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House GOP Chairman Outlines New Dodd-Frank Reforms *Revised Replacement Bill Forthcoming*

A newly leaked memo from U.S. House of Representatives Financial Services Committee Chairman Jeb Hensarling (R-TX) to the Committee’s leadership team has provided stakeholders in the banking industry with a preview of major legislation that the Chairman likely will introduce this month as a first step towards repealing and replacing the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.

The five-page document, dated February 6th, details how Hensarling intends to repeal and replace portions of Dodd-Frank, and specifically names changes that the Chairman intends to make to the reform bill that he introduced last year.¹

Proposed Changes

Hensarling’s memo refers to a number of new provisions that he intends to propose this year. These include revised stress tests and FDIC capital and living will requirements for large banks. However, perhaps the most drastic changes are designed for the Consumer Financial Protection Bureau (CFPB).²

Consumer Financial Protection Bureau

- **Less Authority.** At the core of the Chairman’s proposal is a fundamental overhaul of CFPB’s jurisdiction and structure. Hensarling’s new bill would cut the agency’s authority to promulgate rules, no longer would permit CFPB to perform “consumer education functions,” and would limit rulemaking authority

¹ “Memo from a key congressman outlines plan to gut Dodd-Frank bank rules.” *CNBC*. February 9, 2017. <http://www.cnn.com/2017/02/09/dodd-frank-hensarling-memo-reveals-plan-to-scrap-bank-regulations.html>

² “Cheat sheet: Hensarling’s plans to gut CFPB, revamp stress tests.” *American Banker*. February 9, 2017. <https://www.americanbanker.com/news/cheat-sheet-hensarlings-plans-to-gut-cfpb-revamp-stress-tests>

to enumerated statutes.^{3,4} The memo also envisions shifting CFPB's primary function from rulemaking to law enforcement. Hensarling writes, "CFPB is to be retained and re-structured as a civil law enforcement agency similar to the Federal Trade Commission, with additional restrictions on its authority."⁵ The outline specifies that a future bill would grant authority to CFPB only to conduct civil investigations and issue cease and desist orders, and that the agency would not be allowed to bring lawsuits under the standard of unfair or deceptive acts or practices.⁶

- **Less Supervision.** Eliminating the CFPB's supervisory authority effectively would reduce the regulatory environment for a number of industries. The Dodd-Frank Act assigned the agency jurisdiction over fields such as auto lending, student loan servicing, debt collection, and financial institutions with assets over \$10 billion. It also brought previously unregulated nonbank companies under the eye of the CFPB.⁷
- **Change in Leadership Structure.** House Republicans offered a number of legislative measures, including the CHOICE Act, to replace CFPB's sole director with a bipartisan, five-panel commission.⁸ The Hensarling memo modifies this recommendation and aims to retain an individual director but make the official a political appointee. Providing this designation would permit the President to fire the director "at will."⁹

3 Memo to Financial Services Committee Leadership Team from Chairman Hensarling, February 6, 2017. (Available upon request)

4 "GOP preparing plan to gut Consumer Finance Protection Bureau, roll back Wall Street regulations." *The Washington Post*. February 9, 2017. https://www.washingtonpost.com/news/wonk/wp/2017/02/09/gop-preparing-plan-to-gut-consumer-finance-protection-bureau-roll-back-wall-street-reform/?postshare=3431486737247366&tid=ss_tw-bottom&utm_term=.33effed5e923

5 *Id*

6 *American Banker*.

7 "Hensarling Drops Bid to Turn CFPB Into a Bipartisan Commission." *The Wall Street Journal*. February 9, 2017. <https://www.wsj.com/articles/hensarling-drops-bid-to-turn-cfpb-into-a-bipartisan-commission-1486678230?mg=id-wsj>

8 "Hensarling: Republican Plan to Replace Dodd-Frank Offers 'Economic Growth for All, Bank Bailouts for None.'" U.S. House of Representatives Committee on Financial Services. June 7, 2016. <http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400730>

9 *The Washington Post*.

- **Elimination of Complaint Database.** Additionally, the Chairman proposes to shut down CFPB's consumer complaint database¹⁰ and market monitoring authority.¹¹

Similarities to CHOICE Act

- **New Oversight of Fed.** The document also signals the Chairman's intent to reintroduce measures providing for oversight of the Fed,¹² many of which were part of legislation that the Committee passed last year. Those proposals included requiring the Fed to perform cost-benefit analyses of new rules, permitting the Government Accountability Office to audit the Fed, and mandating that the Fed regularly and clearly communicate the rationale behind its policy decisions and how these decisions might compare to a benchmark rule or regulation.¹³

Responses from Congress and the Administration

U.S. Congress

- **Democratic Reaction Negative.** Top Congressional Democrats were unanimous in their disapproval of the Chairman's outline upon its release. Rep. Maxine Waters (D-CA), the ranking Democrat on the House Financial Services Committee, registered her opposition to the proposed reforms and referred to the blueprint as a "new version of the Chairman's Wrong Choice Act." She stated, "This bill makes it crystal clear that Republicans mean to disarm our consumer protections, expose the American public to financial predators, and ultimately steer us in the direction of another Great Depression."¹⁴

Senator Sherrod Brown (D-OH), the ranking member of the Senate Banking Committee, released a statement similarly disparaging Hensarling's plan. "It took less than three weeks

10 *American Banker*.

11 Memo to Financial Services Committee Leadership Team from Chairman Hensarling.

12 *CNBC*.

13 "The Fed Oversight Reform and Modernization Act (FORM Act), H.R. 3189." U.S. House of Representatives Committee on Financial Services. Accessed February 10, 2017. <http://financialservices.house.gov/issueshome/issue/?IssueID=100094>

14 *The Washington Post*.



for House Republicans to show their hand on how they will renege on candidate Trump's campaign promises to hold Wall Street accountable and help working Americans," he said. "The Hensarling proposal would transform the bureau from an effective watchdog into a toy poodle – nice enough if that's your taste, but not very useful. They have taken a bad bill and made it even worse."¹⁵

- **No Reaction from Senate Banking Chair.** Notably absent in the discussion of the proposal is Senate Banking Committee Chairman Mike Crapo (R-ID). Crapo has not commented on the memo, nor has he offered detailed ideas for reforming the Dodd-Frank Act. However, he stated earlier this month that he has been in communication with Chairman Hensarling.¹⁶

Senator Crapo is recognized as a lawmaker who reaches across the aisle to find bipartisan consensus and in particular is credited with being able to work with the ranking Democrat on the committee. In previous sessions of Congress, Senators Crapo and Brown cooperated on legislation affecting small business employee savings plans and have agreed on measures to provide targeted regulatory relief for small financial institutions. Chairman Crapo also demonstrated his commitment to bipartisanship during the 2014 legislative effort involving Fannie Mae and Freddie Mac and mortgage securitization.¹⁷

Senator Crapo issued his most recent statement on regulatory reform following President Trump's February 3rd Executive Order, which detailed the Administration's core principles for financial regulation and instructions for review of existing laws. "I fully support the core principles for regulating the United States financial system that were outlined in the President's

¹⁵ "Brown Statement on Plan to Gut Wall Street Reform." U.S. Senator Sherrod Brown. February 9, 2017. <https://www.brown.senate.gov/newsroom/press/release/brown-statement-on-plan-to-gut-wall-street-reform>

¹⁶ "House GOP Effort Would Rip Away More CFPB Authority." *Bloomberg BNA*. February 10, 2017. <https://www.bna.com/house-gop-effort-n57982083610/>

¹⁷ "Senate Banking Roster in Place for the Dodd-Frank Contest Ahead." *CQ News*. January 4, 2017. Available upon request.

executive order," the Senator noted. "Directing the Secretary of Treasury to consult with the heads of the member agencies of the Financial Stability Oversight Council and reporting to the President within 120 days is a step in right direction to get financial regulation right."¹⁸

The White House

- **New Treasury Secretary.** Treasury Secretary Steven Mnuchin has not commented on the Hensarling memo but is on record in his support for tailored regulation and a review of the Dodd-Frank Act's supervisory approach towards community and mid-sized banks. Following his confirmation hearing before the Senate Finance Committee, Mnuchin registered his position on regulatory relief in his written responses to Senators' questions for the record.

Senator John Thune (R-SD) inquired about Mnuchin's desired approach toward financial services regulation, especially as it affects community banks. Mnuchin responded that one of Treasury's top priorities should be a re-evaluation of Dodd-Frank and that policies should encourage the flow of credit throughout the economy, "particularly in rural and less populated areas." He added that policymakers should ensure that smaller institutions do not face "inappropriate" burdens. Mnuchin reiterated this sentiment in his response to Senator Tom Carper (D-DE), stating, "focus should be placed on reducing the regulatory costs faced by community financial institutions."

Mnuchin echoed these sentiments in response to a question by Senator Robert Menendez (D-NJ) about specific aspects of Dodd-Frank that are in need of amendment or repeal. He proposed that regulators should re-examine how the law is

¹⁸ "Chairman Crapo Statement on Administration Financial Reforms." U.S. Senate Committee on Banking, Housing, & Urban Affairs. February 3, 2017. <http://www.banking.senate.gov/public/index.cfm/republican-press-releases?ID=68CD3E6C-CF80-4B05-9DE1-FC8F178C7F57>



applied to both large institutions and those lenders that are only engaged in traditional banking activities. “In particular, we should examine whether it is appropriate for financial institutions that engage almost exclusively in traditional banking activities with consumers and businesses to be subject to measures intended for our largest and most complex financial institutions,” he wrote.¹⁹

19 “Mnuchin Endorses Reg Revamp for Regional, Midsize, Community Banks.” American Bankers Association. January 24, 2017. <http://bankingjournal.aba.com/2017/01/mnuchin-endorses-reg-revamp-for-regional-midsize-community-banks/>

Mnuchin also affirmed during his hearing that the CFPB should be funded by Congress via the regular appropriations process.²⁰ Republican policymakers long have advocated for this proposal and Hensarling included the measure in last year’s CHOICE Act.²¹

20 “Consumer Watchdog Faces Attack by House Republicans.” *The New York Times*. February 9, 2017. https://www.nytimes.com/2017/02/09/us/politics/consumer-financial-protection-bureau-republicans.html?_r=0

21 “Hensarling: Republican Plan to Replace Dodd-Frank.” U.S. House of Representatives Committee on Financial Services.

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