

To: Financial Services Committee Leadership Team
From: Chairman Hensarling
Re: CHOICE Act 2.0 Changes
Date: February 6, 2017

This memo provides the changes to be made to the introduced version of the Financial CHOICE Act for the 115th Congress.

**Title I -- REGULATORY RELIEF FOR STRONGLY CAPITALIZED,
WELL MANAGED BANKING ORGANIZATIONS**

1. Eliminate the CAMELS requirement from the capital election
2. Capital Election Leverage Ratio Effective Date
 - a. Change SLR effective date to the date of enactment of the Financial CHOICE Act, not the effective date of the final rule
3. Capital Election Capital Restoration Plans
 - a. Additional flexibility/time for credit unions “to come back into compliance as a qualifying banking organization” (in lieu of supplemental capital).
4. Banking organizations that make the capital election (a qualifying banking organization) will be exempt from the stress tests

Title II -- ENDING “TOO BIG TO FAIL” AND BANK BAILOUTS

1. FDIC Removed from the Living Will Process as required by DFA Section 165
2. Extend CHOICE Act’s Section 211 requirements to the FDIC for purposes of insured depository institutions
3. Remove remaining nonbank SIFI references in OLA repeal
4. Operational Risk Capital requirements will only apply to prospective operational risk. Banking organizations will not have to hold operational risk capital against business lines or products that institution no longer offers.
5. Stress Tests and CCAR Improvements
 - a. Codify the GAO’s recommendations for Stress Test improvements
 - b. Eliminate mid-year company-run DFA Stress Test requirement
 - c. CCAR will be a 2-year cycle
 - d. For banking organizations that do not make the capital election, the Stress Tests will not be used to impose new regulations that have not been the subject of a public notice and comment period
 - e. Expand the CCAR qualitative relief recently promulgated by the Federal Reserve to banking organizations that do not make the capital election
 - f. For CCAR/DFA Stress Tests, the Federal Reserve will rely on a banking organization’s planned capital distribution and the Federal Reserve cannot use qualitative assessment test as grounds for prohibiting capital distributions

Title III -- EMPOWERING AMERICANS TO ACHIEVE FINANCIAL INDEPENDENCE

1. 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:
 - a. Sole director, removable by the President at-will
 - b. Elimination of consumer education functions
 - c. Rule-making authority limited to enumerated statutes
 - d. UDAP authority repealed in full
 - e. Supervision repealed
 - f. Consumer complaint database repealed
 - g. Market monitoring authority repealed
 - h. Enforcement powers limited to cease and desist and CID/Subpoena powers
 - i. Mandatory advisory boards repealed
 - j. Research function eliminated
 - k. Strengthen the existing Dodd-Frank language that the CFPB's jurisdiction does not include entities regulated by either the SEC or CFTC

Title IV-- CAPITAL MARKETS IMPROVEMENTS

1. The SEC's five-year authorization will extend from FY 2021 to FY 2022 (the SEC's appropriation will begin with FY 2017 to prevent a lapsed appropriation scenario).
2. Prohibit the SEC's use a pre-funded escrow account for relocation of its headquarters
3. The SEC Chairman will provide a report within 1 year on eliminating duplication and inefficiencies amongst the various self-regulatory organizations
4. SEC Investor Advisory Committee – impose term limits on members and Chairman/VC
5. Eliminate the PCAOB's Investor Advisory Committee
6. Modernize the shareholder proposal and resubmission thresholds for inflation
7. The SEC shall establish a "Wells Committee 2.0" to reevaluate its Enforcement program
8. Prohibit a co-conspirator from receiving a SEC Whistleblower rewards program
9. Re-draft Section 415 to prohibit any SEC rulemaking by enforcement
10. Allow the SEC to implement a Conditional Approval Process for new securities products
11. Add an exemption for Inter-affiliate Margin for internal derivatives transactions and limit the prudential regulators from unilaterally frustrating this exemption
12. Sarbanes-Oxley 404(b) threshold – amend from \$250 million to \$500 million
13. Section 411 – apply data risk control standards to FINRA and Consolidated Audit Trail
14. Amend the Investment Company Act Section 36(b) to require a private right of action brought against an investment company for breach of fiduciary duty be stated with particularity and meet the burden of clear and convincing evidence

15. Amend Section 441 of CHOICE (Retail Investor Protection Act) to require that the DOL must, in promulgating any fiduciary rule, adhere to a substantially similar standard after the SEC has promulgated its uniform standard under Section 913 of DFA.
16. Make the NRSRO examinations purely risk-based instead of annual
17. Eliminate NRSRO requirement for Board approval of ratings methodologies
18. Eliminate NRSRO CEO attestations for internal controls and conflict management policies and procedures
19. Add a safe harbor to the SEC's NRSRO rules so as to bring rationality to the interaction of NRSRO personnel
20. Improve and tailor the SEC's rules that govern the NRSRO "look-back" requirement that reach those that do not have a conflict of interest.
21. Streamline the content of the information that NRSROs must provide the SEC
22. SEC Pilot Programs that have been in existence for at least 5 years must either be made permanent or ended
23. SEC Universal Proxy restriction: Include Mr. Garrett's amendment language from FS&GG FY 2017 appropriations to prohibit the SEC from promulgating a rule to require a universal proxy ballot

Title V -- IMPROVING INSURANCE COORDINATION THROUGH AN INDEPENDENT ADVOCATE

1. No changes will be made to this title.

Title VI -- DEMANDING ACCOUNTABILITY FROM FINANCIAL REGULATORS AND DEVOLVING POWER AWAY FROM WASHINGTON

1. Delay the repeal of Chevron Deference for two years from the date of enactment of the CHOICE Act
2. NCUA Board will have three rather than five members
3. Add a requirement that federal financial regulators will enter into a memorandum of understanding to designate a "Lead Banking Investigator"
4. Federal regulators shall be guided by the principal of proportionality to determine sanctions in a settled manner and regulators shall consider penalties imposed or expected to be imposed by any Federal or state authority when imposing an administrative sanction and require regulators to adopt rules to explain how they will account for penalties imposed by other entities

Title VII -- FED OVERSIGHT REFORM AND MODERNIZATION (FORM ACT)

No changes will be made to this title

Titles VIII and IX

No changes will be made to these titles

**Title X -- UNLEASHING OPPORTUNITIES FOR SMALL BUSINESSES,
INNOVATORS, AND JOB CREATORS BY FACILITATING
CAPITAL FORMATION**

1. Modernize the Section 12(g) SEC registration requirements for smaller reporting companies
 - a. Eliminate annual verification of accredited investor status, added by the SEC without Congressional consent when implementing the JOBS Act
 - b. Increase revenue/shareholder thresholds and index the revenue test for inflation
2. Republican reversions to provisions in the FAST Act
 - a. Amend the RAISE Act from Mr. McHenry to reflect the legislation's original intent.
3. Republican reversions to provisions included in CHOICE ACT 1.0
 - a. Amend Title III of the JOBS Act to reflect the original intent of the Equity Crowdfunding legislation offered by Mr. McHenry
 - b. Increase the exemption from registration as an investment company for "qualified angel funds" from 100 to 500 investors agreed to by all stakeholders prior to the Ranking Member's objections
 - c. Business Development Company Modernization legislation will revert to the discussion draft version offered by Mr. Mulvaney prior to the Committee markup in the 114th Congress
 - d. SEC Rule 701 threshold to be increased from \$10 to \$20 million with an inflation trigger, consistent with Republican-introduced legislation in the 113th Congress
 - e. ETF Research Safe Harbor will shorten the effective dates consistent with the introduced version.
4. Expand the JOBS Act's Title I provisions to apply to a greater number of companies
 - a. "Testing the Waters" will apply to all companies and not solely emerging growth companies
 - b. Confidential filings will apply to all companies registering shares for the first time with the SEC.
5. Expand the JOBS Act's Title IV Provisions
 - a. SEC "Reg A+" \$50 million threshold will be increased to \$75 million/year plus we will add an inflation trigger

**Title XI -- REGULATORY RELIEF FOR MAIN STREET AND
COMMUNITY FINANCIAL INSTITUTIONS**

1. Final decisions on the CFPB's structure *may* make moot or require conforming amendments for some of the provisions of this Title.

Title XII – TECHNICAL CORRECTIONS (NEW TITLE to the CHOICE ACT)

1. Add Senator Shelby's Technical Corrections bill to conform with current CHOICE Act revisions to the Dodd-Frank Act

Technical Corrections To be Made Throughout the CHOICE Act

1. Strike Section 336 and make conforming changes, which is the annual report and testimony on the future of the GSEs
2. Remove Title IV, Subtitle C (Ag Committee's CFTC provisions)
3. SEC Investor Advisory Committee – technical corrections to DFA Sec. 911
4. Section 611 – eliminate SRO effective on filing exemption (retain the exemption for FINRA, PCAOB, MSRB to meet the CHOICE Act requirements)
5. Section 805 – Incorporate the Judiciary Committee's request to use its "victim" definition
6. *Add the Madden v. Midland* fix (assuming use of language from H.R. 5724)
7. Section 211 – strike references to "primary federal financial regulatory agency" for purposes of the stress test
8. Section 612(a)(8) – add "independent business model" to enumerated considered entities for disproportionate burden
9. Title X, Subtitle R – add the term "transfer agents"
10. Title X, strike the SEC Small Business Advocate Subtitle G, because it was enacted into law at the end of the 114th Congress, but CHOICE 2.0 needs to include technical amendments to align the new law with the CHOICE Act
11. Remove Sec. 221(b)(2) – conforming change to Sec. 151 DFA which was previously repealed in CHOICE