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Governing the Federal Reserve System after the Dodd-Frank Act

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The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act increased the powers of the Board of Governors of the Federal Reserve System (hereafter the Board) along almost all dimensions pertaining to the supervision and operation of systemically important financial institutions. With Ben S. Bernanke's term as Fed chair ending in January 2014, much of the public's attention has focused appropriately on the identity, views, and experience of candidates for the successor, whose influence on bank regulation will be considerable. President Barack Obama's selection of current Board vice chair Janet L. Yellen as chair—a highly qualified choice—comes at the end of a long public debate on this nomination.

By statute, however, the chair decides almost nothing herself: The Federal Reserve System is supervised by a Board of seven presidentially appointed, Senate-confirmed governors, of whom the chair is but one. In practice, the chair has frequently had a disproportionate influence on the monetary policy agenda and also the potential to predominate on regulatory matters—working closely with the Fed Board's senior staff.[1] Even so, for the most significant decisions, the Board must vote, and the chair must rely on the votes of the other six governors (for Board matters) and in addition, on a rotating basis, the votes of five of the twelve Reserve Bank presidents (for monetary policy). On regulation and supervision issues, the chair can do little of consequence without the support of at least three other governors.[2]

This Policy Brief focuses on the powers and responsibilities of the Board following Dodd-Frank and argues in favor of changing the process of considering and choosing governors. In nominating and confirming new governors of the Fed, the president and Congress should make greater efforts to appoint only highly qualified people familiar with both regulatory and monetary matters. They should ensure that governors of the Fed can work effectively with staff and engage on an equal basis with the chair. An appropriate aspirational analogy is to the justices of the Supreme Court: Although one among them is chief, with particular duties and recognition, each justice must answer for the exercise of her duties, and each is subject to public engagement and scrutiny at the appointment process and beyond.

In nominating and confirming new governors of the Fed, the president and Congress should make greater efforts to appoint only highly qualified people familiar with both regulatory and monetary matters.

Section I of this Policy Brief reviews the law and conventions affecting the "upper-level" Board appointments—the chair and two vice chairs of the Board. Section II explains the increased significance of governors after Dodd-Frank. Section

1. As discussed below, staff actions can control a variety of supervisory and legal policy decisions that do not require Board approval, including on stress tests, enforcement, and interpretations of the Fed's legal authority.

2. As we explain in more detail in section III, there are currently six members of the Board: Bernanke (chair), Yellen (vice chair), Daniel K. Tarullo, Sarah Bloom Raskin, Jeremy C. Stein, and Jerome H. Powell. The seventh, Elizabeth A. Duke, stepped down in August 2013.

III discusses the unprecedented number of vacancies likely to arise in the coming months and the criteria for selecting new governors.

This is a pressing matter. Within the next 12 months there may be as many as four appointments to the Board, reflecting an unusually high degree of turnover at a critical moment for the development of regulatory policy, including rules on equity capital funding for banks, the ratio of debt-to-equity (leverage) they are permitted, the funding structure of bank holding companies, and whether and how much banks should be allowed to engage in commodity-related activities.

I. THE CHAIR AND VICE CHAIRS

The Federal Reserve Act creates two levels of Board appointments. First, the Board consists of seven governors, appointed by the president with the advice and consent of the Senate. The term of office for a governor is 14 years. However, when a governor resigns before completing his or her term, another governor is appointed to complete that term.[3] (Appendix A reviews the longest terms of office in the past 100 years; most recent governors have served between two and eight years.)

The creation of the vice chair for supervision signals a potential shift with respect to regulatory matters away from the chair (and potentially the rest of the Board) to a single individual.

The Act also creates three upper-level positions—to be filled by Board governors, either previously or simultaneously appointed. First, obviously, is the chair. This position is unquestionably the most significant within the Federal Reserve System and typically one of the most important appointments a president makes. Since the Fed's reorganization in 1935, and especially after 1951,[4] the de facto authority within the Federal Reserve System has rested mostly with the chair, working closely with senior staff.

But the Federal Reserve Act, as amended, also creates two other positions—the vice chair of the Board and the newly established vice chair for supervision. The official duties of the vice chair of the Board are only lightly specified by the Act: Under section 10, the vice chair presides over Board meetings in the absence of the chair. The vice chair may also have additional cachet with the public.[5]

The Dodd-Frank Act of 2010 created the position of vice chair for supervision.[6] According to the statute, the "Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms."[7] This is the broadest grant of authority to an individual in the Federal Reserve Act—greater than even the explicit authority given to the chair.

The creation of the vice chair for supervision signals a potential shift with respect to regulatory matters away from the chair (and potentially the rest of the Board) to a single individual. The identity of that vice chair will presumably set the tone for the Fed's entire regulatory apparatus, which is significantly expanded under Dodd-Frank. Whether this occurs in practice has yet to be determined. Because so much of the Fed's practices are determined by precedent and convention, the identity of the first vice chair for supervision will matter enormously—everything done by that official will have ramifications for the way the office is held thereafter.

Despite its potential importance, however, three years after the passage of the legislation the position remains unfilled. Daniel Tarullo, a law professor at Georgetown University appointed as a Fed governor in 2009, has assumed the de facto role of vice chair for supervision by virtue of his many pronouncements on regulatory policy and his role representing the Federal Reserve in interagency and international meetings dealing with these issues. But because he has not been nominated and confirmed for the position, the public has not had a chance to weigh in on this singular position in financial regulation, nor do Governor Tarullo's actions carry the same institutional weight that they would carry from a presidentially appointed, Senate-confirmed vice chair. A formal nomination is long overdue. The statutory purpose will not be fulfilled until the position is formally occupied.

3. This has occurred for nearly every governor to serve. See Conti-Brown (2013, 35–37) for a more thorough discussion of governor resignations throughout history. No governor can be appointed to more than one 14-year term but if a governor begins by filling an incomplete term, he or she could theoretically serve for nearly 28 years. Indeed, because the Act allows governors to serve even after their terms have expired "until their successors are appointed and have qualified," a governor's appointment could theoretically extend indefinitely. See 12 U.S.C. § 242.

4. For more on the significance of institutional changes in 1935 and 1951, see Conti-Brown (2013, 38–39). See also Meltzer (2003) and Kettl (1988).

5. Bob Woodward (2000, 126) has put a finer point on it: The chair of the Fed is an A-list political celebrity; at best, the vice chair is B-list; the other governors are C-list, "anonymous politically and socially." For more on the ways that the governors and chair interact with each other and with the political branches, see Conti-Brown (2013).

6. 12 U.S.C. § 242.

7. Ibid.

II. THE BOARD OF GOVERNORS AND THE FEDERAL RESERVE

The Board of Governors was established in 1935.[8] Unlike its predecessor, the Federal Reserve Board, the Board of Governors is designed to have a high degree of independence from the Treasury and the president.

Despite the prominence of the Fed chair, he or she cannot fulfill the Fed's statutory responsibilities alone. Whenever Congress has given authority to the Federal Reserve, it is granted to the Board generally, not to the chair individually. The exception is in section 2B of the Federal Reserve Act, which specifies the chair's obligation to provide testimony to Congress. Everything else that the Fed does must go through the entire Board (or, for monetary policy, the Federal Open Market Committee).

Indeed, the Act itself suggests that, if anything, the chair reports to the Board, not the other way around: "The chairman of the Board, *subject to its supervision*, shall be its active executive officer."[9] To be sure, unlike in the corporate governance context, the supervisory Board cannot remove the chair from his position. But the Board is charged with making "all rules and regulations necessary to enable [it] effectively to perform" its duties under the Federal Reserve Act.[10] Under that authority, nothing would legally prevent the Federal Reserve System from becoming a much more Board-centric institution. While the practice of chair predominance has existed in some respects since the tenure of Marriner Eccles, from 1935 to 1948, it is not guaranteed by statute.[11]

In principle, the decision-making responsibilities of the members of the Board of Governors are analogous to the responsibilities of those sitting on the Supreme Court, which consists of one chief justice and eight associate justices. All nine justices select cases for argument; hear oral arguments; vote on those cases' dispositions; and write majority, concurring, and dissenting opinions. The justices each have one vote. If the chief justice wants his view of a case to prevail, he must gain the votes of four of his colleagues through reason, not will. The same is true for any other justice.

By statute, however, the chief justice has specific duties not granted to the other justices. He appoints judges to the Foreign Intelligence Surveillance Court;[12] oversees the Federal Judicial Conference (effectively, the chief justice is the chief executive of the judicial branch);[13] and is on the governing Board of the Smithsonian Institution.[14] By practice, the chief justice is also the most senior justice, regardless of the timing of his appointment, meaning that he chooses who will write the opinion of any majority or dissent he joins.

Because the votes of the chief and associate justices count the same, a rigorous and highly public vetting process surrounds the Senate confirmation process. Associate justices are also well known figures. They appear on Sesame Street[15] and 60 Minutes.[16] Their views are heavily scrutinized in the media.[17] The additional statutory responsibilities of the chief justice, while important, do not obscure the essential—and distinct—role that each associate justice plays.

By contrast, members of the Board of Governors of the Fed are little known for their views among the general public or even Washington politicians. There is no statutory reason for them to be less prominent or to receive less scrutiny. The appointment process for governors does not receive anything like its due, given the governors' extraordinary breadth of responsibilities overseeing the national—and by effect and implication, global—economy and financial system.

The public has shown considerable interest in the selection of Ben S. Bernanke's successor. We can and should encourage the same for new nominations to the Board generally.

8. Its predecessor was the Federal Reserve Board—a similar name but quite different in its operation. The chair was the secretary of the Treasury, and members of that board fought for control over the Federal Reserve System against powerful Reserve Bank presidents, particularly New York. See Conti-Brown (2013, 19–21) and sources cited therein for more background on the Federal Reserve Board and the reasons for its abolition. See also Meltzer (2003).

9. 12 U.S.C. § 242.

10. Ibid. § 248i.

11. Laurence Meyer (2006) writes of the Greenspan years, "The Chairman, by tradition, is always expected to be on the winning side of the [FOMC] policy vote" (p. 50), and "In fact, within recent memory, there has never been the case of a chairman losing a policy vote at the FOMC" (p. 51). Yet, "While the Chairman clearly does wield disproportionate power in the FOMC, he does not necessarily always get his way" (p. 52).

12. Foreign Intelligence Surveillance Act of 1978, Pub. L. No. 95-511, § 103, 92 Stat. 1783, 1788 (codified at 50 U.S.C. § 1803 (2006 & Supp. III 2009)).

13. 28 U.S.C. § 331.

14. 20 U.S.C. §§ 41-70 (2006).

15. See "Sotomayor Gives Sesame Street Some Career Advice," November 12, 2012, www.salon.com/2012/11/12/sotomayor_gives_semsame_street_some_career_advice.

16. See, for example, "The Private Clarence Thomas," CBS News, www.cbsnews.com/video/watch/?id=3312824n.

17. See Martha T. Moore, "Nomination is No Surprise to Those Who Know Kagan," *USA Today*, May 11, 2010, http://usatoday30.usatoday.com/news/washington/judicial/2010-05-10-kagan_N.htm; Ronald Dworkin, "The Temptation of Elena Kagan," *New York Review of Books*, July 22, 2010, www.nybooks.com/articles/archives/2010/aug/19/temptation-elena-kagan/?pagination=false.

Governors and the FOMC

Board governors have two main roles: (1) as members of the Federal Open Market Committee (FOMC), which sets the nation's monetary policy[18] and (2) as the nation's leading banking supervisor/regulator.

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The voting members of the FOMC consist of all Board governors, plus five presidents of the regional Reserve Banks.[19] In the coming year, they will confront an unusually challenging monetary policy landscape, including the question of when and how the Fed should "taper" the agency and federal government bond purchases that are an essential part of quantitative easing.

Although the governors share FOMC responsibilities with the Reserve Bank presidents,[20] their power is greater, at least on paper, because they play an important role in those presidents' selection. Each Federal Reserve Bank has a board with three classes of directors, A, B, and C, with three directors in each group. The class C directors are directly appointed by the Board of Governors. Class B and C directors select the Reserve Bank president, and even then the governors must approve that selection.[21]

For that reason, the president's choice of the four new governors is important because they will have an important role, however indirect, in selecting the Reserve Bank presidents who also rotate on the FOMC. The governors could, in theory, bring about a significant shift in the consensus on monetary policy and other difficult macroeconomic issues lying ahead. Given current conditions, dramatic shifts in policy might seem unlikely, but a lot can happen during a governor's term of office.

Governors and Banking Regulation

The Board's statutory authority over banking and financial regulation is extraordinarily broad, and were expanded significantly under Dodd-Frank. A Board majority or strong minority could significantly alter the course of financial reform.[22]

This is especially true because, as President Obama has acknowledged,[23] progress with implementing the Dodd-Frank reforms has lagged. Among the open issues before the Board are the following:[24]

18. The FOMC was created by the Banking Act of 1935, with slight amendment in 1942 (making the president of the New York Fed a permanent member). The current composition of the FOMC is available at www.federalreserve.gov/monetarypolicy/fomc.htm.

19. All heads of the 12 regional Feds attend and can speak at each FOMC, but who gets to vote rotates every year. The president of the New York Fed is an exception—he always has a vote and, by convention, is always elected vice chair of the FOMC. For the exact rules, see www.federalreserve.gov/aboutthefed/section12a.htm and 12 U.S.C. § 263.

20. A quorum of the FOMC is seven members, of whom at least one must represent a Federal Reserve Bank; see *Federal Register* 78, no. 64 (April 3, 2013), p. 19981, www.gpo.gov/fdsys/pkg/FR-2013-04-03/html/2013-07605.htm. This applies, according to that official announcement, "unless fewer than seven members are in office in which case the number of members then in office constitutes a quorum."

21. Under the Dodd-Frank reforms, class A directors (bankers representing member banks) are not allowed to participate in choosing Federal Reserve Bank presidents. However, class B directors (nonbankers elected by bankers) are still involved in that choice. Whether the Board of Governors has exercised effective oversight in recent decades remains controversial. The structural limitations to oversight over the Reserve Bank presidents give rise to a constitutional defect inherent in the System. See Peter Conti-Brown, "Is the Federal Reserve Unconstitutional?" www.libertylawsite.org/liberty-forum/is-the-federal-reserve-constitutional.

22. There is a clear internal preference for unanimous Board decisions but this is by no means a requirement. On June 29, 2011, Elizabeth Duke voted against the Board's final rule on debit card interchange fees (*98th Annual Report of the Federal Reserve System*, 2011, p. 168). Of the 21 Board votes in 2011, this was the only one that was not unanimous (apart from absent governors, who did not vote). Of the 20 votes by the Board in 2013 (through September 4; the latest available data), there was one abstention on one vote: Vice Chair Janet Yellen abstained in the June 5 vote on the interim final rule, "clarifying the treatment of uninsured US branches and agencies of foreign banks under the so-called swaps push-out provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act." (See www.federalreserve.gov/aboutthefed/boardvotes.htm.) In 2012, the Board voted 30 times. Raskin voted against the majority twice and Powell voted against the majority once. Raskin voted against final rules: "To seek public comment on a policy statement to be used to develop scenarios for annual supervisory and company-run stress tests and issue scenarios to be used in this year's stress tests," on November 15, 2012; and "a five-month delay in the implementation of the second phase of its program to simplify the administration of reserve requirements," October 25, 2012. (See www.federalreserve.gov/newsevents/press/bcreg/20121115a.htm and www.federalreserve.gov/newsevents/press/bcreg/20121026a.htm.) Powell voted against the approval of the application by Old National Bancorp "to acquire Indiana Community Bancorp and its subsidiary bank, Indiana Bank and Trust Company." (See www.federalreserve.gov/newsevents/press/orders/20120831a.htm.)

23. See Margaret Talev and Lisa Lerer, "Obama Meets with Financial Regulators on Dodd-Frank Progress," Bloomberg, August 19, 2013, www.bloomberg.com/news/2013-08-19/obama-to-meet-financial-regulators-on-dodd-frank-implementation.html.

24. The Fed's own version of Reform Milestones is available at www.federalreserve.gov/newsevents/reform_milestones.htm. And its proposed rules planned for 2013 are available at www.federalreserve.gov/newsevents/reform_milestones_proposed_rules_planned.htm.

- The Volcker Rule, which is intended to prevent large banks from engaging in proprietary trading.
- Revised rules on the equity funding required for banks, as measured by the "leverage ratio" (roughly speaking, total assets compared with loss-absorbing shareholder equity). A rule has been proposed but, based on recent experience (e.g., with the Volcker Rule), it may take a long time to get a final rule.[25]
- Implementation of global standards on bank capital and risk adopted by the Basel Committee on Banking Supervision, known as Basel III, including the so-called capital "surcharge" (i.e., additional equity requirement) for systemically important financial institutions.[26]
- New rules on liquidity.[27] These will stipulate restrictions on the assets that banks can hold, with the goal of reducing the risks associated with holding "illiquid" assets that cannot be sold easily or at a stable price.
- The funding structure for bank holding companies, specifying the amount of equity and long-term unsecured debt required. This is essential for the effectiveness of the single point of entry approach to resolution for insolvent banks, as developed by the Federal Deposit Insurance Corporation (FDIC).
- A reassessment in the near term of the Fed's own rules that allow banks to own commodities, as well as the physical infrastructure involved in moving, storing, and processing commodities. This comes in the wake of a series of scandals involving very large banks.[28]
- The designation of specific nonbank financial companies as systemically important or not, where appropriate. Most notably, several insurance companies have recently been so designated or are under consideration for such designation.[29] A number of other insurers may also come up for review.
- The oversight of regular "stress tests," measuring banks' ability to withstand crises, conducted by and on systemically important banks.
- The approval of "living wills" that large financial institutions are required to prepare under Title I of Dodd-Frank. These documents are intended to lay out how an insolvent firm goes bankrupt without government intervention or market disruption.
- The turning of one of the three "keys" in the FDIC-run resolution process for insolvent financial firms should bankruptcy be deemed inappropriate or unworkable.[30]

The governors—not simply the chair—are also responsible for every aspect of the Federal Reserve's banking regulatory apparatus. For example, the Board regulates the reserve requirements of branches and agencies of foreign banks as a result of the enactment of the International Banking Act of 1978.[31] It oversees comprehensive supervision and regulation of bank holding companies, under the Bank Holding Company Act of 1956.[32] It also limits the extent of transactions between banks and their affiliates[33] and participates in international official rulemaking organizations while substantially overseeing US systemic risk regulation.[34]

25. Specifically, in July 2013, the Department of Treasury, Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency issued a joint notice of proposed rulemaking on "Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions." (See www.fdic.gov/news/board/2013/2013-07-09_notice_dis_b_res.pdf. See also www.federalreserve.gov/newsevents/press/bcreg/20130709a.htm.)

26. See Jeremy Stein, "Regulating Large Financial Institutions," speech on April 17, 2013, www.federalreserve.gov/newsevents/speech/stein20130417a.htm.

27. See Board of Governors press release, December 20, 2011, www.federalreserve.gov/newsevents/press/bcreg/20111220a.htm.

28. For a summary of the current debate, see Simon Johnson, "Getting Big Banks Out of the Commodities Business," August 8, 2013, http://economix.blogs.nytimes.com/2013/08/08/getting-big-banks-out-of-the-commodities-business/?_r=0. On the Fed Board's track record for this issue, see Omarova (2012).

29. AIG has not contested its designation as systemically important, but Prudential Financial is contesting this designation. See "G-20 Financial Stability Board Names Nine Insurers Systemically Important," *Wall Street Journal*, July 18, 2013, http://online.wsj.com/article/SB10001424127887323993804578614244083814244.html. The Financial Stability Oversight Council is in charge of designating nonbanks as systemic, but the Federal Reserve is presumably involved—because the Board supervises all systemically important financial institutions. See Deloitte Center for Regulatory Strategies, "SIFI designation and its potential impact on nonbank financial companies," 2013, www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_aers_grr_crs_SIFI%20Designation%20%20_0313.pdf.

30. The other key holders, for insured banks, are Treasury and the FDIC. For securities companies, the three key holders are the Fed, Treasury, and the Securities and Exchange Commission. For the resolution process, see FDIC, "Title II: Resolution Strategy Overview," August 2012, www.fdic.gov/resauthority/sifiresolution.pdf.

31. 12 U.S.C. §§ 3101-3108.

32. Pub. L. No. 84-511, §§ 1-12, 70 Stat. 134, 135 (1956). For an overview of the history of bank holding companies, see Omarova and Tahyar (2011).

33. Federal Reserve Act 23A, 12 U.S.C. §371c (2006) (amended 2010). For a thorough analysis of the Fed's changing approach to 23A limitations, see Omarova (2011).

34. See Conti-Brown (2012) for an overview of the Fed's responsibilities under Dodd-Frank.

Supervision of the Federal Reserve System

Reserve Banks

An often overlooked but also essential duty of the Board is to supervise the entire Federal Reserve System, including the Federal Reserve Banks. In some ways, Reserve Bank supervision is technical and bureaucratic: For example, the Board of Governors must approve of the "assistants" who are "persons of tested banking experience" to aid the "Federal reserve agent," who is the chairman of the board of directors at each Reserve Bank.[35] But the Board also oversees the Federal Reserve Banks in every other sense, as envisioned by the original compromise as part of the 1913 Federal Reserve Act.[36] Before 1935, the Federal Reserve Board (as it was then called) and the Reserve Banks fought for primacy in the System.[37] That primacy, at least on paper, is now on the side of the Board; in 1935 the Reserve Banks lost a great deal of their independence.

Even while the Federal Reserve Banks have their legally defined status,[38] and the Board has delegated enforcement authority to them, the Board retains control over regulatory policy. Enforcement actions are taken by the staff of the regional Feds, under the authority of the Board staff—and ultimately under the Board of Governors.

The quality of supervision over financial institutions is, therefore, dependent on the knowledge and skill of the Reserve Bank presidents, the System staff, and the members of the Board of Governors together. The Board must possess the knowledge to judge the quality of the Reserve Banks' work.

Reserve Bank presidents and staffs are not irrelevant to regulation and supervision. Indeed, their role is important. For example, Reserve Bank directors appoint their executive staffs. And while the governors must approve those decisions, approval and appointment are not the same. The power of the Reserve Banks was felt strongly in the Dodd-Frank debates, in which Reserve Bank presidents shaped their continued participation in local banking supervision.[39] The Reserve Banks remain responsible for day-to-day operation of the System. Management of those operations should remain a common enterprise with the governors.

System Staff

Another important aspect of the Board's supervision is over the bank supervisors, lawyers, public relations experts, legislative assistants, and others at the Board and the Reserve Banks. These talented and experienced career employees shape what the Fed does and wield sometimes significant influence.[40]

For example, the director of the Division of Banking Supervision and Regulation and the general counsel supervise the Reserve Banks in reaching consent agreements in their enforcement proceedings.[41] Of more than 1,000 enforcement actions by the Fed in the last ten years, only 11 proceeded to an administrative hearing, and only seven of those went to the Board of Governors. The rest were resolved by the Fed staff.[42]

This staff-level oversight is not for minor affairs alone. In April 2013, for example, the Office of the Comptroller of the Currency and Federal Reserve approved a multibillion dollar settlement with major banks regarding their mortgage servicing practices. But as Governor Tarullo stated in a letter to Senator Elizabeth Warren, that approval was without a Board vote and without any governor requesting a review of the action.[43] To be clear, Governor Tarullo stated that "Board staff frequently consulted with Board members before exercising delegated authority to approve the amendments to the foreclosure consent orders."[44] But the approval and process that supported it was a staff process, not a Board process.

35. 12 U.S.C. § 306.

36. For more on the Compromise of 1913 and how it became undone in 1935, see Conti-Brown (2013, 19–21).

37. For more on the contest between the Board and the Banks, see Meltzer (2003, 102–53). See also Chandler (1958).

38. See 12 U.S.C. § 301. Section 4 of the Federal Reserve Act (codified in 12 U.S.C. § 301) is part of the original Federal Reserve Act and was not amended by the 1935 Act. There is a largely academic legal question as to the consequence of the 1935 Act on the force that section 4 retains. Reserve Banks certainly do not function as any other "banking associations" after the 1935 Act.

39. See Conti-Brown (2013, 25–26).

40. For an insider account by a career economist, see Axilrod (2009).

41. 12 C.F.R. § 265.11(15)(i). Specifically, the regulation delegates to the regional banks the authority "[t]o enter into a written agreement[s] with [regulated institutions or persons subject to the Federal Reserve Board's enforcement jurisdiction] . . . concerning the prevention or correction of an unsafe or unsound practice in conducting the business of the [institution] . . . or concerning the correction or prevention of any violation of law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the bank or company or any other appropriate matter." The delegation also allows Fed staff to "stay, modify, terminate, or suspend" such an agreement or any "outstanding cease and desist order." (12 C.F.R. §§ 265.11(15)(ii) and (iii).)

42. "Examining the Settlement Practices of U.S. Financial Regulators: Hearing Before the H. Comm. on Financial Services," 112 Congress 2d Session (2012), written testimony of Scott G. Alvarez, general counsel, Board of Governors of the Federal Reserve System, http://financialservices.house.gov/uploadedfiles/hhrg-112-ba00-wstate-salvarez-20120517.pdf.

43. See letter from Governor Daniel K. Tarullo to Senator Elizabeth Warren, June 11, 2013, http://graphics.thomsonreuters.com/13/06/Tarullo%20Resp%20to%20Warren.pdf. See also "Federal Reserve board did not vote on foreclosure pact," Reuters, June 13, 2013, www.reuters.com/article/2013/06/13/us-financial-regulation-settlement-idUSBRE95C04K20130613.

44. See letter from Governor Tarullo to Senator Warren.

Board governors, in principle, are able to determine what should be delegated to career employees and what is taken up by the entire Board. But regulatory work, like monetary policy, is often highly technical, with the conversation inside and outside the Fed dominated by experts. Governors must be able to do more than hold their own in these conversations. They must critically review decisions delegated to staff and determine which decisions should be delegated. Most crucially, governors need to be knowledgeable, experienced, and able to command respect from the staff.

The staff's influence is also felt in other ways where formal legal delegation has not occurred. In FOMC meetings, the chair, in close consultation with the senior staff, provides the monetary options subject to debate by the committee. For Board matters, the chair, again working with senior staff, sets the agenda. The chair and senior staff's control over the agenda is not a part of the Fed's statutory structure but can be influential in the Board's decision-making process.

The point is this: Even though the chair wields enormous influence over the staff (who in turn wield enormous influence over the Reserve Banks), the governors—by law and even recent practice—actively participate in both policymaking and supervision of the Federal Reserve System.[45] Keeping those often underappreciated roles in mind during the selection and nomination process for governors is essential.

III. BOARD VACANCIES AND NOMINATIONS

Vacancies

Vacancies should be filled only after analysis of the candidate's views on monetary policy, banking regulation, supervision, and knowledge of the Federal Reserve System and its many moving pieces, similar to the evaluation of associate justices of the Supreme Court.

But today the attention should be even higher, in light of the four likely vacancies on the horizon. Elizabeth A. Duke's term expired on January 31, 2012,[46] but she remained a governor, as permitted by statute because no successor was appointed, until she chose to resign on August 31, 2013.[47] (Appendix B lists by term each governor, including Duke.)

Sarah Bloom Raskin is expected to become deputy secretary in the Treasury Department.[48] Her term on the Board expires January 31, 2016.

Jerome H. Powell's term expires on January 31, 2014. He could be reappointed, but this would involve a new nomination and confirmation hearing, or he could stay in office until a successor is confirmed.

Ben Bernanke's term as chair expires on January 31, 2014, although his term as governor does not expire until January 31, 2020. He has expressed no interest in staying on the Board beyond the expiration of his term as chair—indeed, only one Fed chair has ever done so for any significant length of time.[49] It is unlikely that Bernanke will stay on the Board beyond January 2014.

Janet Yellen, current vice chair, has been nominated to become chair—and is likely to be confirmed in that position for a four-year term starting in February 2014. Her term on the board expires January 31, 2024. Yellen's term as vice chair expires on October 4, 2014.

In addition to Yellen, two other governors likely to remain in place for the near term are Jeremy Stein (appointed May 30, 2012 to a term that expires January 31, 2018) and Tarullo (appointed January 28, 2009 to a term that expires January 31, 2022).

Legal and Political Requirements for the Appointment of Fed Governors

The president's prerogative of appointing governors subject to Senate confirmation has been hard to guarantee in recent years. The law does not specify the qualifications or background required, only that there should be "fair representation" of various interests.[50]

For example, there is no statutory requirement that governors should have any kind of political balance, as is common with other independent commissions.[51] Any partisan

45. It is hard to evaluate internal decision-making processes, but under Bernanke, the Fed may have moved closer to a more collegial decision-making model (see Wessel 2009). For a blow-by-blow comparison of the Fed, the Bank of England, and the European Central Bank under pressure, see Irwin (2013).

46. This is allowed under Section 10.2 of the Federal Reserve Act, "Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified." Duke has remained a full voting member since the expiration of her term—see the Board's voting record for 2013 at www.federalreserve.gov/aboutthefed/boardvotes.htm.

47. See "Elizabeth Duke to Resign from Federal Reserve Board Aug. 31," *Wall Street Journal*, July 11, 2013, http://online.wsj.com/article/BT-CO-20130711-706620.html.

48. See "Obama Nominates Raskin for Deputy Treasury Post," *Wall Street Journal*, http://online.wsj.com/article/SB10001424127887323681904578640280076846010.html.

49. Marriner Eccles was Fed chair from November 15, 1934 to February 3, 1948. However, he stayed on the Board of Governors until July 14, 1951 and remained an influential figure. Technically, Arthur Burns was still a governor for a few weeks after G. William Miller became chair at the beginning of March 1978.

50. 12 U.S.C. § 241.

51. A political pairing of nominees does sometimes happen, as with the 2012

requirements on candidates would occur only in give-and-take between the president and the Senate.

The law does state that no two governors should come from the same Federal Reserve District.[52] Some Board candidates may have been ruled out in the past for this reason.[53] It appears, however, that this requirement is interpreted in a loose fashion and may not even be a constraint in most situations.[54] For example, Ben Bernanke is listed under the Sixth District (based in Atlanta), even though he spent the 17 years prior to his first appointment to the Board living in Princeton, NJ, located in the Third District (based in Philadelphia).[55]

A convention has developed requiring that at least one Board member has served as a community banker or has strong support among community bankers. Such a consideration would presumably matter in the choice of Duke's successor.

As for representation of other specific banking interests, such as very large banks, the law is silent. It requires that "[n]o member of the Board of Governors of the Federal Reserve System shall be an officer or director of any bank, banking institution, trust company, or Federal Reserve bank or hold stock in any bank, banking institution, or trust company."[56] Presumably this requirement could be satisfied by an appointee resigning from such a position.

In recent years, the Board has not had prominent Wall Street executives as governors. At least in recent years, the job has tended to go to people in the financial, consulting, legal, and academic communities. Prior policymaking experience may be an advantage but not a requirement. Strong support on Capitol Hill often plays a role. Occasionally, long-term Fed staff members are promoted to the Board.[57]

The trend in recent decades of increasing expertise on the Board could easily be reversed. Such expertise, however, has generally related to monetary policy, rather than bank supervision or regulation. For a long time, the Division of Banking Supervision and Regulation was not the most prestigious or most powerful part of the Board and its staff. After Dodd-Frank this has changed, making it more important for governors to be familiar with all aspects of bank oversight and macroprudential policy.

The recent debate regarding Bernanke's successor also appropriately focused on the Fed's long history as a male-dominated area of government. Beginning in 1913, the first 55 people appointed as Federal Reserve governors were men. The first woman was appointed governor in 1978 and the second in 1984.[58] Another six women have subsequently become governors: Susan M. Philips (1991–98), Janet L. Yellen (1994–97 and again, as vice chair, from October 2010), Alice M. Rivlin (1996–99), Susan S. Bies (2001–07), Elizabeth A. Duke (2008–13), and Sarah Bloom Raskin (from 2010).

The statute does not require that every vacancy be filled immediately. The number of governors dipped to four (briefly, for one week in January 2009), and more commonly the membership has ranged from five to seven. The president could delay nominating people to fill the upcoming vacancies, as he has done with respect to the vice chair for supervision—although this would further increase the workload on existing governors. He could wait until the new chair is installed and consult with him or her regarding the choice of new governors. But presidents have also nominated governors with little or no input from the Fed chair.[59]

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nomination and confirmation of Jerome Powell (who worked in the Treasury Department under President George H. W. Bush) and Jeremy Stein (who worked at Treasury under President Obama). The FDIC, by contrast, has the requirement that "not more than 3 of the members of the Board of Directors may be members of the same political party." (See www.fdic.gov/regulations/laws/rules/1000-300.html.) The same is true for the other independent commissions. See, e.g., the Securities Exchange Commission, 15 U.S.C. § 78d(a) (2012).

52. For a map of the 12 Federal Reserve Districts, see www.federalreserve.gov/otherfrb.htm.

53. For example, in *Chairman of the Fed: William McChesney Martin Jr., and the Creation of the American Financial System*, Robert P. Bremner (2004, 81) states that Harry McDonald was a leading candidate for Fed chair but "At the eleventh hour, fate again intervened when it was discovered that Fed Governor M. S. Szymczak was from McDonald's home Reserve district." McDonald's name was dropped—although there may also have been other considerations.

54. Section 10 of the Federal Reserve Act stipulates that, "In selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country." (See 12 U.S.C. § 241.) As recently as the early 1980s, this was a consideration—or at least an item discussed seriously by senior Board staff members.

55. The connection to the Sixth District cannot be the location of his boyhood home in South Carolina, where he lived until 1971, as this is in the Fifth (Richmond) District of the Federal Reserve System.

56. See www.federalreserve.gov/aboutthefed/section%2010.htm.

57. The most recent example is Donald L. Kohn, who was on the Board from August 5, 2002 to September 1, 2010, and who was vice chair from June 23, 2006 until June 23, 2010. In the 1970s, Robert C. Holland served from June 11, 1973 to May 15, 1976, and J. Charles Partee served from January 5, 1976 to February 7, 1986; both were appointed to the Board directly from the staff. Lyle E. Gramley served on the Board from May 28, 1980 to September 1, 1985; he was a member of the president's Council of Economic Advisers between being on the Fed staff and becoming a governor. The first female governor of the Fed (September 18, 1978 to June 27, 1984), Nancy H. Teeters, was a staff economist at the Fed Board earlier in her career.

58. The first female governor was Nancy H. Teeters; see preceding note. The second was Martha R. Seger, who served from July 2, 1984 to March 11, 1991. There have been 89 governors to date, of whom a total of 8 have been women. Caroline Freund has pointed out that women are underrepresented at leading central banks more generally (See http://articles.washingtonpost.com/2013-09-19/opinions/42218998_1_world-bank-few-women-more-women).

59. For example, Woodward (2000, 187–88) notes that Alan Greenspan was consulted but had little influence over the selection of Roger Ferguson as the vice chair at the end of the Clinton administration.

IV. CONCLUSION

The Fed chair is arguably the most important economic appointment any president makes. After the crises, new statute, and bold decisions of recent years, this job has become even more important.

During its first 100 years of existence, the position of Fed chair has risen to exercise great potential power. By statute, an appointee can remain in office 20 years or more. A perceived "maestro" effect in which insiders and outsiders are discouraged from challenging the chair is no longer a model with broad appeal, if it ever was.

The Board of Governors could provide an effective counterweight to the chair. Indeed, such a counterweight is what Congress intended by requiring presidential appointment and Senate confirmation of the entire Board. In order to break the tradition of a chair-dominated board, governors need sufficient expertise and experience to engage with and in some instances counteract the chair and Fed staff.

A president's choice for Fed chair matters enormously, but the choice for members of the Board also matters a great deal. Monetary policy remains a crucial criterion but not at the exclusion of regulatory policy. The Board is second to none—in the nation and indeed arguably in the world—in its responsibility for regulatory oversight over the financial system. The president, members of the Senate, and the general public ignore these considerations at significant peril to the financial system and the economy.

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APPENDIX A

THE LONGEST TERMS OF OFFICE FOR FED CHAIRS AND GOVERNORS

William McChesney Martin, Jr. is the longest-serving chair of the Fed Board to date—in office from April 2, 1951 to January 31, 1970 (nearly 19 years). Alan Greenspan is close behind—he was chairman of the Fed Board from August 11, 1987 to January 31, 2006 (again nearly 19 years).

Other members of the board who served long terms include Marriner Eccles (Board chair 1934–48 and governor until July 1951), but the record for the post-1935 Board of Governors is just under 28 years (M. S. Szymczak, 1933–61, who handled international issues—including German postwar reconstruction). Two original members of the Federal Reserve Board, Charles S. Hamlin and Adolph C. Miller, served from August 10, 1914 until the switch to the Board of Governors in February 1936.

In recent decades, it has been rare for governors to serve more than 10 years, although J. L. Robertson's term ran from 1952 to 1973, George W. Mitchell was a governor from 1961 to 1976, and Henry Wallich was in office from 1974 to 1986.

No one, other than Alan Greenspan, has spent 14 or more years in office since George W. Mitchell—and a full term in office was rare before that.[60]

60. A full list of Board members, 1913–2008, is available at www.federalreserve.gov/BoardDocs/RptCongress/annual08/sec4/c7.htm. The updated list is on the page "Board of Governors and Official Staff," under "Members since 1913," at www.federalreserve.gov/bios/boardmembership.htm. For more on the implications of governors' failing to serve their full terms, see Conti-Brown (2013, 34–37).

APPENDIX B

Status of the Current Board of Governors

Governor position by expiration date: January 31 of year indicated	Current holder of office	Likely changes in next 12 months, if any	Other notes
2012	Elizabeth A. Duke	Resigned, effective August 31, 2013	Duke's background is as a community banker. She remained in office although her term expired in 2012. Her successor would have a term that expires in 2026
2014	Jerome H. Powell	Term expires soon but may be reappointed to a new term	He could receive a new term of 14 years
2016	Sarah Bloom Raskin	Currently nominated to become deputy treasury secretary; likely to be confirmed in that position	Has been a strong voice for financial reform within the Board
2018	Jeremy C. Stein	Appointed in 2012	Likely to stay in the position for the foreseeable future
2020	Ben S. Bernanke	Presumed not to want another term as chair. Likely, but not required, to resign as governor when term as chair ends	Previously governor (August 5, 2002 to June 21, 2005), resigned to become chair of Council of Economic Advisers, and then appointed Fed chair (February 1, 2006)
2022	Daniel K. Tarullo	Appointed in 2009; likely to stay in office for the foreseeable future	Has been the lead governor responsible for financial regulation, even without presidential appointment to the position of vice chair for supervision
2024	Janet L. Yellen	President Obama's nominee to the chairmanship	Current vice chair. She was previously governor from August 12, 1994 to February 17, 1997. Term as vice chair to expire in October 2014

Note: One term begins every two years, "on February 1 of even-numbered years."