Banking and finance

Access to safe and reliable financial services is fundamental to Americans' prosperity. However, since the passage of the Sarbanes-Oxley Act in 2002, regulators have used their expanded authority to impose burdensome rules that interfere in Americans' financial decisions and hinder access to financial services for consumers and businesses.

Furthermore, the subsequent increased politicization of financial services as a public policy tool has eroded public confidence in financial institutions and their regulators and led to the growth of alternative forms of financial services and instruments— most notably cryptocurrency—which are now attracting politicians' and regulators' attention. Regulators have set in place rules that would block beneficial mergers out of misguided concerns of financial institutions having too much market power, while proposing schemes that would crowd out innovations through direct government competition in cryptocurrency and payments.

Instead of giving financial regulators even more authority, it would be much better depoliticize financial services, reduce political interference in private capital formation, and tell regulators to keep their hands off cryptocurrency. To achieve these good goals, Congress should:

- Make the Consumer Financial Protection Bureau accountable to Congress and check its overreach;
- End the Federal Reserve's regulatory overreach; and
- End financial regulatory agencies' blocking bank merger and new banks.

Check the CFPB: The Consumer Financial Protection Bureau wields vast power over many types of businesses that extend credit, yet is unaccountable to lawmakers by design. The drafters of the Dodd-Frank financial overhaul of 2010 shielded the CFPB from accountability by making the director nearly impossible for the president to remove and creating a funding mechanism that bypasses Congress. The Federal Reserve must fund the CFPB from the Fed's own earnings. The Supreme Court restored some accountability when it made the CFPB director subject to presidential

removal, but unfortunately declined to fix the funding mechanism that leaves Congress without meaningful oversight.

Congress should do what the Supreme Court would not and put the CFPB directly under its appropriations so it can exercise the power of the purse to rein in the CFPB's overreaching burdensome rules and edicts. Rep. Andy Barr's (R-KY) Taking Account of Bureaucrats' Spending (TABS) Act would achieve this objective.

Even if Congress cannot secure this funding oversight, it should do what it can to overturn the CFPB's most egregious acts. It should block all final rules it can with the Congressional Review Act resolutions, so that the newly elected president will be better able implement CFPB policy in the direction he wishes it to go. It should overturn the CFPB's rule mandating $8 price controls on credit card late fees – currently blocked by federal courts. This rule would raise costs for consumers who pay their credit card bills on time and would reduce credit availability for everyone.

Congress should also eliminate the CFPB's complaint database, which has proven unreliable and has been misused by CFPB researchers. Lawmakers should also tighten the definition of the terms "unfair" and "abusive" in Dodd-Frank's list of adjectives for acts the CFPB may prohibit, so that the terms "unfair" and "abusive" can no longer be used by the CFPB to paternalistically punish products and services officials simply don't like.

End Fed regulatory overreach: The Federal Reserve is a multi-functional government entity. It sets monetary policy by controlling the supply of US dollars as well as supervises and regulates the many US banks under its jurisdiction. In recent years, without any new authority from Congress, it has launched and contemplated business ventures that directly compete with the banks under its regulatory jurisdiction.

In 2023, the Fed launched the FedNow payment system as a government-backed competitor to private sector alternatives. It competes directly with the private sector bank-based payment systems RTP and Zelle, and indirectly competes with FinTech apps such as Chime and Dave that have high rates of customer satisfaction as well as privately issued cryptocurrencies. The Fed's government-subsidized presence in this market could crowd out private-sector firms and stifle innovation. FedNow also means the Fed now can see intimate details of consumer transactions, raising huge privacy red flags.

Similar concerns about the Fed stifling innovation and having access to private consumer info arise with proposal for the Fed to issue a central bank digital currency (CBDC). If the Federal Reserve, rather than the private sector, were to issue its own cryptocurrency, the US government would have direct access to the digital ledger that records financial transactions for individuals using that currency. Know Your Customer rules governing banking will empower the federal government

to track and identify nearly every CBDC transaction. Even with safeguards, the information on individual purchase and investment decisions that the Fed would store would be vulnerable to hacking and abuse.

Congress should pass an anti-CBDC bill, along the lines of the CBDC Anti-Surveillance State Act that passed the House in 2024, barring the Fed from creating or contracting out the creation of a CBDC. And it should pass a law clarifying that the Fed has no authority to implement the FedNow payment system and to cease and desist operation of that system.

Congress should also check the Fed's massive regulatory power over the payments system by repealing the Durbin Amendment of Dodd-Frank that tasks the Fed with setting price controls for interchange fees that merchants pay and debit card transactions. The Fed's implementation of the Durbin price controls in 2011 through Regulation II resulted in banks sharply reducing free checking for low balance accounts and in debit card rewards virtually disappearing, as the bulk of the costs of processing debit cards shifted from retailers to consumers. Congress should overturn the Fed's latest proposed rule making the price controls in Regulation II even worse. Similarly, Congress should reject the Credit Card Competition Act that would give the Fed further powers to issue mandates forcing down credit card interchange fees.

Allow mergers, new banks: CEI has long supported competition in all areas of the economy, with an emphasis on consumer choice and consumer welfare, and has highlighted government regulatory barriers that have inhibited competition. For instance, we have decried regulatory barriers to new, or de novo, banks that have been put in place since the Financial Crisis of 2008. We have pointed to the problems posed to both competitiveness and financial stability by the lack of new banking entrants in comparison to past decades.

Over the past two years, financial regulatory agencies have started to express concerns about the lack of competitiveness in the financial sector, but have not moved to ease regulatory barriers to new entrants. Instead, agencies like the Federal Deposit Insurance Corporation (FDIC) have begun to put in place rules to block mergers and acquisitions (M&A) that would be beneficial to consumer choice and financial stability.

As former FDIC Chair Sheila Bair and former FDIC Vice Chair Thomas Hoenig have observed, the FDIC's pending proposed policy statement on M&A "will have a chilling impact on positive M&A banking activity, including among regional banks where consolidation could strengthen their ability to compete with the mega banks." They have noted that "the unintended consequence... could be to reduce, not promote, competition in the banking industry."

Congress should help promote true competition in the banking sector by passing legislation to knock down regulatory barriers. It should also rescind, or if possible overturn by CRA, the policy statements of the FDIC and other agencies that would block beneficial mergers.

It would be helpful to pass legislation along the lines of Rep. Andy Barr's (R-KY) Promoting Access to Capital in Underbanked Communities Act that would require the FDIC to move toward a system of phased-in capital. This would allow de novo banks to build capital as they gain customers, rather than having to meet a nearly impossible burden for massive amounts of capital up-front.

Congress should also set statutory deadlines for approval of new banks and credit unions *and* for M&A. The legislation should provide that any application will be deemed approved unless denied by the banking agency within 120 days of filing.

Experts: John Berlau, Iain Murray

For further reading:

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