BY SAM LOUIS TAYLOR

Debating the 2018 Banking Regulatory Bill

The recent bank failures at Silicon Valley Bank, Signature Bank, and First Republic Bank have brought banking policy back into the forefront of the national policy debate. The law that is at the center of this current debate is the Economic Growth, Regulatory Relief and Consumer Protection Act, which was signed into law by then-President Trump in 2018. This law was the first major attempt to alter financial regulations since the passage of the Dodd-Frank Act in the wake of the 2008 financial crisis. While this law did address other issues related to mortgage lending, consumer protections, and student loans, the most controversial parts of the bill dealt with banking regulations.

The 2018 law was originally sponsored by then Senate Banking Committee Chairman Mike Crapo, R-Idaho, and a bipartisan group of 19 other senators to fix what they saw as flaws in the Dodd-Frank Act. Those sponsors saw the Dodd-Frank Act as creating a one-size-fits-all mentality for banking regulations, applying overly strict rules on smaller banks and credit unions that posed a much lower risk to the economy. They argued these regulations had led to the decimation of small and community banks across the country, citing research from the Federal Deposit Insurance Corporation that showed that the number of small banks had dropped by 14 percent since the passage of Dodd-Frank. Those supporters, such as Sen. John Tester, D-Mont., argued that this led, in turn, to an overall decline in lending and credit for small businesses and rural communities.

"Literally, from the night of the conference on Dodd-Frank, there have been discussions about the need to go in and make some fixes," Crapo stated in 2018. "We've been working toward those areas where we have been able to find consensus. This year it came together."

The legislation created new rules that supporters argued would right-size the regulatory burden on small and mid-sized banks. Those changes include exempting banks under $100 billion in assets from the strictest of stress testing and allowing regulators to tailor regulations for banks between $100 billion and $250 billion. This means that, in principle, regulators could create appropriate tests and rules for banks based on their size, management practices, and risk to the economy. The law also cut reporting requirements for the smallest community banks, allowed for less frequent regulatory examinations if those banks demonstrated responsible behavior, and exempted them from other regulations intended for large Wall Street banks.

While there are other factors that shape how legislation like the 2018 law affects the financial system — for example, the approaches taken by regulators in carrying the laws out — these laws do set the framework for how banks and other institutions can do business.

Despite its bipartisan support, the 2018 law was not without significant opposition, particularly from within the Democratic caucus. Those opposed to the bill, such as Sen. Elizabeth Warren, D-Mass., argued that the bill's focus on small bank relief was a smoke screen to hide deregulation for some of the largest institutions in the country. Better Markets, an advocacy group that supports stricter oversight of the financial sector, stated that the bill would deregulate all but 13 of the largest banks in the United States. Better Markets also argued that those institutions between $100 billion and $250 billion in assets are not, in fact, community banks and do pose a risk to the overall financial sector and should be regulated accordingly. Industry critics also argued that the bill would accelerate consolidation in the banking industry since it removed regulatory disincentives against the growth of mid-sized institutions.

"Telling a bank that's a quarter of a trillion dollars [in assets] that it can be regulated like some tiny, little community bank makes no sense at all," Warren said in 2018. "This bill will increase the likelihood that American taxpayers will be on the hook for another bailout."

While there are other factors that shape how legislation like the 2018 law affects the financial system — for example, the approaches taken by regulators in carrying the laws out — these laws do set the framework for how banks and other institutions can do business. Congress is now debating how this framework should be set up to prevent future bank failures. Regulators have released initial reviews, such as the report by Michael Barr, the Fed's vice chair for supervision, to assess the causes of the collapses and recommend how regulating agencies can better address those issues.

Supporters of the 2018 law see the responsibility for the current problems as lying with bank management as well as with the regulating agencies such as the Fed, not with the underlying law. Critics of the 2018 law see their original concerns as prescient, stating that the law set the stage that allowed bank management to push the bounds of safe operations and led to regulators failing to act at the appropriate time to prevent the crisis. Though the current partisan divide in Congress may make passing new regulatory legislation difficult at this time, the legislative response to the current bank failures is still in its infancy. **EF**