Dodd-Frank Wall Street Reform and Consumer Protection Act

Summary

Assembly Banking & Finance Committee

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Preface

The reform measures present in Dodd-Frank Wall Street Reform and Consumer Protection Act originated from a white paper published by the Treasury Department on June 17, 2009, "A New Foundation: Rebuilding Financial Supervision and Regulation." On July 15, 2010 the Senate approved HR 4173 by a vote of 60-39.

The final product, summarized in this document, is designed to prevent the market problems that led the United States into the current recession. While these changes are important and substantive, the real battle for regulatory reform has just started. HR 4173 requires the creation of 243 rules, and the preparation of over 60 different studies. These rules and studies have the potential to provide further substantive change. Not until many of these rules are final will the full effect of reform become clear.

The forthcoming summary provides a brief overview of each major reform section included in the final law. Additionally, a timeline of regulations has been included, as well as, an index to actual sections of the reform bill, which can be found at http://frwebgate.access.gpo.gov/cgibin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf

As a means of a brief preview, the United States Treasury released the following top ten highlights of the regulatory reform package:

1. Ends "Too Big To Fail": If a big financial firm is failing, it will have only one fate: liquidation. There will be no taxpayer funded bailout. Instead, regulators will have the ability to shut down and break apart failing financial firms in a safe, orderly way – without putting the rest of the financial system at risk, and without asking the taxpayers to pay a dime.

2. Closes Loopholes in Regulation of Major Financial Firms: Loopholes that allowed firms like Lehman Brothers, Bear Stearns and AIG to operate without tough standards or oversight were major contributors to the financial crisis.

3. Brings Transparency to Hedge Funds: The Wall Street Reform and Consumer Protection Act requires advisers to hedge funds to register with the SEC for the first time, bringing transparency and oversight to these unregulated financial firms.

4. Constrains the Size of the Largest Firms: Financial reform will prevent any financial firm from growing by acquisition to more than 10% of the liabilities in the financial system. This will reduce the adverse effects of the failure of any single firm and prevent the further concentration of our financial system.

5. Reforms Executive Pay and Strengthen Shareholder Protections: Financial reform will give shareholders a say in the compensation of senior executives at the

companies they own, and require that the compensation committees of corporate boards are independent.

6. Separates Banking and Speculative Trading – the Volcker Rule: The Wall Street Reform and Consumer Protection Act safeguards taxpayers and depositors by separating risky, speculative "proprietary trading" from the business of banking.

7. Strongest Consumer Protections Ever: Instead of seven federal agencies with only partial responsibilities for consumer protection, there will be the Bureau of Consumer Financial Protection whose sole responsibility is establishing clear rules of the road for banks, mortgage companies, payday lenders, credit card lenders, and other financial service firms and for enforcing these rules. From now on, every consumer will be empowered with the clear and concise information they need to make financial decisions that are best for them.

8. Cracks Down on the Abuses in the Mortgage Markets at the Center of the Crisis: The Wall Street Reform and Consumer Protection Act bans abusive practices in the mortgage markets, like those where brokers got paid more to put families into higher priced loans than those they qualified for, and require mortgage brokers and banks to consider a family's ability to repay when making a loan. The reforms will also require lenders and Wall Street loan packagers to keep skin in the game when selling off loans to investors and make full disclosure so investors know what's in those packages. Reforms of credit rating agencies will help make sure investors do not rely unwisely on their ratings on these packages.

9. Safer, More Transparent Derivatives Market to Help Main Street Businesses: By bringing the derivatives markets out of the shadows, the Wall Street Reform and Consumer Protection Act benefits those businesses that use derivatives to manage their commercial risks. Financial form will benefit Main Street companies at the expense of Wall Street's hidden fees

10. Supports Long Term Job Growth by Helping Prevent Future Crises: By making the financial system safer and stronger, the Wall Street Reform and Consumer Protection Act will reduce the chances that a financial crisis deprives businesses of the credit they need to grow and to create jobs. Financial reform will ensure businesses a more stable and predictable source of credit through the business cycle and reduce the risk of a sharp and sudden cut-off because of financial panic.

DEADLINES CREATED BY THE ACT

Effective Immediately:

- *Resolution Authority*. The resolution authority will immediately fill a regulatory gap by providing an emergency tool to ensure the orderly liquidation of a failed or failing large, interconnected financial company when the stability of the financial system is threatened. As soon as practicable after enactment, the FDIC (with the concurrence of Treasury) is required to establish certain policies and procedures with respect to the operation of an FDIC receivership under the new resolution authority.

- *Federal Office of Insurance (FIO).* FIO will gather information about the insurance industry, including access to affordable insurance products by underserved communities, and monitor the insurance industry for systemic risk purposes. FIO will be established in Treasury, and its Director will be appointed by the Secretary. FIO's first annual report to Congress on the insurance industry must be submitted September 30, 2011.

- *Proxy Access Rulemaking*. The Securities and Exchange Commission's (SEC's) authority to issue rules that grant shareholders proxy access to nominate directors is affirmed. The SEC has a pending proposed proxy access rule that was released for public comment in June 2009.

Within 3 Months:

- *Financial Stability Oversight Council (Council).* The Council, made up of 9 federal financial agencies and an independent insurance member, and 5 nonvoting members will be charged with identifying and responding to emerging risks throughout the financial system, including the designation of systemically significant firms. The Council will be chaired by the Treasury Secretary. The Council's first quarterly meeting will be conducted in October 2010.

- *Ability to Break-up Firms that Pose a "Grave Threat"*. Upon enactment, the Council is authorized to approve a Federal Reserve decision to require a large, complex company to divest some of its holdings if it poses a grave threat to the financial stability of the United States.

***Within 6 Months**:*

- *Say on Pay and Golden Parachutes*. Shareholders will be granted a say on pay with the right to a non-binding vote on executive pay and golden parachutes.

Within 9 Months:

- *"Skin in the Game" Risk Retention*. Companies that sell mortgage backed securities will be required to retain at least 5 percent of the credit risk, unless the underlying loans meet standards determined by regulators that reduce risk.

- *Protect Small Businesses from Unreasonable Interchange Fees*. Within 9 months of enactment, the Federal Reserve Board must write rules that will limit the fees that debit issuers can charge merchants and other card acceptors for debit transactions to levels that are reasonable and related to the issuers' actual costs. Rules may become effective 12 months after enactment.

Within 12 Months:

- *Consumer Financial Protection Bureau*. A new independent watchdog will be created with the authority to ensure American consumers get the clear, accurate information they need to shop for mortgages, credit cards, and other financial products, and protect them from hidden fees, abusive terms, and deceptive practices.   Functions currently handled by existing agencies are expected to be transferred to the Bureau and the Bureau is expected to assume full authority for consumer financial protection no later than 1 year after enactment.

- *Closure of the Office of Thrift Supervision*. The OTS will be shut down and its authorities transferred mainly to the Office of the Comptroller of the Currency. Within 180 days following enactment, the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board, Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS) must submit to Congress a plan for transferring most of the authorities of the OTS to the OCC and its other authorities to the FDIC and Federal Reserve Board. The transfer date will be 1 year after enactment.

- *Derivative Clearing and Swap Dealer Regulation*. Requires central clearing and exchange trading for derivatives that can be cleared and provides a role for both regulators and clearing houses to determine which contracts should be cleared..

- *Mandatory Registration of Investment Advisers*. Advisers to hedge funds and large private equity funds will be required to register with the SEC as investment advisers and provide information about the funds they advise including the amount of assets under management, leverage, risk exposure and other information that may be necessary to assess systemic risk of the fund.

- *Independent Compensation Committees Requirement.* The SEC will write rules that will prohibit any public company from being listed on an exchange unless the compensation committee of such company includes only independent directors and have authority to hire compensation consultants in order to strengthen their independence from the executives they are rewarding or punishing. Final rules required not later than 360 days after enactment.

- *Office of Financial Research (OFR)*. The new Office of Financial Research to analyze data on systemic risk is targeted to be established and fully operational no later than 1 year after enactment.

- *Office of the Investor Advocate (OIA)*. The SEC's new Office of Investor Advocate will act as an ombudsman and assist investors in resolving significant problems dealing with the SEC and SROs and will identify problems that investors have with financial service providers and investment products. The OIA must submit its first annual report to Congress no later than June 30, 2011.

Within 18 Months:

- *Volcker Rule*. Regulators will implement regulations to prohibit banks from engaging in impermissible proprietary trading and investment in and sponsorship of hedge funds and private equity funds, except, for example, de minimis investments in funds – up to 3 percent of tier 1 capital in the aggregate. Council Recommendations must be issued no later than 6 months after enactment, with final rulemaking no later than 9 months after the Council's recommendations.

- *Liabilities Cap on Large Financial Firms*. Subject to rulemaking by the Federal Reserve Board, upon the recommendations of the Council, a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

- *Heighten Standards/Minimum Leverage and Risk- Based Capital Requirements.* The Federal Reserve Board must issue final rules that impose heightened risk-based capital requirements, leverage limits, liquidity requirements and overall risk management standards on the large, interconnected firms it supervises.

- *Resolution of failing companies.* Large, complex financial companies must periodically submit plans for their rapid and orderly shutdown. No later than 18 months after enactment, the Federal Reserve Board and the FDIC must issue final rules implementing the resolution plan requirement.

- *Remittance Error Resolution Standards*. Recordkeeping and other requirements will aim to protect consumers from errors in the transfer of money abroad. Final rules regarding error resolution standards for remittance transfers are required no later than 18 months after enactment.

Within 24 Months*:*

- *Contingent Capital Report and Rulemaking*. The Council must conduct a study on the feasibility, benefits, costs, and structure of a contingent capital requirement for large, interconnected financial companies supervised by the Federal Reserve Board. After the findings of the study are reported to Congress, the Council may recommend that the Federal Reserve Board require the firms it supervises to maintain a minimum amount of contingent capital. The Council must submit a report of its findings to Congress no later than 2 years after enactment.

- *Proposed simplified mortgage disclosures*. New forms will combine overlapping disclosures for mortgage loans currently required under two separate laws. Rules will be proposed within the 1-year period after the Bureau assumes full authority for consumer financial protection.

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SUMMARY DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

Financial Stability Oversight Council [Subtitle A Sections 101-123]

HR 4173 creates the Financial Stability Oversight Council (Council), which is comprised of ten voting members from Federal departments and agencies having oversight of financial companies, including the Secretary of the Treasury (the Secretary") (serving as Chairperson of the Council), Chairman of the Federal Reserve Board (the "Board"), Comptroller of the Currency, Director of the newly created Bureau of Consumer Financial Protection, Chairman of the Securities and Exchange Commission, Chairperson of the Federal Deposit Insurance Corporation, Chairperson of the Commodity Futures Trading Commission, Director of the Federal Housing Finance Agency and one independent member with insurance expertise appointed by the President and confirmed by the Senate (serving a six year term). In addition to these voting members, the Council is also comprised of five non-voting members from various Federal and State finance agencies and who will serve a two-year term. The Council's determinations generally require a majority vote, however, some actions, including designations of companies as systemically important, require a 2/3rds vote (including an affirmative vote from the Secretary).

The Council is also required to promote market discipline (*i.e.*, eliminate "moral hazards") by eliminating the expectation by shareholders, creditors and counterparties to nonbank financial companies and large bank holding companies that the Government will shield them from loss in the event of such distress or failure. The Council is also tasked with responding to emerging threats to the stability of the United States financial system.

In order to fulfill these objectives, Title I requires the Council to:

- Collect information from Federal and State financial regulatory agencies and direct the Office of Financial Reasearch (OFR-newly created) to collect information from bank holding companies and nonbank financial companies to assess the risks to the United States financial system;

- Monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

- Monitor the domestic and international financial regulatory developments and to advise Congress on ways to enhance the stability of the United States financial markets;

- Facilitate information sharing among Federal and State financial regulatory agencies;

- Identify gaps in regulation that could pose risks to the financial stability of the United States;

- Require supervision (the one affirmative power – a very important power – the Board has) by the Board for nonbank financial companies that may pose risks to the financial stability of the United States should they experience material financial distress or failure;

- Make recommendations to the Board regarding the creation of heightened standards for supervising nonbank financial companies and large, interconnected bank holding companies;

- Annually report to and testify before Congress regarding the Council's activities and significant financial market and regulatory developments, including insurance and accounting regulations and standards and recommendations to enhance stability and promote market discipline.

The Board's Supervision of Nonbank Financial Companies

The Council, on a 2/3rds vote, including an affirmative vote by the Chairperson, may determine that a domestic or foreign nonbank financial company will be supervised by the Board. In exercising this authority, the Council will make the determination on whether the activities of these companies could pose a threat to the financial stability of the United States. This forward looking "could" test may well mean that it does not matter if a nonbank financial company is healthy or in distress; if it is so big then someday it "could" be a threat, then the Council may determine it gets supervised by the Board then and there. The Council will consider the following factors when making its determination:

- The extent and nature of the company's leverage, off-balance-sheet exposures, and transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

- The company's importance as a source of credit and liquidity to the United States financial system;

- The extent to which the company's assets are managed (a plus factor) rather than owned (a minus factor) by the company, and the extent to which ownership of assets under management is diffuse (a plus factor);

- The size of the company;

- The amount and types of the liabilities of the company, including the degree of reliance on short term funding; and

- For foreign companies, the Council will use the above factors, but keyed to financial activities and assets in the United States, as well as the extent and nature of the foreign company's off balance- sheet exposures, and the nature of the company's United States financial activities.

The Council, acting through information gathered by the OFR, will make its determination of whether a company could pose a threat to the financial stability of the United States and should be supervised by the Board based on periodic and other reports, including those publicly available, by these companies. Should the Council be unable to make a determination, then the Council may request the Board to conduct an examination of the U.S. nonbank financial company and make its own determination of whether the company should fall within its supervision.

Additional Standards Applicable to Specific Activities or Practices for Financial Stability Purposes

The Council may recommend that a primary financial regulatory agency apply new or heightened standards and safeguards on a specific product or activity of a bank holding companies or nonblank financial companies supervised by the Board, if the Council determines that the activities or practices of these companies could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies, financial markets of the United States or low-income, minority, or underserved communities. These more stringent standards may include recommendations relating to:

- Risk-based capital requirements;
- Leverage limits;
- Liquidity requirements;
- Resolution plan and credit exposure report requirements;
- Concentration limits;
- Contingent capital requirement;
- Enhanced public disclosures;
- Short-term debt limits; and

- Overall risk management requirements.

The primary financial regulatory agency must either impose the new or heightened standard recommended by the Council (or similar standards the Council deems appropriate), or it must explain in writing to the Council why the agency has determined not to follow the Council's recommendation.

Mitigation of Risks to Financial Stability

Should the Board determine that the financial activities of a bank holding company with over $50 billion in assets or a nonbank financial company that it supervises pose a grave threat to the financial stability of the United States, then it may impose conditions on the conduct of the company's financial activities. In some cases, the Board may take additional mitigation actions, including:

- Limiting the ability of the company to merge with or acquire another financial company;

- Restricting the ability of the company to offer one or more financial products; or

- If the Board determines the above are inadequate, it may terminate one or more activities, or impose conditions on an activity.

If the Board determines that the above actions are inadequate, then it can require the sale or transfer of assets to unaffiliated entities.

Systematic Risk Mitigation (Title II, Sections 201-217).

Title II seeks to set up a framework and procedure for liquidating what is called a "covered financial company." (CFC). A CFC is a financial company that is not an insured depository institution and that a determination has been made that the failure of the company would be of significant risk to the U.S. economy. This process is known as orderly liquidation authority (OLA) and it provides that the FDIC becomes the receiver for the liquidation of a CFC. CFCs subject to the OLA include:

- Bank Holding Companies.

- A nonblank financial company supervised by the Board.

- Any company, or subsidiary of such a company, predominately engaged in activities that the Board determines are financial in nature and that such activities account for 85% of the total revenues of the CFC.

Title II prohibits use of taxpayer funds to prevent a liquidation of a CFC and any funds expended will be received via the disposition of assets or will be recovered via industry wide assessments.

Prior to the start of a liquidation under the FDIC and the Board must make a recommendation to the Secretary of the Treasury (Secretary). A CFC is determined to be in default or in danger if:

- A case has been or will be commenced under the Bankruptcy Code;

- The financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital and there is no reasonable prospect for the financial company to avoid depletion.

- The assets of the financial company are less than its obligations to creditors and others; or

- The financial company is unable to pay its obligations in the normal course of business.

Upon the necessary findings and declarations that a CFC is in danger, the FDIC becomes the government appointed liquidator. Additionally, Title II spells out the duties and powers of the FDIC in exercising liquidation authority.

Transfer of Powers to OCC, FDIC, and the Federal Reserve Board [Title III, Sections 300-378]

Eliminates the Office of Thrift Supervision (OTS) and transfers the power and duties of the OTS to the OCC, FDIC, and Board. The transfer of these duties will not effect the validity of any right, duty or obligation of the OTS or the Director of OTS that existed before the transfer date.

Additionally, this transfer revises the mission statement of OCC, which has been traditionally focused on safety and soundness of institutions. The OCC is now responsible for "assuring the safety and soundness of, and compliance with the laws and regulations, fair access to financial services and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.

FDIC reforms:

Assessment Base. Subtitle C of Title III requires the FDIC to adjust the “assessment base” upon which deposit insurance premiums are calculated to an amount equal to:

the average total consolidated assets of the insured depository institution during the assessment period; minus the sum of the average tangible equity of the insured depository institution during the assessment period, and, in the case of a custodial bank or a banker's bank, an amount that the FDIC determines is necessary to establish assessments consistent with the Federal Deposit Insurance Act (the "FDIA") for such custodial bank or banker's bank.

Maximum Deposit Amount.

The standard maximum deposit insurance amount is permanently increased from $100,000 per account to $250,000 per account under the FDIA and the Federal Credit Union Act. The change is retroactive for any institution for which the FDIC was appointed receiver or conservator on or after January 1, 2008 and before October 3, 2008, and effectively covers depositors in most of the failures that occurred in 2008, including that of IndyMac Bank.

Office of Minority and Women Inclusion

Title III requires each agency (Departmental Offices of the Department of the Treasury; Federal Housing Finance Agency; each of the Federal reserve banks; the Board; the National Credit Union Administration [the "NCUA"]; the OCC; the SEC; and the CFPB.), within six months of the date of enactment of the Act, to create an Office of Minority and Women Inclusion that will be responsible for all matters of the agency relating to diversity in management, employment and business activities. The Director of each agency shall develop and implement standards for equal employment opportunities, the diversity of the agency's workforce, increased participation of minority- and women-owned businesses in agency activities, and assessing the agency's diversity policies and practices.

Regulation of Hedge Fund Advisors [Title IV, Sections 401-416]

Title IV contains amendments to the Investment Advisers Act of 1940 (the "Advisers Act") and certain other statutes that impose more stringent registration, reporting and other regulatory requirements on investment advisers that provide advice to one or more "private funds" (defined as entities that would be required to register as investment companies under the Investment Company Act of 1940 ("Company Act"), but for an exemption provided under Sections 3(c)(1) or 3(c)(7)). In particular, Title IV removes the exemption from investment adviser registration currently relied upon by many advisers and imposes more stringent recordkeeping and reporting requirements on advisers.

Title IV directs the SEC to adjust the net worth standard for an accredited investor to require that the individual net worth of any natural person, or joint net worth with the spouse of that person, is, at the time of purchase, greater than $1 million, exclusive of the value of the person's primary residence (in contrast to the current requirement, which requires the same net worth but allows an investor to count the value of his or her primary residence). The change to the individual net worth standard is effective immediately upon enactment of Title IV and may not be altered by the SEC for four years after its enactment. Beginning four years after the enactment of Title IV, the SEC is required, no less frequently than once every four years, to undertake a comprehensive review of the accredited investor definition to determine whether modifications to such definition are appropriate. Upon completion of its review, the SEC is authorized to make such changes to the accredited investor definition, but only with respect to natural person investors.

Office of National Insurance [Title V - Federal Insurance Office Act of 2010]

Title V of the Act takes preliminary steps toward establishing Federal regulatory oversight of the insurance industry. Title V calls for the creation of an Office of National Insurance within the Department of the Treasury, with authority to: (i) monitor and make recommendations regarding the regulation of the insurance industry (except for health and crop insurance), including specific ***insurers*** and their ***affiliates***; and (ii) determine, with some exceptions, when state insurance law is preempted by international agreements regarding the regulation of insurance. Title V also authorizes the Secretary of the Treasury (the "***Secretary***") to negotiate international agreements on the regulation of insurance and reinsurance. Finally, Title V imposes uniformity on state oversight of reinsurers and ***nonadmitted insurers*** by limiting state regulation relating to premium taxes, surplus lines eligibility, reinsurer solvency and other requirements.

Title V of the Act establishes an Office of National Insurance (the "***ONI***") to be led by a Director appointed by the Secretary. The ONI is charged with, among other things, three general functions: (i) monitoring and recommending further regulation of the insurance industry; (ii) determining preemption of state insurance law by international insurance agreements; and (iii) participating, in coordination with the States and the Secretary, in the development of Federal insurance policy and international agreements on insurance regulation. The ONI has the broad mandate to monitor all aspects of the insurance industry. This monitoring function includes identifying gaps in regulation, performing a study of how to modernize and improve insurance regulation in the United States, recommending specific insurers or their affiliates for regulation by the Financial Stability Oversight Council established in Title I of the Act, and making an annual report to Congress on the insurance industry.

Title V sets forth a procedure for the ONI to preempt state insurance law that is either: (i) inconsistent with an agreement between the United States and a foreign authority regarding the regulation of insurance or reinsurance; or (ii) results in unfavorable treatment of a foreign insurer, relative to its domestic counterparts. Preemption of state law on the basis of an inconsistency with an international insurance agreement is to be done only after notice, consultation with the affected State(s), and an opportunity for interested parties to provide comments. However, Title V contains a "savings" provision addressing, among other things, state law governing insurers' rates, premiums, underwriting, sales practices, and insurer solvency and capital requirements. Moreover, Title V disclaims general supervisory or regulatory authority over the business of insurance by the Department of the Treasury.

Improved Regulation of Depository Institutions and Their Holding Companies. [Title VI, Sections 601-628]

Title VI provides numerous changes to the regulation and supervision of depository institutions and their holding companies. The improved regulations are designed to address the weaknesses identified during the financial crisis of the last few years.

Title VI implements the hotly-debated "Volcker Rule," which restricts a bank's authority to engage in proprietary trading and limits a bank's ability to invest in hedge funds. Title VI also imposes certain concentration limitations on the mergers and acquisitions of depository institutions.

Under the Volcker Rule, subject to certain exceptions, a "banking entity" shall not:

- Engage in "proprietary trading;" or
- Acquire or retain an equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

Not later than six months after the date of enactment of the Act, the Financial Stability Oversight Council (the "Council") shall study and make recommendations on the implementation of the Volcker Rule. Not later than nine months after the completion of such study, the appropriate Federal banking agencies, the Securities and Exchange Commission (the "SEC"), and the Commodities and Futures Trading Commission (the "CFTC") shall consider the findings of the study and issue coordinated final rules implementing the Volcker Rule.

Regulation of Swap Markets [Title VII-Sections 721-754]

Title VII attempts to accomplish two regulatory goals: (i) move the riskiest swaps off the books of insured depository institutions; and (ii) create clearing markets for all swaps with real-time public reporting, resulting in public access to trade data including volume and pricing. The goals of the Act follow the recommendations of FDIC Chairman Sheila Bair in her letter to Sen. Lincoln dated April 30, 2010. In her letter, Chairman Bair supported the movement of swaps to a centralized clearing system, but encouraged the legislation to permit banks to continue to hedge interest rates and other traditional bank risks more easily and not push these products into the “shadow sector” not overseen by the FDIC or other government regulators. This particular section of the reform is very complex and needs further review to understand its full impact.

Mitigating Payment System Risks [Title VIII - Payment, Clearing, and Settlement Supervision Act of 2010, sections 801-814]:

Title VIII of the Act grants broad new authorities to the Financial Stability Oversight Council (the “Council”), the Federal Reserve Board (the “Board”), the Securities and Exchange Commission (the “SEC”), and the Commodities Future Trading Commission (the “CFTC”) with respect to financial market utilities and payment, clearing and settlement activities engaged in by financial institutions. The objective of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by setting uniform risk management standards for financial market utilities and payment, clearing and settlement activities designated by the Council as systemically important. Title VIII is effective as of the date of enactment of the Act.

Investor Protections and Improved Regulation of Securities [Investor Protections and Improvements to the Regulation of Securities Act of2010, sections 901-991]

Title IX of the Act is focused on changes to and reform of the Securities and Exchange Commission (“SEC”) to improve investor protections, close regulatory gaps, increase disclosure, and expand the regulation of and limitations on securities products and providers. While this title provides for increases to the SEC’s budget and new remedies and penalties against securities violators, it also directs the SEC to add three new offices reporting directly to the Chairman, conduct ten studies on key areas of market concerns, and to pay for three of the thirteen additional studies to be conducted by the Government Accountability Office (“GAO”) regarding securities trading, regulated entities and the SEC’s operations.

The key substantive areas within Title IX include:

- Title IX creates a new office at the SEC to oversee credit-rating agencies (CRAs) and expands the SEC’s oversight powers. Title IX also provides a new private right of action against credit rating agencies. The SEC is empowered in Title IX to:
    - Establish rules for CRAs to submit reports on the responsibilities for internal controls and for attestations of senior management regarding the controls;
    - Issue rules to prevent the sales and marketing considerations of CRAs from influencing ratings;

- By rule, require disclosures that are comparable between and among the CRAs, are clear and informative, include performance information, are freely available and accessible, and appropriate to each CRA;

- Conduct reviews of the policies and procedures of the CRAs to ensure the prevention of conflicts of interest;

- Using its new rulemaking authority, ensure that each CRA publicly discloses information on rating to allow uses to evaluate the accuracy of the ratings and compare the rating of different CRAs;

- Ensure that credit ratings are determined using approved procedures and methodologies, that changes to procedures and methodologies are made appropriately and applied consistently, and that the CRAs disclose the reason for such changes;

- Require by rule a form to provide information regarding, among other things, the assumptions and data used to produce a rating, the volatility of the rating, as well as the historical performance of the rating and probability of default;

- Issue rules within one year addressing the standards of training, experience and competence required for credit rating analysts and for testing such knowledge; and

- Within 90 days of the enactment of Title IX, revise Regulation FD and eliminate the current exemption as to credit rating agencies so that Regulation FD applies to CRAs.

- The SEC is also given new authority to take action against, including to censure, suspend or bar a person from association with, an CRA based upon misconduct or upon a failure to supervise someone who has engaged in a violation. The SEC may suspend or revoke the registration of an CRA if the SEC finds that the CRA does not have the ability to produce consistently credit ratings with integrity.

- Each CRA is required to have a board of directors with at least half of its members, but not fewer than two, who are independent of the CRA.

- Title IX provides for private rights of action against CRAs, holds CRAs liable for statements in the same manner and to the same extent as an accounting firm or securities analyst would be, and provides that the statements of an CRA are not deemed forward-looking statements under the securities laws. Title IX requires CRAs to refer to law enforcement or regulatory agencies any information from a third party that alleges material violations of law by an issuer. CRAs are required to consider in any rating, information about an issuer that the CRA received from any source, if that information is credible and significant to the rating decision.

- Asset-Backed Securities. Entities selling asset-backed securities, including mortgage-backed products, will be required to retain a portion of the credit risk for the product – thus retaining "skin in the game." SEC rulemaking in this area will be required before all the parameters are clear, but it is certain that more disclosures regarding assets underlying the securities, and the value of those assets, will be required.

- Municipal Securities. The SEC will have an office of municipal securities to govern oversight of, and will impose new standards regarding, the issuance of municipal securities. Title IX establishes a new regulated person, a "Municipal Advisor", who is subject to SEC oversight and enforcement. Title IX makes changes to the Municipal Securities Rulemaking Board ("MSRB") including requiring that a majority of directors be industry investors and allowing the MSRB to participate in fees from SEC and FINRA actions.

- Executive Compensation and Corporate Governance. Title IX adds a number of provisions relating to executive compensation at public companies, including "say on pay" shareholder voting requirements, clawback requirements for incentive pay in the event of an accounting restatement, compensation committee independence requirements, and proxy disclosure requirements relating to executive compensation. Title IX also requires financial system regulators to develop guidelines relating to executive compensation at large financial institutions.

- Broker-Dealer Fiduciary Duty. An important provision of Title IX is the rulemaking authority given to the SEC to impose a fiduciary duty standard to broker-dealers. While the new rules to be promulgated by the SEC are postponed until the completion of a study on the different standards applicable to investment advisers and broker-dealers, the SEC has discretion to impose rules immediately thereafter.

- Whistleblower Protection. Title IX provides new incentives for whistleblowers including the payment of awards between ten and 30 percent of the monetary sanctions collected by the SEC in an action if the total sanctions exceed $1 million. This extends whistleblower recoveries beyond insider trading, as previously authorized, to any violations of the Federal securities laws. Whistleblowers also gain increased protections as well as compensation and litigation expenses if they prevail in any action alleging discharge or discrimination based upon their whistleblower activities.

Consumer Financial Protection [Consumer Financial Protection Act of 2010 Subtitle A-Title X, beginning with Section 1000]

Title X establishes the Bureau of Consumer Financial Protection housed within the Federal Reserve, with an independent director and budget. Within one year of the establishment of the Bureau, the director (appointed by the President) must establish several units and offices, including:

- Research
- Community Affairs
- Collecting and Tracking Complaints
- Office of Fair Lending and Equal Opportunity
- Office of Financial Education.
- Office of Service Member Affairs
- Office of Financial Protection for Older Americans.

The Bureau is provided with extensive and exclusive rulemaking authority to draft regulations governing various financial products or services. In drafting regulations the Bureau must consider the potential benefits and costs to consumer and covered persons, including the potential harm to consumer access to financial products or services. The Bureau is required to coordinate with other federal regulators when drafting rules, and a regulator may object to a rule in writing. A rule, or provisions thereof, issued by the Bureau may be stayed or set aside, if 2/3rds of the Financial Stability Oversight Council (FSOC) votes in favor of the stay or set aside.

The Bureau may draft regulations for products and services defined as including, but not limited to the following,

- Extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

- Extending or brokering leases of personal or real property that are functional equivalent of purchase finance arrangements.

- Providing real estate settlement services or performing appraisals of real estate or personal property;

- Engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

- Selling, providing or issuing stored value or payment instruments, except that in the case of a sale of, or a transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where for purposes of this clause (except if the seller is not a party to the contract and another party is responsible for the terms and conditions);

- Providing check cashing, check collection, or check guaranty services;

- Providing payments or other financial data processing, products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payment systems, or network use for processing payments data, including payments made through an online banking system or mobile telecommunications network.

- Providing financial advisory, including providing credit counseling to any consumer or providing services to assist the consumer with debt management or debt settlement, modifying the terms of any extension of credit or avoiding foreclosure;

- Collecting, analyzing, maintaining, or providing consumer report information or other account information, including information related to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service subject to certain exceptions;

- Collecting debt related to any consumer financial product or service; and

- Such other financial products or services as may be defined by the Bureau by regulation if the Bureau finds such financial products or services are entered into or conducted as a subterfuge or other purpose to evade any Federal consumer financial laws, or permissible for a bank or a financial holding company to offer or to provide under any provision of Federal law or regulation and has or more likely will have a material impact on consumers.

- The Bureau has jurisdiction over what are defined as "covered persons." The following categories of any Covered Persons are subject to supervision by the Bureau:

- Offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family or household purposes, or for loan modification or foreclosures relief services in connection with such loans;

- Is a “larger participant” of a market for other Consumer financial products or services as defined by rule;

- The Bureau has reasonable cause to determine, by order, after notice to the Covered Person and a reasonable opportunity for such covered person to respond, based on complaints or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to offering or provision of Consumer financial products or services;

- Offers or provides to a Consumer any private educational loan; or

- Offers or provides to Consumers a pay-day loan.

Additionally, finds that the Bureau has clear jurisdiction over the following laws:

- The Alternative Mortgage Transaction Parity Act of 1982;
- The Consumer Leasing Act of 1976;
- The Electronic Fund Transfer Act;
- The Equal Credit Opportunity Act;
- The Fair Credit Billing Act;
- The Fair Credit Reporting Act (subject to limited exceptions);
- The Home Owners Protection Act of 1998;
- The Fair Debt Collection Practices Act;
- Various provisions of the Federal Deposit Insurance Act;
- The privacy and data security provisions of the Gramm-Leach-Bliley Act (subject to certain exceptions);
- The Home Mortgage Disclosure Act of 1975;
- The Home Ownership And Equity Protection Act of 1994;
- The Real Estate Settlement Procedures Act of 1974;
- The S.A.F.E. Mortgaging Licensing Act of 2008;
- The Truth in Lending Act;
- The Truth in Savings Act;
- Section 626 of the Omnibus Appropriations Act of 2009; and
- The Interstate Land Sales Full Disclosure Act.

Supervision of large banks and interagency conflict.

The Bureau will have authority to require reports and conduct examinations of insured depository institutions, including credit unions, with total assets or more than $10 billion. For those institutions with assets under $10 billion, the Bureau may make suggestions to the appropriate primary regulator concerning necessary actions needed to address violations of consumer laws. The Bureau shall have primary authority to enforce Federal consumer financial laws against these large institutions. Other Federal agencies authorized to enforce Federal consumer financial laws, other than the FTC, can make a written recommendation concerning an enforcement action. If the Bureau does not undertake an enforcement action within 120 days of a recommendation, the other agency may initiate the enforcement action. Additionally, if the supervisory determination of the Bureau and the regulator conflict, and insured depository institution may request the agencies and to coordinate and present a joint statement of coordinated supervisory action within 30 days of the request. The conflict is not resolved the insured depository institution may appeal to a governing panel composed of one representative from the Bureau, one representative of the applicable federal regulator, plus one representative to be determined on a rotating basis from the FDIC, NCUA or OCC.

Exemptions from supervision by the Bureau

The Bureau may not supervise or issue rules or take enforcement actions against a person who is licensed or registered as a real estate broker or real estate agent in accordance with state law. Two exceptions apply to this rule if the person is also engaged in offering a covered financial product or service, or is subject to the enumerated consumer laws with respect a particular law. The following are the additional categories of persons ***<u>excluded</u>*** from the Bureau's authority:

- An agent or broker for the buyer or seller of a manufactured home or modular home or any person that facilitates the purchase by a consumer of such home;

- Accountants and tax preparers to the extent that such person is engaged in any activity which is “customary and usual” (except for extending or brokering credit, such as a refund anticipation loan);

- Any activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law;

- Persons regulated by State insurance regulators, unless such person offers or provides a Consumer financial product or service or is otherwise subject to an Enumerated Consumer Law;

- Persons involved in employee benefit or compensation plans and certain other arrangements as defined by regulation;

- Persons regulated by a State securities commission, unless such person offers or provides a Consumer financial product or service or is otherwise subject to an Enumerated Consumer Law;

- Persons regulated by the SEC, subject to consultation and coordination with the Bureau;

- Persons regulated by the CFTC, subject to consultation and coordination with the Bureau;

- Persons regulated by the Farm Credit Administration;

- Activities related to charitable contributions; and

- Motor vehicle dealers predominantly engaged in the sale, lease and servicing of motor vehicles unless such person is involved in any services related to financing real property, or other Consumer financial product or service not involving or related to financing a motor vehicle.

The Bureau has additional authority to prevent covered persons or service providers from engaging in unfair and deceptive practices if the Bureau finds that the 1) the act or practice is likely to cause substantial injury to consumers that is reasonable avoidable by consumers and; 2) the injury is not outweighed by countervailing benefits to consumers or to competition. The action or practice is also not abusive unless the act or practice:

- Materially interferes with the ability of the consumer to understand a term or condition of a consumer financial product or service; or

- Takes unreasonable advantage of:

    - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
    - The inability of the consumer to protect the interest of the Consumer in selecting or using a consumer financial product or service; or
    - The reasonable reliance by the consumer on a covered person to act in the interest of the consumer.

Preservation of State Law [Title X subtitle D]:

Title X, which establishes the Bureau is not to be construed as annulling, altering, effecting or exempting and person subject to Title X from complying with statutes, regulations, orders in effect in any state, except as specified. Statutes, regulations or orders are not inconsistent with Title X so long as the state provisions provider greater consumer protection. In effect, the rules, regulations and laws changed or created by the Bureau will set a floor for consumer protection.

Enforcement Powers of the States [Section 1042]:

The attorney general of any state may bring a civil action in the name of the state to enforcement provisions of Title X. Additionally, state attorneys general are provided authority to bring a civil action against a national bank to enforce provisions of Title X. Prior to filing of such action, the attorney general filing the suit must provide a copy of the complaint to the Bureau and the primary federal regulator of the entity subject to the complaint.

Preemption standards [Section 5136c]

Title X clarifies the preemption standards applicable to national banks by stating that State consumer financial laws are preempted only if:

- Application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on banks chartered by that State;

- In accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination may be made by a court, or by regulation or order of the Comptroller of the Currency (the "Comptroller") on a case-by-case basis, in accordance with applicable law; or

- The State consumer financial law is preempted by a provision of Federal law other than Title X.

The Comptroller must consult with the Bureau when making a preemption determination on a case-bycase basis and the Comptroller shall take into account the views of the Bureau when making the determination. The standard of review when a court reviews a preemption determination of the Comptroller includes an assessment of the validity of the determination, the thoroughness evident in the consideration, the validity of the reasoning, the consistency with other valid determinations made by the Comptroller, and other factors that the court finds persuasive and relevant to its decision. The Comptroller may not delegate preemption determinations.

Title X clarifies that preemption standards do not apply to any subsidiaries or affiliates of a national bank (other than those chartered as a national bank). The OCC must publish the Comptroller's preemption determinations at least quarterly. Preemption determinations related to Federal savings associations shall be decided using the same legal standards applicable to national banks regarding preemption of State law. Title X also clarifies that the Home Owners Loan Act "does not occupy the field in any area of State law." Accordingly, field preemption no longer exists for Federal savings associations.

Title X clarifies the concept of visitorial powers by codifying the recent United States Supreme Court case of Cuomo v. Clearing House Association, 129 S.CT. 2710 (2009), which provides that no provision of the National Bank Act related to visitorial powers or that otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by law.

*Reasonable Fees and Rules for Payment Card Transaction*s:

The Board will have authority to prescribe regulations regarding interchange fees so that they are reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Additionally, businesses are allowed to establish differential pricing based on form of payment and further allow businesses to require a minimum purchase for the use of a debit or credit card.

Studies & Reports:

Throughout Title X there are various sections that require the Bureau to conduct studies and issue reports to Congress on various topics, including, but not limited to, the following:

- Study and Report of Financial Literacy Programs;
- Study and Report on the Use of Agreements Providing for Arbitration of Any Future Dispute Between Covered Persons and Consumers in Connection with the Offering or Providing of Consumer Financial Products or Services;
- Department of the Treasury Study on Ending the Conservatorship of Fannie Mae, Freddie Mac, and Reforming the Housing Finance System; Study on Reverse Mortgage Transactions;
- Report on Private Education Loans and Private Educational Lenders;
- Study and Report on Credit Scores; and

- Review, Report and Program with Respect to Exchange Facilitators (Tax Free Exchange Transactions).

Federal Reserve Reform [Title XI-Sections 1101-1109].

Title XI of the Act reforms several areas of the Federal Reserve bank system by amending emergency lending procedures, authorizing the GAO to audit the governance of the Federal Reserve, establishing an FDIC debt guarantee program, and requiring greater transparency in each of these endeavors.

Improving Access to Mainstream Financial Institutions [Title XII-Sections 1201-1210:

Title XII allows the Treasury Secretary to establish agreements, pilot projects and grants to improve access to mainstream financial products for low to moderate income consumers.

Mortgage Reform and Anti-Predatory Lending Act [Title XIV-Sections 1400-1498].

Title XIV establishes new standards aimed at originators of residential mortgage loans, residential mortgage loans themselves, and high-cost residential mortgage loans. These provisions are summarized below.

Many of the provisions and reforms of this section are not new. HR 4173 codifies many existing regulations and proposed regulations regarding residential mortgage lending.

Standards Applicable to Residential Mortgage Loan Origination

In an effort to eliminate steering incentives such as yield spread premiums, Title XIV prohibits a mortgage originator from receiving compensation that varies according to the terms of the loan (other than principal amount). Additionally, a mortgage originator cannot receive any compensation from any person other than the consumer, except in circumstances where the consumer has not provided any compensation directly to the mortgage originator or made any upfront payment of discount points, origination points, or fees.

In addition to the prohibitions aimed at steering incentives, Title XIV authorizes the Federal Reserve Board (the "Board") to prescribe regulations that prohibit:

- Mortgage originator from steering a consumer to a residential mortgage that the consumer is unlikely to be able to repay or that has predatory characteristics, such as equity-stripping, excessive fees, or abusive terms;

- Mortgage originator from steering a consumer from a Qualified Mortgage (defined below) to a non-Qualified Mortgage; abusive or unfair lending practices that promote disparities among consumers of equal creditworthiness but of different race, ethnicity, gender, or age;

- Mortgage originator from mischaracterizing the credit history of a consumer or the appraisal value of the property securing the residential mortgage loan; and

- Mortgage originator who is unable to suggest, recommend, or offer a less expensive loan than one for which the consumer qualifies, from attempting to dissuade the consumer from seeking a residential mortgage loan from a different Mortgage Originator.

Civil liability for violations of the above-listed prohibitions and regulations is the greater of the actual damages suffered by the consumer or three times the total amount of compensation obtained by the mortgage originator in connection with the residential mortgage loan in question. Consumers seeking recovery can pursue claims through a private action (including a class action).

Standards Applicable to Residential Mortgage Loans

Title XIV introduces new standards applicable to most residential mortgage loans. Primarily, a creditor cannot extend credit for a residential mortgage loan without first making a reasonable and good faith attempt to verify that the consumer has the ability to repay the loan. This determination is made by examining verified and documented information, including the consumer's credit history, current and expected income, current obligations, debt-to-income ratio, employment status, and any other pertinent financial information. The determination cannot be based on the consumer's equity in the property securing the mortgage. The creditor must verify the consumer's income through a review of the consumer's W-2 form, tax returns, payroll receipts, financial institution records, or any other third party documentation that reasonably portrays the consumer's income. Refinancing of loans made by certain Federal departments are exempt from the income verification process if certain additional requirements are met. The creditor must use a payment schedule that fully amortizes the residential mortgage loan over the life of the loan with certain exceptions made for non-standard loans such as interest only loans and loans with negative amortization. The creditor must make certain assumptions when conducting the repayment analysis, including that the loan proceeds are fully disbursed when the loan is consummated, the loan is to be repaid in equal monthly payments (unless the terms of the loan provide for unequal payments), and the loan has a fixed interest rate equal to the index rate prevailing on a residential mortgage loan at the time the loan is consummated, plus the margin that will apply after the expiration of any introductory interest rates.

Qualified Mortgages

A creditor offering a mortgage that meets certain specifications (a “Qualified Mortgage”) is allowed to presume that the consumer has the requisite ability to prepay. A Qualified Mortgage is a residential mortgage loan that meets all of the following requirements:

- Regular payments do not result in an increase in principal balance or allow the consumer to defer repayment of principal;
- The payment schedule does not result in a balloon payment, defined as a scheduled payment more than twice the size of the average earlier scheduled payments;
- The income and financial resources of the consumer are verified and documented;
- In the case of a fixed-rate loan, the underwriting process is based on a payment schedule that fully amortizes the residential mortgage loan over the life of the loan;
- In the in case of an adjustable-rate loan, the underwriting process is based on the maximum rate permitted under the loan during the first five years and a payment schedule that fully amortizes the residential mortgage loan over the life of the loan;
- The terms of the loan comply with regulations established by the Board regarding ratios of monthly debt to monthly income, or any alternative measure provided by the Board;
- The total points and fees do not exceed 3% of the total loan amount; and
- The term does not exceed 30 years, with limited exceptions.
- The Board has the authority to adjust the criteria for a Qualified Mortgage in order to allow smaller loans and loans made in rural areas or areas with low home values, that might not otherwise be characterized as a Qualified Mortgage. to take advantage of the associated presumption of ability to repay.

Defense Against Foreclosure

A consumer may assert as a defense against a foreclosure initiated by a creditor, assignee, or holder of a residential mortgage. Any violation of either the prohibition against steering incentives or the ability-to-repay standard. A consumer who successfully asserts this defense is entitled to set-off or recoupment in an amount equal to what the consumer would be entitled to for a valid claim brought against the creditor in an original action for such violation. The defense can be asserted without regard to the time limit on a private action for damages.

Prepayment Penalties

Title XIV eliminates prepayment penalties on residential mortgage loans that do not qualify as Qualified Mortgages. Prepayment penalties are also eliminated for adjustable rate mortgages or mortgages with an annual percentage rate that exceeds the average prime offer rate for a comparable residential loan mortgage. A Qualified Mortgage may contain prepayment penalties, but these penalties must be phased out during the first three years of the life of the Qualified Mortgage and cannot exceed 3% of the outstanding balance of the loan.

Required Disclosures

Specific disclosure requirements are now imposed on creditors offering residential mortgage loans.

These disclosure requirements include:

- the amount of monthly payments for variable rate loans;
- the aggregate amount of settlement charges, fees, and interest for all residential mortgage loans; and
- the date on which the interest rate for a hybrid adjustable rate mortgage will reset or adjust.

Periodic statements provided to the consumer must include the amount of principal, the current interest rate, the date on which the interest rate will reset or adjust, a description of any late fees, and contact information relating to counseling services and mortgage information.

High-Cost Mortgages

Title XIV expands protection for consumers entering into high-cost mortgages in a number of ways. A high cost mortgage is a mortgage:

- for which the annual percentage rate at the time of consummation exceeds the average prime offer rate by 6.5%, for a first-lien residential loan mortgage, or 8.5%, for a second-lien residential loan mortgage or a dwelling valued under $50,000;

- with points and fees greater than 5%, for a residential loan mortgage of $20,000 or higher, or 8% or $1,000, for a residential loan mortgage less than $20,000; or

- in which the creditor is permitted to charge prepayment fees or penalties more than 36 months after consummation or for which the prepayment fees or penalties exceed 2% of the amount prepaid.

High-cost mortgages are subject to the following restrictions:

- No balloon payments. A high-cost mortgage cannot contain a scheduled payment more than twice the amount of the average of earlier scheduled payments, except where payments are adjusted for irregular or seasonal income.

- No recommendation of default by a creditor. A creditor cannot recommend or encourage default on an existing loan in connection with the closing of a high-cost mortgage that will refinance all or a portion of the existing loan.

- Restrictions on late fees. A creditor cannot charge a late fee in connection with a high-cost mortgage:
    - greater than 4% of the past-due payment;
    - unless authorized by the loan documents;
    - before payment is 15 days past due; or
    - more than once with respect to a single payment.

Restrictions on acceleration of debt.

A high-cost mortgage can only be accelerated when:

- a default with regards to payment occurs;
- pursuant to a due-on-sale clause; or
- pursuant to a material violation of a provision unrelated to payment.

Restrictions on financing points and fees.

A creditor cannot finance:
- any prepayment penalties or fees in a refinancing if the creditor is the noteholder; or
- any points or fees.

No modification, deferral, or payoff statement fees.

A creditor cannot charge a fee to modify, amend, renew, or extend a high-cost mortgage or to defer a payment due under a high-cost mortgage. Similarly, a creditor can only charge a fee associated with informing or transmitting the outstanding balance of the high-cost mortgage to any person in limited circumstances.

Pre-loan counseling required.

A creditor cannot extend credit under a high-cost mortgage without first receiving verification that the consumer has completed a counseling program approved by the Department of Housing and Urban Development ("HUD").

A creditor has 30 days from the time the consumer is notified of any violation of the above-listed regulations applicable to high-cost mortgages or 60 days from the time the creditor discovers the violation to cure such violation.

Creation of the Office of Housing Counseling within HUD.

The Director of the Office of Housing Counseling will have primary responsibility for establishing, administering, and coordinating HUD programs relating to housing counseling, homeownership counseling, rental counseling, and mortgage-related counseling, as well as providing grant money to HUD-approved counseling agencies. The Director is also responsible for conducting a study related to default and foreclosure and maintain a public database related to the same.

Other Changes:

Higher-risk loans, such as subprime mortgages, will require the establishment of an escrow account for the payment of taxes and insurance. The Board is authorized to exempt a creditor who operates in rural areas, has total mortgage loan originations that do not exceed certain thresholds, retains its mortgage loan originations in its portfolio, and meets certain asset level thresholds from the mandatory escrow account requirement. If an escrow account is optional and the consumer opts to forgo the use of one, the creditor must provide a detailed explanation of the consumer's obligations with regard to payment of taxes and premiums.

Mortgage servicers cannot obtain force-placed hazard insurance without a reasonable basis for believing that the consumer has failed to obtain such insurance. Loan payments that conform to the requirements of the loan must be credited upon receipt. Nonconforming payments, if accepted, must be credited within five days of receipt.

A creditor cannot extend credit under a higher-risk mortgage, as defined in Title XIV, without first obtaining a written appraisal from an independent appraiser. Steep penalties are imposed on any person with an interest in the underlying property who attempts to improperly influence a person or entity conducting an appraisal. A creditor may provide a customary fee for an appraiser who is not an employee of the creditor or originator.

Appraisal management companies are now subject to increased State and Federal regulation, including qualification, registration, and licensing requirements.

The Secretary of HUD will develop a program to protect tenants and at-risk multifamily properties by creating sustainable financing, providing funds for rehabilitation, maintaining government subsidies, and facilitating transfer of the property to new owners when necessary.

Creditors who deny a consumer's request for a mortgage modification must provide the consumer with all relevant data used in any net present value analysis conducted in connection with the request.

Information collected by the Secretary of the Treasury in accordance with the Home Affordable Modification Program of the Making Home Affordable initiative relating to the number of mortgage modification requests received, processed, approved, and denied in a given month, will be made public by means of a World Wide Web site maintained by the Secretary of the Treasury.

The Secretary of HUD will make available $1 billion in assistance for troubled mortgages through the Emergency Homeowner's Relief Fund established pursuant to the Emergency Housing Act of 1975. The Treasury will make available $1 billion in funding to the Secretary of HUD for the purpose of redevelopment of abandoned and foreclosed homes in accordance with American Recovery and Reinvestment Act of 2009. The Secretary of HUD will develop a program to provide legal assistance to low- and moderate income homeowners and tenants related to a wide range of foreclosure-related issues.

<u>Miscellaneous Reports & Studies.</u>

HR 4173 contains direction for the completion of several studies and reports on the part of federal regulators. Many of these reports and studies have been discussed in previous section summaries. However, below is a list of studies not addressed previously in this document:

- GAO study and report on accredited investors.

- Study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies.

- Study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the benefits and costs on the efficiency of capital markets

- The Comptroller General of the United States shall conduct the following studies:

    - access to capital by smaller insured depository institutions.

    - Use of hybrid capital instruments as a component of Tier 1 capital for banking institutions and bank holding companies.

    - Capital requirements applicable to United States intermediate holding companies of foreign banks that are bank holding companies or savings and loan holding companies.

    - Implementation of prompt corrective action by the appropriate Federal banking agencies.

    - Compliance costs associated with the current Securities and Exchange Commission rules 204-2 (17 C.F.R. Parts 275.204-2) and rule 206(4)-2 (17 C.F.R. 275.206(4)-2) under the Investment Advisers Act of 1940 regarding custody of funds or securities of clients by investment advisers.

    - Feasibility of forming a self-regulatory organization to oversee private funds.

    - Determine the effect of the enactment of this part on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

    - Determine whether it is necessary, in order to strengthen the safety and soundness of institutions or the stability of the financial system, to eliminate the exceptions under section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

    - Mutual fund advertising.

- Identify and examine potential conflicts of interest that exist between the staffs of the investment banking and equity and fixed income securities analyst functions within the same firm.

- Alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

- Feasibility and merits of creating an independent professional organization for rating analysts employed by nationally recognized statistical rating organizations.

- Impact of authorizing a private right of action against any person who aids or abets another person in violation of the securities laws.

- Review the number of employees who leave the Securities and Exchange Commission to work for financial institutions.

- Review of the disclosure required to be made by issuers of municipal securities.

- Study of the municipal securities markets.

- Risks and conflicts associated with proprietary trading by and within covered entities.

- Person to person lending to determine the optimal Federal regulatory structure.

- Current inter-agency efforts of the Secretary of the Treasury, the Secretary of Housing and Urban Development, the Attorney General, and the Federal Trade Commission to crackdown on mortgage foreclosure rescue scams and loan modification fraud in order to advise the Congress to the risks and vulnerabilities of emerging schemes in the loan modification arena.

- Effects the enactment of this Act will have on the availability and affordability of credit for consumers, small businesses, homebuyers, and mortgage lending,

* The Securities and Exchange Commission shall conduct the following studies:

- Review of the use of compensation consultants and the effects of such use.

- Evaluate the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and FINRA, and other Federal a national securities association, and other Federal and State legal or regulatory standards; and whether there are legal or regulatory gaps or overlap, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

- Review and analyze the need for enhanced examination and enforcement resources for investment advisers.

- Complete a study, including recommendations, of ways to improve the access of investors to registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information) about registered and previously registered investment advisers, associated persons of investment advisers, brokers and dealers and their associated persons on the existing Central Registration Depository and Investment Adviser Registration Depository systems, as well as identify additional information that should be made publicly available.

- Determine the extent to which private rights of action under the antifraud provisions of the Securities and Exchange Act of 1934 (15 U.S.C. 78u-4) should be extended.

- Feasibility and desirability of standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms.

- Independence of nationally recognized statistical rating organizations;

- Study of the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models;

- Establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products, including

- Assessment of potential mechanisms for determining fees for the nationally recognized statistical rating organizations to provide initial ratings.

- The internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as the SEC's relationship with and the reliance on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the SEC's oversight.

- Determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between $75,000,000 and $250,000,000 for the relevant reporting period while maintaining investor protections for such companies. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 9 months after the date of the enactment of this subtitle, the Commission shall transmit a report of such study to Congress.

- Financial Stability Oversight Council shall conduct a study evaluating the importance of maximizing United States taxpayer protections and promoting market discipline with respect to the treatment of fully secured creditors in the utilization of the orderly liquidation authority.

- The Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding the resolution of financial companies under the Bankruptcy Code, under chapter 7 or 11 thereof.

- The Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding international coordination relating to the resolution of systemic financial companies under the United States Bankruptcy Code and applicable foreign law.

- The Division of Risk, Strategy, and Financial Innovation of the Commission shall conduct a study on the state of short selling on national securities exchanges and in the over-the-counter markets, with particular attention to the impact of recent rule changes.

- Study on how to modernize and improve the system of insurance regulation in the United States.

- The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study on swap regulation in the United States, Asia, and Europe and clearing house and clearing agency regulation in the United States, Asia, and Europe.

- The Securities and Exchange Commission and the Commodity Futures Trading Commission shall, jointly, conduct a study to determine whether stable value contracts fall within the definition of a swap.

- The interagency group shall conduct a study on the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

- The Inspector General of the Commission shall conduct a study of the whistleblower protections.

- The Board of Governors of the Federal Reserve System, in coordination and consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission shall conduct a study of the combined impact on each individual class of asset-backed security established under section 15G(c)(2) of the Securities Exchange Act of 1934,

- The Chairman of the Financial Services Oversight Council shall carry out a study on the macroeconomic effects of the risk retention requirements with emphasis placed on potential beneficial effects with respect to stabilizing the real estate market.

- GAO study and report on financial literacy programs.

- Study of the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

- The Secretary of the Treasury shall conduct a study of and develop recommendations regarding the options for ending the conservatorship of the Federal National Mortgage Association (in this section referred to as 'Fannie Mae') and the Federal

Home Loan Mortgage Corporation (in this section referred to as 'Freddie Mac'), while minimizing the cost to taxpayers.

- Study of reverse mortgage transactions.

- The Bureau shall conduct a study on the nature, range, and size of variations between the credit scores sold to creditors and those sold to consumers by consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)), and whether such variations disadvantage consumers.

- The Inspector General of the Board of Governors of the Federal Reserve System shall conduct a study on the impact that the exemption from section 552(b)(3) of title 5 (known as the Freedom of Information Act) established under paragraph (6) has had on the ability of the public to access information about the administration by the Board of Governors of emergency credit facilities, discount window lending programs, and open market operations; and

- The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury and other relevant agencies, shall conduct a comprehensive study to determine prudent statutory and regulatory requirements sufficient to provide for the widespread use of shared appreciation mortgages to strengthen local housing markets, provide new opportunities for affordable homeownership, and enable homeowners at risk of foreclosure to refinance or modify their mortgages.

- The Secretary of Housing and Urban Development shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as are available. The study shall also examine the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures, and the role of computer registries of mortgages, including those used for trading mortgage loans.

- The GAO will study the effectiveness and impact of various appraisal methods, as well as the industry and regulation of appraisals.

- The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury, shall conduct a study of the effect on residential mortgage loan foreclosures of the presence in residential structures subject to such mortgage loans of drywall that was imported from China during the period beginning with 2004 and ending at the end of 2007.

- The FDIC shall conduct a study to evaluate:

- the definition of core deposits for the purpose of calculating the insurance premiums of banks;

- the potential impact on the Deposit Insurance Fund of revising the definitions of brokered deposits and core deposits to better distinguish between them;

- an assessment of the differences between core deposits and brokered deposits and their role in the economy and banking sector of the United States;

- the potential stimulative effect on local economies of redefining core deposits; and

- the competitive parity between large institutions and community banks that could result from redefining core deposits.