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OUT WITH THE OLD

JESSICA PUROHIT

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I. INTRODUCTION

"The financial scars of the longest post-World War II recession remain etched in many Americans' everyday lives."[1] "It's worth the wait for things. I consider whether I really need or I really want something," says Jennifer Butz a 35-year-old woman, who in the wake of the financial crisis, lost her job, car, house and filed for bankruptcy - all within a matter of four years.[2]

The 2008 financial crisis led to the worst recession in modern day history.[3] Almost a decade later, the country and its people still have not fully recovered.[4] A main culprit of the 2008 crash was said to be have been caused by mortgaged back securities founded on the backs of the American dream of home ownership.[5] This article will explore the implications of such lending and the resulting regulations, The Volcker

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1. *See* Janna Herron, *4 Personal Stories of the Great Recession*, BANKRATE, (Sept. 27, 2013), www.bankrate.com/personal-finance/smart-money/4-personal-stories-of-the-great-recession/ (explaining the ramifications of the 2008 financial crisis "that many Americans … like Butz, still hold on to the cost-cutting habits that kept them afloat after job losses, foreclosure and bankruptcy, as they regain financial security. Some are teaching younger generations these lessons. Still, some have yet to recover").

2. *Id.*

3. Charles K. Whitehead, *The Volcker Rule and Evolving Financial Markets*, 1 HARV. BUS. L. REV. 41 (2011), www.hblr.org//wp-content/uploads/sites/18/2014/09/Volcker-Rule.pdf.

4. *Id.*

5. *Id.*

Rule - the linchpin of the Dodd Frank Act, which prohibits predatory lending practices.[6] It was the Volcker Rule which was enacted to combat practices that led to an economic decline. This article will then further explore the pros and cons of the Volker Rule and compare its effectiveness to tackle the looming issues with The Financial Choice Act proposed by the Trump Administration. Finally, this article will provide an analysis of a proper solution to the structure and mechanisms used by lending institutions that best safeguard against predatory lending.

II. BACKGROUND

A. The Financial Crisis

The financial crisis neither looked upon our country without unheeded warnings, nor was the threat of subprime lending without warning.[7] To understand the ramifications caused by the mechanisms used by lending institutions, it is necessary to gain insight into a brief history of predatory lending and the factors that led to the financial crisis.

B. Poor Judgment on the Part of Financiers

In the fall of 2008, a major global financial service firm and global bank, Lehman Brothers, collapsed and filed for bankruptcy.[8] With $639 billion in assets and $619 billion in debt, Lehman's bankruptcy filing was the largest in history.[9] Lehman's demise made it the largest victim of the U.S. subprime mortgage-induced financial crisis that swept through global financial markets in 2008.[10] A subprime mortgage is a type of mortgage that is normally issued by a lending institution to borrowers with low credit ratings.[11] Usually, lending institutions will offer borrowers, who cannot obtain conventional mortgages because of their low

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6. *Id.*

7. Joe Becker, Sheryl Gay Stolberg, and Stephen Labaton, *White House Philosophy Stoked Mortgage Bonfire,* N.Y. TIMES (Dec. 20, 2008), www.nytimes.com/2008/12/21/business/21admin.html.

8. *The Origins in the Financial* Crisis *Crash Course,* THE ECONOMIST (Sept. 7, 2013) www.economist.com/news/schoolsbrief/21584534-effects-financial-crisis-are-still-being-felt-five-years-article.

9. *The collapse of Lehman Brothers: A case study,* INVESTOPEDIA, www.investopedia.com/articles/economics/09/lehman-brothers-collapse.asp (last visited Oct. 12, 2018).

10. *Id.*

11. *See Subprime Mortgage,* INVESTOPEDIA, www.investopedia.com/terms/s/subprime_mortgage.asp (last visited Oct. 12, 2018) (explaining borrower's lower credit rating, a conventional mortgage is not offered because the lender views the borrower as having a larger-than-average risk of defaulting on the loan).

credit, a charge interest on subprime mortgages at a higher rate than a conventional mortgage to compensate the lender for carrying more risk[12] Lehman's collapse is regarded as one of the main culprits that led to the erosion of nearly $10 trillion in market capitalization and intensified the countries poor financial stability.[13]

C. The Housing Boom and Mortgaged Backed Securities

In 2007, Lehman underwrote more mortgage-backed securities than any other firm.[14] The firm had accumulating an $85 billion portfolio in mortgage backed securities—four times its shareholders' equity.[15] A mortgage-backed security ("MBS") is a type of asset-backed security that is secured by a mortgage or collection of mortgages.[16] They are created when a number of these loans, usually with similar characteristics, are pooled together.[17] A classic example of this is when a bank offering home mortgages rounds up $X million worth of such mortgages.[18] Those mortgages, with good, bad, and ugly creditworthiness, are then pooled in order to be sold to a federal government agency, or a government sponsored-enterprise such as Fannie Mae or Freddie Mac, or to a securities firm to be used as the collateral for the new MBS.[19]

At the core, an MBS allows a bank to move a mortgage off its books by turning it into a security and selling it to investors.[20] This allows a bank free up capital for more lending.[21] With MBSs receiving AAA standards, investors were more and more encouraged by the traditional strength of the housing market and the ratings on MBS, to purchase these securities.[22] Eventually, there was a continuous, steady stream of demand for these

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12. *Id.*
13. *See id.* (explaining how in the February of 2007, the stock reached a record $86.18, giving Lehman a market capitalization of close to $60 billion. However, by the first quarter of 2007, cracks in the U.S. housing market were already becoming apparent as defaults on subprime mortgages rose to a seven-year high).
14. *Id.*
15. *Id.*
16. *Id.*
17. U.S. SEC. & EXCH. COMM'N, *Mortgage Backed Securities*, www.sec.gov/fast-answers/answersmortgagesecuritieshtm.html (last visited Nov. 17, 2018).
18. *Id.*
19. *Id.*
20. *See generally,* FINRA*, Mortgage Backed Securities*, www.finra.org/investors/mortgage-backed-securities (last visited Nov. 17, 2018) (explaining how mortgage-backed securities are bonds secured by home and other real estate loans).
21. *Id.*
22. *Id.*

repackaged mortgages.[23]

Eventually, MBS would encourage banks to reach further down in creditworthiness to supply more to eager investors.[24] Thus, the MBS market started seeing more subprime MBSs. Additionally, with Freddie Mac and Fannie Mae also assertively supporting the mortgage market, the quality of all mortgage backed securities declined below their increasingly meaningless ratings.[25] When subprime borrowers began to default, the housing market began to collapse.[26] More and more people defaulted from their mortgages and the primary assets underpinning the MBS market saw sharp declines.[27]

This landslide of non-payments meant that many of the MBS based off the pools of mortgages were vastly overvalued.[28] The market for MBSs dried up and losses piled up as institutional investors and banks attempted to unload bad MBS investments.[29] This led to many banks being on the brinks of insolvency.[30] However, to the rescue came the United States Treasury with a $700 billion bailout to save these banks from shutting their doors and causing a global economic meltdown.[31] Additionally, the

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23. *Id.*

24. *See* John J. McConnell & Stephan A. Buser, *The Origins and the Evolution of the Market for Mortgage Backed Securities*, ANN. REV. FIN. ECON. at 17, (Aug. 19, 2011), www.krannert.purdue.edu/faculty/mcconnell/publications/The-Origins-and-Evolution-of-the-Market.pdf (explaining that "[t]he first mortgage-backed security (MBS) was issued in 1968. Thereafter, the MBS market grew rapidly with outstanding issuances exceeding $9 trillion by 2010. The growth in the MBS market was accompanied by numerous innovations such as collateralized mortgage obligations (CMOs) and the emergence of private label alternatives to MBS issued by government-sponsored entities").

25. *Id.*

26. *Id.*

27. *Id.*

28. *See* Cameron L. Cowan, *Hearing on Protecting Homeowners: Preventing Abusive Lending While Preserving Access to Credit*, AM. SECURITIZATION F., at 2 (Nov. 3, 2003), financialservices.house.gov/media/pdf/110503cc.pdf (explaining the "[p]repayment risk for MBS investors includes the unexpected return of principal stemming from consumers who refinance the mortgages that back the securities. Homeowners are more likely to refinance mortgages when interest rates are falling. As this translates into prepayment of MBS principal, investors are often forced to reinvest the returned principal at a lower return").

29. McConnell, *supra* note 24.

30. *See generally* Neil Fligstein & Adam Goldstein, *The Transformation of Mortgage Finance and the Industrial Roots of the Mortgage Meltdown,* INST. RES. LAB. & EMP. (Oct. 2012), www.irle.berkeley.edu/files/2012/The-Transformation-of-Mortgage-Finance-and-the-Industrial-Roots-of-the-Mortgage-Meltdown.pdf (explaining how it is generally agreed that the cause of the financial crisis that produced a worldwide recession was the product of a sudden downturn in the nonconventional mortgage backed securities market in the U.S; however, there is still debate and less clarity about exactly how this market developed to produce the crisis).

31. Mike Collins, *The Big Bank Bailout*, FORBES, (July 14, 2015), www.forbes.com/sites/mikecollins/2015/07/14/the-big-bank-

Federal Reserve took these mortgages off the banks' hands by buying $1.75 trillion MBSs directly while the Troubled Asset Relief Program infused capital into banks.[32]

D. The Great Recession

Following these events, the country suffered one of the worst economic downturns in American history.[33] This was known as the Great Recession—sometimes referred to as the 2008 Recession—in the United States was directly linked to the so-called "subprime mortgage crisis."[34] Although the Great Recession was officially over in the United States in 2009, among many people in America and in other countries around the world, the effects of the downturn were felt for many more years.[35]

The Great Recession also ushered in a new period of financial regulation in the United States and elsewhere.[36] Economists have argued that repeal in the 1990s of the Depression-era regulation known as the Glass-Steagall Act contributed to the problems that caused the recession.[37] The Glass-Steagall Act was a law that prevented banks from using depositors' funds for risky investments, such as the stock market.[38] It was also known as the Banking Act of 1933. The Act gave power to the Federal Reserve to regulate retail banks.[39] The Act also prohibited bank sales of securities, and created the Federal Deposit Insurance Corporation (FDIC).[40] Most notably, the Glass-Steagall Act separated investment banking from retail banking.[41] Investment banks organize the initial sales of stocks, called an Initial Public Offering.[42] They facilitate mergers

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bailout/#2deb2a242d83.

32. *Id.*

33. Matt Egan, *2008: Worse than the Great Depression?*, CNN MONEY (Aug. 27, 2014), www.money.cnn.com/2014/08/27/news/economy/ben-bernanke-great-depression/index.html.

34. *See generally*, Jenny Anderson and Heather Timmons, *Why a U.S. Subprime Mortgage Crisis Is felt Around the World*, N.Y. TIMES (Aug. 30, 2007), www.nytimes.com/2007/08/31/business/worldbusiness/31derivatives.html.

35. *Id.*

36. *Id.*

37. *Id.*

38. *See generally*, *Banking Act of 1933 (Glass-Steagall)*, THE FEDERAL RESERVE HISTORY (Nov. 22, 2013), www.federalreservehistory.org/essays/glasssteagallact.

39. *Id.*

40. *See id.* (explaining that each bank depositor is insured at least $250,000 per bank).

41. *See Glass-Steagall Act (1933)*, N.Y. TIMES, www.nytimes.com/topic/subject/glasssteagall-act-1933 (last visited Nov. 17, 2018) (explaining the Glass-Steagall Act was enacted as an emergency response to the failure of nearly 5,000 banks during the Great Depression and was a part of President Roosevelt's New Deal program).

42. *See id.* ("Investment banking consists mostly of securities underwriting and related activities; making a market in securities; and setting up corporate

and acquisitions.[43] Many of them operated their own hedge funds. Retail banks take deposits, manage checking accounts, and make loans.[44]

E. The Dodd-Frank Act

In response to the events that led to the Great Recession, President Barack Obama signed into legislation the Dodd-Frank Act.[45] The Dodd-Frank Act was designed to restore at least some of the U.S. government's regulatory power over the financial industry.[46] Prior to the Dodd-Frank Act, regulations and government supervision tended to fall on a smaller group of financial institutions.[47] This left a group of nonbank financial companies and some smaller bank holding companies outside of government supervision, despite their potential to impact the financial stability of the United States.[48] Dodd-Frank enabled the federal government to assume control of banks deemed on the brink of financial collapse. Further, Dodd Frank allowed the implementation various consumer protections designed to safeguard investments and prevent "predatory lending," which is banks who provide high-interest loans to borrowers who likely will have difficulty paying.[49] Thus, its goal was also geared toward protecting consumers with Rules such as keeping borrowers from abusive lending and mortgage practices by banks.[50] The bill

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mergers, acquisitions, and restructuring. Investment banking also includes services provided by brokers or dealers in transactions in the secondary market").

43. *Id.*

44. *See generally* Neil Irwin, *What is Glass-Steagall? The 82-Year-Old Banking Law That Stirred the Debate*, N.Y. TIMES (Oct. 14, 2015), www.nytimes.com/2015/10/15/upshot/what-is-glass-steagall-the-82-year-old-banking-law-that-stirred-the-debate.html (explaining that when people talk about banking they are taking about two broad classes of activities: "Commercial banking is what happens at your neighborhood branch: You deposit money in a checking or savings account, and the bank uses those deposits to make loans to consumers or small businesses. Investment banking refers to the kind of banking activity more common on Wall Street, like helping large companies issue stock or bonds in order to fund themselves, and trading securities in hope of making a profit.")

45. Mark Koba, *Dodd-Frank Act*: *CNBC Explains*, CNBC, (May 11, 2012), www.cnbc.com/id/47075854.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *See Great Recession*, HISTORY, (Dec. 4, 2017), www.history.com/topics/recession (by economists' definition, the Great Recession ended in the middle of 2009 – since then, the unemployment rate has dropped to 7.3 percent, down from 10 percent in October 2009. Home prices and sales are finally showing year-over-year gains, and consumer spending in the years following surpassed the peak recorded in 2008. Still, more than 19 million people remain

contained sixteen major areas of reform and contained hundreds of pages.[51] This article will focus on the linchpin of the Dodd-Frank Act, The Volcker Rule.

F. The Volcker Rule

As explained above, because the 2008 economic depression was largely triggered in part by the real estate bubble bursting, it shined a light on the mortgage industry.[52] The fact of the matter was that mortgages became extremely easy to obtain, and many of those mortgages had predatory provisions that made it difficult for borrowers to pay off the mortgages if their real estate value decreased.[53] The Volcker Rule was enacted to combat this issue and is part of Dodd-Frank; the Rule prohibits banks from owning, investing, or sponsoring hedge funds, private equity funds, or any proprietary trading operations for their own profit.[54] The current Volcker Rule restricts a covered banking entity's investments in such proprietary trading.[55] Ultimately, The Volcker Rule's purpose is to prevent banks from making certain types of speculative investments that contributed to the 2008 financial crisis.[56]

Five federal agencies, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Commodity Futures

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without a job or are underemployed. Many Americans still feel uncomfortable with their savings, and many largely remain cautious about borrowing money).

51. *Id.*

52. *See When Did the Real Estate Bubble Burst?,* INVESTOPEDIA (Feb. 7, 2018), www.investopedia.com/ask/answers/100314/when-did-real-estate-bubble-burst.asp (describing "what caused the real estate bubble was real estate prices rising steadily in the United States for decades, with slowdowns caused only by interest rate changes along the way. Prices increased over time as demand for home ownership through government-sponsored programs increased, along with the general sentiment that owning real estate represents the American dream. Mortgages became available to a wider range of consumers with programs offered by Fannie Mae, Freddie Mac and others, which may have put money in the hands of some irresponsible homeowners who would later default on payments").

53. *Id.*

54. *See* James Crotty, Gerald Epstein, & Iren Levina, *Proprietary Trading is a Bigger Deal Than Many Bankers and Pundits Claim*, THE HEARTLAND INST. (Feb. 18, 2010), www.heartland.org/publications-resources/publications/proprietary-trading-is-a-bigger-deal-than-most-bankers-and-pundits-claim (explaining that proprietary lending was a big contributor to the 2008 Financial Crisis by stating that "risky proprietary investments by investment banks, along with trading for clients whose decisions were influenced by these banks, was one of the main forces that sustained upward pressure on security prices in the bubble. By 2008, bank trading books held hundreds of billions of disguised proprietary investments. Also adding for those who support the Regulations against proprietary lending, the Volcker rule is just the beginning of more that the government needs to do").

55. *Id.*

56. *Id.*

Trading Commission and the Securities and Exchange Commission, approved the final regulations that make up the Volcker Rule.[57] The Rules, formally known as section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, went into effect April 1, 2014. Banks were required to fully comply by July 21, 2015.[58]

The Rule still allowed banks to continue market making, underwriting, hedging, trading of government securities, insurance company activities, offering hedge funds and private equity funds, and acting as agents, brokers or custodians.[59] Therefore, banks may still continue to offer these services to their customers and generate profits from providing these services.[60] However, banks cannot engage in these activities if doing so would create a material conflict of interest, expose the institution to high-risk assets or trading strategies, or generate instability within the bank or within the overall U.S. financial system.[61] Additionally, depending on their size, banks must meet varying levels of reporting requirements to disclose details of their covered trading activities to the government.[62] Thus, larger institutions were required to implement a program to ensure compliance with the new rules, and their programs were subjected to independent testing and analysis, and smaller institutions were subject to lesser compliance and reporting requirements.[63]

Despite these regulations, the Volcker Rule has been criticized on many levels.[64] The Rule is said to be too costly on banks and have negative consequences on the economy, and that its costs outweigh the benefits.[65] The Rule has also been criticized on the grounds that

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57. *Id.*

58. *See Volcker Rule*, INVESTOPEDIA, www.investopedia.com/terms/v/volcker-rule.asp.

59. *Id.*

60. *Id.*

61. *See generally Francine McKenna, Biggest Banks Prefer Full Volcker Repeal, But a Rewrite Would Do,* MARKET WATCH, (Aug. 19, 2017), www.marketwatch.com/story/biggest-banks-prefer-full-volcker-rule-repeal-but-a-rewrite-would-do-2017-08-11 (stating the Volcker Rule is supposed to limit risk-taking by banks by prohibiting proprietary trading, or trading for a bank's own account, as a way to prevent a repeat of the 2008 financial crisis).

62. *Id.*

63. *Id.*

64. *See generally id.* (explaining "Dodd-Frank's false premise is that an alchemy of Wall Street greed, outsized private risk and massive Washington de-regulation almost blew up the world economy. According to their narrative, this necessitated massive taxpayer bailouts and a functional occupation of our capital markets by federal regulators. But financial regulation did not decrease in the decade leading up to the crisis – it markedly increased. In fact, regulatory restrictions on financial services grew every year between 1999 and 2008. Financial services was, and remains, one of the heaviest regulated industries in the economy").

65. *See* Andrew Ross Sorkin, *The Volcker Rule and the Cost of Good Intentions*, N.Y. TIMES, (Feb. 13, 2012), www.dealbook.nytimes.com/2012/02/13/the-volcker-rule-and-the-costs-of-good-intentions/ (stating that an

it makes American banks less competitive in the global spectrum against international banks that do not have such restrictions. [66]Moreover, the Rule is said to be too complicated, misunderstood, and invites too many loopholes leaving the investors and consumers it was intended to protect, without adequate protection.[67]

G. The Financial Choice Act 2018

After six years with the Volcker Rule in place, President Obama's term came to an end. During the 2017 presidential elections, Republican nominee Donald J. Trump, was elected to be President Obama's successor in the oval office.[68] After President Trump was inaugurated, he and members of Congress made several efforts to gut key portions of the Dodd-Frank Act, which would remove among other rules protecting Americans from another recession, the Volcker Rule.[69]

President Trump, proposed the House of Representative Bill 10 ("HR-10"), and known as the Financial Choice Act of 2017.[70] This bill would largely tweaked the Dodd-Frank Act, and completely the Volcker Rule.[71] Despite an unexpected bipartisan vote to pass the bill, the United States Senate, passed a bill on March, 7, 2018, with a 67 to 32 vote, that was a version of HR-10.[72] The primary motive

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industry study estimated that the Volcker Rule could cost companies and investors more than $350 billion, but that projection, which has been criticized by some economists, could be wildly exaggerated).

66. *Id.* On this point, Mr. Volcker himself, rebutted critics who say that the Volcker Rule is going to make the United States banking business less competitive with foreign rivals who don't have such restrictions. Mr. Volcker calls such criticism "superficial," saying: "Competition in banking, here as elsewhere, is desirable for the benefits it brings in institutional efficiency and better, more economical service to customers. Any contribution of proprietary trading to customer service and competition is not at all obvious. In fact, because of the risks, the conflicts of interest and the adverse cultural influence it may well impede effective competition."

67. *Id.*

68. *See generally*, Anthony Zurcher, *Donald Trump and Barak Obama Meet at the White House*, BBC (Nov. 10, 2016), www.bbc.com/news/election-us-2016-37932231 (detailing the 90 minute meeting President Trump and former President Obama had in the oval office after President Trumps win)

69. *See* Ben Protess and Julie Hirschfeld Davis, *Trump Moves to Roll Back Obama-Era Financial Regulations,* N.Y. TIMES, (Feb. 3, 2017), www.nytimes.com/2017/02/03/business/dealbook/trump-congress-financial-regulations.html (quoting President Trump as saying "[w]e expect to be cutting a lot out of Dodd-Frank, because frankly, I have so many people, friends of mine that had nice businesses, they can't borrow money," "They just can't get any money because the banks just won't let them borrow it because of the rules and regulations in Dodd-Frank").

70. *Id.*

71. *Id.*

72. *See* Evan Sparks, *Senate Takes Key Procedural Step on Reg Reform Bill,* ABA BANKING J., (last visited Mar. 6, 2018), bankingjournal.aba.com/2018/03/senate-takes-key-procedural-step-on-reg-

of the Financial Choice Act is to reduce the regulatory burden on our banks and on our economy.[73]

H. Regulatory Spending

As stated above, the Financial Choice Act (H.R. 10) would amend the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and other laws governing regulation of the financial industry.[74] It would make numerous changes to the authorities of the agencies that regulate the financial industry, and it would change how the operations of the National Credit Union Administration ("NCUA") and Consumer Financial Protection Bureau ("CFPB") are funded.[75]

The Congressional Budget Office ("CBO") estimates that enacting the legislation would reduce federal deficits by "$24.1 billion over the 2017-2027 period.[76] Additionally, direct spending would be reduced by $30.1 billion, and revenues would be reduced by $5.9 billion." Most of the budgetary savings would come from eliminating the OLF and changing how the Consumer Financial Protection Bureau is funded.[77] Moreover, the CBO also estimates that, over the 2017-2027 period, and assuming appropriation of the necessary amounts, implementing the bill would cost $1.8 billion.[78] Finally, CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2028.[79]

Accordingly, the Financial Choice Act has some possible regulatory savings.[80] Yet, it removes some of the key protections and that the Dodd Frank Act provides in the area of predatory lending.[81] However, it is unknown whether costs and benefits of the heavy regulations with the Dodd-Frank Act and the curt

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reform-bill/ (stating that all Republicans and 12 Democrats voted to pass the bill).

73. *Id.*

74. *Id.*

75. *Id.*

76. Norbert Michel, *Budget Reconciliation: A Viable Path for CHOICE Act Reforms*, FORBES (Sep. 4, 2017), www.forbes.com/sites/norbertmichel/2017/09/04/budget-reconciliation-a-viable-path-for-choice-act-reforms/#b6a0088496f0.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *See generally* AMERICA'S DEBT HELP ORGANIZATION, www.debt.org/credit/predatory-lending/ (last visited Oct. 27, 2017) (explaining that "by definition, predatory lending benefits the lender and ignores or hinders the borrower's ability to repay the debt. These lending tactics often try to take advantage of a borrower's lack of understanding about loans, terms or finances").

regulations of the Financial Choice Act are even truly effective.[82]

III. ANALYSIS

The Analysis section of this paper will examine the pros and cons of the highly-debated Volcker Rule. This section will also highlight the veracity of proprietary lending, and finally, it will weed through the scenarios of what abolishment and accomplishments a repeal of the Volcker Rule would result in. This will be done to provide a greater insight into whether our financial sector truly needs such extensive and complicated regulations. Thereafter, it will describe the results the Financial Choice Act is projected to accomplish.

A. The Volcker Rule and Related Provisions of the Dodd-Frank Act

First, in addition to the Volcker Rule, Dodd-Frank also implemented the Mortgage Reform and Anti-Predatory Lending Act.[83] It is necessary to explore this Act to understand the significance of the Volcker Rule in connection with risky lending that led to millions of people defaulting on their mortgages. Under this Act, lending institutions provide standards for the level of disclosure required for borrowers so that individuals getting a mortgage can be aware of the obligations and the risks.[84] Thus, lenders are required to have more transparency and exercise caution when dealing with borrowers' funds.[85] This provision, in conjunction with the Volcker Rule, makes trading such MBSs less risky.[86]

On the other hand, "President Trump supports dismantling Dodd-Frank for the simple reason that banks aren't lending money to people who need it."[87] However, is it not what proceeded the economic crisis the practice of lending money to people that may have

82. *See generally* Alan Rappeport, *Bill to Erase Some Dodd-Frank Banking Rule Passes in House,* N.Y. TIMES (June 8, 2017), www.nytimes.com/2017/06/08/business/dealbook/house-financial-regulations-dodd-frank.html (explaining bill's passage in the House, by 233 to 186, keeps alive the Republican Party's dream of unwinding one of President Barack Obama's signature accomplishments).

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *See* Jim Puzzanghera, *Trump Says Businesses Can't Borrow Because of Dodd-Frank, the Numbers Tell Another Story*, L.A. TIMES, (Feb. 26, 2017), www.latimes.com/business/la-fi-trump-bank-loans-20170226-story.html (Stating a "main reason for dismantling Dodd-Frank often cited by Trump and critics of the law that its slew of tougher financial regulations have significantly restricted bank lending isn't borne out by the data").

needed it, but that could not repay it?[88] Yet, does the Volcker Rule accomplish what is had set out to and should Americans worry about its abolishment.[89] It could be without these all these limitations in place, some question if in an event of another financial crisis, enough protections will be in place so that history does not repeat itself.[90]

Moreover, Title XIV also establishes minimum standards for all mortgage products. Creditors may not make a home mortgage loan unless "they reasonably determine that the borrower can repay the loan based on the borrower's credit history, current income, expected income and other factors."[91] However, for certain types of mortgages enumerated in this Title there are presumptions of ability to repay.[92] Most importantly, there "must be additional disclosures given to any borrowers for home mortgages, both at the time that the mortgage is made, as well as in the monthly loan statements."[93] This is a necessary check in the system to curtail predatory lending and protect home owners.[94]

As previously explained, predatory lending involves unprincipled actions carried out by a lender to entice a borrower in taking a mortgage that carries unfavorable terms.[95] For example, some of these terms high fees, a high interest rate, strips the borrower of equity or places the borrower in a lower credit rated loan to the benefit of the lender.[96] Also, of these high cost mortgages that the title's disclosures apply to include first mortgages with an interest rate that is more than 6.5% higher than the average prime

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88. *Id.*
89. *Id.*
90. *Id.*
91. *See* 15 U.S.C. § 1639(c) (Dodd-Frank Act § 1411) (2010).
92. *Id.*
93. *Id.*
94. *Id.*
95. *See 5 Examples of Predatory Lending,* MORTGAGE 101, www.mortgage101.com/article/5-examples-predatory-lending (explaining "one of the most common tactics that is used by predatory lenders is emphasizing the monthly payment instead of the other factors of the loan. Another common predatory lending practice is the use of balloon loans. Balloon loans provide borrowers with a small monthly payment for the majority of the loan. Another predatory lending practice is referred to as packing. This is when the lender packs extra things in with the loan without your knowledge. Also, sometimes lenders will charge excessive points and fees on their loans in an attempt to bring in some more profit. One point is typically equal to one percent of the loan balance. And finally, some individuals choose to work with a mortgage broker in order to find the best deal on a mortgage. There is nothing wrong with using a mortgage broker as they can sometimes be very beneficial. However, in some cases lenders will make an excessive payment to these mortgage brokers. This is done so that the mortgage broker will be influenced to bring customers to the lender. This is a disservice to the customers of the mortgage broker").
96. *Id.*

offer rate.[97] They also apply to a second mortgage with an interest rate more than 8.5% higher than the average prime offer rate.[98] Thus, Title XIV is another step the Dodd-Frank Act took to tackle the issues that led to the financial crisis and it works in conjunction the Volcker Rule's objective as well.

Getting back to the Volcker Rule, it was essentially designed to prevent large banks from becoming "too big to fail".[99] The term "too big to fail" refers to when the failure of a bank would distress the economy, and a too-big-to-fail bank will likely need to be bailed out with Americans' taxpayer funds.[100] In this respect, the Rule sought to undo damage when Congress repealed the Glass-Steagall Act, which mitigated the risks associated with banking by breaking up the banking activities into two separate types of banks.[101] This is why the Volcker Rule is best understood as an attempt to update the New Deal–era Glass-Steagall for the twenty-first century.[102] "Glass-Steagall called for a complete separation of investment banking—the activities of underwriting and dealing with stocks and debt—from deposit taking. Consistently weakened from the 1980s onward, Glass-Steagall was fully repealed in the late 1990s to allow Citicorp to merge with an insurance company."[103]

It is, however, debated whether the Rule truly accomplishes this, and if it is worth the costs associated with it. For example, according to Standard & Poor, Banks could lose $10 billion in profit due to the Volcker Rule, and it should also be taken into account the money spent by our government to implement and monitor these

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97. CONSUMER FINANCIAL PROTECTION BUREAU, *What is a "Higher-priced Mortgage*, (Sept. 13, 2017), www.consumerfinance.gov/ask-cfpb/what-is-a-higher-priced-mortgage-loan-en-1797/.

98. *Id.*

99. *See* Rachel Witkowski, *Volcker Rule "Too Big to Fail" Set For Changes*, WALL ST. J. (July 27, 2017), www.wsj.com/articles/mnuchin-volcker-rule-too-big-to-fail-set-for-changes-1501187844 (stating the "Volcker rule, part of the 2010 Dodd-Frank financial-overhaul law, prevents banks from trading for their own account and seeks to make them only facilitate their clients' trading activities and bank executives complain that the line separating the two is fuzzy").

100. *What is "too big to fail"?*, INVESTOPEDIA, www.investopedia.com/terms/t/too-big-to-fail.asp (last visited Apr. 4, 2018).

102. *The Banking Act of 1933*, FEDERAL RESERVE HISTORY www.federalreservehistory.org/essays/glass_steagall_act (last visited Apr 9, 2018). "The Glass-Steagall Act gave tighter regulation of national banks to the Federal Reserve System, requiring holding companies and other affiliates of state member banks to make three reports annually to their Federal Reserve Bank and to the Federal Reserve Board. Furthermore, bank holding companies that owned a majority of shares of any Federal Reserve member bank had to register with the Fed and obtain its permit to vote their shares in the selection of directors of any such member-bank subsidiary." *Id.*

102. *Id.*

103. *Id.*

complex regulations.[104] A deeper look into the Volcker Rule warrants the quandary of whether the Rule is truly beneficial.

Additionally, it has been debated whether banning these activities made the financial crisis worse; one estimate has held that "the major Wall Street firms suffering $230 billion dollars in prop trading losses a year into the crisis."[105] Recently these activities are subsidized by access to the banking safety net.[106] Thus, within a day or two of the Volcker Rule announcement, "the press was full of stories quoting data from bank analysts that proprietary trading was very small."[107] And thus, the banks and economy were losing money.[108] But, "if one looks at the ratio or trading income as a share of net revenue while it was 5.1 % in the year of the crash, it was more than 45% at the height of the boom in 2006".[109] The widely-cited estimates are almost certainly trying to estimate proprietary trading in the "narrowest way possible" and likely do not take into account the capricious lines that are drawn between many different factors that part in these types of trading.[110] Yet, putting so much emphasis on one banking activity does not automatically provide the entire American community with umbrella protection. What we need, and moreover deserve, is transparency from the system.

Currently, the Volcker Rule seeks to keep activities essential to banking within a safety net, while excluding other, riskier, activities from this safety net.[111] There are a variety of distinctive regulations, and safeguards banks get, ranging from federal deposit insurance (known as FDIC) to access to the Federal Reserve's discount borrowing window.[112] These implementations are principally designed to keep the system functioning in an event like the financial crisis.[113] However, there are just as many, if not more,

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104. *See* Michael Moore and Dakin Campbell, *Wall Street Sweats Out Volcker Rule Impact of Revenue*, BLOOMBERG, (Dec. 3, 2013), www.bloomberg.com/news/articles/2013-12-04/wall-street-sweats-out-volcker-rule-with-18-of-revenue-in-play (stating "Wall Street banks, which already shut proprietary trading units that helped fuel record profits, are girding to learn next week how much revenue the Volcker rule may cut from the $44 billion they say comes from market-making").

105. *Id.*

106. *Id.*

107. James Crotty, *The Real Price of Proprietary Trading*, HUFF. POST (Apr. 25, 2011) www.huffingtonpost.com/gerald-epstein/the-real-price-of-proprie_b_472857.html.

108. *Id.*

109. *Id.*

110. *Id.*

111. Neil Irwin, *Everything You Need to Know About the Volcker Rule*, WASH. POST, (Dec. 10, 2013), www.washingtonpost.com/news/wonk/wp/2013/12/10/everything-you-need-to-know-about-the-volcker-rule/?utm_term=.58dd5457e0e7.

112. *Id.*

113. *Id.*

loopholes than protections embedded in the Rule.[114]

Even the collation to be divest of the Volcker Rule received support from an unlikely source, The Federal Reserve.[115] The Federal Reserve is the chief regulator of the big banks. Federal Reserve Governor, Jerome Powell, who leads banking regulation for the central bank told the Senate Banking Committee, "[w]e believe we have the authority to draw a line between those with the big trading books (and other banks)."[116] The argument that is being suggested is that we could have a system that regulated large bank group regulated one way and have everyone else regulated less.[117] Some of the arguments currently being made were made back when the Volcker Rule was enacted; this is due to the fact that the Rule is regarded as complicated legislation that does not take into account the different degrees of activities conducted by different sized banks.[118]

Yet, beyond all of this, one main and reoccurring argument for being rid of the Rule is the big increase in banking regulation since the crisis has made compliance difficult and expensive.[119] This has had the effect of giving a competitive advantage to the biggest banks, which can spread the cost over huge operations.[120] The perplexing irony of it all is, that the true effects the Volcker Rule will not be known until it is tested against another financial crisis.[121]

B. The Financial Choice Act

Conversely, as stated in the bill proposed by the Trump administration, the true goal of the Financial Choice Act ("Choice Act") is to eliminate the abuse of large scale investing with large consumer funds by breaking up the enormous entities that control the financial sector.[122] Thus, the bill states that by limiting the capacity of these large-scale entities, it could potentially lead to more free flow of funds and economic prosperity with less of a

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114. *Id.*

115. *Id.*

116. *Id.*

117. *See generally* Hall Scoot and Lisa Donner, *Should the US Ease Regulations on Big Banks?,* FIN. TIMES, www.ft.com/content/ac28eadc-1bc7-11e8-956a-43db76e69936 (last visited Nov. 1, 2018) (stating in contrast to The United States, "the Bank of England allows lenders to model their own losses and then compares the models with each other and with its own version. If differences are reasonable they are permitted. This helps avoid "model monoculture" in which every bank adapts its holdings in order to pass the tests and they all end up holding assets the government model favors. A diversity of bank strategies is far preferable given that risks are hard to predict").

118. *Id.*

119. *Id.*

120. *Id.*

121. Irwin, *supra* note 111.

122. ABA BANKING J., *supra* note 72.

chance of the economy sinking as a whole.[123] Also, according to the American Action Forum, "the Choice Act could eliminate $10 billion in annual regulatory costs and save 10.3 million hours of paperwork."[124] Thus, an attempt to not completely deregulate, but more so regulate correctly, seems to be the purported goal of the Choice Act.[125]

For example, on June 7, 2016, the House Financial Services Committee Chairman, Jeb Hensarling, a republican from Texas, unveiled details of the Financial Choice Act.[126] At this unveiling, Chairman Hensarling explained that the terms Choice stands for Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs. He further went on to explain that the Choice Act is being introduced because it was not "de-regulation that caused the financial crisis; it was dumb regulation."[127]

Additionally, some critics of the Volcker Rule state that is may have been due to "a panic during the financial crisis".[128] The "panic" theory revolves around the basis that during the financial crisis, regulators, and the market panicked over not knowing how banks' proprietary trading and the extent of potential losses might affect the financial system.[129] Thus, leading to a raw and misguided legislation.[130] Its critics further say that, depending on how regulators implement the provision, the Volcker Rule could actually harm a bank or its customer's ability to manage its assets.[131] It is also, important to mention that the Rule cuts into profits and

123. *Id.*

124. *See* Sam Batkins, *CHOICE Act Equal At Least $10 Billion in Deregulation*, AMERICAN ACTION FORUM (June 6, 2017), www.americanactionforum.org/insight/choice-acts-equals-least-10-billion-deregulation/ (stating that the Volcker Rule costs $4,300,000,000 annually).

125. *Id.*

126. *See Remarks Of Jeb Herseling on the Plan To Replace Dodd Frank*, THE FINANCIAL COMMITTEE, www.financialservices.house.gov/news/documentsingle.aspx?DocumentID=400730 (last visited Oct. 27, 2017), (explaining "Dodd-Frank's false premise is that an alchemy of Wall Street greed, outsized private risk and massive Washington de-regulation almost blew up the world economy. According to their narrative, this necessitated massive taxpayer bailouts and a functional occupation of our capital markets by federal regulators. But financial regulation did not decrease in the decade leading up to the crisis – it markedly increased. In fact, regulatory restrictions on financial services grew every year between 1999 and 2008. Financial services was, and remains, one of the heaviest regulated industries in the economy").

127. *Id.*

128. *See* Katherine Reynolds Lewis, *The 5 Best and 5 Worst Regulations in Dodd-Frank,* THE FISCAL TIMES, www.thefiscaltimes.com/Articles/2011/07/19/The-5-Best-and-5-Worst-Regulations-in-Dodd-Frank (last visited Oct. 25, 2017) (explaining it proper regulation should depend on the quality of the regulations not the quantity).

129. *Id.*

130. *Id.*

131. *Id.*

growth which is vital to economic development.[132] Thus, under this theory, the Volcker Rule created the effect of pulling the trigger fast, instead of providing a real solution to the issues at hand.

Before Dodd-Frank was passed, former Senator Chris Dodd, a democrat from Connecticut, stated that there is some Dodd Frank legislation that no one will know if they worked until the effects are measured against an economic meltdown.[133] The Volcker Rule is a clear example of this. To put it simply, the only effect banning of proprietary trading by banks that has manifested tangibly is that it hurts the amount of capital available in the market.[134] Many economists agree that this effect reduces the ability of banks to resist shocks in the market and causes them to freeze up, which could lead to another possible banking crisis.[135] The Volcker Rule itself was said to be implemented for a number of issues that the Choice Act now aims to resolve along with other possible crises that we are sure to face.[136] As such, it remains questionable whether the Choice Act provides the answer to age old dilemmas without the costly regulations.

At the core of the new bill is an exemption of about two dozen financial companies with assets between "$50 billion and $250 billion from the highest levels of scrutiny by the Federal Reserve," which, mentioned above, is the nation's central bank.[137] Additionally, supporters of the Choice Act argue that the legislation would bring much-needed relief to midsize and regional banks that were treated like their much larger counterparts under Dodd-Frank.[138] However, opponents of the bill argue that it would weaken the oversight needed to ward off the type of dangerous lending and investing that brought the U.S. economy to its worst financial state since WWII. One major opponent of the Choice Act was a principal figure behind Dodd-Frank. Senator Elizabeth Warren, a democrat from Massachusetts, vigorously argued against the bill and stated that "[o]n the 10th anniversary of an enormous financial crash, Congress should not be passing laws to roll back regulations on Wall Street banks."[139] She further lamented that the bill permits about

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132. *Id.*

133. *See* Erica Werner and Damian Paletta, *10 Years After Financial Crisis*, WASH. POST (Mar. 14, 2017), www.washingtonpost.com/business/economy/10-years-after-financial-crisis-senate-prepares-to-roll-back-banking-rules/2018/03/04/e6115438-1e37-11e8-9de1-147dd2df3829_story.html?utm_term=.88024e1bbab3 (elaborating "that a Wall Street regulatory rollback is possible is a testament to the financial sector's improved standing on Capitol Hill — as well as to the lobbying muscle of local banks and credit unions present in every state").

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Morris Pearl, *Remember the Lehman Brothers Crisis: We need Wall Street Rules, Not Trump Deregulation*, USA TODAY (Sept. 14, 2018),

25 of the 40 largest banks in America to escape heightened scrutiny and "to be regulated as if they were tiny little community banks that could have no impact on the economy."[140] However, it is evident that no matter which way you fall on the side of the debate, there are principal issues being left out of the conversation.

IV. PROPOSAL

Regardless of the on-going debate, between regulations and deregulations, it is inevitable that we will face another financial crisis. Therefore, at its core the Volcker rule and other regulations that were passed by the Obama Administration were not in effect to prevent another financial crisis, but in fact were an attempt to stabilize and better prepare our financial sector to tackle another crisis.[141] Again, in theory, this would possibly prevent massive bailouts for those banks and banks that are "too big to fail," and lessen the enormous burden that taxpayers were forced to endure as a result of such bailouts. However, the key component to the "too big to fail" concept has yet to be addressed by any regulation or administration.

A. The Volcker Rule Does Not Deal With "The Too Big to Fail" Issue

Without a deeper understanding of what the Volcker rule truly accomplished, one may presume that the issue of "too big to fail" that was touted around for years during and after the 2008 crisis was in fact dealt with. However, in essence the problem still remains a nebulous issue. The Volcker rule only "split up" big banking activities and required greater scrutiny for risky investments. [142] "The intention behind this was clearly not to *eliminate* the too big to fail problem but *ensure* that large firms do not pose systemic risk like they did in 2008."[143]

As previously explained, the Volcker Rule restricts the ways big banks invest by regulating their trading in risky transactions. In other words, the rule prohibits "banking entities" to invest customer deposits in speculative investments through "proprietary trading".[144] But proprietary trading was not the sole root cause for

www.usatoday.com/story/opinion/voices/2018/09/14/trump-republicans-inviting-new-wall-street-crash-lehman-anniversary-column/1292862002/.

140. *Id.*

141. *Id.*

142. *See* THE MARKET MOGUL, www.themarketmogul.com/can-dodd-frank-act-tackle-big-fail-issue/ (last visited Nov. 10, 2017) (stating "the too big to fail" problem continues to exist with megabanks continuing to threaten the future economy).

143. *Id.*

144. *See id.* (explaining that "on July 22nd 2011 the United States Court of

the 2008 financial crisis; therefore, introducing the Volcker rule may have been a futile attempt to address a problem that never existed.[145]

Another factor to consider is that the Volcker rule costs banks hundreds of millions of dollars.[146] Much of this money will be passed onto the end consumer as costs for banking at these institutions, and moreover, the benefits of these regulations have no tangible benefits that may be seen until another financial crisis hits, and an analysis can be drawn of how the regulations hold up in contrast to the effects of the pre and post regulations. All this does is leave the American consumer left with speculation and uncertainty.

These regulations adequately seek to provide enough protection that is warranted to the American people. Nor do these regulations justify the impositions put on banks. What the regulations really can be boiled down to are experiments that the government is using the American people and banks as guinea pigs to conduct.

B. What We Need

Post 2008, the US banks have not only become 'healthier and stronger' but also "bigger and more interconnected."[147] What we truly need is a solution that underpins the way banks operate and grow and not just a way that they conduct business and make money. "Former president Obama has strongly endorsed the Volcker Rule, claiming, the Volcker Rule will make it illegal for firms to use government-insured money to make speculative bets that threaten the entire financial system, and demand a new era of accountability from CEOs who must sign off on their firm's practices."[148] However, the Volcker rule only dealt with a few of the risky activities, such as proprietary lending. Moreover, the rule in fact did nothing to battle the infrastructure of big banks that caused such a widespread financial crisis which devastated millions and

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Appeals for the District of Columbia upheld a challenge by two trade groups to a Dodd-Frank-related rule on shareholder voting put forward by the Securities and Exchange Commission (SEC); the court found that the rule was backed by insufficient or faulty economic analysis of costs and benefits. On December 2nd, another case on similar grounds was filed in a Washington, DC, district court by two securities-industry trade groups, this time against the CFTC, concerning restrictions on derivative holdings. If that court, too, finds for the plaintiffs expect a deluge of further suits").

145. *Id.*

146. *Id.*

147. *See generally*, John Aziz, THE WEEK, theweek.com/articles/454633/why-volcker-rule-wont-solve-problem-big-fail (last visited Nov. 22, 2017) (explaining that "[t]he idea is to have a two-tier banking sector: A non-risk-taking part, which accepts retail deposits and benefits from deposit insurance, and a risk-taking-part, which does not accept retail deposits and does not benefit from deposit insurance.").

148. *Id.*

caused such a massive government bailout.[149] While this sounds like a plan and did put understandably angry Americans a bit at ease, it was no more than an illusion of accountability and redressability. This is true because in order to truly monitor big banking activity, and not only attempt to prepare but protect against another financial crisis, big banks must be broken up.

C. The Solution

Proponents of regulation always debate about how to hold big financial institutions accountable. However, the concept will always remain an illusion. This is because, in the triangle, created by regulation between the banks, the consumer, and the government regulation, never addresses the crucial fact that in the end, the transactions that lead to liability occur between only the consumer and the bank. While it is certain that a standard must be established by governments on how banks should operate, this is only one minor piece of the puzzle. To protect the consumer and the financial industry, large banking operations must be broken up into sectors. Therefore, the answer is neither the Financial Choice Act nor Volcker Rule, and I would propose that a version similar to the Glass Segal Act be brought back and replace the Volcker rule.

This solution can be distinguished from the rest because of its premise of transparency. The foundation of the current regulation was never based on proper footing and analysis, but I believe the Glass Segal Act was. In order to truly protect the American consumer from big banking activity, it is first and foremost important that the American consumer be aware with what they are dealing with. The Glass–Steagall legislation described four provisions of the U.S. Banking Act of 1933 separating commercial and investment banking.[150] This Act was prematurely and wrongfully repealed.[151] I believe that this Act had the right idea to combat the copious activities of banks that have led to more than one financial crisis. The tiered/segmented approach to banking is the missing link in the quest for a solution to the too big to fail issue and the answer to the quest to provide a solution to protect the American people.[152] Therefore, this solution would not only combat the underlying issue of banks being too big to fail by breaking them up into sectors, it would also provide transparency into the banking industry. Furthermore, it would make the task of regulation more

149. *See id.* (explaining "the Volcker Rule attempted to update this separation for the 21st century by restricting the speculative activities of all Federally insured banks, but without any explicit separation between retail and investment sectors").

150. *What Was The Glass-Steagall Act?,* INVESTOPEDIA, investopedia.com/articles/03/071603.asp (last visited Nov. 10, 2017).

151. *Id.*

152. *Id.*

simple and a lot less costly because regulators would be able to discern which type of bank and its banking activities requires what type of specific and targeted regulation. Currently, this is not the case because we are dealing with a myriad of regulations that overhaul the underlying issue which not only are too complicated and costly, but also too speculative when assessed against the big picture issue.[153]

Therefore, first I would propose that the provision of the Glass Segal Act that separated commercial and retail banking be reenacted. This will for one allow the government more easily implement and monitor regulations that are tailored to a specific type of banking and its consumer. Also, this will provide the consumer with the added protection of what kind of transaction they are being subjected to. Additionally, with this added layer of awareness, a consumer may be better equipped to know and understand the risks involved and make a more educated decision. Breaking banking into two different sectors will lift some fog from the elusive banking industry.

Moreover, I would implement an additional responsibility on banks to know their consumer's risk level. Are they risk adverse or can they cushion a higher level of risks? These types of evaluations are made and required by broker under the 1934 Securities Exchange Act, and I do not see why they should not apply to banks that are making investments with their consumers' funds as well.[154] Some may argue that that the two operations differ fundamentally. Yet, in the end the concept of the two is the same. Making money out of money.

Thus, requiring banks to have a higher reserve is only one step in a two-step process that I would impose on banks to not gamble (so to speak) with consumers' funds that are highly risk adverse. Just as a calculated and well-informed investment decisions are imposed on brokers, banks should nonetheless be required to abide by the same principals. Furthermore, since a bank makes its money by investing and trading with other people's money, I would have all banks "share the wealth" by remitting a much higher interest rate on all types of saving accounts held by consumers.

And finally, I would eliminate any nonfunctional exceptions to these regulations. Moreover, the only functional exceptions I can think of is allowing any sort of risky investment by banks only via a waiver by the consumer. However, this waiver would not be easily obtained by banks. To the contrary, a high threshold of showing that the consumer was cognizant of any and all risks and still independently choose to accept them would be necessary for such a

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153. *Id.*

154. *Securities Exchange Act of 1934*, INVESTOPEDIA, www.investopedia.com/terms/s/seact1934.asp, (last visited Apr. 7, 2018).

waiver. I would allow this only exception because largely banking is a contract between two parties and there should remain flexibility to choose individual rights.