

NOTES

INTRODUCTION

¹ See, e.g., Michael Mandel, *30-Year Deregulation Era Dies a Sudden Death: Food, Financial Debacles Bring the R-Word Back in Fashion in Washington D.C.*, BLOOMBERG BUSINESSWEEK (Sept. 18, 2008), <http://nbcnews.to/RNITLq>.

² Sam Mamudi, *Lehman Folds with Record \$613 Billion Debt*, MARKETWATCH (Sept. 15, 2008), <http://on.mktw.net/dnXuzs>.

³ Edmund L. Andrews, Michael J. De La Merced and Mary Williams Walsh, *Fed's \$85 Billion Loan Rescues Insurer*, THE NEW YORK TIMES (Sept. 16, 2008), <http://nyti.ms/Q61OkI>.

⁴ *Bailout Recipients* (as of Feb. 15, 2013) PROPUBLICA, <http://bit.ly/hptGCS>. Figures here do not include dividends and interest paid by Fannie Mae and Freddie Mac to the government.

⁵ David M. Herszenhorn, *Bailout Plan Wins Approval; Democrats Vow Tighter Rules*, THE NEW YORK TIMES (Oct. 3, 2008), <http://nyti.ms/RWQave>.

⁶ Michael Mandel, *30-Year Deregulation Era Dies a Sudden Death: Food, Financial Debacles Bring the R-Word Back in Fashion in Washington D.C.*, BLOOMBERG BUSINESSWEEK (Sept. 18, 2008), <http://nbcnews.to/RNITLq>.

⁷ Rex Nutting, *Paulson Admits Deregulation Has Failed Us All: Commentary: Mortgage Proposals Spell End to Decades of Looking Other Way*, MARKETWATCH (March 13, 2008), <http://bit.ly/Qn9Hnw>.

⁸ Testimony of Christopher Cox, U.S. House of Representatives, Committee on Oversight and Government Reform, 110th Congress, at 78-79 (Oct. 23, 2008), <http://1.usa.gov/TTsk4a>.

⁹ Submitted testimony of Christopher Cox, U.S. House of Representatives, Committee on Oversight and Government Reform, 110th Congress (Oct. 23, 2008), <http://1.usa.gov/NLF0t1>.

¹⁰ Peter S. Goodman, *The Reckoning: Taking Hard New Look at a Greenspan Legacy*, THE NEW YORK TIMES (Oct. 8, 2008), <http://nyti.ms/RMneSe>.

¹¹ Testimony of Alan Greenspan, U.S. House of Representatives, Committee on Oversight and Government Reform, 110th Congress, at 17 (Oct. 23, 2008), <http://1.usa.gov/TTsk4a>.

¹² PEW RESEARCH CENTER, *AUTO BAILOUT NOW BACKED, STIMULUS DIVISIVE; MIXED VIEWS OF REGULATION*, at 25 (Oct. 23, 2012), <http://bit.ly/RMT7Qv>.

¹³ *Id.*

¹⁴ President Ronald Reagan, Inaugural Address (Jan. 20, 1981), <http://bit.ly/11PeYE>.

¹⁵ Remarks of Thomas J. Donohue, *The Regulatory Tsunami—How a Tidal Wave of Regulations Is Drowning America*, Des Moines, Iowa, Rotary Club (Oct. 7, 2010), <http://bit.ly/QKK82j>.

¹⁶ Press Release, U.S. Senate Committee on Environment and Public Works, *Obama Administration Regulatory Onslaught Against American Energy Production Continues* (May 4, 2012), <http://1.usa.gov/Ohia7S>.

¹⁷ COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, CONTINUING OVERSIGHT OF REGULATORY IMPEDIMENTS TO JOB CREATION: JOB CREATORS STILL BURIED BY RED TAPE, at 2 (July 19, 2012), <http://1.usa.gov/UKQOfg>.

¹⁸ See, e.g., Ruth Marcus, *Bad Science Around ‘Job-Killing Regulations,’* THE WASHINGTON POST (April 24, 2012), <http://wapo.st/Oqk5Zi> and THE REGULATORY RED HERRING: THE ROLE OF JOB IMPACT ANALYSES IN ENVIRONMENTAL POLICY DEBATES, INSTITUTE FOR POLICY INTEGRITY, at 2-3 (April 2012), <http://bit.ly/QLSSCV>. “From 2007 to 2011, the phrase “job-killing regulations” underwent a 17,550 percent increase in usage in U.S. newspapers (from just four appearances in 2007 to over seven hundred in 2011).”

¹⁹ See, e.g., THE REGULATORY RED HERRING: THE ROLE OF JOB IMPACT ANALYSES IN ENVIRONMENTAL POLICY DEBATES, INSTITUTE FOR POLICY INTEGRITY, at 2-3 (April 2012), <http://bit.ly/QLSSCV>. “...At least a few bills introduced would take the even more draconian measure of imposing across-the-board moratoria on rulemakings. Multiple other bills have sought to add new procedural constraints to the regulatory process ...” For an example of a particularly restrictive proposal, see, H.R. 4078, *Regulatory Freeze for Jobs Act of 2012*, 111th Congress (Feb. 17, 2012), <http://1.usa.gov/TSW1Uz>.

²⁰ Darren Samuelsohn and Jonathan Allen, *President Obama’s Administration Slow-Walks New Rules*, POLITICO (July 12, 2012), <http://politi.co/PS8nLV>.

²¹ *Now There’s a Study To Back Up Who Really Wins the Regulations vs. Jamie Dimon Fight*, ASSOCIATED PRESS (Oct. 14, 2011), <http://bit.ly/QJ8hnH>.

²² Edward Wyatt, *Dodd-Frank Act a Favorite Target for Republicans Laying Blame*, THE NEW YORK TIMES (Sept. 20, 2011), <http://nyti.ms/Pc2t4c>.

²³ *Now There’s a Study To Back Up Who Really Wins the Regulations vs. Jamie Dimon Fight*, ASSOCIATED PRESS (Oct. 14, 2011), <http://bit.ly/QJ8hnH>.

²⁴ PEW RESEARCH CENTER, *AUTO BAILOUT NOW BACKED, STIMULUS DIVISIVE; MIXED VIEWS OF REGULATION*, at 25 (Oct. 23, 2012), <http://bit.ly/RMT7Qv>.

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¹ See, e.g., Douglas E. Schoen, *Richard Nixon—The Last Great Liberal*, FOX NEWS (Jan. 9, 2013), <http://fxn.ws/13fO12U>.

² See, e.g., Chris Pummer, *The ‘R’ Word; Commentary: Weak Regulation Proves as Destructive as Overregulation*, MARKETWATCH (Sept. 21, 2008), <http://bit.ly/OQoIef>.

³ See, e.g., Michael Mandel, *30-Year Deregulation Era Dies a Sudden Death: Food, Financial Debacles Bring the R-Word Back in Fashion in Washington D.C.*, BLOOMBERG BUSINESSWEEK (Sept. 18, 2008), <http://nbcnews.to/RNITLq>.

⁴ See, John C. Coates and Taylor Lincoln, *Fulfilling the Promise of 'Citizens United'*, THE WASHINGTON POST (Sept. 6, 2011), <http://wapo.st/nPob9y>. The phrase “Self-appointed advocates of the business community” belongs to Coates.

CHAPTER I

¹ This chapter was written by Taylor Lincoln, Research Director of Public Citizen’s Congress Watch Division. Congress Watch Financial Policy Advocate Bartlett Naylor provided expert advice. It was edited by Congress Watch Director Lisa Gilbert and former Congress Watch Director David Arkush.

² Testimony of Christopher Cox, U.S. House of Representatives, Committee on Oversight and Government Reform, 110th Congress, at 22 (Oct. 23, 2008), <http://1.usa.gov/TTsk4a>.

³ John Birger, *How Congress Helped Create the Subprime Mess*, FORTUNE (Oct. 31, 2008), <http://cnnmon.ie/AkTrOd>.

⁴ *Id.*

⁵ *Id.*

⁶ Riegle Community Development and Regulatory Improvement Act of 1994, Title I, Subtitle B § 152., 103rd Congress (1994), <http://1.usa.gov/ONK9SD>. See also, Raymond Natter, *Home Ownership Equity Protection Act of 1994*, BANKING LAW COMMITTEE JOURNAL (July 2007), <http://bit.ly/QNHmVS>.

⁷ Riegle Community Development and Regulatory Improvement Act of 1994, Title I, Subtitle B § 152., 103rd Congress (1994), <http://1.usa.gov/ONK9SD>. See also, THE FINANCIAL CRISIS INQUIRY COMMISSION, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES, at 76-77 (2011), <http://1.usa.gov/xQflv5>. [Hereinafter *FCIC Report*]

⁸ *FCIC Report*, *supra* note 7, at 76; and Julia Patterson Forrester, *Still Mortgaging the American Dream: Predatory Lending, Preemption, and Federally Supported Lenders*, 74 UNIVERSITY OF CINCINNATI LAW REVIEW 1303, 1316-1317 (2006), <http://bit.ly/zhBlae>.

⁹ Riegle Community Development and Regulatory Improvement Act of 1994, Title I, Subtitle B § 152, 103rd Congress (1994), <http://1.usa.gov/ONK9SD>. See also, Michael Hirsh, *Greenspan’s Folly: The Former Fed Chief’s Culpability in Wall Street’s Woes*, NEWSWEEK (Sept. 16, 2008), <http://bit.ly/R55Dvh>.

¹⁰ Julia Patterson Forrester, *Still Mortgaging the American Dream: Predatory Lending, Preemption, and Federally Supported Lenders*, 74 UNIVERSITY OF CINCINNATI LAW REVIEW 1303, 1339 (2006), <http://bit.ly/zhBlae>.

¹¹ *Id.*

¹² *FCIC Report*, *supra* note 7, at 112.

¹³ *Id.*; and *Watters v. Wachovia Bank N.A.*, 550 U.S. 1 (2007).

¹⁴ Julia Patterson Forrester, *Still Mortgaging the American Dream: Predatory Lending, Preemption, and Federally Supported Lenders*, 74 UNIVERSITY OF CINCINNATI LAW REVIEW 1303, 1340-1341 (2006), <http://bit.ly/zhBlae>.

¹⁵ Oren Bar-Gill and Elizabeth Warren, *Making Credit Safer*, 102 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 157, 192-194 (2008), <http://bit.ly/4vi6Qs>.

¹⁶ JOSHUA ROSNER AND GRETCHEN MORGENSEN, RECKLESS ENDANGERMENT: HOW OUTSIZED AMBITION, GREED, AND CORRUPTION LED TO ECONOMIC ARMAGEDDON, at 100-105 (TIMES BOOKS, KINDLE VERSION, 2011).

¹⁷ U.S. DEPARTMENT OF THE TREASURY AND U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, JOINT REPORT ON RECOMMENDATIONS TO CURB PREDATORY HOME MORTGAGE LENDING, at 2 (June 20, 2000),

<http://bit.ly/wAIQEL>.

¹⁸ *Id.*

¹⁹ Testimony of Jodie Bernstein, Director Bureau Of Consumer Protection, U.S. Senate Special Committee on Aging, 105th Congress (March 16, 1998),

<http://1.usa.gov/xPQDln>

²⁰ *Id.*

²¹ Statement of Representative Ken Bentsen (D-Texas), Hearing on Predatory Lending Practices, U.S. House Committee on Banking and Financial Services, 106th Congress (May 24, 2000) as quoted in Kat Aaron, *Predatory Lending: A Decade of Warnings*, CENTER FOR PUBLIC INTEGRITY (May 6, 2009),

<http://bit.ly/Y4mFdK>.

²² Kat Aaron, *Predatory Lending: A Decade of Warnings*, CENTER FOR PUBLIC INTEGRITY (May 6, 2009), <http://bit.ly/Y4mFdK>.

²³ *Id.*

²⁴ *FCIC Report*, *supra* note 7, at 78.

²⁵ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, UNEQUAL BURDEN: INCOME & RACIAL DISPARITIES IN SUBPRIME LENDING IN AMERICA (1999), <http://bit.ly/xiP7V3>.

²⁶ JOSHUA ROSNER AND GRETCHEN MORGENSEN, RECKLESS ENDANGERMENT: HOW OUTSIZED AMBITION, GREED, AND CORRUPTION LED TO ECONOMIC ARMAGEDDON, at 148 (TIMES BOOKS, KINDLE VERSION, 2011).

²⁷ *Id.*, at 150.

²⁸ *Id.*, at 149.

²⁹ *Id.*, at 145.

³⁰ *Id.*

³¹ *Id.*, at 147.

³² *Id.*, at 147-150.

³³ *Id.*, at 150.

³⁴ *Id.*

³⁵ *FCIC Report*, *supra* note 7, at 77.

³⁶ GENERAL ACCOUNTING OFFICE, LARGE BANK MERGERS: FAIR LENDING REVIEW COULD BE ENHANCED WITH BETTER COORDINATION, at 24-25 (1999),

<http://1.usa.gov/NYVyZ9>.

³⁷ *FCIC Report*, *supra* note 7, at 95.

³⁸ *Id.*, at 93.

³⁹ Julia Patterson Forrester, *Still Mortgaging the American Dream: Predatory Lending, Preemption, and Federally Supported Lenders*, 74 UNIVERSITY OF CINCINNATI LAW REVIEW 1303, 1316-1317 (2006), <http://bit.ly/zhBlac>.

⁴⁰ *FCIC Report*, *supra* note 7, at 93.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*, at 95.

⁴⁴ *Id.*, at 96.

- ⁴⁵ *Where Is the Money: Eye on the Bailout*, PROPUBLICA, <http://bit.ly/zIe071>.
- ⁴⁶ Binyamin Appelbaum and Ellen Nakashima, *Banking Regulator Played Advocate Over Enforcer: Agency Let Lenders Grow out of Control, Then Fail*, THE WASHINGTON POST (Nov. 23, 2008), <http://wapo.st/H4KWq8>.
- ⁴⁷ *Id.*; and Paul Kiel, *Banks Favorite (Toothless) Regulator*, PROPUBLICA (Nov. 25, 2008), <http://bit.ly/HBF2AZ>.
- ⁴⁸ Binyamin Appelbaum and Ellen Nakashima, *Banking Regulator Played Advocate Over Enforcer: Agency Let Lenders Grow out of Control, Then Fail*, THE WASHINGTON POST (Nov. 23, 2008), <http://wapo.st/H4KWq8>.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*
- ⁵¹ *Id.*
- ⁵² *Id.* Although Dugan’s regulatory approach may have been stronger than that of Reich in this instance, consumer advocates criticized Dugan for what they viewed as a lax approach on his part. *See, e.g.*, Andrew Martin, *Does This Bank Watchdog Have a Bite?* THE NEW YORK TIMES (March 27 2010), <http://nyti.ms/H9gOZw>.)
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ *BofA to Pay \$4.1B to Buy Countrywide*, ASSOCIATED PRESS (Jan. 11, 2008), <http://usat.ly/VuesyV>.
- ⁵⁶ Robin Sidel, David Enrich and Dan Fitzpatrick, *WaMu Is Seized, Sold Off to J.P. Morgan, in Largest Failure in U.S. Banking History*, THE WALL STREET JOURNAL (Sept. 26, 2008), <http://on.wsj.com/AtJgYh>.
- ⁵⁷ *FCIC Report, supra* note 7, at 307.
- ⁵⁸ *Id.*, at 306.
- ⁵⁹ *Id.*, at 307.
- ⁶⁰ *Id.*
- ⁶¹ *Id.*, at 351.
- ⁶² *Id.*
- ⁶³ GOVERNMENT ACCOUNTABILITY OFFICE, CHARACTERISTICS AND PERFORMANCE OF NONPRIME MORTGAGES, at 1 (July 28, 2009), <http://1.usa.gov/yPO8LW>.
- ⁶⁴ *Id.*
- ⁶⁵ *Id.*, at 11.
- ⁶⁶ *Id.*, at 1.
- ⁶⁷ *Id.*, at 3.
- ⁶⁸ *Id.*, at 16.
- ⁶⁹ *FCIC Report, supra* note 7, at 217.
- ⁷⁰ Neil Bhutta and Glenn B. Canner, *Did the CRA Cause the Mortgage Market Meltdown?* FEDERAL RESERVE BANK OF MINNEAPOLIS (March 1, 2009), <http://bit.ly/yHEz8S>.
- ⁷¹ *See, e.g.*, *FCIC REPORT, supra* note 7, at 220.
- ⁷² The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, Title XIV—Mortgage Reform and Anti-Predatory Lending Act (2010), <http://1.usa.gov/eEIZxs>.
- ⁷³ *Id.*
- ⁷⁴ Web site of Consumer Financial Protection Bureau (viewed on Feb. 19, 2013), <http://1.usa.gov/hMPxnx>.

⁷⁵ *Summary of the Ability-To-Repay and Qualified Mortgage Rule and The Concurrent Proposal*, THE CONSUMER FINANCIAL PROTECTION BUREAU (Jan. 14, 2013), <http://1.usa.gov/UNeTm9>.

⁷⁶ *FCIC Report*, *supra* note 7, at 79.

⁷⁷ Federal Reserve Chairman Ben S. Bernanke address to the American Economic Association, Atlanta, Ga. (Jan. 3, 2010), <http://bit.ly/QwkkFn>.

CHAPTER II

¹ This chapter was written by Taylor Lincoln, Research Director of Public Citizen’s Congress Watch division. Congress Watch Financial Policy Advocate Bartlett Naylor provided expert advice. It was edited by former Congress Watch Director David Arkush.

² *See*, TAYLOR LINCOLN, PUBLIC CITIZEN, FORGOTTEN LESSONS OF DEREGULATION: ROLLING BACK DODD-FRANK’S DERIVATIVES RULES WOULD REPEAT A MISTAKE THAT LED TO THE FINANCIAL CRISIS (May 2012), <http://bit.ly/KaV9QJ>. The version published in this book has been edited.

³ MARK JICKLING, CONGRESSIONAL RESEARCH SERVICE, THE COMMODITY FUTURES MODERNIZATION ACT (2003), <http://bit.ly/JdYBeK>.

⁴ *See, e.g.*, Bank for International Settlements (BIS), *Semiannual OTC Derivatives Statistics at End-June 2012* (November 2012), <http://bit.ly/3ijsbH>.

⁵ The Commodity Future Trading Commission defined swaps as “an agreement between two parties to exchange a series of cash flows measured by different interest rates, exchanges rates, or prices with payment calculated by reference to a principal base (notional amount).” *See* Michael Greenberger, *Derivatives in the Crisis and Financial Reform*, at 4 in *THE POLITICAL ECONOMY OF FINANCIAL CRISES* (Gerald Epstein & Martin Wolfson eds., Oxford University Handbook (forthcoming), <http://bit.ly/yVxUxX>. [Hereinafter *Derivatives in the Crisis*]

⁶ For discussion of the similarities of swaps and futures, *see*, MARK JICKLING, CONGRESSIONAL RESEARCH SERVICE, THE COMMODITY FUTURES MODERNIZATION ACT (2003). Swaps “serve the same economic purposes and are often interchangeable” with futures. *See also*, *Derivatives in the Crisis*, *supra* note 5, at 4.

⁷ *See, e.g.*, GENERAL ACCOUNTING OFFICE, THE COMMODITY EXCHANGE ACT, LEGAL AND REGULATORY ISSUES REMAIN, at 1 (April 1997), <http://1.usa.gov/JbO9tp>.

⁸ *Derivatives in the Crisis*, *supra* note 5, at 4. “Swaps contained all the features of a futures contract.”

⁹ *Id.*, at 4-6.

¹⁰ *Id.*

¹¹ *Id.*

¹² Testimony of Michael Greenberger, Financial Crisis Inquiry Commission (June 30, 2010), <http://bit.ly/yiYNrt>.

¹³ *Derivatives in the Crisis*, *supra* note 5, at 5-6.

¹⁴ Commodity Futures Trading Commission, Concept Release CFR Parts 34 and 35, Over-the-Counter Derivatives, 63 FEDERAL REGISTER 26114, 26115 (May 12, 1998), <http://1.usa.gov/YAgYCB>. [Hereinafter *Concept Release*] Notional value refers to the target price underlying asset to which a derivative is pegged.

For instance, a barrel of oil may have a notional value of \$100. The potential payments for those trading a derivative pegged to the price of a barrel of oil would be the fluctuation between \$100 and its actual price.

¹⁵ *Id.*

¹⁶ E. Scott Reckard and Michael Wagner, *Merrill Lynch to Pay \$400 Million to Orange County*, THE LOS ANGELES TIMES (June 3, 1998).

¹⁷ *Concept Release*, *supra* note 14, at 26115. In footnote 6 of the *Concept Release*, the CFTC cited a study listing 22 examples of significant losses in financial derivatives transactions and made reference to a 1997 GAO study that identified 360 substantial losses suffered by end users.

¹⁸ Manuel Roig-Franzia, *Credit Crisis Cassandra: Brooksley Born's Unheeded Warning Is a Rueful Echo 10 Years On*, WASHINGTON POST (May 26, 2009), <http://wapo.st/QIK9f>.

¹⁹ *Concept Release*, *supra* note 14, at 26119.

²⁰ *Id.*

²¹ Timothy L. O'Brien, *A Federal Turf War Over Derivatives Control*, THE NEW YORK TIMES (May 8, 1998).

²² *Id.*

²³ *Senate Temporarily Blocks New Rules on Derivative Securities*, THE NEW YORK TIMES (Oct. 7, 1998).

²⁴ Joseph Kahn and Peter Truell, *Troubled Investment Fund's Bets Now Estimated at \$1.25 Trillion*, THE NEW YORK TIMES (Sept. 26, 1998).

²⁵ Gretchen Morgenson, *Seeing a Fund as Too Big to Fail, New York Fed Assists Its Bailout*, THE NEW YORK TIMES (Sept. 24, 1998); and Joseph Kahn and Peter Truell, *Troubled Investment Fund's Bets Now Estimated at \$1.25 Trillion*, THE NEW YORK TIMES (Sept. 26, 1998). The General Accounting Office concluded two years later that the actions by the New York Federal Reserve (FRBNY) set a dangerous precedent. "Although no federal money was committed to the recapitalization, FRBNY's intervention raised concerns among some market observers that it could create moral hazard by encouraging other large institutions to assume greater risks, in the belief that the Federal Reserve would intervene to avoid potential future market disruptions." *See*, GENERAL ACCOUNTING OFFICE, RESPONSES TO QUESTIONS CONCERNING LONG-TERM CAPITAL MANAGEMENT AND RELATED EVENTS, at 2 (Feb. 23, 2000), <http://1.usa.gov/r9dW0D>.

²⁶ THE FINANCIAL CRISIS INQUIRY COMMISSION, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES, at 57 (2011), <http://1.usa.gov/xQf1v5>. [Hereinafter *FCIC Report*]

²⁷ Manuel Roig-Franzia, *Credit Crisis Cassandra: Brooksley Born's Unheeded Warning Is a Rueful Echo 10 Years On*, THE WASHINGTON POST (May 26, 2009), <http://wapo.st/QIK9f>.

²⁸ *Senate Temporarily Blocks New Rules on Derivative Securities*, THE NEW YORK TIMES (Oct. 7, 1998).

²⁹ *FCIC Report*, *supra* note 26, at 58.

³⁰ *Id.*, at 48.

³¹ Press Release, Commodity Futures Trading Commission, *Chairperson Brooksley Born Announces Her Intention Not to Seek Reappointment to a Second Term* (Jan. 19, 1999), <http://1.usa.gov/w3bHcr>; and Manuel Roig-

Franzia, *Credit Crisis Cassandra: Brooksley Born's Unheeded Warning Is a Rueful Echo 10 Years On*, THE WASHINGTON POST (May 26, 2009), <http://wapo.st/OIK9f>.

³² PRESIDENT'S WORKING GROUP ON FINANCIAL MARKETS, OVER-THE-COUNTER DERIVATIVES MARKETS AND THE COMMODITY EXCHANGE ACT, at 1 (November 1999), <http://1.usa.gov/RpekOD>

³³ *Id.*

³⁴ *Derivatives in the Crisis*, *supra* note 5, at 15.

³⁵ *Id.*, at 10.

³⁶ *FCIC Report*, *supra* note 26, at 48.

³⁷ MCKINSEY GLOBAL INSTITUTE, GLOBAL CAPITAL MARKETS: ENTERING A NEW ERA (September 2009), <http://bit.ly/yRPfB2>.

³⁸ John Lanchester, *Outsmarted: High Finance vs. Human Nature*, THE NEW YORKER (June 1, 2009), <http://nyr.kr/KpGeWM>; and Carrick Mollenkamp, Serena Ng, Liam Plevin and Randall Smith, *Behind AIG's Fall, Risk Models Failed to Pass Real-World Test*, THE WALL STREET JOURNAL (Oct. 31, 2008), <http://on.wsj.com/3lu8a5>.

³⁹ *FCIC Report*, *supra* note 26, at 129.

⁴⁰ *Id.*, at 128.

⁴¹ *Id.*, at xxiv.

⁴² *Derivatives in the Crisis*, *supra* note 5, at 12.

⁴³ *FCIC Report*, *supra* note 26, at 50.

⁴⁴ *See*, Web site of the World Bank (viewed on Feb. 20, 2013),

<http://bit.ly/w6l6pl>.

⁴⁵ *Derivatives in the Crisis*, *supra* note 5, at 10.

⁴⁶ *See, e.g.*, MICAH HAUPTMAN, PUBLIC CITIZEN, BANKING ON FAILURE: SPECULATORS' USE OF CREDIT DEFAULT SWAPS TO BET ON OTHERS' MISFORTUNE IS UNSEEMLY, DANGEROUS (November 2011), <http://bit.ly/xmckKHd>.

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⁴⁸ Testimony of Christopher Cox, U.S. House of Representatives, Committee on Oversight and Government Reform, 110th Congress, at 22 (Oct. 23, 2008), <http://1.usa.gov/TTsk4a>.

⁴⁹ Brady Dennis and Robert O'Harrow Jr., *A Crack in The System*, THE WASHINGTON POST (Dec. 30, 2008), <http://wapo.st/2qmqzdg>.

⁵⁰ *FCIC Report*, *supra* note 26, at 50.

⁵¹ MICAH HAUPTMAN, PUBLIC CITIZEN, BANKING ON FAILURE: SPECULATORS' USE OF CREDIT DEFAULT SWAPS TO BET ON OTHERS' MISFORTUNE IS UNSEEMLY, DANGEROUS (November 2011), <http://bit.ly/xmckKHd>.

⁵² DERIVATIVES IN THE CRISIS, *supra* note 5, at 12.

⁵³ *Id.*, at 13.

⁵⁴ *Id.*

⁵⁵ *See, e.g.*, Mary Williams Walsh, *A.I.G. Secures \$150 Billion Assistance Package*, THE NEW YORK TIMES (Nov. 10, 2008), <http://nyti.ms/IJGNes>.

⁵⁶ *Id.*; and *Where Is the Money: Eye on the Bailout*, PROPUBLICA, <http://bit.ly/zle07l>.

⁵⁷ *FCIC Report*, *supra* note 26, at 49.

⁵⁸ *Id.*

⁵⁹ Dan Froomkin, *Rubin: I Actually Supported Regulating Derivatives*, HUFFINGTON POST (June 20, 2010), <http://huff.to/aMXj1N>.

⁶⁰ *Id.*

⁶¹ Testimony of Alan Greenspan, U.S. House of Representatives, Committee on Oversight and Government Reform, 110th Congress, at 17 (Oct. 23, 2008), <http://1.usa.gov/TTsk4a>.

⁶² Dan Froomkin, *Rubin: I Actually Supported Regulating Derivatives*, HUFFINGTON POST (June 20, 2010) <http://huff.to/aMXj1N>.

⁶³ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, § 701-814 (2010), <http://1.usa.gov/eEIZxs>; and *Derivatives in the Crisis*, *supra* note 5, at 17-26.

⁶⁴ Dan Fitzpatrick and Gregory Zuckerman, *Three to Exit J.P. Morgan; Drew, Others to Depart in Wake of Loss, Which Could Total More Than \$4 Billion*, THE WALL STREET JOURNAL (May 14, 2012), <http://on.wsj.com/J49m82>.

CHAPTER III

¹ This chapter was written by Taylor Lincoln, Research Director of Public Citizen’s Congress Watch division. Congress Watch Financial Policy Advocate Bartlett Naylor provided expert advice. This chapter was edited by Congress Watch Director Lisa Gilbert and former Congress Watch Director David Arkush.

² *See, e.g.*, DENNIS FRENK AND WALLACE TURBEVILLE, *BETTER MARKETS, COMMODITY INDEX TRADERS AND THE BOOM/BUST CYCLE IN COMMODITIES PRICES*, at 2 (2011), <http://bit.ly/OfCsVC>.

³ Testimony of Michael Greenberger, Law School Professor University of Maryland School of Law, Commodity Futures Trading Commission, at 13 (Aug. 5, 2009), <http://1.usa.gov/w0LyMV>.

⁴ *See, e.g.*, Christopher Hayes, *Will Federal Regulators Crack Down on Oil Speculation?* THE NATION (March 8, 2011), <http://bit.ly/OznjOf>.

⁵ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, § 737 (2010), <http://1.usa.gov/eEIZxs>. “The Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than *bona fide* hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.”

⁶ *See*, Tom Schoenberg, *CFTC Rule Restraining Speculation Rejected by U.S. Judge*, BLOOMBERG (Sept. 28, 2012), <http://bloom.bg/NV1cST>; and Commodity Futures Trading Commission, Position Limits for Futures and Swaps, Final rule and interim final rule, 76 FEDERAL REGISTER 71626 (Nov. 18, 2011), <http://1.usa.gov/NOQvji>.

⁷ Commodity Futures Trading Commission Web site, U.S. Futures Trading and Regulation Before the Creation of the CFTC (viewed on Jan. 18, 2012), <http://1.usa.gov/QwW5o6>.

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CHAPTER VI

¹ This chapter was written by Taylor Lincoln, Research Director of the Congress Watch division of Public Citizen and former Congress Watch Researcher Negah Mouzoon. Celeste Monforton, Professorial Lecturer at the George Washington University Environmental and Occupational Health Department, provided valuable comments. It was edited by former Congress Watch Director David Arkush.

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CHAPTER VII

¹ This chapter was written by Justin Feldman, former worker health and safety advocate for the Congress Watch division of Public Citizen.

² JUSTIN FELDMAN, PUBLIC CITIZEN, OSHA INACTION: ONEROUS REQUIREMENTS IMPOSED ON OSHA PREVENT THE AGENCY FROM ISSUING LIFESAVING RULES (October 2011), <http://bit.ly/Ro1osh>. The version published in this book has been edited.

³ In this analysis, a “new standard issued” is any regulation resulting in new protections addressing health or safety hazards. In this category, we included substantive revisions to existing regulations. We excluded minor regulatory actions such as small changes in record keeping requirements or technical amendments to existing rules.

⁴ Estimating the annual number of fatalities due to occupational illness is a difficult task. The most recent peer reviewed study to provide such an estimate used data from 1997 to analyze the number of fatalities that could be attributed to exposure to some (but not all) occupational hazards. The estimate ranged from 26,000 to 72,000 deaths. While fatal work-related injuries have decreased by nearly 25 percent since 1997, there are no data showing such a decline for fatal work-related illness. For the study based on 1997 data, see, K. Steenland, C. Burnett, *et al.*, *Dying for Work: the Magnitude of U.S. Mortality from*

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⁵ J.P. Leigh, S.B. Markowitz, *et al.*, *Occupational Injury and Illness in the United States: Estimates of Costs, Morbidity, and Mortality*, 157 ARCHIVES OF INTERNAL MEDICINE 1557 (1997).

⁶ A sixth standard for combustible dust has remained on hold for 1 year, 11 months. OSHA has not yet released an analysis showing the rule's benefits.

⁷ Delay is the time elapsed between OSHA's first public action on a particular rule (such as holding a public stakeholder meeting or issuing a request for information, notice of proposed rulemaking, or advanced notice of proposed rulemaking) and September 2011.

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⁹ *Preliminary Initial Regulatory Flexibility Analysis of the Preliminary Draft Standard for Occupational Exposure to Beryllium*, OSHA (2007). Figures show median of values for estimated range and assumes a permissible exposure limit of 0.02 mcg/m³.

¹⁰ *Preliminary Initial Regulatory Flexibility Analysis of the Preliminary Draft Standard for Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl*, OSHA (2009). Estimate assumes a permissible exposure limit of 0.03 ppm. OSHA's range for estimated benefits at this level was wide (between 100 and 3,168 cases of bronchiolitis prevented annually. Our analysis used the median value).

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¹⁴ Technical and Analytical Support and Docket Review for OSHA's Preliminary Analysis of Costs, Benefits, and Economic Impacts for OSHA's Proposed Standard for Walking and Working Surfaces (2007).

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CHAPTER VIII

¹ This chapter was written by Negah Mouzoon, former researcher for the Congress Watch division of Public Citizen and edited by Congress Watch Research Director Taylor Lincoln and Congress Watch Director Lisa Gilbert. Public Citizen Litigation Group Director Allison Zieve made significant editorial contributions. Amit Narang, regulatory policy advocate for Congress Watch, provided expertise and advice. James Goodwin, policy analyst for the Center for Progressive Reform, and Tony Corbo, senior lobbyist at Food & Water Watch, provided expertise.

² NEGAH MOUZON, PUBLIC CITIZEN, PUBLIC SAFEGUARDS PAST DUE, MISSED DEADLINES LEAVE PUBLIC UNPROTECTED (June 2012) <http://bit.ly/QG9vQr>. The version published in this book has been edited.

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CHAPTER IX

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CHAPTER X

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³¹ See, e.g., SIDNEY A. SHAPIRO AND RUTH RUTTENBERG SETTING THE RECORD STRAIGHT: THE CRAIN AND CRAIN REPORT ON REGULATORY COSTS, CENTER FOR PROGRESSIVE REFORM, at 7 (February 2011), <http://bit.ly/UzauUl>.

³² See, e.g., Testimony of David Arkush, Director, Public Citizen's Congress Watch division, U.S. House Committee on Oversight and Government Reform, 112th Congress, at 3 (Sept. 14, 2011), <http://bit.ly/ONj5xo>.

³³ DRAFT 2012 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES, OFFICE OF MANAGEMENT AND BUDGET (March 2012), <http://1.usa.gov/ScovXt>.