Government efforts to manage the financial crisis and to promote economic recovery have been extensive over the past three years. Hundreds of billions of dollars have been distributed—and much of it now repaid—from the Troubled Asset Relief Program. The Federal Reserve holds more than $2 trillion in mortgage-backed securities, collateralized loans to financial institutions, and other assets and liabilities to maintain liquidity in the financial markets. The American Recovery and Reinvestment Act injected more than $600 billion into the economy through tax breaks, loans, contracts, grants, and entitlements. Congress also passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. Yet economic recovery remains flat. The author examines the reform effort to date, key points of its primary focus, and the politics of implementing the reform as a factor in eventual economic recovery. One component of the reform, the creation of a Consumer Financial Protection Bureau, holds the greatest potential for changing the way consumers participate in the financial markets, but also has drawn the greatest debate and opposition. While regulatory reform alone will not revive the economy, a newly conceived and broadly participatory Consumer Financial Protection Bureau could simplify and streamline the complex linkages that contribute to the supply of credit.

Yet government efforts to manage the crisis over the past three years, and to prevent another crisis from taking shape, have been monumental. Congress passed a major reform of the financial industry in 2010; the Dodd-Frank Wall Street Reform and Consumer Protection Act was aimed at regulating the unregulated, protecting the consumer, and reversing the perverse incentives that guided the actions of subprime lenders and investors, credit rating agencies, market-based financial intermediaries, and others. The U.S. Treasury distributed hundreds of billions of dollars through programs such as the Capital Purchase Program for banks, the Targeted Investment Program, the Asset Guarantee Program, the Automotive Industry Finance Program, and the Treasury Housing Programs, all under the umbrella of the Troubled Asset Relief Program (TARP), much of which now has been recouped (Financial Stability Oversight Board 2011).1

Let me begin by noting that the financial crisis has been of no small consequence to our nation. There are more than 24 million Americans who are out of work, cannot find full time work, or have given up looking for work. About four million families have lost their homes to foreclosure and millions more have slipped into the foreclosure process or are seriously behind on their mortgage payments. Nearly $9 trillion in household wealth has vanished. The budgets of the federal government and of state and local governments across the country have been battered by the economic tailspin precipitated by the financial meltdown. And, the impacts of the crisis are likely to be felt for a generation, with our nation facing no easy path to renewed economic strength.

Recovery from the financial crisis of 2008 has been slow and complicated. On May 10, 2011, Phil Angelides, chair of the Financial Crisis Inquiry Commission, began his testimony before the U.S. Senate Banking, Housing and Urban Affairs Committee with a dour assessment of the U.S. economy three years after the crisis erupted:

Let me begin by noting that the financial crisis has been of no small consequence to our nation. There are more than 24 million Americans who have been out of work, cannot find full time work, or have given up looking for work. About four million families have lost their homes to foreclosure and millions more have slipped into the foreclosure process or are seriously behind on their mortgage payments. Nearly $9 trillion in household wealth has vanished. The budgets of the federal government and of state and local governments across the country have been battered by the economic tailspin precipitated by the financial meltdown. And, the impacts of the crisis are likely to be felt for a generation, with our nation facing no easy path to renewed economic strength.

Support also has come from the Federal Reserve Board: the Fed’s balance sheets exceed $2 trillion from purchases of mortgage-backed securities,
collateralized loans to financial institutions, and other transactions aimed initially at stemming the tide of bankruptcies, and now maintaining liquidity in the financial markets. And the American Recovery and Reinvestment Act of 2009—the so-called stimulus package—provided more than $185 billion in individual entitlements, $209 billion in contracts, grants, and loans to states, localities, and their subcontracting partners, and cut taxes by $260 billion.

So why the slow recovery, evidenced by continued high unemployment, foreclosures, slow growth, stagnant or falling housing prices, and, indeed, the $2 trillion still held on the Fed's balance sheets in support of the financial industry (as well as indicative of the Fed's increased authority throughout this crisis)? One might argue that recovery simply takes time, or that the government intervention has caused more problems than it has solved. Both are possibilities, but the relationship between the financial crisis and the economy and the pace of recovery is complex and presents several puzzles.

First, part of the puzzle rests with the importance of consumption and debt as driving factors in the economy, rather than savings, manufacturing, and exports. Some economists refer to this as an "imbalance" and to the correction as a "rebalance" (The Economist 2010; Samuelson 2010). Without a strong growth component inchema

This retrospective focuses on the topics related to developing and implementing the legislative changes. The analysis tracks a series of questions posed in a Public Administration Review symposium, "A Public Administration Moment," held two years ago at the height of the crisis. Specifically, what should be the design of financial regulation in terms of consolidation and connecting the dots, as well as the implications of organizational design for regulatory autonomy? How might transparency of the financial markets be enhanced, and how can more transparency support regulation of systemic risk? And what are the administrative capacities for public administrators involved in financial regulation? Throughout, the analysis draws heavily on the new CFPB, as this is where the most fundamental changes in the regulatory structure have taken place. First, we provide a legislative overview of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Dodd-Frank: The Legislative Response

In a March 2011 industry-based six-month assessment of the Dodd-Frank Act, the breadth and reach of the legislation was the primary focus:

[Many said it was the most significant remake of the U.S. financial services sector since the Great Depression. That turned out to be an understatement. The six months following passage have demonstrated that Dodd-Frank's impact reaches not only every segment of the financial services industry, but also the rest of corporate America in ways that might not have been fully anticipated. To paraphrase Winston Churchill, never has so much been demanded by so few for so many in such a short period of time. (PwC 2011)]

The legislation certainly has broad and detailed reach across the financial services sector, including reform of the Federal Reserve and changes in the regulation of banks and thrifts, among other priorities, but here the focus is on three key areas of regulatory reform. First, the legislation creates broad regulatory authority to protect consumers of financial products by creating a Consumer Financial...
Protection Bureau. Much of the bureau’s authority is inherited from existing financial consumer protection legislation transferred from existing regulators in July 2011. However, the bureau’s authority expands beyond existing consumer protections, which are focused primarily on banking organizations, to include all mortgage lenders and payday lenders. In addition, the bureau will have the authority to monitor risks to consumers and to prevent unfair, deceptive, or abusive acts associated with consumer financial services or products (Public Law 111–203, Title X). The funding, authority, and leadership of the CFPB are among the most contentious issues in the effort to bring Dodd-Frank on line and the legislative changes into practice, and the legislation creating the CFPB is perhaps the most significant in terms of the potential for real regulatory change after the crisis.

Second, Dodd-Frank targets systemic risk through macroprudential regulation, or the regulation of individual firms based on their significance within the financial system (Labonte 2010; PwC 2011). Systemic risks, in very general terms, are risks that “potentially cause instability for large parts of the financial system” (Labonte 2010). As a recent Congressional Research Service report on systemic risk notes, regulation prior to Dodd-Frank focused on the risk-taking activities of individual firms and efforts to minimize the impact of risk on that firm’s operations (Labonte 2010). Macroprudential regulation focuses on risk taking by firms that affects the entire financial system. In the recent financial crisis, firms considered “too big to fail,” such as American Insurance Group (AIG), were a primary source of systemic risk. In the case of AIG, the largest industrial and commercial insurer in the United States, regulators determined that failure would cause crisis throughout the financial system. AIG was in the business of insuring against default on debt (or bonds) held by banks and other financial firms through an instrument called a credit default swap. The breadth and scale of the credit default swap business was thought to be in the trillions, and thus AIG’s default would bring lending to a halt across the financial industry. Dodd-Frank targets systemic risk associated with firms that are too big to fail through the designation of “systemically important financial institutions” and regulation by the newly established Financial Stability Oversight Council.

Third, the legislation extends the reach of existing federal agencies to include regulation of market-based financial intermediaries (such as hedge funds) as the link between banking and the capital markets (the shadow banking system) and of the role that securitization in the shadow banking system plays in the supply of credit. Tobias Adrian, an economist at the Federal Reserve Bank of New York, and Hyun Song Shin of Princeton University (2009) note that “[s]ecuritization was intended as a way to transfer credit risk to those better able to absorb losses, but instead it increased the fragility of the entire financial system by allowing banks and other intermediaries to ‘leverage up’ by buying one another’s securities.” The credit crunch was driven primarily by the collapse of asset-backed securities held by financial market intermediaries and a plunge in the new issuance of asset-backed securities, from a high of $300 billion in 2007 to just above zero in September 2008 (Adrian and Shin 2009). Dodd-Frank engages the risks of the shadow banking system by requiring hedge funds to be registered with and regulated by the Securities and Exchange Commission (SEC), by requiring those who issue securities to have “skin in the game” or retain a higher percentage of the credit risk, and by requiring the credit rating agencies, who issue assessments of the quality of the securities for sale, to be regulated by the SEC.

Assessing Regulatory Reform

Consumer protection, macroprudential regulation, and regulation of the shadow banking system and securitization are key points of focus in the Dodd-Frank Act—these areas have sparked significant debate, and they represent significant changes in the existing regulatory structure. Here, we examine several long-standing questions about financial regulation in the context of these legislative initiatives and return to the question of effective reform and economic recovery.

Regulatory Design and Autonomy

In the fall of 2008, elected officials and presidential candidates struggled to address the financial crisis, and they engaged a familiar financial regulatory reform: regulatory consolidation, or “connecting the dots” across the regulatory activities of the financial sector. A long-standing criticism of the federal financial regulatory structure focuses on the pluralistic division of authority across regulatory agencies and financial institutions based on the charter of an institution, membership in the Federal Reserve System, and the primary financial products and services offered by an institution. This is further complicated by the overlapping regulatory structures of individual states. Critics argue that a divided regulatory structure limits coordination, hampers the capacity to see broad systemic patterns of excessive risk, and allows financial institutions to “shop” for a favorable regulator that might offer permissiveness as a means to sustain fee-based income for the respective agencies. Consolidation of the regulatory landscape, on the other hand, suggests closing the coordination gaps and the opportunities for permissiveness (Bernanke 2008; Bliss 2008; Group of 30 2008).

The consolidation arguments are appealing metaphorically, such as swapping out a “Rube Goldberg structure” for “a sleek iPod design that is cleaner, has better operating software and may even look good” (Spitzer 2008). But the arguments (or interests) for maintaining a pluralistic structure have the benefit of longevity, established congressional interests, powerful expert regulatory agencies, a banking industry that is divided on the issue, and (current crisis to the contrary) a relatively successful history of financial stability. The strength of the existing regulatory structure was most evident in Dodd-Frank. Despite staggering multitrillion-dollar financial losses and consequent unemployment and housing foreclosures, and despite the extensive and extraordinary steps taken by financial regulators to absorb the losses and prevent economic collapse, the only regulatory consolidation aimed at commercial financial activities to come out of the Dodd-Frank Act of 2010 was the elimination of the Office of Thrift Supervision (OTS)—an agency with little legacy, established in 1991 following the savings and loan crisis to supervise nationally chartered thrifts.4

Instead, the consolidation of commercial financial activities was pursued the old-fashioned way: a council was created that drew on leadership from across the existing financial regulatory agencies to identify and respond to “emerging risks throughout the financial system” (U.S. Senate 2010). The council is chaired by the secretary
of the treasury, with additional voting membership consisting of the heads of the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Securities and Exchange Commission, the Commodity Futures Trading Corporation (CFTC), the Federal Housing Finance Administration, the National Credit Union Administration (NCUA), and the newly created Consumer Financial Protection Bureau. A member with insurance expertise also is appointed, along with five nonvoting members. The primary responsibility of the council will be to identify systemically important financial institutions that will receive special regulatory treatment. Additional responsibilities include monitoring the financial system for potential systemic risks and gaps (drawing primarily on the information collected by the new Office of Financial Research), sharing information across existing regulators, offering advice on additional legislation needed by the new Office of Financial Research, and facilitating jurisdictional disputes (Labonte 2010; U.S. Senate 2010).

The council is, in short, the legislative response for comprehensive authority. In the final report of the Financial Crisis Inquiry Commission, financial regulators across the board were criticized for missing the warning signs of the impending crisis:

Time and again, from the spring of 2007 on, policy makers and regulators were caught off guard as the contagion spread, responding on an ad hoc basis with specific programs to put fingers in the dike. There was no comprehensive and strategic plan for containment, because they lacked a full understanding of the risks and interconnections in the financial markets. Some regulators have conceded this error. (2011, xxi)

Many have argued that the Fed has the authority for comprehensive systemic risk regulation, but that it failed to exercise that authority effectively leading up to the crisis. Prior to passage of Dodd-Frank, the Fed initiated changes to improve its systemic risk regulatory capacities. In testimony before the Senate Banking, Housing and Urban Affairs Committee in May 2011, Chairman Bernanke described the changes:

We created a centralized multidisciplinary body called the Large Institution Supervision Coordination Committee to oversee the supervision of these firms. This committee uses horizontal, or cross-firm, evaluations to monitor interconnectedness and common practices among firms that could lead to greater systemic risk. It also uses additional and improved quantitative methods for evaluating the performance of firms and the risks they might pose. (Bernanke 2011)

Whether exercised by the council or by the Fed, demonstrating the effective prevention of systemic risk-related problems is tricky. The regulator must allow sufficient risk to ensure vigorous markets, but identify and minimize risks such as low levels of liquidity across multiple firms, or highly leveraged portfolios to prevent systemic consequences such as a credit freeze, as happened in the current crisis. And the initial risks might not be evident, as such—recall the Fed’s interpretation of the subprime crisis as “contained.” The multijurisdictional makeup of the council, however, adds another dimension of regulatory complexity related to consensus building. Finding agreement among council regulators on the activities or financial products that require a systemic risk focus, or identifying systemically important financial institutions, may be a more fundamental challenge than mitigating any particular systemic risk.

Consolidation for Consumers
Consolidation did take place, however, for the regulation and enforcement of consumer financial protection (see table 1). This was a key component of the design argument in the debate over the new legislation—whether to consolidate consumer protection authority, or to leave the authority spread across existing agencies.

Creating a new agency with consolidated authority signaled the importance of the consumer protection mandate and the failure of the existing authorities with shared responsibility for consumer protection. The move was resisted by the existing supervisory authorities, such as the Federal Reserve Board (Duke 2009), the OCC (Dugan 2009), the FDIC (Bair 2009), the NCUA, and the now-defunct OTS—and by the Federal Trade Commission, which had authority for enforcing a number of the consumer financial protection mandates (Kovacic 2009). While retaining turf or regulatory authority is understood to preserve power and autonomy (Rourke 1984; Wilson 1989), the preferences of commercial financial regulators for retaining consumer protection responsibilities are more complicated.

Beginning in 1969 with passage of the Truth in Lending Act, the federal agencies charged with commercial banking supervision began overseeing the statutory obligations of banks to operate in a manner that is equitable and fair for their customers and the communities in which they operate. The federal government requires banks, credit unions, and thrifts to follow consumer and community protection standards by leveraging the insurance protection to given bank and thrift depositors through the Deposit Insurance Fund and the National Credit Union Share Insurance Fund. Responsibility for the examination and supervision of banking practices related to these mandates rested with the Federal Reserve, the OCC, the FDIC, the NCUA, and the OTS. On July 21, 2011, this authority was transferred to the Consumer Financial Protection Bureau for banks, thrifts, and credit unions; nondepository institutions such as mortgage originators, brokers, and servicers, payday lenders, and private education loan providers are also now part of the agency’s jurisdiction.

Over the past several decades of implementation, consumer financial protection activities, in general, have been labeled “compliance” by banking supervisors, and the practice of compliance supervision was typically a secondary priority to the practice of commercial supervision, or the safety and soundness examinations of bank activities. As the term “compliance” suggests, the challenge was to ensure that banks were complying with, or in line with, consumer financial protections, whereas safety and soundness examinations and supervision were viewed as requiring more professional expertise by bank examiners. As one examiner described the challenge in earlier research, a commercial exam is a “credit analysis and that’s basically finance. . . . It’s subjective, a true business art” (quoted in Khademian 1996, 27). Nevertheless, each of the commercial supervisory agencies has developed extensive systems for implement-
protection efforts with commercial supervision, it was argued, allows for an interactive balance between compliance activities and commercial activities that strengthens both. As Shelia Bair, chair of the FDIC, described the relationship in testimony before the U.S. House of Representative Financial Services Committee, “Consumer protection and risk supervision both benefit from the synergies created by this holistic approach and the ready and timely access to expertise and critical information. Separating consumer protection examination and supervision from those other supervisory efforts could undermine the effectiveness of both, with the unintended consequences of weakening bank oversight” (2009, 13). In short, commercial regulators wanted to keep consumer protection regulations couched in the context of a competitive banking system, and hence they were opposed to a consolidated consumer protection

<table>
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<tr>
<th>Regulatory Entities</th>
<th>Commercial Supervisory and Examination Authority</th>
<th>Consumer Supervisory and Examination Authority</th>
<th>Consumer Regulatory and Rulemaking Authority</th>
</tr>
</thead>
</table>
| Consumer Financial Protection Bureau (CFPB) | None                                          | • Nondepository institutions, including mortgage originators, brokers, and servicers; payday lenders; and private education loan providers  
• Large (more than $10 billion in total assets) federally insured depository institutions, including credit unions and affiliates | • All existing banking agency authorities to issue and enforce regulations, as well as authority to conduct examinations, were transferred to the CFPB on July 21, 2011, with the exception of authority for the Community Reinvestment Act |
| Federal Reserve                             | • Nonbank financial firms designated as systemically important by the Financial Stability Oversight Board  
• Thrift holding companies  
• Bank holding companies  
• State-chartered member banks | • Small (less than $10 billion in assets) state-chartered member banks | • Transferred to the CFPB on July 21, 2011 |
| Office of the Comptroller of the Currency   | • Nationally chartered banks  
• Nationally chartered thrifts | • Small (less than $10 billion in assets) nationally chartered banks  
• Small nationally chartered thrifts  
• Community Reinvestment Act activities of nationally chartered banks and thrifts | • Transferred to the CFPB on July 21, 2011 |
| Federal Deposit Insurance Corporation       | • State-chartered nonmember banks  
• State-chartered thrifts | • Small (less than $10 billion in assets) state-chartered nonmember banks  
• Small state-chartered thrifts  
• Community Reinvestment Act activities of state-chartered nonmember state banks, as well as state-chartered thrifts | • Transferred to the CFPB on July 21, 2011 |
| National Credit Union Administration        | • Nationally chartered credit unions | Small (less than $10 billion in assets) nationally chartered credit unions | • Member review request for safety and soundness concerns  
• Two-thirds override of CFPB rules |
| Financial Stability Oversight Board          | • Investment advisors  
• Broker-dealers  
• Credit rating agencies  
• Self-regulatory organizations  
• Clearing agencies  
• Transfer agents  
• Municipal advisors | | |
| Securities and Exchange Commission          | • Registered entities such as clearing organizations and markets | | |
| Commodity Futures Trading Corporation        | | | |
agency operating independently from the established banking supervisors.

Banks (primarily large banks with more than $10 billion in assets) were (and are) opposed to the new regulatory agency. Part of the resistance rests with a long-standing opposition to consumer protection laws in general. In earlier research following the banking crisis of the late 1980s, a supervisor involved in developing compliance policy for the Fed described the defensive reaction of banks to compliance policy early on:

> Consumer compliance is burdensome. . . . It’s technical and hard to get the details right. . . . And it’s so annoying and insulting to bankers. To be mandated to disclose information to customers suggests you are not relating information to customers in the first place; to demand community reinvestment suggests you are not reinvesting in the community in the first place. (quoted in Khademian 1996, 151)

Beyond the sensitivity of banks on the issue, opposition to a new regulatory agency focused on the potential conflicts between safety and soundness and consumer protection regulators, the potential for increased regulatory burden and the consequent difficulties of raising capital, and the breadth of authority (discussed later) granted to the new agency (Pollock 2009; Yingling 2009). Yet, in the run-up to the financial crisis of 2008, commercial supervisory concerns trumped consumer protection concerns again and again. The list of consumer protection failures, highlighted in testimony before the Senate Banking Committee, is extensive: the Fed’s failure to develop anti–predatory mortgage lending rules in a timely manner, despite their authority to do so in 1994; aggressive efforts by the OCC to preempt state laws aimed at protecting consumers from ATM surcharges, providing consumers with credit card disclosures, and protecting consumers from predatory lending practices; the Fed’s failure to require banks to provide customers with cost-of-credit disclosures or a contract for overdrafts on debit card cash advances, a practice that garners banks $17.5 billion per year; and the OCC’s failure to take action against banks for violations of consumer lending laws, among other practices (Galvin 2009; Mierzwinski 2009, 9–20; Plunkett 2009; Warren 2009).

Moreover, advocates of the new CFPB argue that if the commercial supervisory agencies had been more attentive to consumer protection, safety and soundness would have improved as well. Travis Plunkett of the Consumer Federation of America made the case: “If regulatory agencies had acted to prevent loan terms or practices that harmed consumers, they would also have vastly improved the financial solidity of the institutions they regulated” (2009, 6). Elizabeth Warren, assistant to the president and adviser to the treasury secretary to help stand up the CFPB, has made a similar point on several occasions, emphasizing that the regulatory structure in place provided neither safety and soundness nor consumer protection (Warren 2009).

As the CFPB prepared to open its doors in July 2011, the battle in Congress heated up over the funding structure for the agency and its eventual leadership. Under Dodd-Frank, the CFPB is housed in the Fed and self-funded; simply put, like the Fed, the agency will not need to go Congress each year for funding. A recent Harvard Business Law Review piece noted that one need only look at the aggressive $2 trillion-plus balance sheet of the Fed to see the strength and capacity of a self-funding regulator (Schmidman 2011). Republicans in Congress now want the agency to have a stronger congressional connection, and they wrote to President Barack Obama that there would not be a vote on the final appointee for the agency unless the funding structure was changed (Wyatt and Protess 2011).

**What to Do with the Fed: One Hand Gives, the Other Takes Away**

The Federal Reserve is the financial regulator that Congress loves to hate. In the debates leading up to passage of Dodd-Frank, the Fed was criticized for its failure to regulate mortgage lending practices and for inaction that allowed the systemic contagion of subprime lending. The Fed also has been targeted by some critics, among them Representative Ron Paul (R-TX), as too autonomous in its regulatory effort, and even unconstitutional (Lowrey 2011). Dodd-Frank responds to Fed critics who want the Fed to be more vigorous in its regulatory efforts, and it responds to critics who want to limit or curtail its authority. The legislation, for example, assigns the Fed to be the examiner of potential systemically important financial institutions, and the supervisor once that designation is affixed. As the supervisor, the Fed has discretionary authority in its application of more stringent safety and soundness provisions such as risk-based capital requirements or liquidity requirements (Labonte 2010). The legislation also limits the ability of the Fed to extend emergency loans, requires the Government Accountability Office to audit certain Fed activities, and prescribes leadership and governance provisions in the Reserve Banks (U.S. Senate 2010).

The implications of Dodd-Frank for the capacity and influence of the Fed are mixed. While some see the regulator as significantly empowered by the systemic risk responsibilities as well as the responsibility for housing the CFPB (Schmidman 2011), others see the additional responsibilities as dangerously impinging on the organization’s core capacities for overseeing monetary policy (Corder 2009). Congress relies on the agency’s capacities, at the same time working to restrain the exercise of Fed influence by limiting some of its discretion and making its activities more transparent through audits and reporting. The Fed’s unique combination of supervisory skills and the detailed knowledge of the banking system that supervisory responsibilities facilitate, along with its deep expertise in monetary policy, make the Fed an understandable target for taking on greater regulatory responsibilities; at the same time, the institutional capacity limit may be breached, soon, leaving the Fed strained in all of its responsibilities rather than master of any one.
Transparency and Systemic Risk

Dodd-Frank engages transparency on the commercial side of financial regulation in three basic ways. First, the legislation relies on a registration and disclosure strategy for demarcating more clearly the participants in the financial markets (particularly the shadow banking system) and making their activities more public. Hedge fund advisors, for example, now are required to register with the SEC. In the past, the limited number of hedge fund clients and the sophistication of hedge fund investors provided a rationale against registration of these financial intermediaries of the shadow banking system. Credit rating agencies also are brought more explicitly into the regulatory process by coming under direct SEC supervision. They now will be regulated by the Office of Credit Ratings within the SEC. Each credit rating agency will be required to disclose its methodologies for exercising due diligence and their track record, will be expected to incorporate relevant third party information, and will be subject to annual examinations by the SEC. Ratings analysts will be required to pass an exam, and the SEC will have the power to “deregister” a credit rating agency with a consistently poor record. Similarly, derivatives traded over the counter now will be regulated by the CFTC and the SEC.

Second, the legislation requires the clear identification of firms with systemic potential and raises the profile of their supervision, as discussed earlier. And third, transparency is pursued through the uniform application of key rules and restrictions, such as limiting proprietary trading, standardizing procedures and practices related to executive pay, and so on. In short, transparency as it relates to the commercial side of regulation is directly linked to the identification (through disclosure and registration), monitoring, and regulation of potential sources of systemic risk.

Turning to the consumer protection side of the regulatory effort, however, there is a fourth possible approach to transparency in a proposed use of technology in the CFPB that could be formative in the operationalization of the Dodd-Frank consumer protection mandates. Over the past two years, Elizabeth Warren has focused on three potential advantages for the use of information technology in the work of the CFPB: transparency and open communication with the public can be a counter to industry capture; information technology can build the capacity to conduct cutting-edge research and trend analysis and to spot troubles; and data can be made available broadly to the public, researchers, and so on, to make consumer protection a collective endeavor similar to “crowdsourcing” (Dennis 2010a, 2010b, 2010c; Khademian, forthcoming; Warren 2010). The crowdsourcing component of consumer protection—that is, the participation of the public in the agency efforts—will hinge on the types of data collected and their accessibility for members of the public.

The first use of information technology in support of the bureau’s mission is educational and informative. Members of the public receive information regarding regular bureau reports, information on enforcement activities, and so on. This approach to transparency resonates with the disclosure and registration approach in Dodd-Frank. The second method suggests professional excellence in monitoring the financial markets on behalf of consumers—the availability of information technology could help the bureau be the best it can be in protecting consumer interests and ensuring a transparent, fair, and competitive market. Here, we find a parallel to the educational requirements in Dodd-Frank for credit rating agency analysts, the routinization of key supervisory practices, and Fed monitoring of systemically important financial institutions. Finally, the third method suggests direct involvement of the public in spotting problems and contributing information that eventually will shape bureau policy—a form of transparency not evident in other Dodd-Frank reforms. The first two approaches are becoming more common in regulatory circles, while the third approach would put the CFPB in a different league of public involvement and consumer protection (for a similar analysis of public involvement, see Khademian et al. 2009). Research indicates that online consumer groups can play a key role in developing product innovations (Füller et al. 2006). Similar potential could rest in finding ways to identify unfair, systemically risky, or deceptive financial products.

Administrative Capacity, and Beyond

The discussion of transparency raises a fundamental concern about the regulatory response to the financial crisis and the potential for a robust recovery and revitalized financial sector. In many ways, Dodd-Frank uses traditional models of regulation to address non-traditional challenges. Emphasis on disclosure, supervision, and restrictions on specified activities all draw on decades of financial regulation in the United States. Perhaps during a time when the credit markets were driven primarily by traditional banking activities, when the risks of lending and investments were concentrated within the walls of an individual institution, and when technology was focused on wire transfers and ATMs, we might comfortably apply the traditional regulatory models. In the wake of the financial crisis, it is clear that the world has changed. Credit markets are driven not only by bank lending but also by the buying and selling of asset-backed securities that spread risk far beyond the originator of a loan. And technology offers consumers of financial products opportunities to comparison shop, to purchase at a national and international level for financial products, and to learn a great deal about the companies and advisors from whom they are purchasing products.

To the question, why the slow recovery, it is truly too early to judge in the short term. In the long term, recovery may remain elusive until we take some bold steps in our approach to financial regulation that allow for the innovation and drive of the previous decade, but within the informed parameters of savvy consumers, regulators with a broad systemic understanding of the markets, society, the economy, and technology, and clear vision about the public importance of healthy and vibrant markets.

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of public administration and affairs can bring a broader public interest perspective often missing in discussions dominated by efficiency, gains, losses and clear demarcations between public and private. Such professional capacities likely are to be found in the innovative program of the Rockefeller College Institute for Financial Regulation at the University at Albany, which educates undergraduates in aspects of the law, public policy, finance, and technology so that they can see the big picture and see new possibilities for regulating in the public interest (see http://www.albany.edu/ifmr/).

Notes

1. Despite the slow recovery, the Treasury Department has recouped a significant amount of the TARP funds. For example, under the Capital Purchase Program, as of March 31, 2011, bank organizations that had received original support had paid dividends, repayments, and other income exceeding the original investment (Financial Stability Oversight Board 2011).


4. Washington Mutual, a thrift based in Seattle, collapsed on September 25, 2008, under the weight of bad loans that it could not sell to investors and a run on deposits. When the OTS seized the thrift, it was the largest bank (thrift) failure in the history of U.S. banking. Critics charged OTS supervisors with lax oversight and failure to heed the warnings of high-risk activities noted by on-site OTS examiners in the years leading up to the crisis. The collapse was key to the elimination of the OTS as a supervisor under the Dodd-Frank Act (commercial thrift supervision has shifted to the OCC and the FDIC), and the fee-based system of funding the OTS also came under scrutiny—OTS income was drawn from fees charged to the thrifts it supervised, and approximately 15 percent of OTS income came from Washington Mutual fees (ElBoghdady 2010).

5. This analysis of information technology and the CFPB draws on Khademian (forthcoming).

References


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