



The Dodd-Frank Wall Street Reform and Consumer Protection Act: Financial Stability

Addressing the Problem of Too-Big-To-Fail

- **Background**
 - The bill creates an ICBA-advocated systemic-risk council of regulators that could force the downsizing of too-big-to-fail firms. If the Federal Reserve determines that a large bank holding company or nonbank it supervises poses a grave threat to financial stability, it may, upon a two-thirds vote of the systemic-risk council, require the company to terminate or modify activities or sell assets. The bill also provides the FDIC authority to unwind large, failing financial firms. Treasury would supply funds to cover the upfront costs of winding down the failed firm, but the government would have to put a “repayment plan” in place to protect taxpayers. Regulators would recoup any losses incurred from the wind-down afterwards by assessing fees on financial firms with more than \$50 billion in assets.
 - Also included is a modified version of the Volcker rule to prohibit large banks from engaging in proprietary trading or holding or obtaining investments of up to 3 percent of their capital in private equity funds and 3 percent in hedge funds. Also included are exceptions for securities that community banks typically invest in.
 - The bill also enacts changes to the emergency lending powers of the Federal Reserve and the FDIC. The Federal Reserve will no longer be able to provide lending assistance to a single firm unless it was part of a broad-based program. Additionally, there are new restrictions on the ability of the FDIC to establish lending programs like the Temporary Liquidity Guarantee Program.
- **ICBA Position:** ICBA worked tirelessly to include policies that subject systemically dangerous firms to more rigorous regulations and to prevent government bailouts of large firms.
- **What's Next:** The nine voting members of the Financial Stability Oversight Council will begin meeting to identify financial firms to be subject to enhanced supervision and prudential standards.
- **What It Means for Community Banks:** *Helping to end the problems posed by too-big-to-fail financial firms will prevent risks to the financial system and provide for a fairer system and a more competitive marketplace for community banks.*

Trust-Preferred Securities

- **Background:** Following ICBA outreach, Congress modified an amendment that would have prevented all financial institutions from including trust-preferred securities in their Tier 1 capital. With the modification, TRuPS issued by bank holding companies with less than \$15 billion in assets and mutual holding companies before May 19, 2010, are grandfathered. Additionally, bank holding companies with less than \$500 million in assets are exempt from the requirement, and the Fed's small bank holding company policy statement remains intact.
- **ICBA Position:** ICBA strongly opposed the amendment and relentlessly worked with policymakers to exempt existing TRuPS and protect the small bank holding company policy statement.
- **What's Next:** Bank holding companies with more than \$15 billion in assets must begin to transition starting in January 2013. The transition period is three years.
- **What It Means for Community Banks:** *These exemptions will help shield the community banking sector from the amendment.*

Federal Home Loan Banks

- **Background:** The law excludes the Federal Home Loan Banks from a prohibition on institutions lending an amount to any unaffiliated company that exceeds 25 percent of the capital stock and surplus of the lending institution.
- **ICBA Position:** ICBA fought to include the exemption in the final bill.
- **What's Next:** No further action is needed.
- **What It Means for Community Banks:** *Community banks will continue to have access to FHLBank advances.*

Derivatives

- **Background:** The law provides for federal regulation of the derivatives markets and contains several provisions advocated by ICBA. Banks that engage in swaps with their customers in connection with loans do not trigger the definition of “swaps dealer,” which carries a host of regulatory burdens, nor do banks that use swaps to hedge their own interest rate risk. A *de minimis* provision exempts banks and other entities that use swaps infrequently.
- **ICBA Position:** ICBA worked vigorously to include these exemptions.
- **What’s Next:** Many decisions are left to regulators.
- **What It Means for Community Banks:** *Community banks face fewer regulatory burdens due to these exemptions.*