

For a Lasting Answer to the Financial Crisis, Rewrite Congress's Job Description

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Economists, bankers, and regulators—all failed to protect us from the financial crisis we're now facing. And they will again—because their job description does not require them to regularly review and revise the entire framework of financial regulation. But Congress might well succeed where these others have so often failed if it rewrites its own job description to include this task. Recurrent financial crises point out the need not just for a new regulatory “architecture,” but for a means of renewing it on a regular basis.

Regular review and revision would be a new task for Congress. But it falls squarely within its legislative function. It is up to Congress, not the executive branch, to decide on the purposes and overall direction of regulation. The authors of the US Constitution conceived of the separation of powers as a protection against tyranny. Reinvigorating the legislative function of Congress through a process of comprehensive regular review and revision might now be just as important as a protection against recurrent regulatory failure.

Regular review stands in sharp contrast to a one-time reform of our financial regulatory architecture, as has been called for by President Obama. It would involve taking the time to periodically and deliberately review and—if need be—alter or “rebuild” the overall structure of financial regulation. If Congress doesn't take on the job, you can bet that over time the executive will either modify it piecemeal or, even more likely, allow the regulatory edifice to crumble.

A regular and comprehensive process of Congressional review would help Congress and the executive concentrate on what each does best. Legislation would no longer mean simply enacting new laws, but regularly updating a system of laws and regulations so that they remained coherent—and in conformity to changing circumstances and the will of the people. Were Congress to continually update the purpose, direction, and overall structure of regulation, the executive branch would be encouraged to stick to its constitutionally specified power to “take care that the laws be faithfully executed.”

How would a regular and comprehensive Congressional review process work?

Currently, Congress spends most of its time passing laws and engaging in detailed oversight. It builds new buildings and then occasionally checks to see if all is well in the boiler room. Regular and comprehensive Congressional review would add a new task: it would involve periodic monitoring of the entire regulatory architecture. This requires

broad, systemic thinking, that is: legislative thinking. To keep pace with market innovations and help us avoid future crises it would have to incorporate three elements: *review*, *revision*, and *regularity*.

Review. Review means taking stock of where you've been and how you got there. It involves a kind of global progress check in order to get a coherent view of both the full range of relevant current regulatory efforts and their past consequences. Review ensures that regulation is based on a comprehensive view.

Revision. Revision means that regulations are actually changed when indicated by a regular process of review, not a year later or after they've developed into "crises." Regulatory revision, like the review it is based on, should be general, meant to direct the actions of multiple regulatory agencies and future legislation. Revision ensures that regulatory efforts are coordinated—that someone is supervising the supervisors.

Regularity. Regularity means of keeping on top of changes in the environment. Regulators can all too easily get comfortable with their surroundings. Regularity—a planned regulatory review every five years, for example—ensures that regulatory innovation, should it be called for, is timely.

Notice the many contrasts with the path we've recently traveled. Whatever else one chooses to believe about the proximate causes of the current financial catastrophe, one thing is clear: there has been no effort to continually rebuild the entire structure of financial regulation, despite near continual and unprecedented financial innovation. At least a half a dozen different agencies are directly responsible for financial regulation. Small wonder that one hand doesn't know what the other is doing or that different hands so often work at cross purposes. And small wonder that financial wizards and other less savory characters end up taking advantages of cracks in the system.

Regular review and revision is more than just a broader form of "oversight." It involves a comprehensive and proactive form of overview. And it packs real punch in the form general guidance that orients future regulatory and legislative action. Without this action component, regular review would perhaps illuminate much, but change very little.

Congress is the right place to institute a process of regular review and revision of financial policy because periodic renewal of our regulatory architecture is a legislative rather than executive function. And unlike the executive agencies, Congress can accomplish periodic review through the simple expedient of majority vote.

Congress need not conduct regular review and revision in a vacuum. Information and expertise are hardly in short supply. They could come from agencies, academic experts, or a professional advisory arm of Congress. But the final responsibility for periodic review and revision would properly rest with Congress as the people's representative.

Greater legislative coherence, adaptability, and accountability might be resisted by some in the executive branch. Yet greater legislative clarity—at the systemic or general level—might end up encouraging the faithful execution of the law, all the more so if it were firmly rooted in independent analysis. Then, too, a regular review process might help Congress avoid being distracted by the specifics of administration.

British Prime Minister Gordon Brown has recently called for a global financial warning and crisis prevention system. By instituting comprehensive regular review and revision, Congress can give the world an American prototype—and American citizens the protection they deserve.