



The Daily Dish

Dodd-Frank at 10

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Eakinomics: Dodd-Frank at 10

This week marks the 10th anniversary of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). AAF is [commemorating](#) the occasion with a daily look at the Act, ranging from a [primer](#) describing the content of Dodd-Frank to my [op-ed](#) regarding the law. And AAF's commentary includes a couple of verdant videos from experts [Thomas Wade](#) and [Dan Bosch](#) that evidently are intended to make a subtle comment on the Act by featuring elements that have nothing to do with the content.

Indeed, the very scope of Dodd-Frank makes it impossible to easily assess, even with a week to do so. One of the real lessons, for me at least, was the process by which it was enacted. Specifically, I was a commissioner on the Financial Crisis Inquiry Commission (FCIC), which was established as part of the Fraud Enforcement and Recovery Act (Public Law 111-21) passed by Congress and signed by the president in May 2009. The 10-member panel was composed of private citizens with experience in financial services, economics, and consumer protection. Six members of the commission were appointed by the Democratic leadership of Congress and four members by the Republican leadership.

In statute, the FCIC was given an enormous mandate, namely to:

“(1) to examine the causes of the current financial and economic crisis in the United States, specifically the role of—

(A) fraud and abuse in the financial sector, including fraud and abuse towards consumers in the mortgage sector;

(B) Federal and State financial regulators, including the extent to which they enforced, or failed to enforce

statutory, regulatory, or supervisory requirements;

(C) the global imbalance of savings, international capital flows, and fiscal imbalances of various governments;

(D) monetary policy and the availability and terms of credit;

(E) accounting practices, including, mark-to-market and fair value rules, and treatment of off-balance sheet vehicles;

(F) tax treatment of financial products and investments;

(G) capital requirements and regulations on leverage and liquidity, including the capital structures of regulated and non-regulated financial entities;

(H) credit rating agencies in the financial system, including, reliance on credit ratings by financial institutions and Federal financial regulators, the use of credit ratings in financial regulation, and the use of credit ratings in

the securitization markets;

(I) lending practices and securitization, including the originate-to-distribute model for extending credit and transferring risk;

(J) affiliations between insured depository institutions and securities, insurance, and other types of nonbanking companies;

(K) the concept that certain institutions are “too-big- to-fail” and its impact on market expectations;

(L) corporate governance, including the impact of company conversions from partnerships to corporations;

(M) compensation structures;

(N) changes in compensation for employees of financial companies, as compared to compensation for others with similar skill sets in the labor market;

(O) the legal and regulatory structure of the United States housing market;

(P) derivatives and unregulated financial products and practices, including credit default swaps;

(Q) short-selling;

(R) financial institution reliance on numerical models, including risk models and credit ratings;

(S) the legal and regulatory structure governing financial institutions, including the extent to which the structure creates the opportunity for financial institutions to engage in regulatory arbitrage;

(T) the legal and regulatory structure governing investor and mortgagor protection;

(U) financial institutions and government-sponsored enterprises; and

(V) the quality of due diligence undertaken by financial institutions;

(2) to examine the causes of the collapse of each major financial institution that failed (including institutions that were acquired to prevent their failure) or was likely to have failed if not for the receipt of exceptional Government assistance from the Secretary of the Treasury during the period beginning in August 2007 through April 2009.”

All of this took a bit of effort (700 interviews, 19 days of public hearings, millions of pages of documents) and time. The FCIC filed its report in January 2011. That’s right, January 2011, six months after the president had signed Dodd-Frank. The disinterest by Congress and the administration in using the official findings of the FCIC to inform the structure of financial services reform had two big implications. First, Dodd-Frank is not at all focused on the root causes of the financial crisis (which were quite [complex](#)). It instead wanders all over the proverbial financial services lot, including many things that had nothing to do with the crisis. Second, given that the legislative stakes were literally zero, the FCIC wrote a terrible report. The main report’s conclusions were partisan messaging that could have been written before the FCIC had been constituted, and the minority could

not unify on a single, coherent dissent.

In the end, maybe the lesson is that the American public was not well served by either the process or the product. Happy Birthday Dodd-Frank.