

A PRELIMINARY LOOK AT STATE STRUCTURES FOR REGULATING FINANCIAL SERVICES

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ABSTRACT

Within the past thirty-five years approximately fifty nations have consolidated their financial regulatory agencies into either a single integrated agency or into two semi-integrated agencies. The United States has resisted this trend, due in part to a concern that the costs of such significant consolidation would exceed its benefits. The existing studies that compare the costs of the consolidated regulators around the world with the United States regime have often been discounted because they have been unable to control for differences in culture and regulatory intensity between those other countries and the United States. This article attempts to address this problem by examining the costs of six different regulatory structures used by states within the United States, which range from separate agencies for each financial services industry to a single agency that regulates all financial services. As a result, this study provides a better picture of whether consolidation within the United States might result in any cost savings.

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I. INTRODUCTION

In the past thirty-five years, at least twenty-three countries, including the United Kingdom and Germany, have consolidated their financial service¹ regulators to form a single, national financial services regulator within each of their countries (although some of these countries moved away from a single regulator model in the wake of the financial crisis).² Worldwide, roughly fifty countries use either an integrated financial regulator or two semi-integrated financial regulators to regulate banking,

1. In this article, financial services refer to any of the activities considered financial in nature pursuant to Section 103 of the GLBA, which include banking, securities, merchant banking, and insurance products and services. GLBA, 12 U.S.C.S. 1843 (2004)). This definition of financial services is not universally applied by other organizations. For example, the Basel II Capital Accord excludes insurance activities from the definition of “financial activities” and excludes insurance entities from the definition of “financial entities.” BANK FOR INTERNATIONAL SETTLEMENTS, BASEL COMMITTEE ON BANKING SUPERVISION, INTERNATIONAL CONVERGENCE OF CAPITAL MEASUREMENT AND CAPITAL STANDARDS – A REVISED FRAMEWORK 7 n.6 (June 2004) (hereinafter BASEL II CAPITAL ACCORD).

2. Elizabeth F. Brown, Consolidated Financial Regulation: Six National Case Studies and the Experience of the European Union, The Volcker Alliance (Apr. 20, 2015), https://www.volckeralliance.org/sites/default/files/attachments/Background%20Paper%202_Consolidated%20Financial%20Regulation%20-%20Six%20National%20Case%20Studies%20and%20the%20Experience%20of%20the%20European%20Union.pdf; Jose de Luna Martinez & Thomas A. Rose, International Survey of Integrated Financial Sector Supervision 13 (World Bank, Fin. Sector Operations & Pol’y Dep’t, Working Paper No. 3096, 2003); James R. Barth et al., *A Cross-Country Analysis of Bank Supervisory Framework and Bank Performance*, 12 FIN. MARKETS, INST. & INSTRUMENTS 67 (May 2003); Ellis Ferran, *Symposium: Do Financial Supermarkets Need Super Regulators? Examining the United Kingdom’s Experience in Adopting the Single Financial Regulator Model*, 28 BROOK. J. INT’L L. 257 (2003); Marc Quintyn & Michael W. Taylor, Regulatory and Supervisory Independence and Financial Stability (IMF, Working Paper No. WP/02/46, Mar. 2002); Central Bank of Bahrain, About CBB, Profile, <https://www.cbb.gov.bh/about-cbb/>; FINANCIAL SUPERVISION COMMISSION, ANN. REP. 8 (2011) (Bulgaria); Cayman Island Monetary Authority, About CIMA, What We Do, <https://www.cima.ky/about-us/>; *Dominica to Set Up a Single Financial Regulatory Body*, FIN. TIMES, Dec. 31, 2003; Finland Financial Supervisory Authority, About Us, http://www.fin-fsa.fi/en/About_us/Pages/Default.aspx (Finland); FIN. SERVICES COMMISSION GIBRALTAR, ANN. REP. 3 (2013); Margit Feher, ECB: Hungary Central Bank Independence, Primary Mandate Must Stay Intact, WALL ST. J. Aug. 5, 2013, <http://blogs.wsj.com/emergingurope/2013/08/05/ecb-hungary-central-bank-independence-primary-mandate-must-stay-intact/> (discussing merger of Hungarian Financial Supervisory Authority with the National Bank of Hungary); Central Bank Reform Act 2010 (Act. No. 23/2010) (Ir.) (made the Central Bank of Ireland the sole financial regulator); Financial Services Commission Act (Aug. 2, 2001), <https://moj.gov.jm/laws/financial-services-commission-act> (created the Jamaican Financial Services Commission); National Bank of Kazakhstan, Financial Supervision, <http://www.nationalbank.kz/?docid=805&switch=english>; Saudi Arabia Monetary Agency, About SAMA, Functions, <http://www.sama.gov.sa/sites/samaen/AboutSAMA/Pages/SAMAFunction.aspx>; *Taiwan Combining Financial Regulators to Bring in Investors*, TAIWAN NEWS, July 1, 2004.

insurance, and securities firms.³ Prior to the financial crisis of 2008, the major arguments for the integration of financial regulators were that the lines between financial products and firms were blurring so that some insurance products were now fungible with banking products or securities products and vice versa. Moreover, financial conglomerates that straddle the banking, insurance, and securities sectors increasingly dominated financial markets and posed unique regulatory problems that are best dealt with by consolidated financial regulators, and globalization had eroded local markets for financial services.⁴ After the financial crisis of 2008, concerns about the inability of multiple financial regulators to deal with systemic risks also led some nations, like France and the United Kingdom, to reorganize their financial regulators into an integrated or semi-integrated system of financial regulation.⁵

In the decade before the 2008 financial crisis, U.S. politicians and academics engaged in a lively debate regarding whether the United States should consider consolidating some or all of its financial regulators into either a twin peaks model (one regulator for prudential risks and one

3. Martinez & Rose, *supra* note 2 at 13; Barth et.al., *supra* note 2; Central Bank of Bahrain, *A supra* note 2; Bulgarian Financial Supervision Commission, *supra* note 2; Cayman Island Monetary Authority, *supra* note 2; *Dominica to Set Up a Single Financial Regulatory Body*, *supra* note 2; Public Law 2003-706 of Aug. 1, 2003, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Aug. 2003, p. 13220 (Fr.) (law creating Financial Markets Authority in France); Ordinance No. 2010-76 of Jan. 21, 2010, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Jan. 2010 (Fr.) (law creating the Prudential Supervisory Authority); Finland Financial Supervisory Authority, *supra* note 2; FIN. SERVICES COMMISSION GIBRALTAR, *supra* note 2; Feher, *supra* note 2; Central Bank Reform Act 2010, *supra* note 2; National Bank of Kazakhstan, *supra* note 2; *Taiwan Combining Financial Regulators to Bring in Investors*, *supra* note 2.

4. Elizabeth F. Brown, *E Pluribus Unum—Out of Many, One: Why the United States Needs a Single Financial Services Agency*, 14 U. Miami Bus. L. R. 1, 91-92 (Fall/Winter 2005)

5. Int'l Monetary Fund, *France: Financial System Stability Assessment* 27-28, 35 (IMF Country Report No. 12/341, Dec. 2012); H.M. GOVERNMENT, *THE COALITION: OUR PROGRAMME FOR GOVERNMENT* 9 (2010) [hereinafter U.K. Government 2010 Reform Proposal]; H.M. TREASURY, *A NEW APPROACH TO FINANCIAL REGULATION: THE BLUEPRINT FOR REFORM* 5-7 (June 2011).

regulator for market conduct risks) or a single agency.⁶ However, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010⁷, for the most part, avoided this debate.⁸ While it did consolidate the functions of the Office of Thrift Supervision into the Office of the Comptroller of the Currency and the Federal Reserve, it did not consolidate any other agencies.⁹ Instead, it created a new one, the Consumer Financial Protection Bureau.¹⁰

Five years after the financial crisis, several notable former financial regulators, including former Federal Reserve Chairman Paul Volcker, began to urge U.S. regulators and politicians to reconsider the need for

6. For examples of some of the articles and studies debating the consolidation of U.S. regulators, see Roberta Romano, *Empowering Investors: A Market Approach to Securities Regulation*, 107 YALE L.J. 2359, 2360 (June 1998); Helen A. Garten, US FINANCIAL REGULATION AND THE LEVEL PLAYING FIELD 135-138 (2001); Jerry W. Markham, *Panel I (Part 2): A Comparative Analysis of Consolidated and Functional Regulation: Super Regulator: A Comparative Analysis of Securities and Derivatives Regulation in the United States, the United Kingdom, and Japan*, 28 BROOKLYN J. INT'L L. 319 (2003) [hereinafter Markham, *Super Regulator*]; U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO THE CHAIRMAN, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, U.S. SENATE, FINANCIAL REGULATION – INDUSTRY CHANGES PROMPT NEED TO RECONSIDER U.S. REGULATORY STRUCTURE 110 (Oct. 2004) [hereinafter GAO FINANCIAL REGULATION REPORT]; Brown, *E Pluribus*, *supra* note 4; Charles E. Schumer and Michael R. Bloomberg, *To Save New York, Learn from London*, WALL ST. J. (Nov. 1, 2006); McKinsey & Co., *Sustaining New York's and the US' Global Financial Services Leadership* (2007) [hereinafter MCKINSEY REPORT]; Committee on Capital Markets Regulation, INTERIM REPORT (Nov. 30, 2006) [hereinafter INTERIM REPORT OF THE COMMITTEE ON CAPITAL MARKETS]; Committee on Capital Markets Regulation, THE COMPETITIVE POSITION OF THE U.S. PUBLIC EQUITY MARKET (Dec. 4, 2007) [hereinafter COMPETITIVE POSITION REPORT OF THE COMMITTEE ON CAPITAL MARKETS]; Richard M. Kovacevich, James Dimon, Thomas A. James, and Thomas A. Renyi, THE BLUEPRINT FOR U.S. FINANCIAL COMPETITIVENESS, (The Financial Services Roundtable: Nov. 2007) [hereinafter THE FINANCIAL SERVICES ROUNDTABLE REPORT]; U.S. DEP'T OF TREASURY, BLUEPRINT FOR A MODERNIZED FINANCIAL REGULATORY STRUCTURE (2008) [hereinafter PAULSON TREASURY BLUEPRINT]; Howell E. Jackson, A Pragmatic Approach to Phased Consolidation of Financial Regulation in the United States, (Harvard Public Law Working Paper No. 09-19, Nov. 12, 2008) [hereinafter JACKSON PHASED CONSOLIDATION PAPER]; Group of 30, FINANCIAL REFORM: A FRAMEWORK FOR FINANCIAL STABILITY (Jan. 15, 2009) [hereinafter GROUP OF 30 REPORT]; U.S. DEP'T OF TREASURY, FINANCIAL REGULATORY REFORM -A NEW FOUNDATION: REBUILDING FINANCIAL SUPERVISION AND REGULATION (2009) [hereinafter OBAMA WHITE PAPER ON FINANCIAL REGULATORY REFORM]; Committee on Capital Markets Regulation, THE GLOBAL FINANCIAL CRISIS: A PLAN FOR REGULATORY REFORM (June 2009) [hereinafter GLOBAL FINANCIAL CRISIS REPORT OF THE COMMITTEE ON CAPITAL MARKETS]; Adriane Fresh and Martin Neil Baily, *What Does International Experience Tell Us About Regulatory Consolidation?* PEW FINANCIAL REFORM PROJECT, BRIEFING PAPER NO. 6 (2009); Sheila C. Bair, *The Case Against a Super Regulator*, N.Y. TIMES (Sept. 1, 2009) at A29; and BIPARTISAN POLICY CENTER, DODD-FRANK'S MISSED OPPORTUNITY: A ROAD MAP FOR A MORE EFFECTIVE REGULATORY ARCHITECTURE 8 (Apr. 2014).

7. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as scattered sections of 12, 15 U.S.C.) [hereinafter Dodd-Frank Act].

8. Kevin McCoy, *Dodd-Frank act: After 3 years, a long to-do list, Progress of Dodd-Frank Act Slow but Steady, USA TODAY*, (Sept. 12, 2013), <http://www.usatoday.com/story/money/business/2013/06/03/dodd-frank-financial-reform-progress/2377603/>

9. Dodd-Frank Act, *supra* note 7, §§311-313 (codified at 12 U.S.C. §§5411-5413).

10. *Id.* §1011 (codified at 12 U.S.C. §5491).

consolidating financial services regulators.¹¹ Volcker was motivated by a desire to make government more efficient and responsive. At the time, Volcker commented, “I’ve gotten concerned by the seeming impotence of federal regulatory agencies . . . [t]oo many agencies overlapping, too many opportunities for delay.”¹² In 2014, the Volcker Alliance hired a project manager to administer its programs aimed at improving financial regulation.¹³ One of the issues this project manager explored, was “the benefits from financial agency consolidation,” which resulted in the Volcker Alliance report, *Reshaping the Financial Regulatory System*, that recommended the United States adopt a U.K.-style twin peaks model at the federal level.¹⁴

The Bipartisan Policy Center issued a report on the same topic in April 2014.¹⁵ The report was titled “Dodd-Frank’s Missed Opportunity: A Road Map for a More Effective Regulatory Architecture.” It recommended that the existing federal regulators be consolidated into a multi-peaks structure with a new federal prudential regulator, a new capital markets regulator, and a new federal insurance regulator.¹⁶ It also recommended that the Federal Reserve serve as both the macro-prudential regulator and as the financial stability regulator.¹⁷

One element of the debate on consolidating the U.S. financial regulators has involved comparing the costs of the United States’ regulatory regime with those of other nations that have consolidated regimes.¹⁸ These studies, however, fail to account for the significant cultural and economic differences between the United States and other nations, which include, among other things, differences in the laws and regulatory intensity of each nation, differences regarding the role of government and government regulation in the area of financial services, and differences in the complexity and sophistication of the financial

11. Nelson D. Schwartz, *Volcker’s Aim: Responsive Government*, N.Y. TIMES, (May 29, 2013).

12. *Id.*

13. Volcker Alliance, Position Announcement, Project Manager, (Feb. 11, 2014).

14. Volcker Alliance, Position Announcement, *supra* note 13; VOLCKER ALLIANCE, *RESHAPING THE FINANCIAL REGULATORY SYSTEM* 6-9 (2015), <https://www.volckeralliance.org/publications/reshaping-financial-regulatory-system>.

15. BIPARTISAN POLICY CENTER, *supra* note 6. Former Senate Majority Leaders Howard Baker, Tom Daschle, Bob Dole, and George Mitchell formed the Bipartisan Policy Center in 2007. *Id.* at 2.

16. *Id.* at 8-9. The prudential regulator would assume the prudential responsibilities of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve. The capital markets regulator would merge the functions of the Securities and Exchange Commission and the Commodity Futures Trading Commission.

17. *Id.*

18. Among the articles that include such comparisons are the following, Brown, *E Pluribus*, *supra* note 4; Barth et al., *supra* note 2; Jackson, Howell, *Variation in the Intensity of Financial Regulation: Preliminary Evidence and Potential Implications*, 24 YALE J. ON REG. 253 (Summer 2007); Markham, *Super Regulator*, *supra* note 6; and Martinez & Rose, *supra* note 2.

markets in each nation. As a result, one cannot argue with any degree of certainty that the United States would achieve significant cost savings if it moved toward a semi-integrated or completely integrated financial regulatory regime.

This article attempts to minimize or eliminate the problems found in the prior comparisons of national structures by examining the ways that the states within the United States regulate financial services. State governments in the United States operate over 100 existing state agencies that regulate banking, securities, and insurance firms. While the types of entities and products regulated by the states are similar, how each state chooses to structure the agencies that regulate financial services vary considerably. Some states have created a separate agency to regulate banks, insurance firms, and securities firms, while other states regulate all financial firms with a single financial services department or agency.¹⁹

Examining how the states within the United States regulate financial services would eliminate or minimize some of the problems that arise when one compares how different countries regulate financial services. By minimizing or eliminating many of the significant differences between national regimes, one can focus in on the question of whether integrated regulation of financial services is more cost effective and beneficial than other forms of financial services regulation by looking at the different regulatory structures used by the states in the United States.

Part II briefly discusses the existing nations that use a semi-integrated financial regulatory regime or a single financial regulatory regime and the comparisons that have been done to date between those regimes and the United States. In addition, this section describes why these comparisons are of limited value in answering the question of whether the United States would achieve some cost savings if it were to consolidate its regulators. Part III outlines the current regulatory regimes for financial services used among the states within the United States. It also discusses why the data from how these regimes operate may, or may not, be able to shed some light on whether integrated regulation of financial services is preferable from a cost-benefit perspective than the other ways of

19. THE CONFERENCE OF STATE BANK SUPERVISORS, A PROFILE OF STATE-CHARTERED BANKING 35 (19th ed., 2003) [hereinafter CSBS Profile]; CAL. DEP'T FIN. INST., ANN. REP. 24-25 (2002); GA. DEP'T OF BANKING AND FIN., ANN. REP. (2002); HAW. DEP'T OF COMMERCE AND CONSUMER AFFAIRS, ANN. COMPLIANCE RESOL. FUND REP. (2002); IND. DEP'T OF FIN. INST., ANN. REP. 16 (2002); IOWA SUPERINTENDENT OF BANKING, ANN. REP. 27 (2002); MISS. DEP'T OF BANKING & CONSUMER FIN., ANN. REP. 12-14 (2002); N.Y. BANKING DEP'T, ANN. REP. 1 (2002); S.C. STATE BD. OF FIN. INST., ANN. ACCOUNTABILITY REP. (2002); VT. INS. COMM'R, ANN. REP. 10 (2002); WASH. DEP'T OF FIN. INST., ANN. REP. 2 (2002); W.VA. BD. OF BANKING AND FIN. INST., ANN. REP. 14, 18, 23 (2002); State of Illinois Department of Financial and Professional Regulation, <http://www.idfpr.com> (last visited May 8, 2019); Michigan Department of Insurance and Financial Services website, <https://www.michigan.gov/difs/> (last visited May 8, 2019). New York Financial Services Law §102 (2014).

regulating financial services.

Part IV develops the testable hypotheses regarding the factors affecting how much states spend to regulate financial services. To test these hypotheses, we collected data on how much each state and the District of Columbia spent to regulate financial services from 1990 to 2006. For purposes of this article, we are only using the data from 2001 to 2004. We are only using this sample of the data because the states employed the widest range of different regulatory structures during this period. One state, Michigan, even had a single regulator with an internal organizational structure that replicated the twin peaks structure used in Australia and the Netherlands. Thus, we can better replicate the diversity of financial regulatory structures that operate around the globe to see how the different regulatory structures affect costs.

Part V will then present the empirical results based on the available data on how costly the various regulatory options are and discuss to what extent these variations can be attributed to the type of regulatory regime used rather than other factors. It focuses only on the direct costs to state governments of employing one regulatory regime rather than other. Part VI draws some preliminary conclusions based on the results and outlines future areas for research.

II. FINANCIAL REGULATORS

Table 1 below lists all of the nations in the world that have adopted either a single financial services regulator or that have consolidated the regulation of two or more areas of financial services regulation into a single agency. The first nations to create a single financial services regulator were Singapore in 1971 and the Scandinavian nations of Denmark, Norway, and Sweden in the 1980s and early 1990s.²⁰ The concept of a single financial services regulatory agency, however, did not seem to gain significant appeal until the United Kingdom created its Financial Services Authority (“UK FSA”) in 1997.²¹ Table 1 also shows those nations that have adopted a “twin peaks” approach.²²

20. Singapore Monetary Authority, About MAS, Overview, <http://www.mas.gov.sg/About-MAS/Overview.aspx> (last visited Aug. 28, 2014); Martinez & Rose, *supra* note 2 at 4.

21. GROUP OF THIRTY, THE STRUCTURE OF FINANCIAL SUPERVISION: APPROACHES AND CHALLENGES IN A GLOBAL MARKETPLACE 28-29 (2008).

22. Michael Taylor, a former officer with the Bank of England, coined the phrase “twin peaks” in his article, *Twin Peaks: A Regulatory Structure For The New Century*, which was published by Centre for the Study of Financial Innovation in 1995. The term “twin peaks” was not used in the final report prepared by the Australian Financial System Inquiry, which recommended that Australia adopt a system similar to the one outlined in Taylor’s article. Financial System Inquiry, Final Report (Mar. 1997), <http://fsi.treasury.gov.au/content/publications.asp>.

Table 1: Countries with Either an Integrated or Semi-Integrated Financial Services Agency as of November 1, 2018²³

Single Supervisor for Financial Services (Year Created)	Single Agency Supervising Two Types of Financial Intermediaries			Twin Peaks Model or Modified Twin Peaks
	Banks and Securities Firms	Banks and Insurers	Securities Firms and Insurers	
Austria (2002)	Dominican Republic	Belgium	Bolivia	Australia
Bahrain (2002)	Finland	Colombia	Bulgaria	Canada
Cayman Islands (1997)	Luxembourg	Ecuador	Chile	France (2013)
Denmark (1988)	Mexico	El Salvador	Egypt	Germany (2013)
Estonia (2002)	Switzerland	Guatemala	Jamaica	Netherlands
Germany (2002-2013)	Uruguay	Kazakhstan	Mauritius	UK (2013)
Gibraltar (1991)		Malaysia	Slovakia	
Hungary (2000)		Peru	South Africa	
Iceland (2001)		Saudi Arabia	Ukraine	
Ireland (2003)		Venezuela		
Japan (2000)				
Kazakhstan (2004)				
Latvia (2001)				
Maldives (1999)				
Malta (2002)				
Nicaragua				
Norway (1986)				
Singapore (1984)				
South Korea (1998)				
Sweden (1991)				
Taiwan (2004)				
UAE				
UK (1997-2013)				

23. Brown, Consolidated Financial Regulation, *supra* note 2; Brown, *E Pluribus*, *supra* note 4; Martinez & Rose, *supra* note 2, at 13; James R. Barth, Daniel E. Nolle, Triphon Phumiwasana and Glenn Yago, *A Cross-Country Analysis of Bank Supervisory Framework and Bank Performance*, 12 FIN. MARKETS, INSTITUTIONS & INSTRUMENTS 67 (May 2003); CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND ACT 2003, No. 12 of 2003 Part IIIA, Ch. I, par. 33B (2003); Central Bank of Bahrain, *Overview*, <https://www.cbb.gov.bh/about-cbb> (Nov. 18, 2018); Bulgaria Financial Supervision Commission, *About FSC, Establishment*, <http://www.fsc.bg/en/about-fsc/establishment/> (Nov. 18, 2018);

Even in the nations that use one agency to regulate financial services, most nations still maintain separate banking, insurance and securities divisions within that agency. Very few of the nations that had adopted integrated supervision had been able to harmonize regulations and supervisory approaches across the financial services industry, although they did find a greater degree of consistency between the regulation and supervision of banks and securities firms than banks and insurance companies.²⁴ Some have speculated that the reasons for this were the relative newness of the agencies involved—which were generally less than five years old when the surveys were done—and the lack of consistency of international standards across the financial services industry.²⁵

The UK FSA initially moved the furthest towards fully integrated regulation by regulating based on “objective,” which usually meant regulating particular risks, such as prudential or market conduct risks, rather than based on industry sector, such as banking, insurance, or securities.²⁶ From 1998 to 2000, the UK FSA had a department for Financial Supervision that handled prudential risks and a department for Authorization, Enforcement, and Consumer Protection that handled market conduct risks as shown in Figure 1. In these early years of the UK FSA’s existence, its internal structure looked similar to the twin peaks model employed by Australia and the Netherlands.²⁷

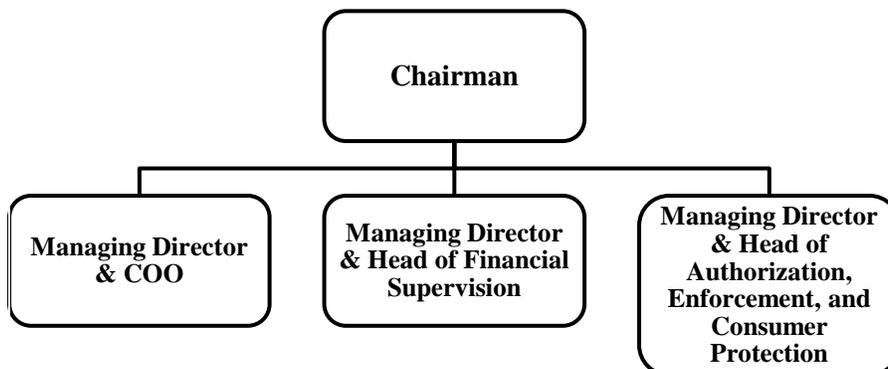
Cayman Island Monetary Authority, About Us, <https://www.cima.ky/about-us>; *Dominica to Set Up a Single Financial Regulatory Body*, *supra* note 2; Finanssivalvonta Financial Supervisory Authority, *supra* note 2; Gibraltar Financial Services Commission, About Us, Our Organisation, What We do and Why, <https://www.fsc.gi/fsc/whatwedo> (Nov. 1, 2018); Gulmira Kapenova, Supervision of the Securities Market in Kazakhstan (Apr. 2004), www.oecd.org/dataoecd/14/30/31739306.pdf; SAUDI ARABIA MONETARY AGENCY, A CASE STUDY ON GLOBALIZATION AND THE ROLE OF INSTITUTION BUILDING IN THE FINANCIAL SECTOR IN SAUDI ARABIA 12 (Feb. 2004); Financial Supervisory Commission Republic of China (Taiwan), About FSC, Introduction, <https://www.fsc.gov.tw/en/home.jsp?id=9&parentpath=0,1> (Nov. 18, 2018); and JACKSON PHASED CONSOLIDATION PAPER, *supra* note 6 at 13. Canada regulates banking and insurance at the national level using a Twin Peak structure with one agency to manage prudential risks and another to manage consumer protection issues. In Canada, the regulation of securities is handled by its ten provinces and three territories, not its federal government.

24. Martinez & Rose, *supra* note 2 at 31.

25. *Id.* at 31-32.

26. UK FSA ANN. REP. 2000/01 11-12 (2001).

27. GROUP OF THIRTY, *supra* note 21, at 30.

Figure 1: UK FSA structure from 1998 to 2000²⁸

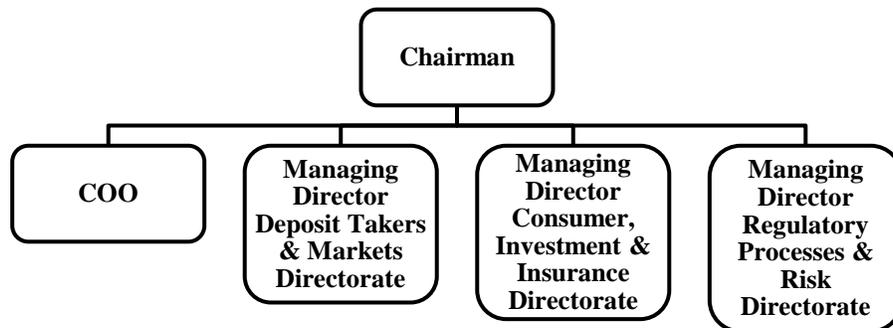
In 2001, the UK FSA began to move back towards an internal organizational structure based on industry segments rather than by objectives. From 2001 to 2003, the UK FSA had three main departments—one for Deposit Takers and Markets, which supervised banks and other depository institutions, one for Consumer, Investment, and Insurance, which supervised capital markets and insurance, and one for Regulatory Processes and Risk, as illustrated in Figure 2.²⁹ It also has a number of cross sector leaders that touch on issues that arise in all three departments, such as auditing and accounting and asset management.³⁰ The UK FSA, however, did not cover all of the financial services firms until 2004 when it finally added coverage of mortgage and general insurance intermediation.³¹

28. UK FSA ANN. REP. 1997/98, Appendix 2: FSA Organisational Chart, 45 (1998); UK FSA ANN. REP. 1999/2000, Appendix 2: UK FSA Organisational Chart as of 30 June 2000, 71 (2000).

29. UK FSA, ANN. REP. 2001/02 (2002).

30. *Id.*

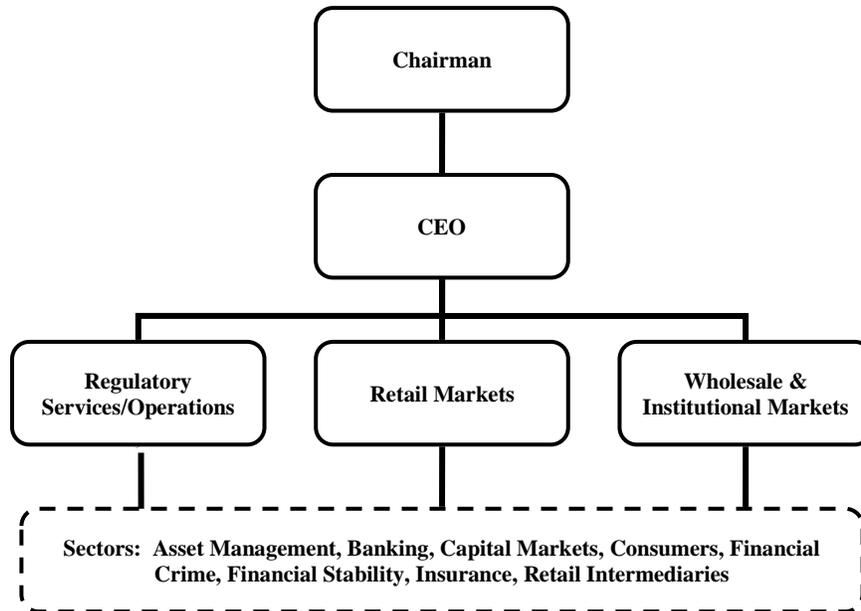
31. UK FSA, ANN. REP. 2004/05 5 (2005).

Figure 2: UK FSA structure from 2001 to 2003³²

In 2004, the UK FSA underwent a major reorganization, which restructured its departments more along the lines of specific industry segments as shown in Figure 3. As a result, its internal structure mimicked in many ways the mixture of institutional and functional regulatory agencies found in the U.S. regulatory structure and the structures of those nations that still maintain separate banking, insurance, and securities divisions within a single agency. It kept this structure until 2009 when it went through another major reorganization to bring its internal structure back to something that more approximated the twin peaks approach with a department for Risk and another for Supervision.³³

32. UK FSA ANN. REP. 2000/01, *supra* note 26, at Appendix 2: Organisational Chart, 72; UK FSA ANN. REP. 2002/03, Appendix 2: FSA as of 31 March 2003, 122 (June 2003).

33. UK FSA, Ann. Rep. 2009/10 4 (2010).

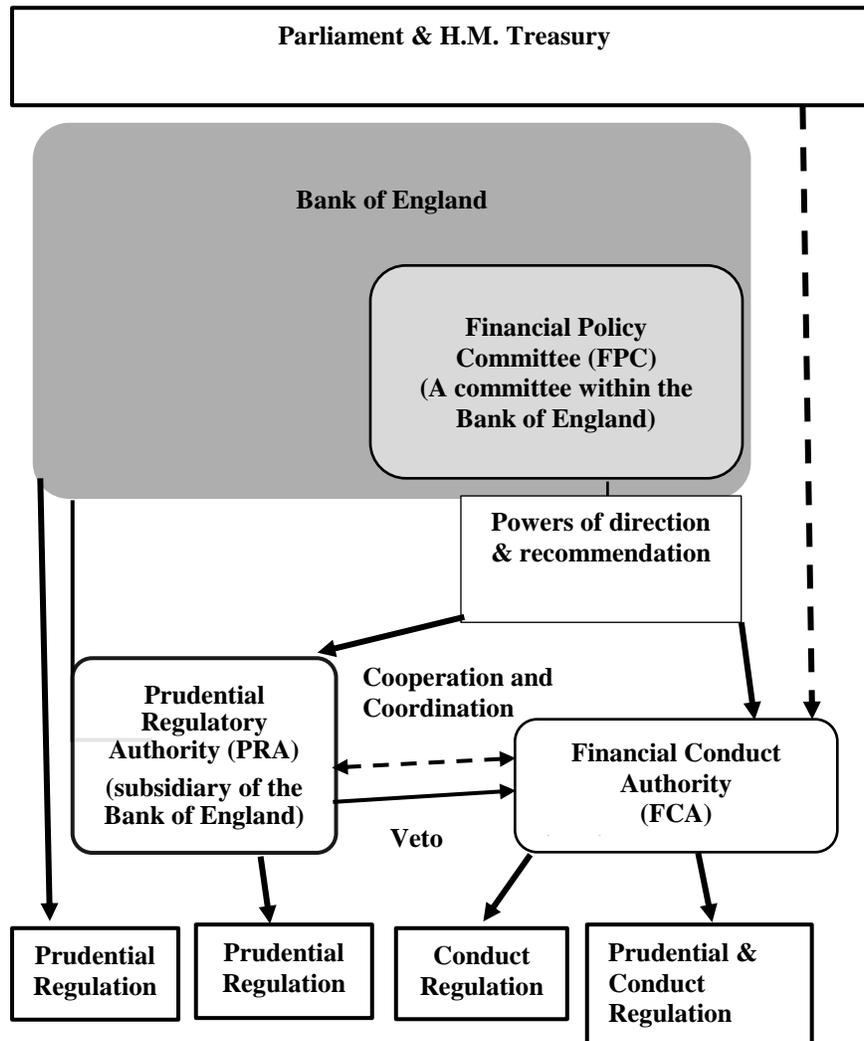
Figure 3: UK FSA structure from 2004 to 2009³⁴

The United Kingdom eventually moved to a twin peaks structure on April 1, 2013 when the U.K. government moved prudential regulation back to the Bank of England and converted the UK FSA into the Financial Conduct Authority.³⁵ Even with this structure, some financial services regulation, such as those pertaining to pensions, are not regulated by the Bank of England or the Financial Conduct Authority.³⁶

34. UK FSA ANN. REP. 2003/04, Appendix 2: FSA June 2004, 50 (June 2004); UK FSA ANN. REP. 2005/06, Appendix 2: FSA May 2006, 51 (June 2006); UK FSA ANN. REP. 2008/09, 4 (June 2009).

35. Financial Services Act, 2012, ch. 21 (UK); Press Release, H.M. Treasury and Greg Clark M.P., Financial Services Bill Receives Royal Assent (Dec. 19, 2012), <https://www.gov.uk/government/news/financial-services-bill-receives-royal-assent> [hereinafter H.M. Treasury Press Release] (act to take effect on Apr. 1, 2013).

36. Pensions are regulated by the Pension Regulator and by the U.K. Department for Work and Pensions. Pensions Act 2004, ch. 35, Part 1, §1 (2004) (UK). The Pension Regulator took over the functions of the Occupational Pensions Review Authority that the Pensions Act 1995 had created to regulate workplace pensions. Pensions Act 1995, ch. 26, §1 (1995) (UK). In addition, the Pension Protection Fund (“PPF”) protects defined benefit plan participants in the event that a plan became insolvent by ensuring that they receive at least a portion of their promised benefits. Pensions Act 2004, ch. 35, Part 2, §§108-111. Thus, the PPF acts in ways that are similar to the U.S. Pension Benefit Guaranty Corporation. Djuna Thurley, *Pensions Protection Fund*, H.C. Library S.N. 3917, (July 25, 2012), at 4-5, 30 <http://www.parliament.uk/briefing-papers/SN03917.pdf>.

Figure 4: New U.K. financial regulatory structure as of April 1, 2013³⁷

Since its inception until its 2008/09 fiscal year, the UK FSA published a chart in its annual report comparing its costs with the costs of the financial services regulatory regimes in the United States, Germany,

37. FINANCIAL SERVICES AUTHORITY, JOURNEY TO THE FCA 11 (2012): Andrew Bailey, *The Prudential Regulatory Authority*, BANK OF ENGLAND Q. BULL., 2012 Q4, at 2.

France, Hong Kong, Ireland, and Singapore.³⁸ As a result, some studies have used these figures to make cost comparisons between the United States and the other nations covered.³⁹

Use of the UK FSA numbers is problematic for several reasons, as the UK FSA noted. In each of its annual reports, the UK FSA raised the following caveats regarding the comparability of the data collected: (1) the figures do not necessarily relate to the same accounting period and may not have been compiled on the same basis; (2) labor and other costs vary between countries; (3) variations in exchange rates will affect the results expressed in a single currency; (4) the scope of the responsibility of the regulatory authorities differ from one country to the next; and (5) the nature and scale of the financial services industries in different countries differs materially.⁴⁰

In addition to the caveats noted by the UK FSA, several other factors also make comparisons between the United States and the other nations problematic. These factors include:

- The United Kingdom failed to obtain the regulatory costs for all of the financial services regulatory agencies, particularly in the case of the United States.
- The significant cultural differences between the United States and other nations affect the way the financial laws are implemented and enforced and the way businesses in other nations interact with financial services providers.
- The size of the financial markets that single financial regulators monitor in the United Kingdom, Germany, and Japan are considerably smaller than the U.S. market and all of the effects of these differences in size cannot be eliminated simply by looking at costs from the perspective of costs per billion dollars of gross domestic product (“GDP”).

Comparing the United States with the United Kingdom and Germany can provide some idea of how significant these differences may be. For example, the United State federal agencies use a fiscal year that runs from October 1 to September 30 while most U.S. state financial services

38. UK FSA ANN. REP. 1999/2000, *supra* note 28, at Appendix 6, 84-85; UK FSA ANN. REP. 2000/01, *supra* note 26, at Appendix 5, 80-81; UK FSA ANN. REP. 2001/02, Appendix 10, 133-38 (2002); UK FSA ANN. REP. 2002/03, *supra* note 32, at Appendix 8, 205-10; UK FSA ANN. REP. 2003/04, *supra* note 34, at Appendix 5, 99-103; UK FSA ANN. REP. 2004/05, *supra* note 31, at Appendix 5, 111-14 (June 2005); UK FSA ANN. REP. 2005/06, *supra* note 34, at Appendix 5, 101-04; UK FSA ANN. REP. 2006/07, Appendix 1, 101-04 (2007); UK FSA ANN. REP., 2007/08, Appendix 1, 105-09 (June 2008); UK FSA ANN. REP. 2008/09, *supra* note 34, at Appendix 1, 121-25.

39. Jackson, *supra* note 6.

40. For example, *see* U.K. FSA, ANN. REP. 2004/05, *supra* note 31, at 111.

regulators use a fiscal year that runs from July 1 to June 30.⁴¹ The UK FSA, however, had a fiscal year that ran from April 1 to March 31 while the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht or “BaFin”), which was the single financial regulator in Germany until 2013, used the calendar year as its fiscal year.⁴² As a result, the UK FSA and the studies that used those numbers are comparing data from time periods that are off by at least three to six months.

More importantly, the UK FSA data only included a portion of the over 115 different state and federal agencies that regulate financial services in the United States.⁴³ The UK FSA generally included the costs of the Federal Reserve Board, the Federal Deposit Insurance Commission (“FDIC”), the Office of the Comptroller of the Currency (“OCC”), the Securities and Exchange Commission (“SEC”), the Commodities Futures Trading Commission (“CFTC”), the National Credit Union Administration (“NCUA”), and the budgets of the state insurance agencies provided by the National Association of Insurance Commissioners (“NAIC”).⁴⁴ It failed to include the Financial Crimes Enforcement Network (“FINCEN”), the Securities Investor Protection Corporation (“SIPC”), the Office of the Federal Housing Enterprise Oversight (“OFHEO”), which is now the Federal Housing Finance Agency (“FHFA”), the state banking regulators, the state securities regulators, the state savings and loan regulators, and the state credit union regulators. As a result, the UK FSA numbers substantially underestimated how expensive the U.S. regulatory regime is.

To provide some idea of how much the UK FSA’s numbers underestimated the total cost of state and federal regulation of financial services in the United States, the data collected by the UK FSA for comparison with its 2002/03 fiscal year placed the total annual regulatory

41. U.S. Senate, Glossary, Fiscal Year, http://www.senate.gov/reference/glossary_term/fiscal_year.htm; National Conference of State Legislatures, Quick Fiscal Reference Table, <http://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx#fyrs> (scroll down to “State Fiscal Years”).

42. See UK FSA Ann. Rep. 2008/09, *supra* note 34, at 2; Int’l Monetary Fund, *Germany*, 65 Int’l Financial Statistics 1447 (Apr. 30, 2012).

43. Brown, *E Pluribus*, *supra* note 4, at 6; Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as scattered sections of 12, 15 U.S.C.) [hereinafter Dodd-Frank Act] (eliminated the Office of Thrift Supervision but created the Consumer Financial Protection Bureau, which left the total number of federal financial regulators unchanged); New York Financial Services Law, *supra* note 19, §102 (2014) (created N.Y. Department of Financial Services by merging the Department of Banking and the Department of Insurance). The states had more than 110 financial regulators before the creation of the N.Y. Department of Financial Services and so even after its creation, the total number of U.S. state and federal financial regulators exceed 115 agencies.

44. For example, see UK FSA ANN. REP. 2008/09, *supra* note 34, at Appendix1, 123-25.

costs incurred by the United States at approximately 12 times the total annual regulatory costs for the UK FSA.⁴⁵ The total regulatory costs for the United States for 2002 were more than 16 times the annual expenses of the UK FSA if all of the annual expenses for the Federal Reserve, the OCC, the OTS, the FDIC, the NCUA, the SEC, the CFTC, the OFHEO, and the state insurance, banking, and securities agencies were combined.⁴⁶

In addition, the UK FSA has not been consistent with regard to which U.S. agencies it includes. For example, in 2002/03 and 2003/04, the UK FSA included the budgets for the Office of Thrift Supervision (“OTS”) in the U.S. Department of Treasury and the National Association of Securities Dealers (“NASD”) but left the budgets for these organizations out of the charts in later years.⁴⁷ As a result, the UK FSA numbers underestimate the regulatory costs of the U.S. system for the fiscal years of 2002/03 and 2004/05 even more than they did in their other annual reports.

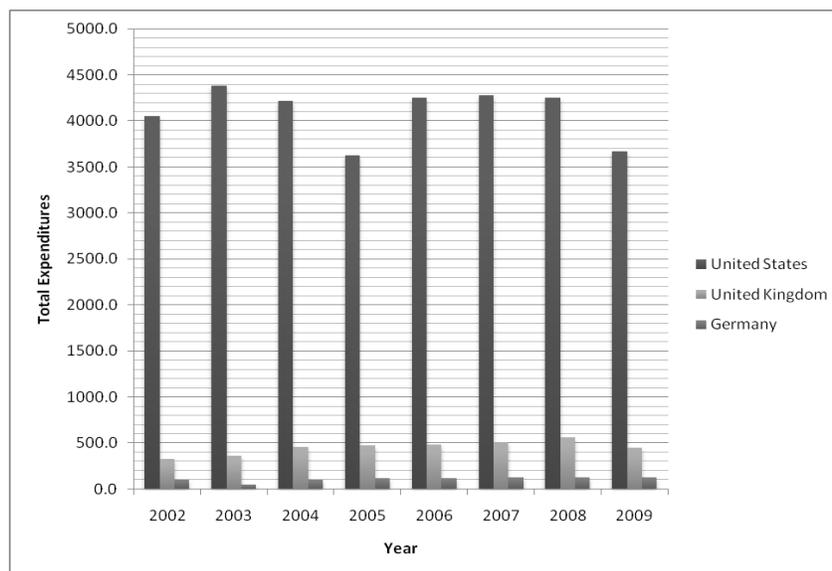
Nevertheless, the data collected and published by UK FSA provided a starting point for comparison. For purposes of this article in order to make the comparisons between the numbers provided in (1) the annual report for 2003/04 and (2) the annual reports for 2004/05 and 2005/06, the budgets for the OTS and the NASD were subtracted from the total regulatory costs listed for the United States for 2003/04. In addition, the total expenditures for each country and the total GDP for each country were translated into constant 2000 US dollars to eliminate the effects of inflation in each country. While the UK FSA provides data for about a half dozen countries, this article will only use the United Kingdom and Germany as points of comparison because they were the only two nations on which the UK FSA collected data that maintained single financial regulators for the period between 2002 and 2009.

45. Brown, *E Pluribus*, *supra* note 4, at 59-60.

46. *Id.* at 60-61.

47. UK FSA ANN. REP. 2001/02, *supra* note 38, at Appendix 10, 133-38; UK FSA ANN. REP. 2002/03, *supra* note 32, at Appendix 8, 205-10; UK FSA ANN. REP. 2003/04, *supra* note 34, at Appendix 5, 99-103; UK FSA ANN. REP. 2004/05, *supra* note 31, Appendix 5, at 111-14; UK FSA ANN. REP. 2005/06, *supra* note 34, at Appendix 5, 101-04; UK FSA ANN. REP. 2006/07, *supra* note 38, at Appendix 1, 101-04; UK FSA ANN. REP. 2007/08, *supra* note 38, at Appendix 1, 105-09; UK FSA ANN. REP. 2008/09, *supra* note 34, at Appendix 1, 121-25.

Figure 5: Total financial services regulatory expenditures by the governments of the United States, the United Kingdom, and Germany (in millions of constant 2000 US dollars)⁴⁸



As Figure 5 illustrates, the United States spent at least 12.6 times more than the United Kingdom and at least 41.2 times more than Germany to regulate financial services in 2002.⁴⁹ The United States continued to spend substantially more than the United Kingdom and Germany for the rest of the decade. In 2009, the United States spent at least 8.2 times more than the United Kingdom and at least 29.3 times more than Germany to regulate financial services.⁵⁰

Even if one accounts for the differences in the gross domestic product of each country, the United States still spent substantially more than the United Kingdom and Germany. In 2002, the United States spent twice as

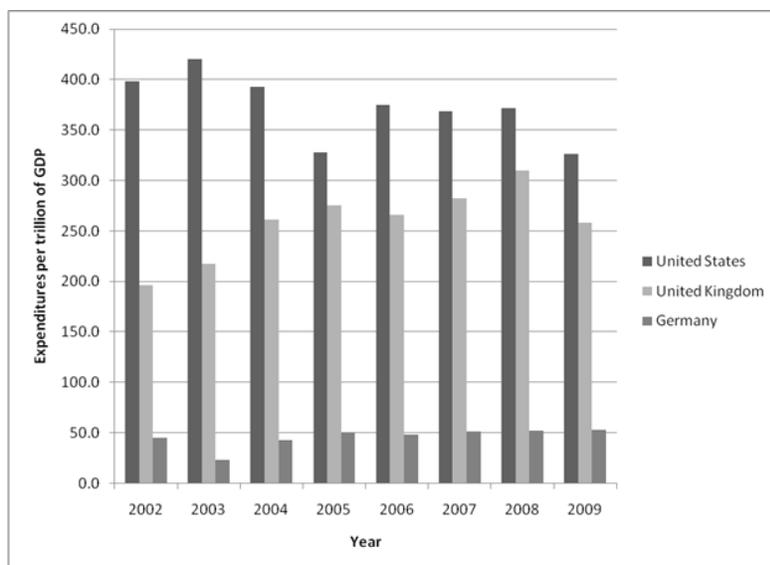
48. UK FSA ANN. REP. 2001/02, *supra* note 38, at Appendix 10, 133-38; UK FSA ANN. REP. 2002/03, *supra* note 32, at Appendix 8, 205-10; UK FSA ANN. REP. 2003/04, *supra* note 34, at Appendix 5, 99-103; UK FSA ANN. EP. 2004/05, *supra* note 31, at Appendix 5, 111-114; UK FSA ANN. REP. 2005/06, *supra* note 34, at Appendix 5, 101-04; UK FSA ANN. REP. 2006/07, *supra* note 38, at Appendix 1, 101-04; UK FSA ANN. REP. 2007/08, *supra* note 38, at Appendix 1, 105-09; UK FSA ANN. REP. 2008/09, *supra* note 34, at Appendix 1, 121-25. Data from UK FSA annual reports converted into U.S. dollars using the rates set forth in the Federal Reserve Statistical Release, H.10 - Historical Exchange Rates, Spot Exchange Rate, \$US/Pound Sterling, https://www.federalreserve.gov/releases/h10/hist/dat00_uk.htm (last visited May 7, 2019). The dollars were then converted into constant 2009 constant dollars using the Inflation Calculator on the Bureau of Labor Statistics, http://www.bls.gov/data/inflation_calculator.htm [hereinafter BLS Inflation Calculator].

49. UK FSA ANN. REP. 2001/02, *supra* note 29, at Appendix 10, 133-38; Federal Reserve Statistical Release, *supra* note 48; BLS Inflation Calculator, *supra* note 48.

50. UK FSA ANN. REP. 2008/09, *supra* note 34, at Appendix 1, 121-25; Federal Reserve Statistical Release, *supra* note 48; BLS Inflation Calculator, *supra* note 48.

much as the United Kingdom and 8.9 times more than Germany to regulate financial services after accounting for differences in GDP.⁵¹ Between 2002 and 2009, the gaps between the United States and the United Kingdom and between the United States and Germany both narrowed. In 2009, the United States spent 1.3 times more than the United Kingdom and 6.2 times more than Germany to regulate financial services after accounting for differences in GDP.⁵² The gap between the United States and the United Kingdom narrowed, in part, because the UK FSA assumed the responsibility for regulating both mortgage and general insurance intermediation for the first time in 2004/05 and because the UK FSA needed to spend more to deal with the 2008 financial crisis.⁵³

Figure 6: Total financial services regulatory expenditures by the governments of the United States, the United Kingdom, and Germany per trillion dollars of GDP (in constant 2000 U.S. dollars)⁵⁴



51. UK FSA ANN. REP. 2001/02, *supra* note 29, at Appendix 10, 133-38; Federal Reserve Statistical Release, *supra* note 48; BLS Inflation Calculator, *supra* note 48; OECD, Stat Extracts, National Accounts, GDP, US\$, current prices, current PPPs, millions (customize data for date range 2002 to 2009), http://stats.oecd.org/Index.aspx?datasetcode=SNA_TABLE1 (last accessed on May 8, 2019) [hereinafter OECD GDP].

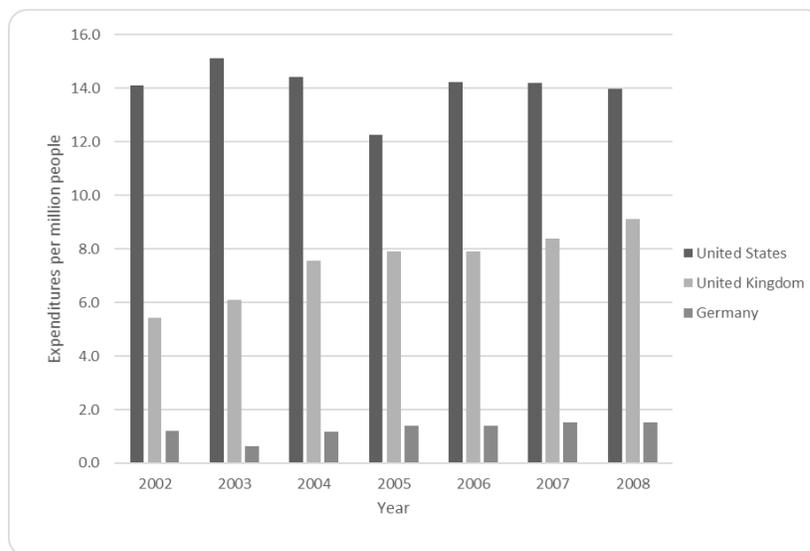
52. UK FSA ANN. REP. 2008/09, *supra* note 34, at Appendix 1, 121-25; Federal Reserve Statistical Release, *supra* note 48; BLS Inflation Calculator, *supra* note 48; OECD GDP, *supra* note 51.

53. UK FSA, ANN. REP. 2004/05, *supra* note 31, at 5.

54. The data from Figure 5 was divided by the GDP amounts for Germany, the United Kingdom, and the United States from the OECD GDP. OECD GDP, *supra* note 51. These amounts were converted into constant 2009 dollars using the Inflation Calculator on the Bureau of Labor Statistics. BLS Inflation Calculator, *supra* note 48.

If one looks at the comparison of the expenditures based on the population of each country in Figure 7, the picture was no better. After accounting for difference in population, the United States spent 2.6 times more than the United Kingdom in 2002 and the gap narrowed to 1.6 times in 2009 as regulatory expenditures increased during the financial crisis.⁵⁵ The United States spent 11.8 times more than Germany in 2002, which declined to 7.8.1 times more in 2009.⁵⁶

Figure 7: Total financial services regulatory expenditures by the governments of the United States, the United Kingdom, and Germany per million people (in constant 2000 U.S. dollars)⁵⁷



One cannot tell from looking at these comparisons how much more expensive the United States is because of its highly fragmented regulatory structure. Howell Jackson attempted to address this problem by analyzing the budgets and staffing levels of each country.⁵⁸ He also analyzed the securities enforcement actions brought by each country in order to begin

55. UK FSA ANN. REP. 2001/02, *supra* note 29, at Appendix 10, 133-38; UK FSA ANN. REP. 2008/09, *supra* note 34, at Appendix 1, 121-25; Federal Reserve Statistical Release, *supra* note 23; BLS Inflation Calculator, *supra* note 48; OECD, Stat Extracts, Population, http://stats.oecd.org/Index.aspx?DataSetCode=POP_FIVE_HIST [hereinafter OECD Population]

56. UK FSA ANN. REP. 2001/02, *supra* note 38, Appendix 10, at 133-38; UK FSA ANN. REP. 2008/09, *supra* note 34, Appendix 1, at 121-25; Federal Reserve Statistical Release, *supra* note 48; BLS Inflation Calculator, *supra* note 48; OECD Population, *supra* note 55.

57. UK FSA ANN. REP. 2001/02, *supra* note 29, Appendix 10, at 133-38; UK FSA ANN. REP. 2008/09, *supra* note 34, Appendix 1, at 121-25; Federal Reserve Statistical Release, *supra* note 48; BLS Inflation Calculator, *supra* note 48; OECD Population, *supra* note 55.

58. Jackson, *supra* note 18, at 269-77.

to determine the regulatory intensity of each nation.⁵⁹ His analysis, however, was preliminary as he did not have comprehensive data for the United States. For example, he did not have data regarding U.S. state securities regulators' budgets. He also lacked the budgets for some agencies for certain years, and so he extrapolated the data from prior years.⁶⁰

Jackson's preliminary conclusions—based on analyses of budgets and staffing levels—were that the United States regulates banking far more intensely than any other country and is near the top end of the spectrum with regard to insurance regulation.⁶¹ He also noted that the United States regulates securities significantly less intensely than Australia and Canada.⁶² This comparison, however, may be flawed as the budget for the United States does not include the costs of U.S. state securities regulators. Jackson did note that if one looks at enforcement actions, the United States regulated securities more intensely than either the United Kingdom or Germany.⁶³

While recognizing that Jackson's analysis and conclusions were preliminary, it is worth noting that he did not attempt to tease out whether the differences in regulatory intensity are due to differences in the scope of the laws that regulatory authorities implement or due to cultural differences regarding enforcement. For example, a larger percentage of the population in the United States and in the United Kingdom own stocks than in Germany. This fact was true both before and after the financial crisis. In the United States in 2002, 84.3 million individuals, or 29.2 percent of the total U.S. population, and 52.7 million U.S. households, or 47.3 percent of all U.S. households, owned equities, either through individual stocks or through stock mutual funds.⁶⁴ In the United Kingdom, 23.3 percent of the population owned stocks directly in 1996.⁶⁵ In Germany, only 9.8 percent of the population owned any stocks directly in 2000.⁶⁶ More recent data indicates that these percentages have declined. In the first half of 2010, only 6 percent of Germans directly

59. *Id.* at 278-86.

60. *Id.* at 266, note 16.

61. *Id.* at 270.

62. *Id.* at 269.

63. *Id.* at 278-86.

64. U.S. Census Bureau, Statistical Abstract of the United States: 2004 7 & 33 (Aug. 26, 2004) (Estimated U.S. population in 2002 was 288.2 million and estimated the number of householders at 111.3 million) <https://www2.census.gov/library/publications/2004/compendia/statab/124ed/tables/pop.pdf?#> (last visited May 8, 2019); Investment Company Institute and Securities Industry Association, Equity Ownership in America, 2002, 1 (2002), https://www.ici.org/pdf/rpt_02_equity_owners.pdf

65. Laurence Boone and Natalie Girourard, *The Stock Market, the Housing Market and Consumer Behavior*, OECD ECON. STUDIES NO. 35, 175 (June 22, 2002).

66. *Id.*

owned stocks while 10 percent of Britons did.⁶⁷ The differences continue to exist when one takes into indirect ownership of stocks through mutual funds or similar investments. In 2009, 44 percent of U.S. households owned mutual funds while only 9.4 percent of German households owned stock investments.⁶⁸ Both the United States and the United Kingdom regulate their securities markets more intensively than Germany does due to the perceived need to protect the larger number of less sophisticated investors active in the securities and futures markets in the U.S. and the U.K. than in Germany.

Unless one can eliminate or significantly reduce certain factors, like differences in regulatory intensity or cultural attitudes towards government regulation, it is difficult to conclude with any certainty that if the United States moved to a single financial services regulatory model, it would create a more efficient regulatory regime and achieve substantial cost savings. As a result, continuing to make adjustments when comparing one nation with another might not be the best way to address the question: will consolidating regulators into a single regulator create a more efficient regulatory regime?

III. STATE REGULATORY STRUCTURES FOR FINANCIAL SERVICES

One way of eliminating or reducing many of the factors that arise when making nation-to-nation comparisons is to examine whether consolidated regulators within the 50 states and the District of Columbia are more efficient than multiple regulators. The states use a range of regulatory structures that run the gamut from having a separate agency to regulate each industry sector to having a single regulator that regulates based on risk, like the UK FSA. The data from the states avoids the complications created by converting budgets in one currency into another currency for comparison. In addition, all but four states use the same fiscal year, July 1 to June 30, for their budgets.⁶⁹ As a result, the data being compared comes from the same time periods for the most part. The movements to encourage states to adopt uniform laws mean that banking, securities, and insurance laws do not vary among the states to the same degree that the laws governing financial services vary among nations. In addition, the extent to which the populations of the different states use different types of financial instruments does not vary as substantially as the extent to

67. Julie Cruz, *Why Don't Germans Invest in Stocks?*, BLOOMBERG BUSINESS (Sept. 30, 2010), <https://www.bloomberg.com/news/articles/2010-09-30/why-dont-germans-invest-in-stocks-businessweek-business-news-stock-market-and-financial-advice>.

68. *Id.*

69. National Conference of State Legislatures, *supra* note 41. The four states who use a different fiscal year are Alabama, Michigan, New York, and Texas. *Id.*

which the populations in the United States, the United Kingdom, and Germany use different financial instruments. As a result, comparing how states regulate financial services may provide a better way of determining whether, from a cost perspective, the United States would benefit if it created a single financial services regulator.

A. Regulatory Options

The 50 states and the District of Columbia employ or have employed financial regulatory structures that may be classified into six different options:

- Option 1: separate agencies to regulate banking, securities, and insurance.⁷⁰
- Option 2: a semi-integrated agency that regulates both banks and securities firms while a separate agency regulates insurance companies.
- Option 3: a semi-integrated agency that regulates both banks and insurance companies while a separate agency regulates securities firms.
- Option 4: a semi-integrated agency that regulates both insurance companies and securities firms while a separate agency regulates banks.
- Option 5: a single agency that regulates all financial firms, but which maintains separate departments for banks, insurance companies, and securities firms, which is similar to how most single financial regulators are structure, including the UK FSA from 2004 to 2009.
- Option 6: a single agency that regulates all financial services and organizes its departments based on regulatory objectives, such as prudential concerns and market conduct objectives, which is similar to the UK FSA's structure from 1998 to 2003 and 2009 to the present. This one is the closest to the twin peaks model used by Australia, Canada, and the Netherlands.

Table 2 below lists which states fit within each of these categories.

70. In some states, the banking regulators also regulate savings and loans and credit unions while in other states, such as Texas, the banking regulators only regulate banks and a separate regulator exists to regulate savings and loans and credit unions.

Table 2: States with Either an Integrated or Semi-Integrated Financial Services Agency from 2002 to 2018⁷¹

Option 1: Separate Agency For Banking, Securities, & Insurance Firms	Option 2: Banks and Securities Firms	Option 3: Banks and Insurers	Option 4: Securities Firms and Insurers	Option 5: Single Agency containing Divisions for Banking, Securities, & Insurance	Option 6: Single Supervisor for Financial Services
Alabama Arizona Arkansas California Delaware Georgia Indiana Kansas Maryland Massachusetts Mississippi Missouri New Hampshire New York (until 2011) North Carolina North Dakota Oklahoma Pennsylvania South Carolina Texas Utah West Virginia Wyoming	Connecticut Idaho Kentucky Louisiana Nebraska New Mexico Ohio Washington Wisconsin	Illinois (2004 - present) New Jersey New York (2011–present) Nevada	Tennessee Montana	Alaska Colorado District of Columbia (2004-present) Florida (2002) Hawaii Iowa Maine Michigan (2009-present) Minnesota Oregon Rhode Island South Dakota Vermont Virginia	Michigan (2000 - 2008)

71. Conf. of State Bank Supervisors, State Agency Quick Access, (Nov. 18, 2018) <https://www.csbs.org/state-bank-agency-contact-quick-access>; California Department of Business Oversight, About Us, (Nov. 18, 2018) http://www.dbo.ca.gov/About_DBO/default.asp; GA DEP'T. OF BANKING AND FINANCE ANN. REP. (2017); Hawaii Department of Commerce and Consumer Affairs, Financial Institutions, Regulation, (Nov. 18, 2018) <http://cca.hawaii.gov/dfi/regulation/>; IND. DEP'T. OF.

While many of the states with semi-integrated or integrated financial regulators only created these agencies within the last fifteen years, others have had such arrangements for decades. Virginia's Bureau of Financial Institutions has been in existence since 1910.⁷² Other states only consolidated their banking and securities following the adoption of the National Securities Markets Improvement Act of 1996 ("NSMIA") and the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), which preempted significant parts of state securities laws in order to eliminate duplication of federal regulations at the state level by, among other things, eliminating state registration and merit review of federal covered securities. As a result, all states now are limited to registering non-federal covered securities and are forced to concentrate on the registration of, and taking antifraud enforcement against, certain types of securities professionals. Still, other states, like Michigan, were prompted to consolidate their financial services into semi-integrated or integrated agencies following the enactment of the Gramm-Leach-Bliley Act by Congress in 1999, which attempted to shift financial services regulation towards a functional regulatory approach, rather than an institutional regulatory approach.⁷³

Michigan attempted to move beyond institutional and functional regulatory models and towards a risk regulatory model in 2000. Michigan reorganized its financial regulatory structure to focus on regulatory goals concerning risks (prudential risks, market conduct risks, etc.) rather than on financial sectors.⁷⁴ Michigan's Office of Financial and Insurance

FIN. INST. ANN. REP. 13 (2017); Iowa Division of Banking, Who We Regulate, (Nov. 18, 2018) <https://www.idob.state.ia.us/>; MICH. DEP'T. OF CONSUMER & INDUSTRY SERVICES, FIN. INST. BUREAU, 1999 ANN. REP. 55 (2000); MICH. INS. BUREAU, 1999 ANN. REP. 25 (2000); MICH. OFF. OF FIN. & INS. SERVICES, DEP'T. OF LABOR & ECON. GROWTH, 2003 ANN. REP. 11 (2004); MICH. OFF. OF FIN. & INS. SERVICES, DEP'T. OF LABOR & ECON. GROWTH, 2006 ANN. REP. 6 (2006); MICH. OFF. OF FIN. & INS. SERVICES, DEP'T. OF LABOR & ECON. GROWTH, 2007 ANN. REP. 4 (2007); MICH. OFF. OF FIN. & INS. SERVICES, DEP'T. OF LABOR & ECON. GROWTH, 2008 ANN. REP. 5 (2008); MICH. OFF. OF FIN. & INS. SERVICES, DEP'T. OF LABOR & ECON. GROWTH, 2009 ANN. REP. 5 (2009); Mich. Executive Order No. 2013-1 (Jan. 16, 2013) (creating the Michigan Dept. of Insurance and Financial Services); MISS. DEP'T. BANKING & CONSUMER FIN. ANN. REP., 6 (2017); 2002 N.Y. BANKING DEP'T ORG. & MAINT. REP., 1 (2002); New York Financial Services Law §102 (2014)(created N.Y. Department of Financial Services in 2011 by merging the Department of Banking and the Department of Insurance); S.C. BOARD OF FIN. INST. ANN. ACCOUNTABILITY REP. (2016); Vermont Department of Financial Regulation, <http://www.dfr.vermont.gov/> (Nov. 18, 2018); WASH. DEP'T. FIN. INST. ANN. REP. 2014-2015, 4 (2015); W.VA. 116TH ANN. REP. FIN. INST., 1-2 (2017); State of Illinois Department of Financial and Professional Regulation website, *supra* note 19; North American Securities Administrators Association, Contact Your Regulator <http://www.nasaa.org/about-us/contact-us/contact-your-regulator/> (Nov. 18, 2018); and Nat'l Assoc. Ins. Com., Membership List (revised Aug. 8, 2018), http://www.naic.org/documents/members_membershiplist.pdf.

72. BUREAU OF FIN. INST., STATE CORP. COM., COMMONWEALTH OF VIRGINIA, SUMMARY OF OPERATIONS 5 (2013).

73. Brown, *E Pluribus*, *supra* note 4, at 23.

74. *Id.*

Services (“OFIS”) claimed to be “the first state to coordinate regulation of financial institutions, insurance, and securities industries under the federal Financial Services Modernization Act of 1999.”⁷⁵ Michigan created the OFIS in April 2000 by combining the Financial Institutions Bureau, the Insurance Bureau, and the Securities Bureau.⁷⁶ Frank Fitzgerald, who was the commissioner of the Michigan Insurance Bureau at the time that the OFIS was created and became the first commissioner to lead the OFIS, justified the creation of the new office by stating: “The old fire walls are breaking down and the operative word today is convergence . . . The new office is intended to improve regulatory efficiency.”⁷⁷

Initially, the OFIS had three divisions that essentially replicated the three former bureaus, which meant that it would have been classified as Option Five among the regulatory structures discussed above.⁷⁸ From 2002 to 2008, however, the OFIS reorganized its internal structure so that it was divided into two offices that regulate based on risk: (1) the Office of Financial Evaluation, which deals with prudential regulation and supervision, and (2) the Office of Policy, Conduct, and Consumer Assistance, which deals with market conduct risks.⁷⁹ As a result, it operated like the UK FSA did in its early years and, in many ways, similar to the twin peaks model used by Australia. Its regulatory structure was the only one classified as an Option Six for the period of this study.

In 2008, Michigan abandoned its innovated structure.⁸⁰ It reverted to an internal structure organized along institutional lines with separate divisions for specific sectors like banks and trusts, credit unions, and insurance companies. In addition, it renamed the OFIS to the Office of Financial and Insurance Regulation (“OFIR”).⁸¹ In January 2013, Michigan Governor Rick Snyder signed an executive order to remove OFIR from the Department of Licensing and Regulatory Affairs and make it the new Department of Insurance and Financial Services.⁸² It retained its internal institutional organizational structure.

75. *Id.*

76. MICH. OFF. OF FIN. & INS. SERVICES, DEP’T. OF LABOR & ECON. GROWTH, 2000 ANN. REP. (2000) [hereinafter MI OFIS 2000 ANN. REP.].

77. *State to Oversee Financial Firms: Engler Plans to Set Up Regulatory Office to Keep Tabs On Banks, Insurers, Brokers*, DETROIT NEWS (Jan. 28, 2000) at 1B.

78. MI OFIS 2000 ANN. REP., *supra* note 76.

79. MICH. OFF. OF FIN. & INS. SERVICES, DEP’T. OF LABOR & ECON. GROWTH, 2003 ANN. REP. 7-8(2003) [hereinafter MI OFIS 2003 ANN. REP.].

80. Press Release, Michigan Department of Licensing and Regulatory Affairs, OFIS Renamed Office of Financial and Insurance Regulation (April 8, 2008).

81. *Id.*

82. Press Release, Michigan Governor Rick Snyder, Snyder signs executive order establishing Department of Insurance and Financial Services (Jan. 17, 2013).

B. Why Examine State Regulatory Structures?

1. Benefits of Comparing State Regulatory Structures

Comparisons regarding how different nations regulate financial services face several problems that are minimized or eliminated when comparing how states within the United States regulate financial services. These problems include:

- Differences in composition and sophistication of the financial services industry;
- Differences in regulatory objectives;
- Differences in resource endowments, like wages, capital costs and education;
- Differences in enforcement intensity; and
- Differences in the degree to which the population respects the law.

The range of these differences between states in the United States is very small or nonexistent.

Financial conglomerates hold substantial market shares of the financial services industry throughout the United States.⁸³ As a result, highly sophisticated financial services may be obtained in any state. The range of products and services that financial firms can offer may vary, particularly in the area of insurance, from state to state, but generally, most products and services are available throughout the United States.

Many of the states have adopted similar laws for regulating financial products and firms. In the area of securities, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) began drafting a uniform law to regulate the sale of securities in 1922 and proposed the Uniform Sale of Securities Act of 1930.⁸⁴ The second uniform securities act proposed by NCCUSL, the Uniform Securities Act of 1956, was ultimately adopted by 37 states.⁸⁵ In 1985, NCCUSL proposed the first major revision to the 1956 act and additional amendments were distributed in 1988.⁸⁶ In 2002, NCCUSL promulgated a fourth version of the Uniform Securities Act.⁸⁷ Only a handful of states adopted the 1985 or the 2002 versions of the Uniform Securities Act.⁸⁸

83. Brown, *E Pluribus*, *supra* note 4 at 4-5.

84. Uniform Securities Act (1930).

85. Uniform Securities Act (1956).

86. Uniform Securities Act (1985) with amendments.

87. Uniform Securities Act (2002).

88. Uniform Securities Act (1985) with amendments and Uniform Securities Act (2002).

State laws in the area of securities have also been shaped by the federal securities regulations. The scope of state regulatory authority has been significantly curtailed by federal securities laws, like NSMIA and SLUSA, which have preempted states' ability to regulate certain aspects of the securities industry. State securities regulators also regulate broker-dealers and brokerage firms who sell securities within their states as well as investment advisers who manage less than \$25 million. Unlike bank regulators, state securities regulators traditionally were not primarily focused on prudential concerns addressing the stability of the financial system and the solvency of the firms operating within it but were more focused on protecting investors from fraud by requiring disclosure of all material information.⁸⁹

State banks are chartered by individual states and can choose to either be a member of the Federal Reserve System or not.⁹⁰ A state-chartered bank will be supervised and regulated by the banking commission or similar agency of the state that issued its charter.⁹¹ If the state-chartered bank is a member of the Federal Reserve System, then it will be subject to the regulation and supervision of the Federal Reserve.⁹² If the state-chartered bank is not a member of the Federal Reserve System, then the FDIC will be its primary federal regulator.⁹³ The FDIC also acts as a back-up supervisor for other national chartered and state-chartered banks, which are insured by the FDIC.⁹⁴

In the years following the enactment of the Gramm-Leach-Bliley Act ("GLBA"), the total number of banks in the United States, both nationally chartered and state-chartered, has declined.⁹⁵ In 2003, state-chartered banks comprised at least 75 percent of the total number of banks in the United States, but held only 44.6 percent of the total deposits in the United States.⁹⁶ In addition to holding fewer deposits than nationally chartered banks, state-chartered banks on average were less profitable than national banks in 2003.⁹⁷

89. PATRICIA A. MCCOY, BANKING LAW MANUAL 2D, §12.02[2] (2003).

90. *Id.* at §§2.03[a], 3.02.

91. *Id.*

92. 12 U.S.C.S. §§248, 325, 338, 483 (2014).

93. 12 U.S.C.S. §1831a (2014).

94. 12 U.S.C.S. §§1815 and 1828 (2014).

95. FDIC, Statistics on Depository Institutions (May 28, 2004), <http://www2.fdic.gov/sdi/index.asp>. The total number of nationally chartered banks declined 15.5 percent to 1999 banks in 2003, while the number of state-chartered banks declined 7.1 percent to 5,771 banks in 2003. *Id.*

96. *Id.*

97. *Id.* In 2003, the return on equity for national banks was 16.1 percent, up slightly from 1999 when the return on equity for national banks was 15.1 percent. *Id.* The return on equity for state banks was 13.0 percent in 2003, down 9.7 percent from the 14.4 percent return on equity that state banks had in 1999. *Id.*

State-chartered thrifts are also chartered, supervised, and regulated by the state savings and loan commissions that granted them their charters. The FDIC acts as a back-up regulator for thrifts that are insured by Savings Association Insurance Fund (“SAIF”) of the FDIC and examines, supervises, and regulates state-chartered savings associations that are insured by SAIF.⁹⁸ In 2003, state-chartered savings and loans comprised only 12.2 percent of all of the savings associations in the United States.⁹⁹

A dual regulatory system also exists for credit unions. Credit unions may be chartered and regulated either by state authorities or by the National Credit Union Administration (“NCUA”).¹⁰⁰ The NCUA also contains the National Credit Union Share Insurance Fund (“NCUSIF”), which insures deposits within credit unions.¹⁰¹

Credit unions cannot serve the general public but can only serve their members who generally must share a single common bond based on an occupation or community if the credit union has more than 3,000 members or may share multiple common bonds if the credit union has less than 3,000 members.¹⁰²

The dual regulatory structures in the areas governing depository institutions has resulted in state laws, which have been heavily influenced by federal banking laws in order to maintain the competitiveness of the state charters as alternatives to a national charter. As a result, state banking laws contain many common features. For example, during the period from 2001 to 2004, which is the period that we are using to compare the states’ budgets, a majority of states had laws that authorized state-chartered banks or their subsidiaries to engage in the following activities among others:

- May sell insurance within state (50 states).¹⁰³
- May establish or own operating subsidiaries (49 states).¹⁰⁴
- May sell annuities (48 states).¹⁰⁵
- May operate a discount securities brokerage (48 states).¹⁰⁶
- May have competitive equality with national banks (47 states).¹⁰⁷

98. 12 U.S.C.S. §1463 (2014).

99. Office of Thrift Supervision, U.S. Dept. of the Treasury, 2003 Fact Book 2 (2004). The United States had 928 savings associations in 2003, of which 815 had national charters. *Id.*

100. 12 U.S.C.S. §1752(a) (2014).

101. 12 U.S.C.S. §1782 (2014).

102. 12 U.S.C.S. §1759 (2014).

103. CSBS Profile, *supra* note 19, at 276-81.

104. *Id.* at 304-10.

105. *Id.* at 276-81.

106. *Id.* at 290-95.

107. *Id.* at 311-19.

- May operate a full securities brokerage (45 states).¹⁰⁸
- May sell crop insurance (40 states).¹⁰⁹
- May engage in municipal general obligation bond underwriting (39 states).¹¹⁰
- May sell title insurance (38 states).¹¹¹

States are the primary regulators of financial services only in the insurance area. Unlike depository institutions, which are regulated by both the federal and state governments, insurance is regulated almost exclusively by the states. The state insurance commissions or corresponding agency regulate insurance products and insurance companies.¹¹² All state insurance commissions also license insurance producers, although the exact type of licenses issued varies.¹¹³ Some states issue a general insurance producer license while others issue licenses for each different type of producer, such as individual licenses for agents, brokers, solicitors, consultants, and reinsurance intermediaries.¹¹⁴ In 2002, there were 7,173 domestic insurers and 3.8 million licensed insurance producers in the United States.¹¹⁵ In 2017, there were only 5,954 domestic insurers in the United States.¹¹⁶ The decline in the number of insurers was primarily due to mergers. The number of licensed insurance producers had climbed to over 9 million by 2017.¹¹⁷

As previously noted, 46 of the 50 states operate on the same fiscal year, July 1 to June 30. As a result, the data obtained regarding their budgets are more reliably comparable than the data regarding the budgets of the United States and the United Kingdom or Germany.

All of these similarities among state financial laws reduce the likelihood that substantial differences in the cost of regulatory regimes among states derives from differences in regulatory intensity.

108. *Id.* at 290-95.

109. *Id.* at 276-88.

110. *Id.* at 287-89.

111. *Id.* at 299-303.

112. National Association of Insurance Commissioners, 2002 Insurance Department Resources Report (2003) [hereinafter NAIC 2002 REPORT].

113. *Id.*

114. *Id.*

115. *Id.* at 39 and 53.

116. National Association of Insurance Commissioners, 2017 Insurance Department Resources Report 35 (2018) [hereinafter NAIC 2018 REPORT].

117. *Id.* at 51.

2. Problems of Comparing State Regulatory Structures

Nevertheless, significant differences still exist when one compares the states with one another. First, not all states are transparent about how much they spend to regulate financial services. While data on how much a state spends to regulate banking and insurance usually can be obtained easily from the Conference for State Banking Commissioners and the National Association of Insurance Commissioners, data on how much a state spends to regulate securities cannot be easily obtained from the North American Securities Administrators' Association ("NASAA") because NASAA does not make it publicly available. In addition, states' spending on securities regulation is difficult to obtain directly from the states because, in many cases, the securities regulators are embedded in larger departments or offices, which do not publish how much of their budget goes to securities regulation. For example, in the period from 2001 to 2004 covered by our data set, New York regulated securities through its Office of the Secretary of State and through its Office of the Attorney General. Unfortunately, the publicly available budgets for those offices do not disclose how much they spent to regulate securities.

The size of state GDP from financial services industry can vary significantly among the states and, in some cases, are substantially more than the differences in the size of the total U.S. GDP from financial services when compared to other major developed nations, such as Germany and the United Kingdom.¹¹⁸ For example, in 2002, New York's GDP from financial services was \$126 billion (in constant 2000 U.S. dollars), which was over 192 times as large as Wyoming's GDP from financial services.¹¹⁹ This example is the most extreme case as New York has the largest financial services industry and Wyoming has the smallest. The average state GDP from financial services was \$16.3 billion in 2002.

The disparities in the size of the U.S. financial services industry in each state peaked just prior to the start of financial crisis. In 2006, New York's GDP from financial services was \$155.2 billion (in constant 2000 U.S. dollars), which was 258 times as large as Wyoming's GDP from financial services.¹²⁰ By 2009, this had narrowed substantially. New York's GDP

118. Bureau of Economic Analysis, Gross Domestic Product by State, <https://www.bea.gov/data/gdp/gdp-state> (May 7, 2019) ["BEA State GDP"]. Reportedly, six percent of Germany's GDP came from financial services in 2009 while eight percent of the United Kingdom's GDP came from financial services. *UK 'blocking tough financial rules'*, BBC NEWS (Sept. 23, 2009), <http://news.bbc.co.uk/2/hi/8270404.stm>.

119. BEA State GDP, *supra* note 118. Data on state GDPs' derived from financial services derived by selecting "Gross Domestic Product by State (millions of current dollars)" under Step 2, "All States and Regions" under Step 3, "Finance and insurance" under Step 4, and years 2002 to 2009 under Step 5. Data converted into constant 2000 U.S. dollars using the BLS Inflation Calculator, *supra* note 48.

120. BEA State GDP, *supra* note 118. Data on state GDPs' derived from financial services derived by selecting "Gross Domestic Product by State (millions of current dollars)" under Step 2, "All States and

from financial services in 2009 was down to \$136.8 billion (in constant 2000 U.S. dollars), which was only 184 times as large as Wyoming's GDP from financial services.¹²¹

In addition, the relative importance of the financial services industry to the overall economy of each state varies significantly. In 2002, the top five states with the largest percentage of their GDP derived from financial services were:

1. Delaware (Option 1) – 35.2% of total GDP from financial services
2. South Dakota (Option 5) – 19.1% of total GDP from financial services
3. New York (Option 1) – 16.0% of total GDP from financial services
4. Connecticut (Option 2) – 15.3% of total GDP from financial services
5. Rhode Island (Option 5) – 13.3% of total GDP from financial services¹²²

In 2004, Rhode Island slipped from the top five and was replaced by Iowa, which remained in the top five through 2009. In 2009, the top five states with the largest percentage of their GDP derived from financial services were:

1. Delaware (Option 1) – 36.4% of total GDP from financial services
2. South Dakota (Option 5) – 19.1% of total GDP from financial services
3. Connecticut (Option 2) – 18.4% of total GDP from financial services
4. Iowa (Option 5) – 16.2% of total GDP from financial services
5. New York (Option 1) – 15.7% of total GDP from financial services¹²³

Regions" under Step 3, "Finance and insurance" under Step 4, and years 2002 to 2009 under Step 5. Data converted into constant 2000 U.S. dollars using the BLS Inflation Calculator, *supra* note 48.

121. BEA State GDP, *supra* note 118. Data on state GDPs' derived from financial services derived by selecting "Gross Domestic Product by State (millions of current dollars)" under Step 2, "All States and Regions" under Step 3, "Finance and insurance" under Step 4, and years 2002 to 2009 under Step 5. Data converted into constant 2000 U.S. dollars using the BLS Inflation Calculator, *supra* note 48.

122. BEA State GDP, *supra* note 118. Data on state GDPs' derived from financial services derived by selecting "Gross Domestic Product by State (millions of current dollars)" under Step 2, "All States and Regions" under Step 3, "Finance and insurance" under Step 4, and years 2002 to 2009 under Step 5. Data on state total GDPs derived by selecting "Gross Domestic Product by State (millions of current dollars)" under Step 2, "All States and Regions" under Step 3, "All industry total" under Step 4, and years 2002 to 2009 under Step 5. Data converted into constant 2000 U.S. dollars using the BLS Inflation Calculator, *supra* note 48. Then the amount of state GDPs' derived from financial services was divided by the amount of state total GDPs to obtain the percentages listed.

123. BEA State GDP, *supra* note 118. Data on state GDPs' derived from financial services derived by selecting "Gross Domestic Product by State (millions of current dollars)" under Step 2, "All States and Regions" under Step 3, "Finance and insurance" under Step 4, and years 2002 to 2009 under Step 5. Data on state total GDPs derived by selecting "Gross Domestic Product by State (millions of current dollars)"

Some people may be surprised that Delaware and South Dakota derive a larger percentage of their GDP from financial services than New York, particularly since these two states are among the bottom 10 states in terms of population. In fact, Delaware and South Dakota have taken advantage of a unique feature of federal banking law that affects credit cards. Under federal banking law, a national bank may charge its customers up to the interest rate permitted by the state in which the bank actually processes the credit card transaction.¹²⁴ National banks are not bound by the interest rate limits of the state in which the customer is located, or the interest rate limits of the state in which the purchase of goods or services occurred.¹²⁵ Neither Delaware nor South Dakota imposes any limit on the interest rates charged by financial institutions. As a result, both states have successfully attracted a large number of national banks that would like to charge high interest rates to their credit card customers.

In 2002, the five states with the lowest percentage of their GDPs derived from financial services were:

46. Idaho (Option 2) – 4.2% of GDP from financial services
47. Louisiana (Option 2) – 4.0% of GDP from financial services
48. New Mexico (Option 2) – 3.7% of GDP from financial services
49. Alaska (Option 5) – 3.3% of total GDP from financial services
50. Wyoming (Option 1) – 3.2% of total GDP from financial services¹²⁶

During the first decade of the 21st century, the percentage of Idaho's GDP derived from financial services grew to 5.3% by 2009, which allowed it to escape the bottom five.¹²⁷ In 2009, the five states with the lowest percentage of their GDPs derived from financial services were:

under Step 2, "All States and Regions" under Step 3, "All industry total" under Step 4, and years 2002 to 2009 under Step 5. Data converted into constant 2000 U.S. dollars using the BLS Inflation Calculator, *supra* note 48. Then the amount of state GDPs' derived from financial services was divided by the amount of state total GDPs to obtain the percentages listed.

124. Elizabeth R. Schiltz, *The Amazing, Elastic, Ever-Expanding Exportation Doctrine and Its Effect on Predatory Lending Regulation*, 88 MINN. L. REV. 518, 522, 544 (2004).

125. *Id.*

126. BEA State GDP, *supra* note 118. Data on state GDPs' derived from financial services derived by selecting "Gross Domestic Product by State (millions of current dollars)" under Step 2, "All States and Regions" under Step 3, "Finance and insurance" under Step 4, and years 2002 to 2009 under Step 5. Data on state total GDPs derived by selecting "Gross Domestic Product by State (millions of current dollars)" under Step 2, "All States and Regions" under Step 3, "All industry total" under Step 4, and years 2002 to 2009 under Step 5. Data converted into constant 2000 U.S. dollars using the BLS Inflation Calculator, *supra* note 48. Then the amount of state GDPs' derived from financial services was divided by the amount of state total GDPs to obtain the percentages listed.

127. *Id.*

46. Hawaii (Option 5) – 4.3% of GDP from financial services
47. New Mexico (Option 2) – 4.07% of GDP from financial services
48. Louisiana (Option 2) – 3.9% of GDP from financial services
49. Alaska (Option 5) – 3.7% of total GDP from financial services
50. Wyoming (Option 1) – 2.5% of total GDP from financial services¹²⁸

Given the importance that oil and agriculture play in the economies of these states, and the relatively small populations of Alaska, Hawaii, Idaho, and New Mexico compared to the rest of the states, it is perhaps not surprising that financial services do not play a significant role in their economies.

States also show a wide variation in how much of their overall state budgets goes to regulate financial services. In no state does financial services regulation make up more than 1% of the state budget and the states with the largest GDPs from financial services do not spend a larger percentage of their state budgets to regulate financial services. In 2002, the top five states that spend the largest percentage of the total state budget to regulate financial services were:

1. Vermont (Option 5) – 0.90%
2. New Hampshire (Option 1) – 0.66%
3. North Dakota (Option 1) – 0.57%
4. Arkansas (Option 1) – 0.53%
5. Nebraska (Option 2) – 0.48%¹²⁹

In that same year, the bottom five states that spent the smallest percentage of the total state budget to regulate financial services were:

46. Massachusetts (Option 1) – 0.09%
47. Minnesota (Option 5) – 0.11%
48. Indiana (Option 1) – 0.12%
49. New Mexico (Option 2) – 0.14%
50. Wisconsin (Option 2) – 0.15%¹³⁰

In almost all cases, the budgets for the state financial services regulators are derived from the fees collected by the agencies from the financial services firms that they regulate.

Finally, state governments have a range of attitudes regarding the need for government regulation of business in general. These attitudes may

128. *Id.*

129. See *infra* Appendix A.

130. See *infra* Appendix A.

affect how much states are willing to spend to regulate financial services, which in turn may affect the level of consumer protection available in different states. How to accurately capture these differences in attitudes is problematic as different rankings of states regarding how much they regulate business in general sometimes produce vastly different results. For example, both *Forbes* magazine and the Small Business & Entrepreneurship Council (SBEC) rank the 50 states based on their regulatory and tax environments for businesses.¹³¹ In 2010, SBEC ranked South Dakota, Nevada, Texas, Wyoming, and Washington as having the five best business climates for small businesses, which they define as having the lowest level of regulation and business taxes, while it ranked New Jersey, New York, California, Vermont, and Maine as having the worst business climates.¹³² *Forbes*, on the other hand, rated Utah, Virginia, North Carolina, Colorado, and Washington as having the five best regulatory environments for business and Maine, Rhode Island, Mississippi, Michigan, and Hawaii as having the worst.¹³³

As the above problems illustrate, a comparison of state regulatory structures may eliminate or minimize some of the problems inherent when making comparisons among nations. However, it still leaves other differences that need to be controlled for if one is going to ascertain whether an integrated regulatory structure is preferable to the current multiple agency structure.

IV. HYPOTHESES

In this section we develop a series of hypotheses to test whether a regulatory regime that relies on separate regulators for each major financial service (Option 1) is more expensive or less expensive than the consolidated regimes (Options 2 to 6). Prior to conducting our regressions, we expected to find that consolidated regulation would be less expensive than a regime that used multiple regulatory agencies. One can imagine a number of reasons why a single financial regulator might be more cost effective than multiple regulators. The multiple regulator approach embodied in Option 1 (multiple regulators) potentially entails the following costs, which could be minimized or eliminated by consolidating some or all of the regulatory agencies:

131. Badenhausen, Kurt, Best Places - Table: The Best States for Business and Careers, *Forbes* (Oct. 13, 2010) <http://www.forbes.com/2010/10/13/best-states-for-business-business-beltway-best-states-table.html>; SBEC, Small Business Survival Index 2010 Ranks State Policy Climates for Entrepreneurship, Business News Press Release (Dec. 9, 2010) <http://www.sbecouncil.org/news/display.cfm?ID=4099> ["SBEC, 2010 Rankings"]. SBEC has been conducting an annual ranking of the states for the past fifteen years. SBEC, 2010 Rankings.

132. SBEC, 2010 Rankings, *supra* note 131.

133. Badenhausen, *supra* note 131.

- Multiple regulators may fail to communicate and cooperate with one another effectively.
- Multiple regulators may issue inconsistent or duplicative regulations.
- Multiple regulators may create confusion for consumers who may find it difficult to ascertain which agency is responsible for the relevant financial firm, product, or service.
- Multiple regulators may fail to adequately address the range of conflict of interest problems posed by financial conglomerates.
- Multiple regulators that specialize in a particular financial segment may be more prone to agency capture than more diversified single regulators.

For example, a single state agency may eliminate regulatory overlap and duplication as well as the inter-agency turf wars, in which the agencies frequently engage.

One might have expected to see lower costs with a single agency because economies of scale would allow the single agency to perform the same functions with fewer people than are currently employed by all of the state agencies combined. The single agency could also reassign agency officials to where the needs are the greatest more easily than the individual smaller agencies can. Internal services that are common to all of the state agencies, such as human resources, purchasing, and accounting, could also achieve cost savings by achieving economies of scale and reducing duplication of efforts.¹³⁴

To varying degrees, some U.S. states have benefited from these types of economies of scale cost savings. The State of Illinois was able to save 14% in 2004 over the amount it spent in 2003 to regulate financial services by consolidating some of its separate financial regulators to form the Department of Financial and Professional Regulation in 2004.¹³⁵ While Michigan's regulatory expenses increased initially in 2001 and 2002 after creating its single financial services regulatory agency, they decreased substantially in 2003.¹³⁶ In 2003, Michigan spent 14% less than

134. California Performance Review Commission, *A Government for the People for a Change* (Aug. 3, 2004), https://immagic.com/eLibrary/ARCHIVES/GENERAL/CAGOV_US/C040803H.pdf (last accessed May 7, 2019). The report cited the consolidation of internal services to achieve economies of scale as a major benefit of its proposal to dramatically consolidate the number of California departments, agencies and boards. *Id.* at 96.

135. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, *Press Release, Five Agency Merger Will Net \$14 million in Savings* (Feb. 18, 2004).

136. MICH. OFF. OF FIN. & INS. SERVICES, DEP'T. OF LABOR & ECON. GROWTH, 2001 ANN. REP. 10 (2001) [hereinafter MI OFIS 2001 ANN. REP.]. MICH. OFF. OF FIN. & INS. SERVICES, DEP'T. OF LABOR

it spent in 1999 to regulate financial services.¹³⁷

Nevertheless, in constructing our tests, we choose to employ the use of a categorical variable for the different regulatory options. The base case is Option 1, in which multiple agencies are used to regulate financial services. A negative (positive) coefficient will indicate that the option is cheaper (more expensive) than the base case.

The first two hypotheses examine the costs of the consolidated regulatory options relative to the costs of Option 1 (multiple regulators) without accounting for other factors, such as population or the amount of the gross domestic product based on financial services:

H1: Option 1 is more expensive than Options 2, 3, 4, 5 and 6.

H2: Option 1 is more expensive than Options 2, 3, 4, 5 and 6 after controlling for year fixed effects.

The next hypothesis attempts to account for the fact that significant differences in population size amongst the states may influence the amount an individual state will spend to regulate financial services:

H3: Option 1 is more expensive than Options 2, 3, 4, 5 and 6 after taking into account differences in population.

The last hypothesis undertakes the same analysis as H6 but excludes states that are outliers because they are the only state within a particular regulatory option, such as Michigan in Option 6, or because they are unusually large:

*H7: Option 1 is more expensive than Options 2, 4, and 5 after excluding the possible outlying states of California, Michigan, and New Jersey and taking into account differences in gross state domestic product and controlling for year fixed effects.*¹³⁸

V. EMPIRICAL RESULTS

A. Sample Selection

We have collected data on how much each state and the District of

& ECON. GROWTH, 2002 ANN. REP. 11 (2002) [hereinafter MI OFIS 2002 ANN. REP.].

137. MICH. FIN. INST. BUREAU, 1999 ANN. REP., *supra* note 71, at 55; MICH. INS. BUREAU, 1999 ANN. REP., *supra* note 71, at 25; MICH. OFF. OF FIN. & INS. SERVICES 2003 ANN. REP., *supra* note 71, at 11.

138. California was also excluded because it is significantly larger than any other state, which makes it is an outlier in terms of financial spending. For Option 3 (consolidated agency for banking and insurance), we only have complete data for New Jersey and for Option 6 (single agency organized to regulate for risk not sector), we only have data for Michigan.

Columbia spent to regulate financial services from 1990 to 2006.¹³⁹ For purposes of this article, only the data from 2001 to 2004 was used. We only used this data because the Michigan OFIS was not created until April 2000. As a result, we only have a full year's worth of data for Option 6 (single agency organized to regulate based on risk rather than sector) beginning in 2001.

We decided to look at the data over this period of time because it could enable one to eliminate or account for isolated fluctuations in a state's budget in a particular year. It also allows one to gather anecdotal evidence of how much each state's costs have changed if it consolidated regulatory agencies or created new ones during this period. Finally, it also allows one to see to what extent states' spending changed to accommodate changes in federal regulation.

Because of the transparency issues mentioned above, we encountered difficulties in gathering complete budgetary data for all 50 states. We had complete data on the states' budgets for a total of 150 observations for the years 2001 to 2004. If we had complete data for all of the states for 2001 to 2004, we would have a total of 204 observations. Since we did not have complete data for all of the states for 2001 to 2004, we can only reach preliminary conclusions based on the data available. In addition, we only had one state, Michigan, which used the regulatory structure of Option 6 (single regulator organized to regulate for risk not sectors) between 2001 and 2004, and we only had complete data on one state, New Jersey, for Option 3 (consolidated agency for banking and insurance) for the period from 2001 to 2004. It is difficult to be certain that any results finding cost savings from using Options 3 and 6 are reliable given the extremely limited number of observations available to us for those categories.

To provide an example of what the compiled data looks like, we have supplied the data for the year 2002 in the table in Appendix A. This table provides the available data for the total amount that each state spent on financial services regulation in 2002. In order to give some sense as to how much each state spends to regulate financial services given the size of the banking, securities, and insurance sectors contributions to the state's GDP, the ratio of regulatory costs per million dollars of GDP produced in the financial services as defined by North American Industry

139. In addition, to gathering budgetary data, we collected data regarding the workloads of the state regulators, e.g., how many entities do they regulate, how many charters or licenses did they issue, how many enforcement actions did they bring, and how many consumer complaints did they receive. We hope to use this data to measure the budgets of the states in relation to the outputs of states to determine if some states have lower budgets given the size of the financial services industry within the state because the states are simply not doing much to regulate the industry or enforce the laws regulating the industry. This data is still incomplete, and we are still assessing the best way to measure these outputs.

Classification system is provided.¹⁴⁰ In addition, the regulatory costs per person living within the state are provided as another benchmark for gauging how much each state spends to regulate financial services.

As the table in Appendix A indicates, states show a wide variation on how much they spend to regulate financial services within their boundaries. As a share of GDP from financial services, South Dakota spent the least to regulate financial services by spending only \$599 per million dollars of GDP from financial services and Alaska spent the most by spending \$7,062 per million of GDP from financial services. On a per capita basis, Indiana spent the least, \$1.99 per person, and the District of Columbia spent the most, \$19.64. On average, in 2002, the states spent \$2,617 per million dollars of GDP generated by the financial services industry within the state or \$5.42 per person residing in the state to regulate financial services. Not surprisingly, given the lack of federal regulation for insurance, states spend on average almost two-thirds of their budgets for financial services regulation on insurance regulation.

Table 3 provides a comparison of the average regulatory costs of states that use each of the six regulatory options described in the table in Appendix A.

140. The North American Industry Classification system was adopted following the signing and ratification of the North American Free Trade Agreement in order to harmonize the industrial classification systems of the United States, Canada and Mexico. *North American Industry Classification System*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/eos/www/naics/faqs/faqs.html#q1> (last visited Mar. 7, 2019).

Table 3: Average Costs for States that Use the Six Different Regulatory Options for 2002¹⁴¹

	Regulatory Costs per Million Dollars of State GDP for Finance & Insurance Sector (in constant 2000 dollars)	Regulatory Costs per Million of Population (in constant 2000 dollars)
Option 1	\$2,470.81	\$4.93
Option 2	\$3,127.55	\$5.59
Option 3	\$1,137.62	\$3.99
Option 4	\$3,207.61	\$9.42
Option 5	\$2,915.94	\$5.81
Option 6	\$1,831.17	\$3.51

B. Regression Results

Throughout all of the models, cost is the dependent variable. The cost for different years has been converted into 2004 dollars using the Bureau of Labor Statistics inflation calculator. In the first regression the model that is tested is:

$$\text{Cost}_{it} = \alpha + \beta \text{option}_{it} + \varepsilon_{it}$$

Where:

Cost_{it} is the cost to state i in year t .

141. This data is still preliminary for several reasons. First, some states have embedded the division or department that regulates securities in another agency and that agency does not usually provide breakdowns of its budget for each division or department. As a result, the direct costs of financial regulation of securities could not be included and the total direct costs of financial regulation in those states are understated. Second, not all states use the same fiscal year for budgeting purposes and so the time frames for comparison purposes may be off by three to six months. In addition, one state, Oregon, only uses biennium budgets, not annual budgets. CSBS Profile, *supra* note 19, at 35; CAL. DEP'T. FIN. INST. ANN. REP., *supra* note 19, at 24-25; GA DEP'T. OF BANKING AND FINANCE ANN. REP., *supra* note 19; HAW. COMPLIANCE RES. FUND REP., *supra* note 19; IND. DEP'T. OF FIN. INST. ANN. REP., *supra* note 19, at 16; IOWA ANN. REP. OF SUPERINTENDENT OF BANKING, *supra* note 19, at 27; MISS. DEP'T. BANKING & CONSUMER FIN. ANN. REP., *supra* note 19, at 12-14; 2002 N.Y. BANKING DEP'T ANN. REP., *supra* note 19, at 1 (2002); S.C. BOARD OF FIN. INST. ANN. ACCOUNTABILITY REP., *supra* note 19; VT ANN. REP. INS. COMM'R, *supra* note 19, at 10; WASH. DEP'T. FIN. INST. ANN. REP., *supra* note 19, at 2; W.VA. ANN. REP. FIN. INST., *supra* note 19, at 14, 18, 23; State of Illinois Department of Financial and Professional Regulation website, *supra* note 19; MICH. OFF. OF FIN. & INS. SERVICES, ANN. REPORT 2003, *supra* note 71.

$Option_{it}$ is a vector of variables which indicates under which regulatory option state i is operating in year t . The option is a categorical variable. The options that are represented are:

- Option 1: Separate Agency for banking, securities, and insurance firms
- Option 2: Banks and securities firms
- Option 3: Banks and insurers
- Option 4: Securities firms and insurers
- Option 5: Single agency containing divisions for banking, securities, and insurance
- Option 6: Single supervisor for financial services

The results from testing H1 (Option 1 is more expensive than Options 2, 3, 4, 5 and 6) are as follows:

Variable	Coefficient	P-Value
Option 2	- 1.36 E 07	0.07
Option 3	2.84 E 07	0.15
Option 4	- 1.62 E07	0.36
Option 5	-2.61 E 07	<0.01
Option 6	4.30 E 06	0.83

As noted above, this regression, and all that follow, employs the use of a categorical variable for the different regulatory options. The base case is Option 1, which was described previously in the article. A negative (positive) coefficient indicates that the option is cheaper (more expensive) than the base case. The results indicate that only Option 5 (combined regulator) is statistically significant at the 0.05 level and appear to be associated with lower costs than Option 1 (multiple regulators). The other options show no statistically significant difference. The adjusted R-square for this regression was approximately 0.05.

The second model that is tested is:

$$Cost_{it} = \alpha + \beta option_{it} + \chi year_t + \varepsilon_{it}$$

Where the cost and option variables are the same as above.

Year is a vector of variables indicating the year in order to control for intertemporal changes common to all states in the sample.

The results from testing H2 (Option 1 is more expensive than Options 2, 3, 4, 5, and 6 after taking into account the year fixed effects) are as follows:

Variable	Coefficient	P-Value
Option 2	- 1.40 E 07	0.072
Option 3	2.93 E 07	0.143
Option 4	- 1.64 E07	0.360
Option 5	-2.67 E 07	0.005
Option 6	3.82 E 06	0.849
Year 2001	-287,504.1	0.978
Year 2002	-1.31 E 06	0.897
Year 2003	-148,704.2	0.988
Year 2004	5.47 E 06	0.606

The results again indicate that Option 5 (combined regulator) appears to be associated with lower costs than Option 1 (multiple regulators). The other options show no statistically significant difference. The adjusted R-square for this regression was approximately 0.0291.

The next model controlled for differences in the population size of the states. The model tested was:

$$\text{Cost}_{it} = \alpha + \beta \text{option}_{it} + \delta \text{pop}_{it} + \varepsilon_{it}$$

Where the cost and option variables are the same as above.

Pop is the estimated population in state i in year t.

The results from testing H3 (Option 1 is more expensive than Options 2, 3, 4, 5, and 6 after taking into account differences in population) are as follows:

Variable	Coefficient	P-Value
Option 2	4.44 E 06	0.101
Option 3	2.17 E 07	0.002
Option 4	- 8.50 E 06	0.168
Option 5	5.41 E 06	0.109
Option 6	-1.05 E 07	0.127
Estimated population	5.25	<.001

The results this time indicate that Option 3, which is statistically significant at the .01 level, (banking and insurance combined), appears to be associated with higher costs than Option 1 (multiple regulators). The other options show no statistically significant difference. The estimated population variable is statistically significant at the .01 level. The adjusted

R-square for this regression was approximately 0.88.¹⁴²

When controlling for the estimated population of the state, we find that only Option 3 is statistically significantly different from Option 1. Option 5 is not statistically significant when the population of the state is controlled for. We also do not detect a difference among the other options.

However, it is important to note that while Option 3 is statistically significant the difference is actually quite small. When controlling for population on average, Option 3 is approximately \$21 million more expensive than Option 1.

VI. CONCLUSIONS AND POSSIBLE FUTURE LINES OF INQUIRY

A. Conclusions

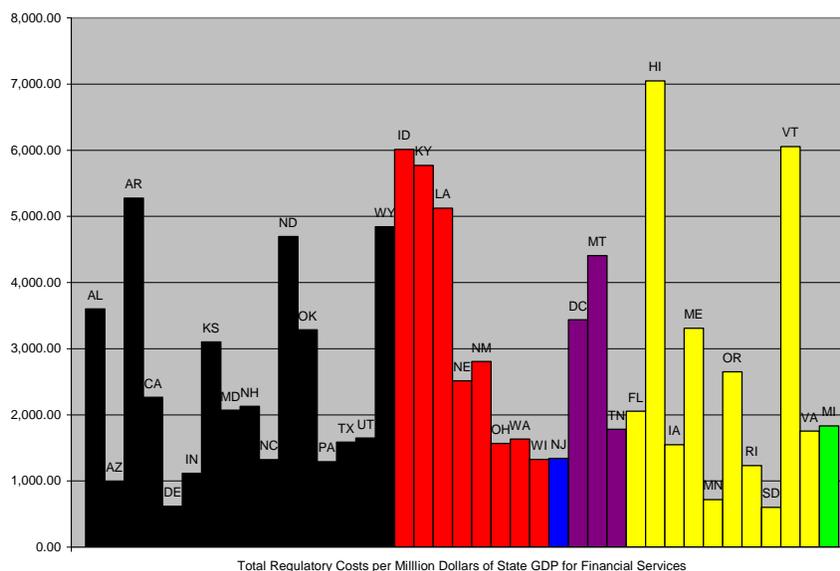
Our results indicate that for most of the consolidated regulatory options, there does not appear to be a statistically significant association between lower costs and consolidated regulatory regimes. In fact, our results find that Option 3, in which banking and insurance regulation is consolidated into a single agency, is associated with higher costs than using Option 1 or multiple regulators.

It is unclear at this time why Option 3 appears to be more expensive than Option 1. It may be due to the fact that, as previously mentioned, the Option 1 numbers may understate how much some of the states are spending for financial services because of the difficulty of obtaining data on spending for securities regulation for some Option 1 states, particularly New York.¹⁴³ Figure 8 below shows the variation among the states for which complete data was available.

142. Please note: the population of the state was highly correlated with the size of the financial services industry variable. Therefore, due to concerns about multicollinearity both variables could not be included in the regression. Further, the population of the state is more likely to be exogenous than the size of the financial services industry which could have issues of endogeneity. It should be noted, however that the results were similar when the size of the financial services industry variable was used instead of the population variable.

143. New York regulates securities through its Office of the Attorney General and the Office of the Secretary of State. Neither of the publicly available budgets for these offices provide a breakdown of how much they spend to regulate securities. Although we submitted Freedom of Information Act requests with these agencies, they have declined to provide us with this data on the grounds that they do not publish the accounts for the divisions within the Attorney General's office.

Figure 8: Regulatory costs per million dollars of GDP from financial services for the states with complete data that used one of the six different regulatory options for 2002¹⁴⁴



It would be worthwhile to investigate what exactly is driving Option 3 states to spend more than Option 1 states.

Does the failure to find that consolidation leads to cost savings mean that the United States would not benefit from moving to a single financial regulator? Not necessarily. Costs are only half of the analysis when doing cost-benefit analysis. One still needs to assess the benefits and weigh them against the costs before concluding that it would not be in the interests of the United States to change its regulatory structure. Given that most of the consolidator regulatory regimes used at the state level do not appear to be associated with higher costs, moving to single financial services regulator would likely not be precluded on the grounds that it would result in higher operating costs on an annual basis than the current multiple regulator model now used. Moving from one regime to another would entail some initial, one-time expenses. We have not attempted to estimate those expenses in this article, although it may be worth investigating if policymakers are persuaded that a single financial services regulator offers sufficient benefits in other areas, such as consumer protection, to warrant changing models.

Other articles have outlined from a theoretical perspective the advantages and disadvantages that the United States would face if it

144. See *infra* Appendix A.

decided to move to a single financial services agency.¹⁴⁵ These studies discuss some of the substantial advantages that a single financial services regulator offers over the current U.S. regulatory regime, which include, among others:

- A single regulator would be better than the current regime because it would be able to monitor risks across firms and sectors and address such risks strategically.
- A single regulator would be able to regulate financial conglomerates more effectively.
- A single regulator would be able to respond more effectively to the globalization of the financial markets.
- A single regulator would be less prone to capture.
- A single regulator would provide improved consumer protections.¹⁴⁶

A complete cost-benefit analysis also needs to assess the following costs to society:¹⁴⁷

- A single regulator would reduce regulatory competition and experimentation to the extent that both are present in the current system.
- A single regulator may have difficulty prioritizing issues.
- A single regulator may have difficulty responding to smaller firms and, thus, may undermine the diversity of institutions that currently comprise the financial industry within the state.
- A single regulator may lose or fail to develop staff with specialized knowledge related to large and small companies and industry sectors.
- A single regulator may lack transparency when making rules.
- A single regulator may lack accountability to both consumers and market participants.
- A single regulator may experience significant logistical problems when it merges the existing regulators in order to be created.

It may be impossible to accurately assess some of these costs in advance. In addition, when considering these costs, policymakers should also review the ways that some of the costs could either be eliminated or

145. Brown, *E Pluribus*, *supra* note 4.

146. Brown, *E Pluribus*, *supra* note 4; Brown, Consolidated Financial Regulation, *supra* note 2.

147. GAO FINANCIAL REGULATION REPORT, *supra*. note 6, at 130-31; Martinez & Rose, *supra* note 2 at 27-31.

reduced, which have been outlined in some of the studies done to date on single financial regulators.

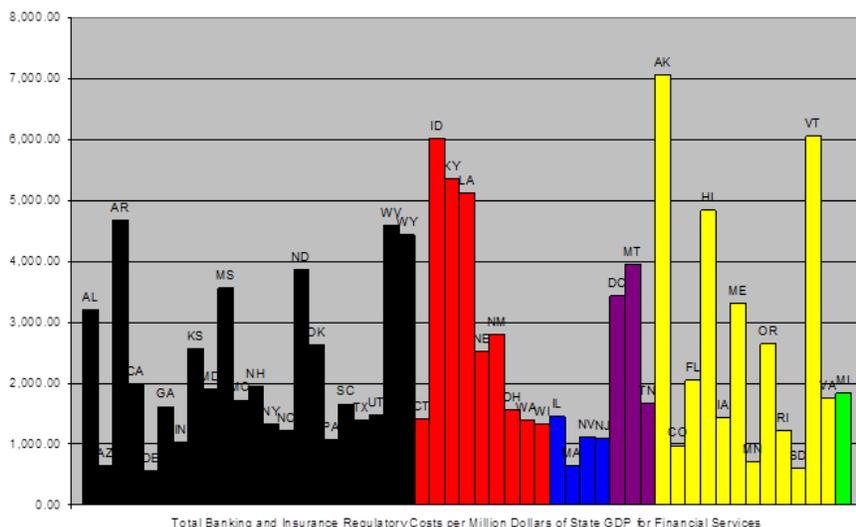
B. Future Lines of Inquiry

As we have indicated, our results are preliminary because we have not been able to obtain complete budgetary data for all 50 states. We will only have a full picture of how much it costs the state governments to regulate financial services after we obtain all of the budgetary data on how states regulate securities.

Based on the preliminary data from the states, it appears that the question of whether states should adopt a single financial regulator model or maintain separate regulators for the different financial sectors will not turn solely on the direct costs that may be paid by the state governments. If the results are the same after obtaining complete budgetary data for the states, it would indicate that consolidation by itself does not guarantee any cost savings. Other factors, such as regulatory intensity of a state and the regulatory economies of scale, need to be accounted for when determining whether consolidation will achieve any cost savings.

It might, therefore, be useful to attempt to control for some factors that we did not control for in this study. For example, it might be useful to discern what role economies of scale play in the costs to state governments of regulating financial services. Larger states may take advantage of economies of scale, which may exceed the cost savings one might expect to achieve from consolidated regulation. Five of the Option 5 states—Alaska, Hawaii, Maine, Oregon, and Vermont—have relatively small populations and relatively small GDPs from financial services. If one examines Figure 9, one can see that the spending by these states may mask the benefits of consolidated regulation because of their inability to take advantage of economies of scale available to larger states.

Figure 9: Regulatory costs per million dollars of GDP from financial services for all of the states that used one of the six different regulatory options for 2002¹⁴⁸



It would also be useful to determine to what extent cost savings may be possible from eliminating the regulatory overlap and duplication between state and federal regulators for banking and securities and among state regulators for insurance. One might not be getting an accurate picture of what the cost savings would be for the United States if it consolidated all of its regulators into a single agency by looking at the effect of agency consolidation at the state level. Much of the overlap and duplication of financial services regulation in the United States is not between state banking, insurance, and securities agencies, but between state agencies and federal agencies or among state regulators. Thus, one avenue for future research would be to attempt to determine what the cost savings would be if duplicative federal and state regulatory efforts are eliminated.

Another avenue for further investigation is how much financial services firms would save in terms of their spending to comply with federal and state regulations if all duplicative and overlapping regulations were eliminated. This article has looked only at the amounts spent by state governments to operate their regulatory agencies. Simply looking at the amount that the government spends to regulate financial services underestimates the total costs to the various state regulatory regimes within the United States because it does not capture how much more

148. See *infra* Appendix A.

companies and individuals must pay to operate within each state. The regulatory costs are a fraction of the fees, assessments, and taxes that the state and federal governments charge financial services firms. For example, in 2002, state insurance department budgets totaled \$946.6 million but the total revenues generated from fees, assessments, fines, penalties, and taxes assessed by states on insurance companies totaled \$12.52 billion.¹⁴⁹ The state insurance department budgets represented only 7.56 percent of the total revenues generated. In order to assess the total costs for the current regulatory regime, the amount spent by firms and individuals to comply with the regulatory requirements of the system must also be taken into account.

In the United States, insurance companies must become licensed in each state in which they want to offer insurance and must get authorization from these states for the products that it offers. If a new company wants to offer insurance in all 50 states and the District of Columbia, it must first apply for a license to operate from each one of these 51 jurisdictions, then it must seek advanced approval from each of these 51 jurisdictions for each of its products that it will offer, and finally it must obtain a license for each producer or agent in each state who will sell its products.¹⁵⁰ The costs involved in completing the applications for all of these licenses as well as paying the relevant fees are significant, creating a barrier to entry, particularly for small firms. Efforts by NAIC to encourage uniformity and coordination among states have not been extremely successful.

In 2002, the total number of domestic insurers (insurers domiciled in the state in which the business is written) in the 50 states and the District of Columbia equaled 7,090, or an average of 139 domestic insurers per state.¹⁵¹ The number of foreign insurers (insurers domiciled in a state different from the state in which the business is written) is larger than the number of domestic insurers in every state. On average, 1,357 foreign insurers operate in each state, which means that, on average, foreign insurers comprise a little over 90 percent of the total number of insurers in a state.¹⁵²

If one assumes that states generally charge the same taxes, fees, assessments, fines, and penalties to foreign insurers as to domestic insurers, than states raised \$10.88 billion of the \$12.52 billion in total revenue that states earned from taxes, fees, assessments, fines, penalties, and other sources from foreign insurers.¹⁵³ Most of this \$10.88 billion

149. NAIC 2002 REPORT, *supra* note 112, at 22 and 25.

150. BAIR REPORT, *supra* note 6, at 11-12.

151. NAIC 2002 REPORT, *supra* note 112, at 30 and 39.

152. *Id.*

153. *Id.* at 25 and 39.

could be saved if insurers only had to pay fees and assessments to the state in which they were domiciled. These added costs create barriers to entry and reduce competition in the insurance sector.¹⁵⁴

Compliance costs for other financial services providers are equally daunting. According to banking industry estimates, banking institutions, prior to the 2008 financial crisis, spent approximately \$25 billion annually to comply with federal and state regulations.¹⁵⁵ In the wake of the Dodd-Frank Act and its accompanying regulations, compliance costs for the financial services have gone up.¹⁵⁶ Financial services firms will attempt to pass along to their business and consumer clients the costs that they incur to comply with the existing regulatory regime in the United States. Thus, consumers and the U.S. economy as a whole pay a large price for the current regulatory structure.

These numbers are crude estimates of the compliance costs to financial services firms under the current system. All of these costs would not be eliminated if the United States moved to a single financial services regulator. A closer examination of compliance costs by financial services firms is needed to determine how much they would save or would not be passed along to consumers if duplicative and overlapping regulations were eliminated.

The other avenues of inquiry listed above would help provide a fuller picture of what the costs are of the current system and what costs may arise if the United State were to move to a single financial services regulator. Our preliminary results, however, suggest that costs of regulation are unlikely to be the determining factor in whether the United States should convert its regulatory regime from its current model to a single regulator. Instead, the value added by a single regulator model in other areas, such as consumer protection, probably holds the key as to

154. For example, about 66 percent of the respondents to a recent survey of life insurance providers considered the current state regulatory structure for insurance to impose barriers to entry, particularly for small firms. BAIR REPORT, *supra*, note 6, at 31 and 51-52. Out of 383 companies in the life insurance business that were sent the survey, 129 companies responded.

155. Opening Statement of Chairman Spencer Bachus, Hearing of Financial Institutions and Consumer Credit Subcommittee on the Financial Services Regulatory Relief Act, H.R. 1375, 1 (Mar. 27, 2003).

156. See OCC, Mem. Economic Impact Analysis for Swaps Margin Final Rule (Oct. 16, 2015) (Estimates rule would result in compliance costs of between \$2.8 billion and \$5.2 billion); SEC, Pay Ratio Disclosure, 80 Fed. Reg. 50104, 50161 (Oct. 18, 2015) (Estimates total compliance costs for affected registrants would be approximately \$1.3 billion); CFPB, Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66128, 66295 (Oct. 28, 2015) (Estimates rule will result in compliance costs of up to \$1.2 billion for repository institutions with less than \$10 billion in assets); CFTC, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 636, 692 (Jan. 6, 2016) (Estimates rule would result in compliance costs of up to \$2.05 billion). *But see*, Llewellyn Hinkes-Jones, How Much Did Dodd-Frank Cost? Don't Ask Banks, BNA.com, Feb. 2, 2017, <https://www.bna.com/doddfrank-cost-dont-n57982083211/> (Discusses the difficulties in estimating how much compliance costs have gone up for banks).

whether the United States would benefit from switching regulatory regimes.

APPENDIX A
TOTAL STATE REGULATORY COSTS FOR FINANCIAL SERVICES FOR 2002¹⁵⁷

State	State Regulatory Category	State GDP for Financial Services (millions of constant 2000 dollars) (NAIC)	Annual Total Financial Services Regulators Appropriations (in constant 2000 dollars)	Regulatory Costs per Million Dollars of State GDP for Financial Services (in constant 2000 dollars)	Total Regulatory Costs (in constant 2000 dollars) per person
Alabama	1	\$6,203	\$22,330,377.14	\$3,599.93	\$4.99
Alaska	5	\$884	\$6,243,613.72	\$7,062.91	\$9.75
Arizona	1	\$13,068	\$12,911,389.82	\$988.02	\$2.37
Arkansas	1	\$3,045	\$16,059,340.64	\$5,274.00	\$5.93
California	1	\$88,174	\$199,699,344.99	\$2,264.83	\$5.70
Colorado	5	\$11,444	\$11,197,528.00	\$978.46	\$2.49
Connecticut	2	\$24,272	\$34,268,925.06	\$1,411.87	\$9.91
Delaware	1	\$13,717	\$8,416,645.53	\$613.59	\$10.45
District of Columbia	4	\$3,308	\$11,368,848.32	\$3,436.77	\$19.64
Florida	5	\$34,554	\$70,920,443.29	\$2,052.45	\$4.25
Georgia	1	\$16,989	\$27,465,984.90	\$1,616.69	\$3.19
Hawaii	5	\$1,975	\$13,912,779.20	\$7,044.45	\$11.28
Idaho	2	\$1,531	\$9,202,696.86	\$6,010.91	\$6.85
Illinois	3	\$44,072	\$63,785,404.10	\$1,447.30	\$5.06
Indiana	1	\$10,996	\$12,253,001.96	\$1,114.31	\$1.99
Iowa	5	\$8,863	\$13,708,827.02	\$1,546.75	\$4.67

157. This data is still preliminary for several reasons. First, some states have embedded the division or department that regulates securities in another agency and that agency does not usually provide breakdowns of its budget for each division or department. As a result, the direct costs of financial regulation of securities could not be included and the total direct costs of financial regulation in those states are understated. Second, not all states use the same fiscal year for budgeting purposes and so the time frames for comparison purposes may be off by three to six months. In addition, one state, Oregon, only uses biennium budgets, not annual budgets. CSBS Profile, *supra* note 19, at 35; CAL. DEP'T. FIN. INST. ANN. REP., *supra* note 19, at 24-25; GA DEP'T. OF BANKING AND FINANCE ANN. REP., *supra* note 19; HAW. COMPLIANCE RES. FUND REP., *supra* note 19; IND. DEP'T. OF FIN. INST. ANN. REP., *supra* note 19, at 16; IOWA ANN. REP. OF SUPERINTENDENT OF BANKING, *supra* note 19, at 27; MISS. DEP'T. BANKING & CONSUMER FIN. ANN. REP., *supra* note 19, at 12-14; 2002 N.Y. BANKING DEP'T ANN. REP., *supra* note 19, at 1 (2002); S.C. BOARD OF FIN. INST. ANN. ACCOUNTABILITY REP., *supra* note 19; VT ANN. REP. INS. COMM'R, *supra* note 19, at 10; WASH. DEP'T. FIN. INST. ANN. REP., *supra* note 19, at 2; W.V. ANN. REP. FIN. INST., *supra* note 19, at 14, 18, 23; State of Illinois Department of Financial and Professional Regulation website, *supra* note 19; MICH. OFF. OF FIN. & INS. SERVICES, ANN. REPORT 2003, *supra* note 71; NAIC 2002 REPORT, *supra* note 112.

State	State Regulatory Category	State GDP for Financial Services (millions of constant 2000 dollars) (NAIC)	Annual Total Financial Services Regulators Appropriations (in constant 2000 dollars)	Regulatory Costs per Million Dollars of State GDP for Financial Services (in constant 2000 dollars)	Total Regulatory Costs (in constant 2000 dollars) per person
Kansas	1	\$5,225	\$16,197,316.00	\$3,099.96	\$5.97
Kentucky	2	\$5,551	\$32,012,256.13	\$5,766.93	\$7.83
Louisiana	2	\$5,265	\$26,956,899.89	\$5,120.02	\$6.03
Maine	5	\$2,565	\$8,477,778.92	\$3,305.18	\$6.54
Maryland	1	\$12,978	\$26,815,809.80	\$2,066.25	\$4.93
Massachusetts	3	\$29,781	\$19,356,364.58	\$649.96	\$3.01
Michigan	6	\$19,244	\$35,239,024.58	\$1,831.17	\$3.51
Minnesota	5	\$18,105	\$13,007,782.57	\$718.46	\$2.59
Mississippi	1	\$2,857	\$10,159,872.28	\$3,556.13	\$3.55
Missouri	1	\$10,574	\$18,989,886.82	\$1,795.90	\$3.34
Montana	4	\$1,113	\$4,904,180.16	\$4,406.27	\$5.39
Nebraska	2	\$4,710	\$11,831,512.08	\$2,512.00	\$6.85
Nevada	3	\$6,095	\$6,778,683.80	\$1,112.17	\$3.12
New Hampshire	1	\$3,830	\$8,147,964.73	\$2,127.41	\$6.40
New Jersey	3	\$30,475	\$40,868,542.89	\$1,341.05	\$4.76
New Mexico	2	\$1,900	\$5,329,932.43	\$2,805.23	\$2.87
New York	1	\$126,541	\$167,385,284.21	\$1,322.78	\$8.73
North Carolina	1	\$27,755	\$36,651,877.18	\$1,320.55	\$4.41
North Dakota	1	\$1,227	\$5,760,504.20	\$4,694.79	\$9.09
Ohio	2	\$26,519	\$41,557,524.72	\$1,567.08	\$3.64
Oklahoma	1	\$4,581	\$15,043,242.95	\$3,283.83	\$4.31
Oregon	5	\$6,204	\$16,420,736.64	\$2,646.80	\$4.66
Pennsylvania	1	\$29,886	\$38,518,620.81	\$1,288.85	\$3.13
Rhode Island	5	\$4,509	\$5,550,010.53	\$1,230.87	\$5.19
South Carolina	1	\$5,423	\$9,003,478.98	\$1,660.24	\$2.20
South Dakota	5	\$4,421	\$2,649,733.84	\$599.35	\$3.49
Tennessee	4	\$10,528	\$18,737,637.28	\$1,779.79	\$3.24
Texas	1	\$45,534	\$72,200,359.22	\$1,585.64	\$3.32
Utah	1	\$6,144	\$10,120,274.90	\$1,647.18	\$4.35
Vermont	5	\$1,072	\$6,487,875.44	\$6,052.12	\$10.53

State	State Regulatory Category	State GDP for Financial Services (millions of constant 2000 dollars) (NAIC)	Annual Total Financial Services Regulators Appropriations (in constant 2000 dollars)	Regulatory Costs per Million Dollars of State GDP for Financial Services (in constant 2000 dollars)	Total Regulatory Costs (in constant 2000 dollars) per person
Virginia	5	\$17,949	\$31,473,173.48	\$1,753.48	\$4.32
Washington	2	\$12,533	\$20,442,986.73	\$1,631.13	\$3.37
West Virginia	1	\$1,748	\$8,034,798.03	\$4,596.57	\$4.45
Wisconsin	2	\$12,228	\$16,174,547.12	\$1,322.75	\$2.97
Wyoming	1	\$594	\$2,875,164.59	\$4,840.34	\$5.76
Total		\$788,759.00	\$1,343,906,789.07		

APPENDIX B
TOTAL STATE BANKING AND INSURANCE REGULATORY COSTS FOR
2002¹⁵⁸

State	State Regulatory Category	Annual Total Banking & Insurance Regulatory Appropriations (in constant 2000 dollars)	Total Banking and Insurance Regulatory Appropriations per Million Dollars of Fin. & Ins. State GDP (in constant 2000 dollars)	Total Banking & Insurance Regulatory Costs (in constant 2000 dollars) per person
Alabama	1	\$19,881,129.46	\$3,205.08	\$4.44
Alaska	5	\$6,243,613.72	\$7,062.91	\$9.75
Arizona	1	\$8,531,892.22	\$652.88	\$1.57
Arkansas	1	\$14,247,598.58	\$4,679.01	\$5.26
California	1	\$175,310,886.96	\$1,988.24	\$5.01
Colorado	5	\$11,197,528.00	\$978.46	\$2.49
Connecticut	2	\$34,268,925.06	\$1,411.87	\$9.91
Delaware	1	\$7,824,331.16	\$570.41	\$9.71
District of Columbia	4	\$11,368,848.32	\$3,436.77	\$19.64
Florida	5	\$70,920,443.29	\$2,052.45	\$4.25
Georgia	1	\$27,465,984.90	\$1,616.69	\$3.19
Hawaii	5	\$9,546,830.74	\$4,833.84	\$7.74
Idaho	2	\$9,202,696.86	\$6,010.91	\$6.85
Illinois	3	\$63,785,404.10	\$1,447.30	\$5.06
Indiana	1	\$11,412,939.75	\$1,037.92	\$1.85
Iowa	5	\$12,786,100.20	\$1,442.64	\$4.36
Kansas	1	\$13,433,368.29	\$2,570.98	\$4.95
Kentucky	2	\$29,747,524.72	\$5,358.95	\$7.28
Louisiana	2	\$26,956,899.89	\$5,120.02	\$6.03
Maine	5	\$8,477,778.92	\$3,305.18	\$6.54
Maryland	1	\$24,827,499.10	\$1,913.05	\$4.56

158. CSBS Profile, *supra* note 19, at 35; CAL. DEP'T. FIN. INST. ANN. REP., *supra* note 19, at 24-25; GA DEP'T. OF BANKING AND FINANCE ANN. REP., *supra* note 19; HAW. COMPLIANCE RES. FUND REP., *supra* note 19; IND. DEP'T. OF FIN. INST. ANN. REP., *supra* note 19, at 16; IOWA ANN. REP. OF SUPERINTENDENT OF BANKING, *supra* note 19, at 27; MISS. DEP'T. BANKING & CONSUMER FIN. ANN. REP., *supra* note 19, at 12-14; 2002 N.Y. BANKING DEP'T ANN. REP., *supra* note 19, at 1 (2002); S.C. BOARD OF FIN. INST. ANN. ACCOUNTABILITY REP., *supra* note 19; VT ANN. REP. INS. COMM'R, *supra* note 19, at 10; WASH. DEP'T. FIN. INST. ANN. REP., *supra* note 19, at 2; W.V. ANN. REP. FIN. INST., *supra* note 19, at 14, 18, 23; State of Illinois Department of Financial and Professional Regulation website, *supra* note 19; MICH. OFF. OF FIN. & INS. SERVICES, ANN. REPORT 2003, *supra* note 71; NAIC 2002 REPORT, *supra* note 112.

State	State Regulatory Category	Annual Total Banking & Insurance Regulatory Appropriations (in constant 2000 dollars)	Total Banking and Insurance Regulatory Appropriations per Million Dollars of Fin. & Ins. State GDP (in constant 2000 dollars)	Total Banking & Insurance Regulatory Costs (in constant 2000 dollars) per person
Massachusetts	3	\$19,356,364.58	\$649.96	\$3.01
Michigan	6	\$35,239,024.58	\$1,831.17	\$3.51
Minnesota	5	\$13,007,782.57	\$718.46	\$2.59
Mississippi	1	\$10,159,872.28	\$3,556.13	\$3.55
Missouri	1	\$18,206,724.32	\$1,721.84	\$3.21
Montana	4	\$4,406,224.49	\$3,958.87	\$4.84
Nebraska	2	\$11,831,512.08	\$2,512.00	\$6.85
Nevada	3	\$6,778,683.80	\$1,112.17	\$3.12
New Hampshire	1	\$7,472,263.06	\$1,950.98	\$5.87
New Jersey	3	\$33,080,776.70	\$1,085.51	\$3.86
New Mexico	2	\$5,329,932.43	\$2,805.23	\$2.87
New York	1	\$167,385,284.21	\$1,322.78	\$8.73
North Carolina	1	\$33,707,442.05	\$1,214.46	\$4.05
North Dakota	1	\$4,733,236.97	\$3,857.57	\$7.47
Ohio	2	\$41,557,524.72	\$1,567.08	\$3.64
Oklahoma	1	\$12,054,869.54	\$2,631.49	\$3.46
Oregon	5	\$16,420,736.64	\$2,646.80	\$4.66
Pennsylvania	1	\$32,000,099.71	\$1,070.74	\$2.60
Rhode Island	5	\$5,550,010.53	\$1,230.87	\$5.19
South Carolina	1	\$9,003,478.98	\$1,660.24	\$2.20
South Dakota	5	\$2,649,733.84	\$599.35	\$3.49
Tennessee	4	\$17,578,182.86	\$1,669.66	\$3.04
Texas	1	\$63,001,694.08	\$1,383.62	\$2.89
Utah	1	\$9,018,400.75	\$1,467.84	\$3.88
Vermont	5	\$6,487,875.44	\$6,052.12	\$10.53
Virginia	5	\$31,473,173.48	\$1,753.48	\$4.32
Washington	2	\$17,446,398.65	\$1,392.04	\$2.87
West Virginia	1	\$8,034,798.03	\$4,596.57	\$4.45
Wisconsin	2	\$16,174,547.12	\$1,322.75	\$2.97
Wyoming	1	\$2,635,864.99	\$4,437.48	\$5.28
Total		\$1,259,220,737.75		