Depositors – Not Taxpayers – Will Take the Hit for the Next '2008' Crash Because Major Banks May Use the 'Bail-In' System

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Global Research, August 08, 2018

Region: USA
Theme: Global Economy

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The Federal Reserve's recent undermining of the Volcker Rule brings depositors closer than ever to a Cyprus-style "bail-in" in another 2008 crash. And all signs indicate another is on the way. This time, however, many U.S. banks may confiscate deposits to stay solvent because the Dodd-Frank law bars them from touching taxpayers' monies. Indeed, most major banks have been planning the "bail-in" tactic ever since Dodd-Frank.

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What's likely to happen to depositors' money in a major commercial bank in another 2008 crash? And for months, financial pundits and experts such as William Cohen have been warning an even bigger one is on its way because nothing has essentially changed. If it's one of those giant too-big-to-fail types that caused that global catastrophe, chances are they've been planning what's called a "bail-in" system to seize depositors' money—temporarily, of course. But whether depositors want to withdraw $50 from the ATM for the weekend, write a cheque at the supermarket, or cash in a CD, they'll be shut out by their banks.

And when the furious confront those banks, they'll be told it's an emergency and, until Monday, would they like to start procedures with the FDIC for a refund? Or accept the bank's IOU (stocks) *immediately*for it? (With a failing bank, stocks (aka *"equities")* would be as worthless as a Confederate dollar after Appomattox.)

Forget joining fellow depositors armed with baseball bats and AK-16s to storm the banks and retrieve money on Monday. Banks will be closed. Probably ringed by paddy wagons and well-armed police with state-of-the-art equipment to handle any "disturbance."

Worse, depositors relying on the FDIC (Federal Deposit Insurance Corporation), banking's insurer since 1933 to protect their money, probably will get none in these times. Although the law permits it to borrow $100 billion from the Treasury in an economic crisis—and face taxpayer rage once again—at the end of March, the fund had $56 billion in its coffers. It's also expected to cover deposits of at least $26 billion from both domestic and foreign customers, but also derivatives that were at $550 trillion by February.

But the new bank bill (S. 2155), also known as the "bank lobbyists' bill", just signed into law by president Trump says stress tests now would be "periodic" and not required for banks holding less than $100 billion.

As financial writer **Dean Baker** described the bill:

> [It] rolls back major provisions of the Dodd-Frank financial regulations of 2010, allowing banks to engage in riskier investment strategies and to hide discriminatory practices.

Written to protect bank customers after the 2008 crash, the Dodd-FrankWall Street Reform and Consumer Protection Act was designed

> To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail" [banks], to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

In other words, in a financial collapse serious enough to cause Great Depression II, banksare forbidden to use taxpayer revenues resting in the Treasury's vaults because of public rage in 2009 over making $700 billion of their tax monies available to banks.

Banks were then required by the FDIC and the Federal Reserve Board to hold enough money in their vaults to cover a sudden major shortage. It was guaranteed and enforced by annual and semi-annual stress-test monitoring for solvency in a financial crisis to prevent another "2008."

But banks grew restive about the expensive and onerous time and energy spent to comply in the years since, to say nothing about being hamstrung in investments—particularly derivatives. And so such protection was significantly compromised a few days ago by the Federal Reserve Board after "intensive pressure" by the banking lobby.

It voted unanimously to "loosen restrictions on high-risk trading (aka derivatives)" by the nation's major banks. This involves speculation. Banks were forbidden to use depositors' money under Dodd-Frank law (DFA). But as the Fed's chairman defended this dangerous step: "Our goal is to replace overly complex and inefficient requirements with a more streamlined set of requirements."

The FDIC, and four other regulatory agencies will have to approve the change by fall and will take public commentin the next 60 days.

That's the scenario planned for depositors by the banking industry on how to handle "the next one." It makes a bail-in possible with depositors' money.

A little history on the bail-in is in order.

This tactic was first mentioned internationally in a 2010 report to the G-20 nations as a method to prevent bank insolvency. Because the U.S. is part of the G-20, it opened the vista of subverting DFA by any creative means, plainly the practicality of immediately seizing depositors' funds in a crash and getting away with it.

Theory turned to practice in 2012 on the Mediterranean island of Cyprus to prevent the collapse of its banking system after heavy investments in Greek bonds went sour. A *portion*of a depositor's account was "levied" supposedly once only at the start: 9.9% on deposits over €100,000, 6.7% under €100,000. The banks then closed for a brief "holiday.

News of this new "rescue" source instantly spread throughout the banking worldabout how to be solvent on the *next*business day after a failure.

One of the bail-in advantages pointed out was that unlike the lengthy timeframe of bankruptcy proceedings, solvency can be achieved that quickly because the depositors' monies are at hand. Such speed would also prevent bank-run riots. And any lawsuits will be dealt with far down the road.

This *fait accompli* tactic was suggested in June 2013 by the Reserve Bank of New Zealand's implemental plan for a bail-in:

> …the bank can be closed promptly at any time of the day and on any day of the week, freezing in full all liabilities and preventing access by customers and counterparties to their accounts.

To say the least, American banking officials warmed to the bail-in. After all, once a deposit is made—checking, savings, CDs, and other financial deals—it's legally the bank's property. It's used for making for loans, paying overhead—and investing in derivatives or other avenues to swell profits.

Legally, depositors are also considered an "unsecured creditor," the last in line to get what's left after a bankruptcy receiver doles out the remaining assets to several parties first. In the order of restitution priorities they are: administration, the government, employee wages/commissions, benefit/pension plans, general/senior liabilities, junior obligation managers, executive/directors' salaries, shareholders, junior partners, and "other" equity holders. So a long, long line of creditors come before depositors.

In 2016, banks could only seize deposits that were *more* than the FDIC's $250,000 protection levels per account. But if a bank is about to fold, past behavior of too many officials indicate these days they'll confiscate *all*deposits now and deal with consequences later. By then, of course, they might merge with a bigger bank as did 65 of them last year, among them community banks.

How could a bail-in be possible in the U.S. in view of one of the DFA Title II sections (203:2c) that seemed to consider the depositors' plight? The law required

> …a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities.

But all that was asked involved a "*description*," not *protection*of the nation's millions of depositors.

The answer is that bail-in designers—and those bankers—regarded depositors as ignorant, unable (or unwilling) to follow banking's changing and complex laws, much less read or understand the "fine-print" on monthly banking statements. For instance, how many know about the new S. 2155 law or its implications to their lives? Or know the now-subverted Volcker rules in the Dodd-Frank law?

They don't because information is too complicated for most depositors to understand. Too, the mainstream media and its advertisers obviously believe viewers aren't interested even if they were to boil key points down for comprehension. Their audiences are mostly "plain folk," including millions of bank depositors. The media rationale seems to be that it won't adversely affect their advertisers despite a heavy loss of customers in a crash. Or they fear the wrath of ferocious banking lobbyists and lawyers if they make explanations simple for most depositors to understand.

For instance, back in 2013 did the mainstream media feature financial writer Ellen Brown, among other columnists, warning depositors that

> … our deposits, our pensions, and our public investment funds will all be subject to confiscation in a bail-in… If your bank account or pension gets wiped out, you could wind up in the street or sharing food with your pets.

Fewer still were likely to watch C-Span for even one of Sen. Elizabeth Warren's three recent impassioned speeches begging Senate colleagues to vote "no" on passage of S. 2155, with its cynical title "Economic Growth, Regulatory Relief, and Consumer Protection Act." In the third one, she lamented:

> Now, as the bill is on the verge of passing the Senate, I want to stop and just ask: why? Who is asking us to do this? Our constituents hate it—a recent poll showed that an overwhelming majority of Americans oppose this bill. So why is it that the only thing Washington can agree to do on a bipartisan basis in this Congress is to help out giant banks?

I'll tell you why. Washington's amnesia is legendary. We go through the same cycle like clockwork. When the economy is looking good, lobbyists flood Congress and tell politicians it's perfectly safe to roll back the rules on the big banks. It's always the same arguments: America needs more lending for more economic growth; our country is losing ground to our competitors; banks have learned their lesson and don't need the rules to behave responsibly. And the kicker: What could possibly go wrong?

But that "bipartisan" bill seriously affecting depositors' money passed both Houses: 67-31 in the Senate, aided by 15 Democrats, and 225-158 in the House, thanks to 33 Democrats. Those who voted "aye" knew that most depositors voting in the November mid-terms will never go to the trouble of finding out who in Congress made it possible for banks to seize their money in another crash. The roll-call vote is listed in the links of this paragraph for depositors who want to contact or confront members of their Congressional representatives.

Moreover, most depositors seem to be considered by bankers to be impotent because to sue a bank requires hiring an attorney to fight the institution's legion of lawyers and endless court postponements. Even successful class-action suits not only have taken years to travel through the lower courts to settle, but a U.S. Supreme Court ruling *for* class-action plaintiffs against a corporation these days seems unlikely given 5-4 verdicts in cases as recent as *Epic Systems v. Lewis* forcing employees to settle issues by having signed pre-work arbitrations agreements rather than using post-hiring collective action against management.

Also, a favorable ruling would mean reimbursing depositors and require *another*taxpayer bailout, or set off a multitude of bank failures plunging the economy into that Great

Depression II. Given that choice, the Supreme Court probably will let depositors take the fall in yet another 5-4 decision.

Up to the bail-in tactic, depositors' monies have been considered a sacred trust offered by the banks. It's not like, say, a home or car loan in which borrowers know they face the risk of repossession if they fail to meet payments.

By contrast, *depositors*hand the banks their money, trusting it's safer than under the mattress. It also earns interest because the *bank*is the borrower. Interest currently is about 0.01% these days, provided it's not wiped out by a $5 monthly maintenance fee for the usual mandated balance of $300 for passbook savings accounts.

By some twisted logic, however, bankers don't want see the difference between a mortgage holder and depositor. "Let the buyer beware" still seems to be the governing philosophy. Either transaction means the bank owns the house *and* deposit. Despite big promotions (perhaps a toaster) lavished on the two different customers, the ultimate treatment is comes across as contempt—especially revealed in banks now considering use of the bail-in on depositors.

So what should depositors do to protect their money from a bail-in.

Both senators Warren and Jeff Merkley were contacted after Trump signed the bill into law and asked if they planned to hopper a stand-alone bill protecting depositors in the event of the next bank crash. So far, neither has responded.

The obvious solution for depositors is to move their money to a credit union, despite the hassle of having to notify direct-depositors for Social Security, pension funds, or other incoming sums. But most credit unions take care of such switches.

Deposits up to $250,000 have been insured since 1970 by the National Credit Union Share Insurance Fund. And as my Oregon credit union just pointed out to us *members*:

> Credit unions might look like banks, but we're very different. Other financial institutions are governed by stockholders who focus on making a profit. But not credit unions. We're governed by members; we're member focused. That means we're focused on achieving more together, not making profits for stockholders. The difference is how we're governed.

The only other alternatives for depositors in a bail-in still seem to be the hiding the cash under the mattress or a coffee can behind the beans and peas.

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