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Does Dodd-Frank work? We asked 16 experts to find out

By: Mike Konczal- July 20, 2013

Sunday is the third anniversary of the Dodd-Frank Act. To get a sense of how implementation has been going, I asked 16 people at the forefront of the debate to answer two questions: What has gone better than you had expected? And what has gone worse? – Mike Konczal

Sheila C. Bair served as the 19th chairman of the Federal Deposit Insurance Corp. for a five-year term, from June 2006 through June 2011.

"Things that went better than expected: just about all of the rules where an agency could act alone, e.g., the FDIC's rules on resolution authority and deposit insurance premiums; the CFPB's rules on mortgage lending standards; the CFTC's rules on moving standardized domestic swaps to centralized clearing.

"Things that were bigger problems than expected: just about all of the rules where inter-agency coordination and agreement were required: e.g. tougher bank capital standards, the Volcker Rule, risk retention for securitizers. Between agency squabbling and industry lobbying, Sisyphus could move faster than the agencies in moving these rules."

Michael S. Barr is a professor of Law at the University of Michigan Law School and former assistant secretary of the treasury for financial institutions, where he was a key architect of the Dodd-Frank Act.

"The opponents of financial reform are losing. There's a strong, new Consumer Financial Protection Bureau, looking out for American households, and Senate Republicans finally relented and confirmed, by a lopsided vote, Rich Cordray as director of the bureau. Capital requirements are going up, derivatives are coming out of the shadows and major financial firms will be subject to strict supervision and wind-down authority regardless of corporate form. But much remains to be done, from LIBOR reform to the Volcker Rule, and the financial industry will continue to try to lobby, litigate and legislate their way out of the tough new rules. Now is not the time to lose hope, stop fighting or give in, but to renew the commitment to making the financial system fairer and safer."

Louise Bennetts is the associate director of financial regulation studies at the Cato Institute and was formerly a corporate lawyer in private practice advising bank and nonbank clients on Dodd-Frank implementation.

"The FDIC has taken some positive steps towards developing a viable bankruptcy regime for large firms through their 'single point of entry' strategy, although they still have some way to go. Otherwise, the implementation of the act has been messy. The act has many design flaws, but chief among them has been the amount of discretion awarded to regulators, which creates significant economic costs and uncertainty in the market as well as undermining the rule of law. Overall, the act has resulted in a contraction of

ordinary credit, more expensive loans for consumers, a reduction in global capital flows and less efficiency in capital allocation without addressing most of the fundamental causes of the 2008 crisis."

Heather Slavkin Corzo is the Senior Legal and Policy Advisor for the AFL-CIO Office of Investment.

"It has been a pleasant surprise to see how efficiently the CFTC, a tiny agency, has moved to implement derivatives regulatory reform. While there are certainly areas where I wish the rules were stronger, I think Chairman Gensler deserves a lot of credit for putting a regulatory framework in place that will make our financial system more safe and sound.

"At the same time, it has been shocking to witness how quickly so many people in Washington have forgotten the lessons of the crisis. Under the guise of technical amendments, some in Congress have moved to repeal key components of Dodd-Frank, such as CEO-to-worker pay ratio disclosures, and create dangerous loopholes in derivatives regulation. Other provisions important to protecting the safety and soundness of the financial system, like the Volcker Rule and the requirement that banks move certain types of derivatives trades into separately capitalized subsidiaries, remain in regulatory limbo."

Douglas Elliott, fellow in economic studies at the Brookings Institution

"I've been pleased and surprised by the great progress on developing a workable method of resolving large troubled banking groups using the Single Point of Entry approach, which has been led by the FDIC and received good cooperation from other regulators.

"I've been disappointed by the problems in working through many of the issues that require transatlantic cooperation. There is so much agreement on the goals and overall approaches that we really ought to be able to do a lot better in agreeing on the specifics."

Alexis Goldstein worked on Wall Street for seven years and is now an Occupy Wall Street activist

"The inaction and administration's weakness on the Volcker Rule has been inexcusable and disappointing. Myself and others documented in the Occupy the SEC comment letter how the draft of the rule was rife with loopholes. The final rule is over one year late, with no end in sight. President Obama trumpeted this rule for a good PR buzz, and then allowed it to languish in purgatory. A strong final Volcker Rule would ensure that banks that enjoy the benefits of the Fed discount window can't make risky bets that put the entire economy at risk. The lack of meaningful pressure coming out of the administration on the Volcker Rule shows their complete disinterest in meaningful financial reform.

"Overall, the Financial Stability Oversight Council (FSOC) has been a disappointment. They were given many new responsibilities and powers that they have left unused, including the ability to break up any systemically risky institution. But the FSOC has been quite strong on money market reform. When the SEC wasn't moving on money market reform, the FSOC threatened to override the Agency if they failed to act. Given how vigorously the Chamber of Commerce lobbied against money market reform, the fact that the FSOC insisted on kick-starting these reforms anyway was a welcome surprise."

Dennis Kelleher is president of the nonprofit Better Markets, a former senior staff member in U.S. Senate and a former partner at Skadden Arps.

"No question that former Goldman Sachs partner Gary Gensler as chairman of the CFTC has regulated derivatives, correctly referred to by Warren Buffett as 'financial weapons of mass destruction,' better than

anyone expected. Virtually all other financial reform has been a much bigger problem because no one expected Wall Street's scorched earth strategy of fighting all financial reform nonstop."

Aaron Klein directs the Bipartisan Policy Center's Financial Regulatory Reform Initiative

"The part that has gone better is in failure resolution. Dodd-Frank attempted to solve the 'too big to fail' problem in several ways, including creating a new failure resolution regime that applies to all systemically important financial institutions. The FDIC came up with a 'single point of entry' approach to carry out the new regime although that approach does not appear in Dodd-Frank. It has been a breakthrough, gaining significant international buy-in from both the United Kingdom and Canada.

"The part that has gone worse is regulatory cooperation. The financial crisis of 2008 showed the importance of domestic and international regulatory cooperation. Dodd-Frank's efforts to encourage greater cooperation have so far been mixed at best. Domestic regulators can't agree on a Volcker Rule, the SEC and CFTC can't agree on a common definition for a U.S. person, and the Federal Reserve has moved aggressively through its foreign bank proposal in a way that has raised threats of retaliation from other central banks."

Adam Levitin is a law professor at the Georgetown University Law Center

"On the plus side, the CFPB has been a huge success. The newly created agency has impressed even its critics by turning out a battery of balanced rule-makings on schedule and flexing the most effective enforcement muscle yet seen from a financial regulator even as it continues to staff up and in the face of intense political headwinds. On the minus side, the failure of other federal bank regulators to agree on the definition of the 'qualified residential mortgage' exemption from the Dodd-Frank Act's credit risk retention for securitization has contributed to the uncertainty about the future of the housing finance market, which is the Dodd-Frank Act's unaddressed elephant in the room for financial regulatory reform."

Brad Miller is a former member of the House Financial Services Committee, where he led efforts to prohibit predatory mortgage lending and create the CFPB. He is now a senior fellow at the Center for American Progress and of counsel to the law firm of Grais & Ellsworth LLP.

"On the policy front, the fight over implementing regulations has been harder than imagined. Reformers have just not had the resources to fight. Rulemaking has been dominated by the biggest banks, with unlimited money for lobbyists, lawyers and economists to meet with regulators, write comments, do slanted cost-benefit analyses, bring lawsuits, and whatever else.

"On the positive side, the public is more convinced than ever that Wall Street needs tougher rules and to be held accountable when they break the rules. Public support for consumer protection is still especially strong. The CFPB has generally picked the right fights and worked well with responsible voices in industry. The CFPB is here to stay. The Washington political establishment is still easily swayed when Wall Street lobbyists puff themselves up and declare patronizingly that Wall Street critics simply don't understand the complexity of financial issues. Since we are still a democracy of sorts, what the public thinks should eventually matter more."

Bartlett Naylor, financial policy advocate for Public Citizen's Congress Watch division

"Seven years after the crash, the debate about solutions has grown better than expected, with more sophisticated arguments and actual progress on leverage requirements, a sophisticated Glass-Steagall reconstitution plan, and talk from Republicans about size limits. Also the OCC and FDIC are now moving

in the right direction. However the Federal Reserve remains captured. Friendly insiders say staff holdovers from Alan Greenspan's administrations are quietly sabotage any actual progressive thinking."

Robert Nichols, president and CEO of the Financial Services Forum

"What's good: Due to industry-initiated improvements, laws passed by Congress and regulatory changes, real progress has been made to increase the safety, soundness and stability of U.S. financial sector. For example: capital and liquidity are double pre-crisis levels; balance sheets are much more solid; risk management and governance structures have been dramatically improved; banks have significantly deleveraged; compensation structures have been reformed to closely align the personal incentives of employees with banks' long-term performance and safety and soundness; banks have passed multiple stress tests imposed by the Federal Reserve; and banks recently submitted 'living wills' to regulators, detailing the structure of each bank company and how companies could be dismantled in the event of a failure. Overall, the U.S. banking system is safer, more transparent and more accountable.

"What's bad: Perhaps as a result of the delay in implementing parts of Dodd-Frank, some policymakers have unfortunately proposed additional and, in our view, unnecessary legislative proposals that would harm our economic recovery by undermining the effectiveness, innovative capacity and competitiveness of the U.S. banking sector. Regulators and the industry need time to fully implement the changes that Congress has already mandated. Additional and potentially punitive regulations before the provisions of Dodd-Frank are fully implemented risks over-kill, to the detriment of credit availability and the broader economy, at a time when economic growth remains very slow and fragile, and tens of millions of Americans remain out of work or underemployed."

Karen Petrou is co-founder and managing partner of Federal Financial Analytics

"What has gone better than I expected is the dramatic improvement in the condition of the U.S. banking system, although much of this is attributable to regulatory action — especially FRB stress tests — not Dodd-Frank. I also commend the FDIC for its work building out the new orderly-resolution standards designed to end too big to fail. The law is strong but the rules remain weak, leading to widespread skepticism that TBTF has been meaningfully addressed. As long as markets believe TBTF lives, sadly it still does."

Marcus Stanley is policy director for Americans for Financial Reform

"The progress of the CFPB has been the most impressive thing about Dodd-Frank implementation. In 2009, very few people would have predicted that a few years later there would be a fully operational and independent consumer financial protection bureau.

On the negative side, there are too many other areas where regulators have not acted to use the broad authority they were granted in Dodd-Frank to hold the financial system accountable. They have not yet followed through with rules adequate to the problems revealed in the financial crisis, or in many cases with any completed rules at all. An exception has been Gary Gensler at the Commodity Futures Trading Commission. While there are flaws in the CFTC's derivatives framework it still represents a substantial improvement over the pre-crisis lack of derivatives regulation, and it's impressive that the smallest financial regulator has managed to actually complete one of the biggest rulemaking jobs in Dodd-Frank."

Jennifer S. Taub, an associate professor at Vermont Law School, is the author of a book forthcoming in early 2014 from Yale Press on the financial crisis.

"The conditions that brought the financial system to the brink of failure in 2008 persist. The Dodd-Frank Act while a good starting point is insufficient both as enacted and as currently implemented to accomplish

its key goals of promoting financial stability, improving accountability and transparency and ending 'too big to fail.' The crown-jewel of the Dodd-Frank Act is the Consumer Financial Protection Bureau, which at last has an appointed director.

"The greatest disappointment has been the delays and dilutions. In particular, though proposals have been made to modestly raise permitted equity capital for giant Bank Holding Companies it is still just 3 percent, that financial firms still rely on trillions of dollars in short-term and overnight funding to finance their longer-term assets and that the Volcker Rule has not been implemented."

Wallace Turbeville practiced law on Wall Street for eight years and was an investment banker at Goldman Sachs for 12 years. He is now a senior fellow at Demos focusing his research on the financial markets.

"Having never been significantly involved in the process of implementing federal laws through regulations, my expectations in July 2010 were uniformly naïve. The ability of CFTC Chairman Gensler and his staff to maintain an intense effort to develop and finalize derivatives rules that are coherent and comprehensive, despite imperfections, exceeded expectations.

On the other hand, I never expected the widespread memory loss concerning the implications of 2008, especially the breadth and depth of the dysfunction in the financial sector at that time. It never occurred to me that talking points drafted to focus attention on the events most proximate to the crash in September 2008 (Lehman, Bear Stearns, AIG) would successfully distract policy makers and pundits from the perversions of the financial sector that emerged from our experiment in deregulation. It is surprising that so many opinion leaders resist the idea that the repeal of Glass-Steagall was a substantial cause of the crisis and that the financial sector's use of complex and obscure financial transactions was, and is, at its core a predatory practice."