialservices.house.gov/FinancialSvcsDemMedia/file/key_issues/Financial_Regulatory_Reform/Dodd_Frank_Paygo_summary.pdf).

consumers nothing and even returns a substantial amount of money back into the U.S. Treasury, paying down our national debt.

### V. Conclusion

Now that President Obama has signed H.R. 4173, much of the legwork of reforming the financial regulation industry has just begun. The least of this work is the setup of the CFPB, which is scheduled to be operational within a year of the bill's enactment.<sup>66</sup> Similar to the creation of the Department of Homeland Security, the CFPB will gather most of its thousands of employees from existing federal regulators.<sup>67</sup> And, like President Roosevelt before him, President Obama will have to appoint a new director of the CFPB that will "shape the powerful agency's public image, initial priorities and starting lineup."<sup>68</sup> The new agency's director, who will serve a five-year term, has the authority to make or break the effectiveness of the CFPB.<sup>69</sup>

Initially, Harvard Law Professor Elizabeth Warren – the one who came up with the idea of a consumer protection financial regulator – was favored to head the new agency,<sup>70</sup> but President Obama recently nominated her in a special advisory capacity to help launch the new agency instead.<sup>71</sup> It has been alleged that Warren was too biased and critical of Wall Street and Republicans may have made it a "grueling confirmation battle in the Senate."<sup>72</sup> Once the CFPB has a director, it is not clear that it or the rest of the Act's provisions are out of the woods yet. Republicans are already vowing to reopen the matter if they take control of the House of Representatives and/or Senate this

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<sup>66</sup> Kate Andersen Brower, *Obama Says Financial Overhaul Bill 'Strongest' Ever*, BLOOMBERG, July 21, 2010, <http://www.bloomberg.com/news/2010-07-21/obama-calls-new-u-s-financial-regulation-measure-strongest-in-history.html>.

<sup>67</sup> Reddy, *supra* note 1.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Damian Paletta, *Labor Pushes Warren to Head Consumer Agency*, THE WALL ST. J. BLOG (July 20, 2010, 1:42 PM ET) <http://blogs.wsj.com/washwire/2010/07/20/labor-pushes-warren-to-head-consumer-agency/>.

<sup>71</sup> Victoria McGrane, *Warren to Be adviser to Consumer Watchdog Agency*, THE WALL ST. J., Sept. 15, 2010, <http://online.wsj.com/article/SB10001424052748703743504575494302450862326.html>.

<sup>72</sup> *Id.*

November.<sup>73</sup> Critics of the Act claim it will restrict available credit and burden the banks with over regulation,<sup>74</sup> while proponents do not think excessive credit is necessarily a good thing and think the Act's consumer protections far outweigh any restrictions of credit they may induce.<sup>75</sup>

The Dodd-Frank Act is sure to have a tremendous impact on the way the U.S. regulates its financial markets. It not only creates two new regulators, it modifies a handful of existing ones to more thoroughly regulate the industry. Wall Street has long been several steps ahead of its sheriff – maybe even miles. However, its sheriff will now hopefully have enough deputies to adequately patrol the financial landscape. But, as extensive and far reaching as the Act is, it is uncertain just how effective its provisions will be until it has been fully implemented and its regulations have been fully promulgated and enforced. Just how close this phoenix has flown to the sun, we will just have to wait and see. For now, all we can do is hope it is not soaring on wings of wax.

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<sup>73</sup> See Dave Clarke & Rachele Younglai, *US Senator Wants to Reopen Wall St. Bill*, REUTERS, Sept. 20, 2010, <http://uk.reuters.com/article/idUKN2010700820100920>.

<sup>74</sup> *Id.*. See also Benner, *supra* note 12.

<sup>75</sup> Benner, *supra* note 12.

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