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# Dodd-Frank Bill Reshapes Businesses

July 15, 2010

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**Introduction**

The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Bill") represents the most ambitious and thorough regulatory reform of the laws governing the financial industry since the Great Depression. The Bill touches every domestic financial entity and affects most foreign financial entities. While most of the Bill's provisions are aimed at large, complex financial institutions, smaller institutions are affected by many of the regulatory changes as well. As many of the Bill's provisions give a basic structure of reform and leave the regulators to fill in the details over the next 6 to 18 months, the process of implementing the Bill's provisions promises to be a dynamic one. Consequently, the final shape and practical impact of the Bill are still years from being understood.

The following is an overview of the Bill as passed by Congress. In the coming weeks, we plan to focus on specific areas of legislation that are of particular interest to our clients. Additionally, we will continue to update these legal summaries as the substance of financial reform emerges from the actions of regulators.

**Title I - Financial Stability**

***Financial Stability Oversight Council***

- Creates a Financial Stability Oversight Council ("FSOC") with authority over bank holding companies with assets over $50 billion and nonbank financial companies which the FSOC deems a systemic risk to financial stability.
  - Once designated systemically important, nonbank financial companies have 180 days to register with the Fed.
- The FSOC is charged with the task of identifying risks and emerging threats to the financial stability of the United States arising from large bank holding companies and systemically important nonbank financial companies and responding with appropriate regulation to reduce the risk from their size and activities.
  - U.S. and foreign nonbank firms will be identified by the FSOC as systemically important by a two-thirds vote. These firms will be brought under the purview of the Fed and subject to prudential standards.
- The Council will recommend enhanced supervision and prudential standards which will be implemented by the Fed. Examples of enhanced prudential standards include risk-based capital, leverage limits, liquidity requirements, resolutions plans, concentration limits, contingent capital, enhanced public disclosures, and overall risk management provisions. Rules implementing these standards must be issued within 18 months of enactment of the Bill.
  - The Fed, in consultation with the Council, may exempt a systemically important company from the risk-based capital requirements and leverage limits if such requirements are deemed inappropriate because of the company's activities, but must apply other standards that result in similarly stringent controls.

    - As for concentration limits, the Fed must prescribe standards to limit the risks associated with the failure of any individual company to a systemically important firm. Thus, the rules issued by the Fed must prohibit credit exposure of a systemically important firm to any unaffiliated institution that exceeds 25% of capital stock and surplus of the systemically important firm.
- The Council is comprised of nine voting members led by the Treasury Secretary. The other voting members include: the heads of the Federal Reserve Board of Governors, the Office of Comptroller of the Currency ("OCC"), the Consumer Financial Protection Bureau ("CFPB"), the Securities and Exchange Commission ("SEC"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Housing Finance Administration ("FHFA"), the National Credit Union Administration ("NCUA"), and an independent insurance expert appointed by the President for a 6-year term. There are also five nonvoting members including: the Directors of the Office of Financial Research and the Federal Insurance Office, a state insurance commissioner, a state banking supervisor, and a state securities commissioner.

***Other Provisions***

- **Forced Downsizing.** If the Fed determines that a large bank holding company or nonbank financial institution under its supervision poses a serious threat to domestic financial stability, the Fed may, upon a two-thirds vote of the FSOC, require the company to downsize by ceasing activities, selling assets, or a combination of the two.
- **Research.** The Office of Financial Research ("OFR") will have the power to subpoena financial information from institutions under the supervision of the Fed. The OFR may require periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing whether the company itself, or any financial activity in market in which it participates, is systemically important.
- **Risk Committees.** Publicly traded bank holding companies of more than $10 billion and nonbank financial institutions supervised by the Fed must create risk committees made up of independent directors and at least one "risk expert." The Fed may subject bank holding companies of less than $10 billion to the same requirements. These rules must be issued within 12 months of enactment of the Bill and must take effect within 15 months of the transfer of OTS duties to the Fed, the FDIC, and the OCC.
- **Limited Leverage.** Systemically important institutions will be subjected to a leverage limit of 15-to-1.
- **Collins Amendment.** The minimum capital requirements for bank holding companies cannot be less stringent than those for banks. Trust preferred securities are excluded from Tier 1 capital calculations; however, banks of less than $500 million are exempt. Further, trust preferred securities issued before May 19, 2010 by bank holding companies of less than $15 billion are grandfathered in.
    - The Bill explicitly and permanently grandfathers all TARP preferred issuances, regardless of the size of the institution.

**Title II – Orderly Liquidation Authority**

- **FDIC As Receiver.** In an answer to the "too-big-to-fail" issue that plagued Congress during the financial crisis, the Treasury Secretary is given the authority to appoint the FDIC as receiver of any financial company if certain conditions are satisfied.
- **Findings Necessary to Trigger.** For this provision to be triggered, the Treasury Secretary, upon the recommendation of two-thirds of the Federal Reserve Board and two-thirds of the FDIC Board, and in consultation with the President must make the following findings: (i) the financial company is "in default or danger of default;" (ii) the failure of the financial company and its resolution under otherwise applicable insolvency law would have serious adverse effects on the financial stability of the U.S.; (iii) no viable private sector alternate is available to prevent the default of the firm; (iv)

any effect of using the orderly liquidation authority on the claims or interests of creditors, counterparties, and shareholders would be appropriate; (v) the use of the orderly liquidation authority would avoid or mitigate the adverse effects that would result from resolving the company under otherwise applicable insolvency law; (vi) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to being converted by regulatory order; and (vii) the company meets the definition of "financial company" contained in the statute.

- **FDIC Authority.** The FDIC would be given the authority to unwind large, failing financial institutions. The Treasury will supply bridge loans to cover the initial costs of winding down the failed firm. The FDIC would be required to repay its borrowings from Treasury within 60 months or such longer period as approved by Treasury.
    - The FDIC would be authorized to transfer all or any portion of the assets or liabilities of the financial company to a third party at fair value. If a third party buyer for fair value cannot be found, the FDIC would have the authority to establish a temporary bridge financial company to hold the assets worth preserving until a buyer at fair value could be found.
- **Shareholder and Creditor Losses.** The shareholders and creditors of the failed institution must bear losses up to the amount they would have suffered under a Chapter 7 bankruptcy of the firm.
- **Recoupment.** If after selling of the firm's assets the government has incurred a loss, regulators will recoup these losses by assessing fees on financial firms with more than $50 billion in assets.

**Title III – Transfer of Powers to the Comptroller of the Currency, the Corporation, and the Board of Governors**

***OTS Merged into OCC***

- The OTS will be merged into the OCC and will cease to exist. The OCC will oversee the federal thrift charter, while the Fed will oversee savings and loan holding companies, in addition to bank holding companies and state-chartered banks. This merger is to occur one year after enactment of the Bill.

***Deposit Insurance Provisions***

- **Assessment Base Calculation.** The Bill changes the assessment base calculation. Previously, the assessment base was calculated as domestic deposits minus tangible equity. The new equation substitutes domestic deposits with the average consolidated total assets minus average tangible equity.
    - This change shifts a larger amount of the deposit insurance fees to larger financial institutions, which fund a greater percentage of their balance sheet through non-deposit liabilities, and will save smaller banks an estimated $4.5 billion over the next three years.
- **Increase in the Minimum Reserve Ratio.** The minimum reserve ratio will be increased from 1.15 to 1.35. However, banks of under $10 billion are exempt from any premium increases which occur as a result of an increase in the reserve ratio.
- **Deposit Insurance Coverage.** The Bill makes permanent the temporary increase in the maximum amount of deposit insurance coverage per depositor to $250,000.
- **Transaction Accounts.** The Bill extends the unlimited deposit insurance coverage for non-interest bearing transaction accounts for two years.

**Title IV – Regulation of Advisors to Hedge Funds and Others**

***Investment Advisor Registration***

- **Registration Requirement.** Under the Bill, large hedge and private equity funds are forced to register with the SEC and come under federal oversight for the first time, though venture capital funds are exempt.
- **Elimination of Exemptions.** The Bill eliminates the "private investment advisor" exemption contained within Section 203(b)(3) of the Investment Advisers Act and the intrastate registration exemption for investment advisors with any private fund client.
  - The Bill requires the SEC to provide an exemption from registration to any investment adviser that acts solely as an adviser to private funds and has assets under management in the U.S. of less than $150 million. Such advisors will be subject to recordkeeping and reporting requirements as determined by the SEC.
- **Private Fund Definition.** The Bill defines the term "private fund" to be any fund that would be an investment company but for the exemptions contained in Section 3(c)(1) or 3(c)(7) of the Investment Company Act.
- **Advisors to Venture Capital Funds.** The Bill exempts from SEC registration advisors that act as an investment advisor solely to one or more venture capital funds. The SEC has one year from the date of enactment to issue final rules defining "venture capital fund" for purposes of this exemption. Advisors to solely venture capital funds would be subject to recordkeeping and reporting requirement promulgated by the SEC.
- **Minimum Assets for SEC Adviser Registration.** For investment advisors that do not fall under an exemption from registration the minimum assets under management to register with the SEC is $100 million. However, if an advisor has $25 million in assets under management and would not be subject to registration and examinations by their home states or would otherwise be required to register with 15 or more states, they may also register with the SEC.

***Other Provisions***

- **Accredited Investor Definition Modification.** The Bill provides that for the next five years the net worth threshold for determining an "accredited investor" is $1 million, excluding the value of the investor's primary residence. Thereafter, the SEC is required to review the definition of the term "accredited investor" and adjust the threshold amount to take into account inflation.
- **Qualified Client Standard to be Adjusted for Inflation.** Within one year of enactment, and periodically thereafter, the SEC must adjust for inflation any dollar threshold contained in rules permitting an investment advisor to charge certain clients performance-based fees, in spite of the Investment Advisor Act's general prohibition against doing so.

**Title V – Insurance**

- **Federal Insurance Office.** The Bill establishes the Federal Insurance Office ("FIO"), which is housed within the Treasury Department. The FIO is charged with monitoring all aspects of the insurance agency and identifying issues or gaps in regulation that could lead to systemic risk. Based upon its findings, the FIO will make recommendations to the FSOC regarding insurance institutions that pose a systemic risk and should be subject to greater regulatory oversight. The FIO will also coordinate federal efforts to regulate the insurance industry. Finally, the FIO will develop federal policy on prudential aspects of international insurance matters.

**Title VI – Improvements to Regulation of Bank and Savings Association Holding Companies and Depository Institutions**

- **Moratorium on Nonbank Applications.** The Bill imposes a three year moratorium on deposit insurance applications for new credit card banks, industrial loan companies, and trust banks owned by commercial companies.
- **Credit Exposure Determination.** The Bill also expands the affiliate transaction rules by modifying the definition of a "covered transaction" to include repurchase agreements, derivatives transactions, and securities borrowing and lending. With respect to national banks, this new definition could lead to lower lending limits as these items are now included in their credit exposure. For state banks, only derivatives transactions are included in a bank's credit exposure.

***Additional Provisions for Holding Companies***

- **Source of Financial Strength.** Provisions in the Bill require bank holding companies and savings & loan holding companies to serve as a "source of financial strength" for their depository institution subsidiaries. Regulations implementing this provision must be issued within one year of enactment.
    - "Source of financial strength" is defined as the ability of a company that directly or indirectly owns or controls an insured depository financial institution to provide financial assistance to such depository institution in the event it experiences financial distress.
- **Capitalization Requirement.** Bank holding companies and savings & loan holding companies must remain well-capitalized and well-managed on a consolidated basis at the holding company level as well as at the depository institution level, in order to engage in the expanded financial activities permissible only for a financial holding company.
- **Counter-Cyclical Capital and Leverage Limits.** The Bill establishes counter-cyclical capital and leverage requirements so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction.

***The Volker Rule***

- **Generally.** The bill adopts a modified version of the "Volker Rule" ban on proprietary trading by banks. Generally, the Rule prohibits banks from engaging in proprietary trading or holding or obtaining an interest in a hedge fund or a private equity fund.
- **Permitted Activities.** Banks are permitted to invest up to 3% of their Tier 1 capital in hedge funds and private equity funds, but a bank's interest may not exceed 3% of the assets of any single hedge or private equity fund. Banks are also permitted to invest in investments or entities backed by the federal government such as U.S., state, and local debt, as well as obligations of Ginnie Mae, Fannie Mae, Freddie Mac and other government entities. The Bill permits banks to engage in hedging activities.
- **Nonbank Firms and Capital Requirements.** Nonbank financial firms that are subject to Fed supervision are subject to additional capital requirements and quantitative limits with respect to their proprietary trading or investments in or sponsorship of a hedge fund or private equity fund.

**Title VII – Wall Street Transparency and Accountability**

***Derivatives Regulation***

- **Trades Cleared Through Central Clearinghouse.** For the first time the derivatives markets will be subject to federal regulation and oversight. The bill requires most derivatives trades, those that are standardized, to be cleared through a central clearinghouse and be exchange-traded. The Bill imposes more stringent capital and margin requirements on those derivatives trades that are not required to be traded on an exchange.

- **Exemptions.** The Bill contains limited exemptions from these expansive regulations for commercial end-users of derivatives. Further, banks that engage in swaps with their customers in connection with providing loans and banks that use swaps to hedge their own interest rate risk will not trigger the definition of "swaps dealer," allowing them to bypass a host of regulatory burdens.

**Title VIII - Payment, Clearing, and Settlement Supervision**

- **Designation as Systematically Important.** The Bill allows for the designation of systematically important financial market utilities and payment, clearing, and settlement activities.
    - These financial market utilities include clearing organizations, but exclude exchanges and alternative trading systems with respect to pre-trade activities, such as trade comparison services.
    - Designated financial market utilities are provided access to the Fed's discount window in unusual or extraordinary circumstances and upon showing by the designated financial market utility that it is unable to secure adequate credit accommodations from other banking institutions.
    - The Bill requires designated financial market utilities to provide notice to their prudential regulator of any proposed changes to their rules, procedures, or operations that could affect the risks presented by the utility. Under certain circumstances, the change may be disallowed by the regulators.
    - To be designated as systematically important requires a two-thirds vote by the FSOC, including an affirmative vote by the Chairperson of the Council.

**Title IX – Investor Protections and Improvements to the Regulation of Securities**

- **Proxy Access Requirements.** Section 971 of the Bill amends Section 14(a) of the 1934 Act to give the SEC the ability to require a listed company to (i) include in its solicitation of proxy, a director nominee submitted by a shareholder and (ii) follow a certain procedure regarding the solicitation.
    - Section 971 authorizes the SEC to issue rules allowing shareholders to use proxy solicitation materials supplied by a company for the purpose of nominating individuals to serve on the board of directors.
- **Disclosures Regarding Chairman and CEO Structures.** Section 972 of the Bill amends Section 14B of the 1934 Act to require the SEC to issue rules requiring a listed company to disclose in its annual proxy statement the reasons why the company has chosen:
    - (i) the same person to serve as chairman of the board of directors and chief executive officer, or
    - (ii) different individuals to serve as chairman of the board and chief executive officer.
- **Shareholder Vote on Executive Compensation Disclosures.** Section 951 of the Bill amends the 1934 Act by inserting Section 14A, requiring every public company to do the following:
    - (i) at least once every three years, the company must hold a shareholder advisory vote to approve the compensation of executives as disclosed pursuant to the executive compensation requirements of Section 229.402 of title 17;
    - (ii) at least once every six years, a public company must include in its proxy statement a separate resolution for shareholder vote to determine whether votes on executive compensation will occur every 1,2, or 3 years; and
    - (iii) in any proxy solicitation for a shareholder meeting, at which shareholders are asked to approve an acquisition, merger, consolidation, proposed sale or other disposition of substantially all assets of the company, the person making the solicitation must disclose any agreements that that person has with any executive officer of the company or the acquirer concerning compensation relating to the acquisition.

        - Such compensation agreements are subject to shareholder approval.
    - Section 951 provides that any shareholder vote under this section is nonbinding and will not overrule a decision by the company or its board.
- **Compensation Committee Independence.** Section 952 of the Bill adds Section 10(C) of the Exchange Act, which requires the SEC to direct the securities exchanges to prohibit the listing of any security of an issuer that does not comply with the compensation committee independence requirements.
    - The Bill also requires that the SEC rules permit a securities exchange to exempt certain types of companies based on the size of the issuer and any other relevant factors.
    - The Bill requires that each member of a board's compensation committee be independent according to a definition of independence determined by the exchanges. The definition of independence must take into account (i) the sources of compensation paid to members of the compensation committee and (ii) whether the members are affiliated with the company or any affiliate of the company.
    - A compensation committee may only select a compensation consultant, legal counsel or other advisor after considering the following factors:
        - (1) the provision of other services to the issuer by the person that employs the consultant;
        - (2) the amount of fees received from the issuer by the person that employs the compensation consultant, as a percentage of the total revenue of the person that employs the compensation consultant;
        - (3) the policies of the person that employs the consultant which are designed to prevent conflicts of interest;
        - (4) any business or personal relationship of the compensation consultant with a member of the compensation committee; and
        - (5) any stock of the issuer owned by the compensation consultant.
    - The Bill provides that the compensation committee of an issuer shall be directly responsible for the appointment of a compensation consultant. In its proxy statement for annual shareholder meetings, a company must disclose whether (i) the compensation committee retained a compensation consultant; and (ii) whether the work of the compensation consultant raised any conflict of interest.
    - Compensation committees are also authorized to retain independent legal counsel and other advisors, once the committee has considered the independence factors articulated above. Similar to obtaining a compensation consultant, the compensation committee would not be obligated to implement the advisor's recommendations.
- **Executive Compensation Disclosures.** Section 953 of the Bill amends Section 14 of the 1934 Act to require the SEC to issue rules requiring each listed company to disclose in its proxy statement for annual shareholder meetings a description of any compensation that must be disclosed under Item 402 of Regulation S-K. The disclosure must describe the relationship between executive compensation actually paid and the financial performance of the company.
    - Section 955 of the Bill amends Section 14 of the 1934 Act to require the SEC to require each listed company to disclose in its annual proxy statement whether any employee or director, or any designee, is permitted to purchase financial instruments designed to hedge or offset any decrease in the market value of equity securities granted to the employee or director as part of their compensation or other securities held by the employee or director.
- **Recovery of Erroneously Awarded Compensation Policy ("Clawback Provisions").** Section 954 would add Section 10C of the 1934 Act to require the SEC to issue rules requiring listed companies to implement policies to recover compensation from executive officers under certain circumstances.
    - Listed companies must develop policies providing for disclosure of the company's policy on incentive-based compensation, and that, if the company must prepare an accounting restatement because of material noncompliance, the company will recover from any current or former executive officer who received incentive-based compensation during the three-

year period preceding the accounting restatement, compensation in excess of what should have been paid under the restatement.

- **Voting by Brokers.** Section 957 of the Bill amends Section 6(b) of the 1934 Act to prohibit any member that is not the beneficial owner of an issuer's shares registered under Section 12 from granting a proxy to vote the shares in connection with a shareholder vote on certain proposals, unless the beneficial owner has given the member voting instructions.

**Title X – Consumer Financial Protection Bureau**

***Structure and General Authority***

- **Consumer Financial Protection Bureau.** The Consumer Financial Protection Bureau is established as an independent entity housed within the Fed. The CFPB will be led by a director who is appointed by the President and confirmed by the Senate.
- **Authority.** The CFPB is granted the authority to write consumer protection rules for banks and nonbank financial firms offering consumers financial services or products and to ensure that consumers are protected from "unfair, deceptive, or abusive" acts or practices. The CFPB also has the authority to examine and enforce regulations for banks and credit unions with greater than $10 billion in assets, all mortgage-related business (such as lenders, servicers, and mortgage brokers), and large nonbank financial businesses (such as payday lenders, debt collectors, and consumer reporting agencies).
    - Banks with assets of $10 billion or less are subject to CFPB rules but are not subject to the CFPB's examination authority. Instead, smaller banks will continue to be examined by their respective prudential regulator. However, the CFPB has the authority to participate in exams conducted by the prudential regulator on a "sampling basis" and provide input on the scope and conduct of the exam. The CFPB also has the authority to make referrals to the prudential regulator, where the CFPB has reason to believe that a material violation of Federal consumer law has occurred. The prudential regulator must respond to the referral within 60 days.
- **Restrictions.** The prudential regulators will have an opportunity to comment on the rules before they are proposed by the CFPB and the CFPB is required to respond to these comments. In addition, the Chairperson of the FSOC, if petitioned by a member agency and upon a two-thirds vote of the members of the Council, is required to set aside a regulation proposed by the CFPB if it is determined that the rule puts the safety and soundness of the financial system at risk.
- **Exempt Persons.** Auto dealers, insurance companies, accountants, tax preparers, attorneys, persons regulated by a state insurance regulator, merchants, retailers, and other sellers of non-financial services are exempt from the CFPB's authority.

***Debit Interchange***

- **Fed to Set Interchange Rate.** The bill grants the Fed the authority to set the interchange rate in debit transactions. Interchange transaction fees must be "reasonable and proportional to the cost" of the card network's expense for processing the transaction. In setting the rate, the Fed must consider the functional similarity between debit transactions and paper check transactions, which are required to clear "at par" (with no transaction fee). The Fed must consider the incremental costs of each transaction and may consider fraud prevention actions on the part of issuers in setting the rates.
- **Limitations.** The bill limits the Fed's authority over network fees to ensuring that fees are not used to compensate issuers with respect to electronic debit transactions.
- **Exceptions.** Cards issued by banks with fewer than $10 billion in assets are exempt from the interchange transaction fee limitation. Also, the transaction fee limit does not apply to transactions involving debit or prepaid cards issued by the government.

***Other Notable Provisions***

- **Arbitration Clauses.** The CFPB is authorized to prohibit or limit mandatory predispute arbitration clauses after conducting a study. Any such limits must be consistent with the findings of the study.
- **Expansion of Truth in Lending Act.** The Truth in Lending Act is amended to apply to credit transactions and consumer leases below $50,000 instead of $25,000.
- **Requests For Information.** The Bill requires that covered persons comply with consumer requests for information concerning a consumer financial product or service obtained from the covered person. The provision excludes confidential commercial information, information collected to prevent fraud or money laundering, or to detect or make a report regarding other unlawful conduct, or other nonpublic or confidential information from the disclosure obligation.
- **Penalties.** The CFPB may impose civil penalties in the amount of $5,000 per day for a violation, up to $25,000 per day for any reckless violation, and up to $1 million per day for any knowing violation of any law, rule or final order or condition imposed by the Bureau. Further, the U.S. Sentencing Commission is directed to review and, if appropriate, to amend federal sentencing guidelines and policy statements applicable to securities fraud or financial institution fraud. Also, the statute of limitations for securities fraud offences is extended to six years.

**Title XI – Federal Reserve System Provisions**

- **Audit Authority.** The Government Accountability Office is granted the authority to conduct a one-time audit of the Fed's emergency lending which took place during the financial crisis. The GAO may also audit emergency lending, discount window lending, and open market transactions on a going-forward basis. However, the GAO is not permitted to audit the Fed's monetary policy operations.

**Title XII – Improving Access to Mainstream Financial Institutions**

- **Alternatives to Payday Loans.** Authorizes the Treasury Secretary to establish multiyear grants, cooperative agreements and other programs to expand access to financial institutions in an effort to provide alternatives to payday loans.

**Title XIII – Pay It Back Act**

- **Reduction of TARP.** This provision reduces the authorization for the Troubled Asset Relief Program ("TARP") from $700 billion to $475 billion. The Bill also prohibits any new programs under TARP and requires that any repaid funds not be recycled back into the program.

**Title XVI – Mortgage Reform and Anti-Predatory Lending**

- **Mortgage Originator Duty of Care.** Mortgage originators will be required to be qualified and, when required, registered and licensed as a mortgage originator and include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.
- **Underwriting Requirements.** A mortgage originator is required to make a good faith determination based on documentation such as credit history, current obligations, and employment status, that, at the time the consumer assumed liability for the loan, the consumer had a reasonable ability to repay the loan.
- **Qualified Mortgage.** A mortgage originator may presume that a "qualified mortgage" meets the reasonable repayment requirement, but this presumption is rebuttable. Examples of qualified mortgages include a residential mortgage loan: where the income and financial resources of the borrower are verified and documented; where regular payments do not result in an increase in principal and, except for balloon loans under specific circumstances, does not allow the borrower to

defer principal; and where the total points and fees payable under the loan do not exceed 3% of the total loan amount.

- **Prohibition on Steering Incentives.** A mortgage originator is prohibited from directly or indirectly receiving compensation that varies based on terms of a loan other than the amount of principal owed. The CFPB is charged with implementing these provisions through regulations that prohibit activities such as: steering a consumer to a loan that the consumer lacks a reasonable ability to repay, or a loan that may be deemed predatory due to excessive fees or abusive terms; or steering a consumer who qualifies for a "qualified mortgage" to a "not qualified" mortgage.
- **Consumer Foreclosure Defense.** A borrower may assert as a defense against a lender's judicial or nonjudicial foreclosure action, or any other debt collection action associated with repayment of a mortgage, that the lender violated the reasonable repayment requirement or the prohibition on steering incentives.
- **Liability.** If a mortgage originator violates the steering prohibitions or makes loans to consumers in violation of the reasonable repayment requirement, the originator must pay the greater of the actual damages or three times the amount previously secured by the originator on the initial loan, plus costs and attorneys' fees.
- **Prepayment Penalties.** A prepayment penalty may not be charged on any loan other than a qualified mortgage. Prepayment penalties for qualified mortgages must also be phased out in such a manner than no such penalties will be assessed after three years of the loan having been made.
- **Yield Spread Premiums.** Mortgage originator compensation and yield spread premiums are restricted by requiring that mortgage compensation can only be financed if all originator compensation is paid directly by the borrower, instead of a third party, and the borrower pays the entire fee by financing the cost of it.
- **High Cost Mortgages.** Certain amendments to the Truth in Lending Act will prohibit creditors from engaging in practices such as charging late fees in excess of 4% of the overdue payment, the pyramiding of late fees, and unilateral acceleration of a mortgage under certain circumstances for high cost mortgages.
- **Appraisal Requirements.** A higher-risk mortgage now requires a physical appraisal by a certified appraiser in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), and if another party previously purchased the property within 180 days of a borrower's currently anticipated purchase, a second appraisal is required. Additionally, the originator must provide the borrower with a copy of these appraisals free of charge at least three days prior to closing.
- **Emergency Mortgage Relief.** As of October 1, 2010, $1 billion of assistance will be available through the Emergency Homeowners' Relief Fund for delinquent borrowers to pay portions of their mortgages. The aggregate amount of assistance for an individual homeowner will not exceed $50,000.
- **Neighborhood Stabilization Program.** As of October 1, 2010, $1 billion of assistance will be available through the Neighborhood Stabilization Program for states and local governments to redevelop foreclosed and abandoned homes.
- **Foreclosure Related Legal Assistance.** $35 million will be available in both FY 2011 and 2012 to homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk for foreclosure, and tenants at risk of or subject to eviction as a result of foreclosure of the property in which the tenant resides. However, these funds may not be used to fund class action litigation, and the funds will be prioritized for state and local legal organizations operating in the 125 metropolitan areas with the highest home foreclosure rates.

| Agency | New or Expanded Role |
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| CFPB | **Consumer Financial Protection Bureau**<br>Will write consumer protection rules for banks and nonbank financial firms offering consumers financial services or products and ensure that consumers are protected from "unfair, deceptive, or abusive" acts or practices. |

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| FDIC | **Federal Deposit Insurance Corporation**<br>May be appointed by the Treasury Secretary as receiver of any financial company if certain conditions are satisfied. Empowered to unwind large, failing financial institutions. |
| FIO | **Federal Insurance Office**<br>Will monitor all aspects of the insurance agency and identify issues or gaps in regulation that could lead to systemic risk. Based upon its findings, the FIO will make recommendations to the FSOC regarding insurance institutions that pose a systemic risk and should be subject to greater regulatory oversight. |
| FSOC | **Financial Stability Oversight Council**<br>Will identify risks and emerging threats to the financial stability of the United States arising from large bank holding companies and systemically important nonbank financial companies and respond with appropriate regulation to reduce the risk from their size and activities. |
| OCC | **Office of the Comptroller of the Currency**<br>Will absorb the Office of Thrift Supervision and oversee the federal thrift charter. |
| OFR | **Office of Financial Research**<br>Will have the power to subpoena financial information from institutions under the supervision of the Fed. The OFR may require periodic and other reports from any nonbank financial company or bank holding companies. |
| SEC | **Securities and Exchange Commission**<br>Expand oversight to include large hedge and private equity funds. |