FDIC Staff Summary of Certain Provisions of the DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

(formerly H.R. 4173/S. 3217)

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (formerly H.R. 4173 and S. 3217) was signed into law on July 21, 2010. Unless otherwise specified in the Act, provisions of the Act take effect on July 22, 2010. This highlight summary prepared by FDIC staff focuses on some particular areas of interest to the FDIC. While this summary is based on the Act, it is not a legal interpretation of the new law . Many of the provisions require notice-and-comment rulemaking and action by the FDIC's Board of Directors or another agency, and nothing in this summary may be read to bind the FDIC Board or another agency. The FDIC will make its proposed and final rules available through the Federal Register, on the FDIC's website for obtaining comments on proposed rules (www.fdic.gov/regulations/laws/federal/notices.html), and online through this website dedicated to the implementation of the Dodd-Frank Act. As the FDIC Board proceeds with these rulemakings, materials on this website may be updated as appropriate.

Topics

Highlight Summary

A. FINANCIAL STABILITY OVERSIGHT COUNCIL, PRIMARILY TITLE I

The Act establishes a new Financial Stability Oversight Council which:

- Consists of 10 voting members and 5 nonvoting members. Voting members are: Treasury (also Council Chair), Board of Governors of the Federal Reserve Board ("FRB"), Office of the Comptroller of the Currency ("OCC"), FDIC, National Credit

Union Administration ("NCUA"), Consumer Financial Protection Bureau ("CFPB" or "Bureau"), Securities and Exchange Commission ("SEC"), Commodities Futures Trading Commission ("CFTC"), Federal Housing Finance Agency ("FHFA"), and an independent insurance expert. Nonvoting members are the Director of the Office of Financial Research ("OFR", established in subtitle B of Title I), the Director of the Federal Insurance Office (established in Title V), a State insurance commissioner, a State banking supervisor, and a State securities commissioner.

- Identifies and responds to risks to U.S. financial stability.
- Identifies *nonbank financial companies* to be supervised by the FRB. §113.
- Makes recommendations to FRB concerning prudential standards for nonbank financial companies supervised by the FRB and bank holding companies ("BHCs") on: risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, short-term debt limits, enhanced public disclosures, and overall risk management. § 115.
- Recommends to the primary financial regulatory agency new or heightened standards and safeguards for financial activities or practices conducted by BHCs or nonbank financial companies. § 120.

B. ORDERLY LIQUIDATION AUTHORITY, TITLE II

The Act provides for the orderly liquidation of systemically important, failing financial companies and:

- Generally subjects these failing systemic financial companies (i.e., covered financial companies), including brokers and/or dealers and insurance companies, to orderly liquidation, subject to a systemic risk determination involving the FDIC, FRB, and Treasury (in consultation with the President). (The SEC and the Federal Insurance Office are substituted for FDIC if the company or its largest subsidiary is a broker and/or dealer or insurance company, respectively; the FDIC is consulted in the systemic risk determination process in those cases).
- Provides that insurance companies, including subsidiaries of insurance companies that are themselves insurance companies, are liquidated or rehabilitated under State law, instead of FDIC receivership law as set forth in Title II.
    - Gives FDIC backup authority if the State insurance regulator does not promptly commence the orderly liquidation process for an insurance company, but the FDIC must proceed under State law.
- Provides that liquidation of systemic broker/dealers is coordinated with SEC and the Securities Investor Protection Corporation under specific statutory provisions.

The Act expressly prohibits taxpayer bailouts by:

- Providing that shareholders receive no payments until all other claims are paid (including claims of the FDIC and other governmental entities).
- Requiring unsecured creditors to bear losses in accordance with priority of claims provisions.
- Requiring the FDIC to ensure that management and board members responsible for failure are removed.

- Prohibiting the FDIC from taking an equity interest in or becoming a shareholder of any covered financial company or covered subsidiary. § 206.
- Requiring all financial companies put into receivership under Title II to be wound down and liquidated, and prohibiting the use of taxpayer funds to prevent the liquidation of any financial company under Title II.
- Prohibiting any taxpayer losses from the exercise of any Title II authority. § 214.
- If receivership assets are insufficient to cover the costs of orderly liquidation, requiring any funds expended in the liquidation of any financial company to be recovered through assessments as described in the Act. § 210(o).

A Three-Tiered Funding Mechanism:

- Allows the FDIC to borrow from Treasury (up to the Maximum Obligation Limitation, which is generally 90 percent of covered financial company assets) to fund the operations of a receivership or bridge financial company. § 210(n).
- If receivership assets are not sufficient to repay Treasury borrowings, requires the FDIC to "clawback" funds from creditors who received higher payments than other similarly situated creditors (except when payment was for operations essential to the receivership or bridge financial company).
- If the "clawback" is not sufficient to repay Treasury, requires the FDIC to charge risk-based assessments on "eligible financial companies" (BHCs with consolidated assets of $50 billion or more and any nonbank financial company supervised by the FRB) and any nonbank financial company with assets of $50 billion or more. § 210(o).

The FDIC Receivership Process:

- Gives the FDIC broad authority to manage receiverships (subject to coordination with SEC and SIPC for brokers and/or dealers) and liquidate covered financial companies.
- The FDIC:
    - Will conduct a claims process and pay claims;
    - Can pay similarly situated creditors more than others if doing so will maximize returns and minimize losses, subject to the clawback requirement and reporting requirements;
    - Can establish bridge financial companies; and
    - Can transfer Qualified Financial Contracts ("QFCs") to bridge companies or third parties; and
- Will be the subject of rulemaking.

C. LIVING WILLS, TITLE I, § 165(d)

Submission of Resolution Plan:

The FRB must require each FRB-supervised nonbank financial company and BHC with at least $50 billion in total consolidated assets to report periodically to the FRB, Council, and FDIC on its plan for rapid and orderly resolution (living wills) in the event of material financial distress or failure. The FDIC and FRB must jointly issue rules on living wills within 18 months of enactment. The plan must include:

- Information on the manner in which affiliated insured depository institutions ("IDIs") are adequately protected from risks of other activities;
- Description of ownership structure, assets, liabilities, and contract obligations;
- Identification of cross-guarantees on securities, major counterparties, process for determining to whom collateral is pledged; and
- Any other information FRB and FDIC jointly require by rule or order.

The legislation also requires FRB-supervised nonbank financial companies and BHCs to report to the FRB, the Council, and the FDIC on their credit exposures to other significant non-bank financial companies and BHCs, and the extent to which other significant non-bank financial companies and BHCs have credit exposures to them.

Review of Living Wills:
The FDIC and FRB are required to review living will reports and credit exposure reports. If there are deficiencies such that the FDIC and FRB jointly determine that resolution plan is not credible or would not facilitate an orderly resolution under the bankruptcy code, the FDIC and FRB must notify the company, and the company must resubmit the report to correct deficiencies.

Failure to Resubmit Credible Resolution Plan:

- *Application of "More Stringent" Requirements*: If the company fails to resubmit its resolution plan with the required revisions, the FDIC and FRB may jointly impose "more stringent capital, leverage, or liquidity requirements, or restrictions on growth, activities, or operations of the company, or any subsidiary" until the company resubmits an acceptable plan.
- *FDIC and FRB Authority to Order Divestiture of Assets or Operations*: In any case where: 1) the FRB and the FDIC have imposed more stringent requirements, and 2) the company has not resubmitted an acceptable plan within 2 years of the imposition of the more stringent requirements, the FDIC and FRB, in consultation with the Council, may jointly order divestiture of assets or operations in order to facilitate an orderly resolution, in the event of failure.

➔ *Other Authority to Order Divestiture*, §121

- Separate from the authority of the FDIC and the FRB to jointly order divestiture if a company fails to resubmit a credible resolution plan within 2 years of the imposition of "more stringent requirements," the FRB may determine that a nonbank financial company supervised by the FRB or a BHC with assets of at least $50 billion poses a grave threat to U.S. financial stability and, upon two-thirds vote of Council, shall require the company to take mitigatory actions, including imposing conditions or restrictions on mergers and acquisitions, offering financial products, and requiring the company to terminate activities; or if the FRB determines that those actions are inadequate to mitigate a threat to U.S. financial stability, require the company to divest (i.e., sell or otherwise transfer assets or off-balance sheet items to unaffiliated entities).

D. FDIC BACKUP EXAM AND ENFORCEMENT AUTHORITY, § 172

Backup Examination Authority:
The FDIC may conduct a special examination of a nonbank financial company supervised by the FRB, or a BHC with at least $50 billion in assets, if the FDIC Board determines that it is necessary to determine the condition of the company for purposes of implementing its authority to provide for orderly liquidation under Title II of the Act.

- Such authority may not be used with respect to a company that is in generally sound condition.
- Before conducting a special examination of a nonbank financial company or a BHC as described above, the FDIC must review any available and acceptable resolution plan that the company has submitted and available reports of examination, and must coordinate to the maximum extent practicable with the FRB to minimize duplicative or conflicting examinations.

Backup Enforcement Authority:
The FDIC has backup enforcement authority over a depository institution holding company ("DIHC") if the conduct or threatened conduct of the DIHC poses a risk to the Deposit Insurance Fund ("DIF"), provided that such authority may not be used with respect to a DIHC that is in generally sound condition and whose conduct does not pose a foreseeable and material risk of loss to the DIF.

E. LEVERAGE AND RISK-BASED CAPITAL REQUIREMENTS, § 171

- The appropriate Federal banking agencies ("AFBAs") (including the FDIC) are required to establish minimum leverage and risk-based capital requirements for IDIs, DIHCs, and nonbank financial companies supervised by the FRB. Such requirements shall not be less than the "generally applicable leverage capital requirements" and the "generally applicable risk-based capital requirements" applicable to IDIs at the time of enactment.
- The generally applicable leverage and risk-based capital rules shall operate as a capital floor with respect to any future rulemaking involving the minimum leverage and risk-based capital requirements applicable to IDIs, DIHCs, and nonbank financial companies supervised by the FRB. Minimum leverage and risk-based capital requirements may not be quantitatively lower than the generally applicable requirements in effect for IDIs as of the date of enactment.
- In addition, any regulatory capital instrument that is not recognized as Tier 1 or Tier 2 capital for an IDI shall be deducted from the regulatory capital of a DIHC or nonbank financial company supervised by the FRB (except for a DIHC with less than $15 billion in total assets as of Dec. 31, 2009, and an entity organized as a mutual holding company on or before May 19, 2010).
    - Regulatory capital deduction requirements would **phase-in** over a 3-year period from January, 2013, for debt or equity instruments issued before May 19, 2010, by DIHCs and nonbank financial companies supervised by the FRB, except for DIHCs with assets of less than $15 billion as of December 31,

2009, and by organizations that were mutual holding companies on May 19, 2010.
    - This capital deduction requirement would not apply for debt or equity instruments issued before May 19, 2010, by DIHCs with less than $15 billion in consolidated assets as of December 31, 2009, or by organizations that were mutual holding companies on May 19, 2010.
- **Effective Dates**
    - **For FRB-supervised entities** (DIHCs or nonbank financial companies supervised by the FRB), these requirements would become effective immediately for debt or equity instruments issued after May 19, 2010.
    - **For Non-FRB-supervised entities** (DIHCs that were not supervised by the FRB as of May 19, 2010, and certain bank holding company subsidiaries of foreign banking organizations), these requirements would become effective 5 years after enactment.
- **Exceptions --** These requirements would not apply to debt and equity instruments issued to the United States under the Emergency Economic Stabilization Act of 2008 and prior to October 4, 2010, or to Federal home loan banks or small bank holding companies (less than $500 million) operating under the FRB statement of policy in effect on May 19, 2010.

F. THE VOLCKER RULE AND RELATED STUDY AND RULEMAKING, § 619

***Basic Prohibition**:*
The AFBAs, SEC, and CFTC must issue regulations within 15 months of enactment prohibiting (or limiting) banking entities (defined as IDIs, companies controlling IDIs, and their affiliates) from engaging in proprietary trading or having any ownership interest in a hedge fund or private equity fund.

Exceptions:
- ***Proprietary Trading.*** Unless otherwise limited by the regulators, the prohibition on proprietary trading does not include, for example, purchases of government or GSE securities, underwriting or market-making activities "designed not to exceed reasonably expected near term demands of clients, customers, or counterparties"; and risk-hedging in connection with and related to the institution's positions, contracts, or other holdings.
- ***Hedge Fund Investments.*** Banking entities may invest in hedge funds they organize and offer if their aggregate investment is "immaterial," as defined in regulations, but does not exceed 3 percent of Tier 1 capital. In addition, 1 year after establishing the fund, they can own no more than 3 percent of the fund's "ownership interests."

Study and Rulemaking:
- Within 6 months of enactment, the Council must study and issue recommendations regarding implementation.

- Within 9 months of the study, the AFBAs (jointly), SEC, and CFTC must consider the Council's recommendations and adopt coordinated rules to carry out this section.
- The Council Chairperson coordinates the rulemakings.

Capital Requirements for FRB-supervised Nonbank Financial Companies:
FRB must establish additional capital requirements and quantitative limits on nonbank financial companies it supervises that engage in proprietary trading or hold any ownership interest in a hedge fund or private equity fund. See also capital requirements in sections 165 and 171.

Limitation on Relationships with Hedge Funds and Private Equity Funds:
No banking entity that sponsors, advises, or organizes a hedge fund may enter into a transaction with the fund, or any hedge fund or private equity fund controlled by the fund, that would be a covered transaction under Federal Reserve Act Section 23A.

Effective Date:
The prohibitions discussed above take effect on the earlier of: 12 months after issuance of final rules by the agencies; or 2 years after enactment, and then covered entities generally have 2 additional years to become compliant, although the FRB could grant extensions.

G. REGULATION OF OTC DERIVATIVES MARKETS, TITLE VII INCLUDING § 716

Section 716 bans ***Federal assistance*** for ***swaps entities***.

- ***Definitions***
  - *Federal assistance* includes FDIC guarantees, deposit insurance, and FRB credit facility or discount window access, unless part of a program or facility with broad-based eligibility under the revised version of Section 13(3) of the Federal Reserve Act, for the purpose of: (a) making loans or purchasing any equity interest or debt obligation of any swaps entity; (b) purchasing the assets of any *swaps entity*; (c) guaranteeing any loan or debt issuance of any *swaps entity*; or (d) entering into an assistance, loss sharing, or profit sharing arrangement with any *swaps entity*.
  - *Swaps entity* is defined as any CFTC-registered *swap dealer* or *major swap participant* or any SEC-registered *securities-based swap dealer* or *major security-based swap participant*. The term *swaps entity* expressly excludes any CFTC-registered *major swap participant* or SEC-registered *major security-based swap participant* that is an IDI regardless of size.
- ***IDI Applicability****:* The prohibition applies to an IDI that is a swaps entity unless it limits its derivatives activities to: (1) hedging directly related to the IDI's activities; or (2) acting as *swaps entity* for derivatives involving rates or underlying assets that are permissible investments for a national bank (e.g., interest rate or foreign currency derivatives). Acting as a *swaps entity* for credit

default swaps shall not be considered a permissible activity unless such credit default swaps are cleared through a clearinghouse.

- **FDIC Receivership Exclusion**: The term *swaps entity* expressly excludes an IDI or covered financial company that is in a conservatorship, receivership, or bridge operated by the FDIC.

- ***IDI Affiliates Permitted**:* The prohibition does not prevent an IDI from having an affiliate that is a *swaps entity* as long as the IDI is part of an FRB-supervised BHC or Savings and Loan Holding Company, the swaps entity complies with 23A and 23B, and it complies with any other requirement imposed by the CFTC, SEC, or FRB.
- ***Effective Date:*** The prohibition in section 716 is effective 2 years after title VII becomes effective, which is 360 days after enactment. An AFBA, after consulting with CFTC or SEC as appropriate, must allow an IDI up to 24 months after effective date to divest the *swaps entity* or cease activities that require registration as a *swaps entity*. The AFBA may extend this transition period up to 1 additional year after consultation with the CFTC and SEC. The prohibition applies only to swaps and security-based swaps entered into by an IDI after the transition period.

Federal Assistance

- ***Council Authority to Deny Federal Assistance to Swaps Entity:*** The Council may determine, when other provisions of Title VII are insufficient to effectively mitigate systemic risk and protect taxpayers, that a *swaps entity* may no longer access *Federal assistance* with respect to any swap, security-based swap, or other activity of the *swaps entity*. The Council's determination has to be made on an institution-by-institution basis and require a vote of at least two-thirds of its members, which must include Chairman (Treasury Secretary), FRB Chairman, and FDIC Chairperson.
- ***Ban on Taxpayer Bailout**:* No taxpayer funds may be used: (1) to prevent the receivership of a *swaps entity* that is an IDI or entity subject to heightened supervision; or (2) for the orderly liquidation of any other *swaps entity*.

OTC Derivatives Reform

Substantive reform of over-the-counter derivatives regulation includes:

- Requiring standardized derivatives to be cleared through a clearinghouse and traded on an exchange;
- Non-financial end-users may elect to have their covered derivatives exempted from the clearing and exchange-trading requirements subject to certain conditions;
- Requiring major derivatives dealers and major derivatives participants to register with the applicable Commission (SEC or CFTC). (Such dealers and major participants must comply with prudential standards (capital and margin requirements) and business conduct standards (anti-fraud and anti-manipulation requirements).); and
- Imposing additional reporting requirements to give regulators greater information about covered derivatives.

H. LIMITATION ON RELIANCE ON CREDIT RATING AGENCIES

Removal of Regulatory References to Credit Ratings, § 939A:
Within 1 year of enactment, each federal agency, including the FDIC, must remove any regulatory reference to, or requirement of reliance on, credit ratings, and substitute its own credit-worthiness standards. To the extent feasible, the agencies should seek uniform standards.

Removal of Statutory References to Credit Ratings, §939*:*
Two years after enactment, the Act strikes these statutory credit rating references (and others in non-banking laws):

- **State-Chartered Thrifts**. Federal Deposit Insurance Act ("FDI Act") § 28(d) and (e) prohibit state thrifts from holding below-investment grade corporate debt, and address the exchange of a security held on August 9, 1989 for a qualified note from an affiliate. The Act changes "investment grade" references to "standards of credit-worthiness as established by [FDIC]."
- **National Bank Financial Subsidiary.** Section 5136A(a) and (f) of Title LXII of the Revised Statutes of the United States (12 U.S.C. § 24a(a) and (f)) concern a national bank's authority to control or invest in a financial subsidiary. The Act changes references to "applicable ratings" and similar references to "standards of credit-worthiness established by the OCC."
- **FDIC Sources of Information to Assess IDI Risk of Losses.** FDI Act § 7(b)(1)(E) requires the FDIC to collect information on IDI risk, and sets out an illustrative list of sources, including "credit rating entities, and other private economic or business analysts." The Act amends this to "credit analysts."

I. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE, §§ 951-57

Subtitle E of Title IX:

- Generally provides shareholders with a periodic non-binding vote on executive compensation and golden parachutes.
- Requires the SEC to direct the national securities exchanges and national securities associations to prohibit listing any company that does not have a compensation committee with independent members and provides for the compensation committee's hiring impartial compensation consultants and advisors.
- Also requires the SEC to direct the national securities exchanges and national securities associations to prohibit listing any company that does not include clawback provisions in its compensation agreements for any material noncompliance with financial reporting requirements.
- Requires the "appropriate Federal regulators" which includes the Federal banking agencies as well as NCUA, SEC, and FHFA, to jointly issue rules or guidelines, within 9 months of enactment:

  - requiring covered financial institutions (including IDIs and DIHCs) to report the structures of incentive compensation agreements sufficient for the regulators to determine whether they provide the recipient with excessive compensation or could lead to a material financial loss to the institution; and
  - prohibiting incentive-based arrangements that similarly provide the recipient with excessive compensation or could lead to a material financial loss.
  - requiring the regulators to ensure that any standards for compensation under this statutory requirement are comparable to the standards established under section 39 of the FDI Act for IDIs and take into consideration the compensation standards described in section 39(c).
- Prohibits brokers from voting on the election of a member of the board of directors, executive compensation, or other significant matter without instruction from the beneficial owner of the underlying securities.

J. CHANGES TO FDIC AUTHORITY IN TITLE XI

FDIC Liquidity Assistance, §§ 1104-05:

- The Act provides permanent authority for the FDIC to establish a widely available program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies (including affiliates) during times of severe economic distress, upon a liquidity event finding by a process similar to a systemic risk finding by the FDIC, FRB, and the Secretary of the Treasury (in consultation with the President).
- To exercise the authority, the Act requires the Secretary (in consultation with the President) to determine the maximum amount of debt that the FDIC can guarantee, as well as Congressional approval.
- An IDI, holding company, or other participant that defaults on any FDIC-guaranteed obligation after the date of enactment triggers FDIC authority to appoint itself as receiver for the IDI and, for other participants, to require consideration of a determination to resolve the company under Title II. If the FDIC is not appointed within 30 days, the Act empowers the FDIC to trigger the bankruptcy of the defaulting company.

Amendments to FDIC Systemic Risk Exception Authority, §1106:

- Amends Section 13(c)(4)(G) of the FDI Act to allow FDIC to take action or provide assistance as necessary to avoid or mitigate serious adverse effects on economic conditions or financial stability if the insured depository institution has been placed in receivership and for the purpose of winding down the failed institution.
- Suspends the FDIC's authority under FDI Act Section 13(c)(4)(G)(i), to establish a widely-available debt guarantee program for which section 1105 of this Act would provide authority.

K. CONSUMER FINANCIAL PROTECTION BUREAU, TITLE X

Supervision and Regulation of Non-Bank Providers:
The Consumer Financial Protection Bureau ("Bureau") has rulemaking, examination and enforcement authority over nonbank "covered persons" that --

- Offer or provide origination, brokerage, or servicing of residential mortgage loans or foreclosure relief services in connection with such loans;
- Are "larger participants" of a market for other consumer financial products or services (as defined by Bureau rule);
- Offer or provide payday loans to consumers or private education loans; or
- Generate consumer complaints that lead the Director to determine the covered persons are engaging in conduct that poses risks to consumers with regard to the offering or providing of consumer financial products or services.

Bureau supervision is based on risks posed to consumers and in coordination with prudential regulators and with States.

Examination and Enforcement Exemption for Smaller IDIs:

- **Prudential Regulators' Examination & Enforcement Authority**. The FDIC and other federal banking agencies ("prudential regulators") have consumer examination and enforcement authority over IDIs with total assets of $10 billion or less.
- **Bureau Referrals/Recommendations.** The Bureau may make referrals and recommend action to the prudential regulator where the Bureau has reason to believe an institution has violated federal consumer law. Prudential regulators must respond to the Bureau within 60 days.

Examination and Enforcement for Larger IDIs:

- The Bureau has examination and primary enforcement authority for Federal consumer financial laws for IDIs that are larger than $10 billion in assets and their affiliates. The prudential regulators have backup enforcement authority.

Bureau Independence:
Bureau Located within the Federal Reserve System and:

- Is headed by a presidentially-appointed, Senate-confirmed Director who has independent authority to make rules, hire and fire Bureau employees, determine and manage Bureau funding, give congressional testimony and make recommendations, conduct examinations and take enforcement actions.
- Has dedicated funding sources from Federal Reserve System. If needed, supplemental appropriated funding is authorized. In accordance with the Bureau Director's determination of need, funding will be transferred to the Bureau each year from the Federal Reserve System subject to annual caps. Congress also authorized supplemental appropriated funding of up to $200 million through fiscal year 2014, if needed and requested by the Bureau's Director.
- Has rulemaking authority for Federal consumer financial laws**,** including specifically enumerated Federal consumer protection laws such as the Truth in

Lending Act, and has further authority to issue a range of substantive rules, including rules to identify and prevent unfair, abusive or deceptive acts or practices.

Applicability of State Consumer Financial Laws

- Generally addresses applicability of State law, including enforcement role of States.
- Provides that State consumer financial law may be preempted if the State law in question has a discriminatory effect on national banks, or, applying the legal standard for preemption in *Barnett Bank of Marion County, N.A. v. Nelson*, the state law prevents or significantly interferes with the exercise by the national bank of its powers, or, is preempted by operation of certain other Federal laws.
    - Includes a similar preemption standard for Federal savings associations.
    - Provides for Federal preemption determinations on a case-by-case basis.
    - Clarifies applicability of state law to national bank subsidiaries.

Timing and Process for Transfer of Certain Consumer Functions and Employees §§ 1061-64

- **Transfer Date**: The Treasury Secretary, in consultation with the FDIC and other agencies, has 60 days after enactment to designate a date for the transfer of certain functions to the new Bureau.
    - This "designated transfer date" must be between 180 days and 12 months from enactment, but may be extended by the Treasury Secretary to a date not later than 18 months after enactment.
    - The transfer of functions and employees to the Bureau must be coordinated among the affected agencies.

L. NEW MORTGAGE PROTECTIONS, TITLE XIV

- **Ability to repay.** Requires creditors to make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay a residential mortgage loan at the time the loan is consummated. There is a rebuttable presumption that a mortgage meets the ability to repay requirements if it meets specified standards governing rates and terms.
- **Steering incentive ban.** Prohibits yield spread premiums and other mortgage loan originator compensation that varies based on the terms of the loan (other than the amount of the principal).
- **Prepayment penalty phase-out.** Phases out prepayment penalties and prohibits them after 3 years. For adjustable rate and certain higher-priced mortgages, prepayment penalties are prohibited upon enactment of the legislation.
- **Interest rate reset notice.** Requires creditors to notify consumers at least 6 months before the interest rate on a hybrid adjustable rate mortgage is scheduled to reset.
- **Escrows.** Requires escrows for taxes and insurance for certain mortgages (including those exceeding specified interest rate thresholds).

- **Broader HOEPA coverage.** More loans will receive the protections for high-cost mortgages under the Home Ownership and Equity Protection Act of 1994 (HOEPA).
- **Regulations.** Requires final regulations for most of the foregoing mortgage protections within 18 months of enactment.
- **Appraisal reform.** For "higher-risk mortgages," requires written appraisals based on physical inspection of the property, and in some cases second appraisals. FRB interim final regulations defining acts or practices that violate appraiser independence are required no later than 90 days after enactment. A broker price opinion may not be used as the primary basis for determining the value of property that would secure a mortgage for the purchase of a consumer's principal dwelling. The FRB, FDIC, OCC, NCUA, FHFA, and CFPB may issue additional joint regulations and guidance on appraiser independence, and they are required to issue joint regulations on the appraisal requirements for higher-risk mortgages, appraisal management companies, and automated valuation models.

M. ELIMINATION OF OTS, TRANSFER OF FUNCTIONS AND EMPLOYEES

Transfer of OTS Functions and Employees, §§ 313-328:

- Transfers OTS powers and responsibilities to the OCC, FDIC, and FRB 1-year after enactment (may be extended for up 6 months). Abolishes the OTS and requires the transfer of OTS employees 90-days after the transfer date.
- Places the CFPB Director on the FDIC Board as of the transfer date.
- Requires OTS, OCC, FDIC, and FRB to coordinate transfer of functions and employees among the agencies.
- Charges the FDIC with regulating state thrifts, the OCC with regulating Federal thrifts, and the FRB with regulating savings and loan holding companies.

N. CHANGES TO FDIC DEPOSIT INSURANCE FUND AND INSURANCE

Changes to the DIF

- **Minimum Reserve Ratio, § 334:** Eliminates the maximum limitation of the reserve ratio, and sets the minimum to not less than 1.35 percent of estimated insured deposits or the comparable percentage of the assessment base. Requires the FDIC to take the steps necessary to attain 1.35 percent by September 30, 2020, subject to an offsetting requirement for certain institutions.
- **Assessment Base, § 331:** Directs the FDIC to amend its regulations to define assessment base as average total consolidated assets minus average tangible equity. For custodial banks and bankers' banks, the FDIC may subtract an additional amount as necessary to reflect risks posed by such institutions.
- **Permanent (and Retroactive) Increase in Deposit Insurance Amount, § 335:** Permanently increases the statutory standard maximum deposit insurance amount to $250,000, and makes this increase retroactive to January 1, 2008.

Temporary Unlimited Coverage for Noninterest-Bearing Transaction Accounts

- **Insurance of Transaction Accounts:** Provides full deposit insurance coverage for "noninterest-bearing transaction accounts" for 2 years starting December 31, 2010. The statutory program features:
  - Mandatory participation for all insured depository institutions
  - No separate assessment fees for banks
  - Unlimited insurance for covered accounts (separate from the $250,000 standard insurance amount)
  - Only true noninterest-bearing accounts are covered. (*NOW accounts and any interest-bearing accounts are not covered under this category of insurance coverage*. IOLTAs also are not included.)

O. RISK RETENTION FOR ASSET-BACKED SECURITIES, §§ 941-946

Risk Retention

Issuers or originators of asset-backed securities ("ABS") generally will be required to retain an economic interest of at least 5 percent of the credit risk ("risk retention") in securitized assets, a threshold that may decline if the quality of the underwriting warrants. This requirement will not apply to "qualified residential mortgages" if they are the only assets in a pool collateralizing an ABS.

Regulations

The Federal banking agencies (OCC, FRB, and FDIC), along with the SEC and other relevant agencies, must jointly issue regulations specifying allowable forms and minimum duration of risk retention and asset classes with rules for securitizers of various classes of assets. These regulations must:

- prohibit hedging or transferring retained risk; and
- provide for exemptions or adjustments to retention requirements for certain securitizations, consistent with the public interest.

These agencies may also issue regulations to ensure adequate underwriting standards. In addition, the SEC must issue regulations regarding new disclosure, due diligence and reporting requirements.

P. OTHER SELECT PROVISIONS OF INTEREST

New Offices of Minority and Women Inclusion, § 342:

- Establishes Offices of Minority and Women Inclusion at each Federal banking and securities agency, including the FDIC, Treasury, and the FRB, and at each Federal reserve bank, to address, inter alia, employment and contracting diversity matters.

Moratorium on Deposit Insurance and Change in Control Applications from Industrial, Credit Card, and Trust Banks, § 603:

- For 3 years after enactment:
  (i) the FDIC may not approve a deposit insurance application received after November 23, 2009, for an industrial bank, credit card bank, or trust bank controlled by a "commercial firm", and
  (ii) the AFBAs must disapprove a change in control of an industrial bank, credit card bank, or trust bank if it would result in control by a commercial firm.
- The change in control prohibition does not apply to an entity that has regulatory approvals, including FDI Act § 7(j), and: (1) is in danger of default; (2) results from an acquisition by a commercial firm of another commercial firm that controls the entity; or (3) results from an acquisition of voting shares of a public company that controls the entity, if the acquirer would hold less than 25 percent of any class of the company's voting shares.

***Intermediate Holding Company for Financial Activities of Grandfathered Unitary Savings & Loan Holding Companies, § 626*:**

- The FRB may require a Grandfathered Unitary Savings & Loan Holding Company to (1) establish an intermediate holding company to conduct financial activities, and (2) be a "source of strength" to that subsidiary intermediate holding company.

Enhanced Restrictions on Bank Transactions with Affiliates, § 608:

- The FRB may grant an affiliate transaction exemption only after making a finding that the exemption is in the public interest and consistent with the purposes of section 23A(f) and after receiving no objection from the FDIC Chairperson—that is in writing, within 60-days after the notice, and based on a determination that the exemption presents an unacceptable risk to the DIF.
  - For an exemption involving a national bank, the FRB and OCC must jointly find the exemption is in the public interest and consistent with section 23A(f), and there must be no objection from the FDIC Chairman.
  - The FDIC may exempt a transaction of a State savings association subject to the same findings.
- These provisions take effect one year after enactment.

Repeal of Prohibition against the Payment of Interest on Demand Deposits, § 627:

Effective one year after enactment, the Act repeals various banking law provisions prohibiting the payment of interest on demand deposits.