

Transparency and Confidentiality in the Post Financial Crisis World -- Where to Strike the Balance?

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Existing supervisors, as well as the new institutions that the Dodd-Frank Act created, collect and aggregate an unprecedented amount of commercially sensitive financial information. Although financial institutions and their supervisors are increasingly transparent in the post financial crisis era, some information that financial institutions provide regulators should be protected from disclosure. Untimely public disclosure of sensitive and competitive information—through FOIA requests, third-party subpoenas, or Congress—could undermine the goals of the Dodd-Frank Act by creating upsetting markets and making financial institutions reluctant to disclose data to the government voluntarily. The Article argues that when it passed the Dodd-Frank Act, Congress, out of an understandable desire to promote transparency in the financial system, created an intolerable level of uncertainty as to whether information that regulators gather will be kept confidential. The Article argues that regulators and Congress should act to strike a proper balance between transparency and confidentiality rather than allowing courts to determine the legally required level of disclosure in an unpredictable and ad hoc fashion.

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