

Dodd-Frank Liquidation Rules Should Not be Scrapped

By Sean Kiernan, J.D. Candidate 2020 | October 27, 2017

The debate regarding how to effectively handle a failure of major financial institutions has reignited under the Trump Administration, prompting [critical reaction](#) from overseas regulators. In April, [President Trump ordered](#) the Treasury Department to review current Dodd-Frank rules and determine if an improved bankruptcy process could be a better option. Some Congressional republicans agree that it is.

Under Dodd-Frank regulations, when a big bank fails, the FDIC will step in, unwind nonbank and other financials firms integral to it, and set up a fund, the [Orderly Liquidation Authority](#), to pay for the cost. It would initially borrow from the Treasury Department and recover the funds by charging the bank.

Foreign regulators have threatened to impose higher capital requirements on overseas subsidiaries of American banks if the Dodd-Frank rules are scrapped.

Potential legislation should prevent panic and lack of liquidity throughout the entire American and overseas financial system. Given the [FDIC's ability](#) to coordinate responses to multiple failing banks, Dodd Frank is the superior option. Replacing Dodd Frank bankruptcy rules with a revised bankruptcy process could mean bankruptcy judges would be assigned to one specific case and could not cross coordinate with each other.

[Bankruptcy judges](#) do not have the legal mandate, prior experience, nor the incentive necessary to maintain the stability of the financial system as a whole. Their legal responsibility is to adjudicate creditor's claims against the bank, rather than minimize debilitating effects on the entire economy.

While the bankruptcy process can serve as a useful additional channel for resolving failing financial institutions, wide scale crisis demands regulatory authority to manage it. An outright replacement of the Orderly Liquidation Authority, as administered by the F.D.I.C., could severely undermine our financial system's stability.

Fortunately, Wall Street's support for maintaining the liquidation authority, Secretary Steve Mnuchin's [pragmatic policy approach](#), and threats from overseas regulators make the odds of major deregulation bleak.