



Summary of Conference Report on the Dodd-Frank Wall Street Reform and Consumer Protection Act

June 30, 2010

Title I – Financial Stability

Financial Stability Oversight Council

- Creates a *Financial Stability Oversight Council* (FSOC) with authority over large bank holding companies (over \$50 billion) and systemically-risky nonbank financial companies.
 - *FSOC will play a key role in reining in too-big-to-fail banks and creating a level playing field for all banks.*
- The purpose of the FSOC is to identify risks and respond to emerging threats to the financial stability of the U.S. arising from large, interconnected bank holding companies or nonbank financial companies.

Structure and Authority

- Nine voting members led by the Treasury Secretary. Others are: Heads of the Federal Reserve Board of Governors, the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Commodity Futures Trading Commission (CFTC), the Federal Housing Finance Administration (FHFA), the National Credit Union Administration (NCUA), and an independent insurance expert appointed by the President for a 6-year term. The Director of the Office of Financial Research gets a non-voting seat, as do the Director of the Federal Insurance Office, a state insurance commissioner, a state banking supervisor, and a state securities commissioner.
- Identify, by a two-thirds vote, U.S. and foreign non-bank financial companies to be supervised by Fed and subject to prudential standards.
- Recommend enhanced supervision and prudential standards for non-bank financial companies supervised by the Fed and bank holding companies of more than \$50 billion. New standards will be implemented by the Fed. Prudential standards include risk based capital, leverage limits, liquidity requirements, resolution plan, concentration limits, contingent capital, enhanced public disclosure, overall risk management.
- Provide direction for supervisory policy, to be implemented by the member agencies, and identify gaps in regulation and supervision.
- Require supervision by the Fed for nonbank financial companies that may pose risk to financial stability.

- **Accounting oversight.** One of the council's duties will be to "review and, as appropriate ... submit comments to the Securities and Exchange Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure."
- Authority to collect information from regulatory agencies and directly from large bank holding companies and non-bank financial companies.

Downsizing, Capital and Other Provisions

- **Forced Downsizing.** If Fed determines that a large bank holding company or nonbank it supervises poses a grave threat to financial stability, the Fed may, upon a two-thirds vote of the FSOC, require the company to terminate or modify activities or sell assets.
- **Office of Financial Research.** Has subpoena power. Funded through assessments on large bank holding companies and non-banks supervised by the Fed.
- **Risk Committees.** Nonbank financial companies supervised by the Fed and publicly traded BHCs of more than \$10 billion must establish risk committees with independent directors and at least one "risk management expert." The Fed may also require publicly traded BHCs of less than \$10 billion establish such committees.
- **Leverage Limit.** Establishes 15-to-1 leverage limit for systemic risk companies.
- **Concentration Limits.** FHLBs are exempt from concentration limits that prohibit exposure to counterparties exceeding 25 percent of capital.
 - *ICBA helped secure this exemption, without which FHLB advances to community banks would have been cut.*
- **Collins Amendment (TRUPS).** Minimum capital requirements for bank holding companies can't be any less stringent than those for banks themselves. TRUPS proceeds are excluded from Tier 1 capital, but BHCs of less than \$500 million are exempt (the Fed's small BHC policy statement is protected) and TRUPS issued before May 19, 2010 by BHCs of less than \$15 billion are grandfathered. BHCs of greater than \$15 billion must begin to transition after two and a half years starting in January 2013, and the transition period will be three years.
 - *ICBA played a lead role in shielding community banks from the impact of the Collins amendment.*

Title II – Orderly Liquidation Authority

- Gives the FDIC authority to unwind large failing financial firms. Treasury would supply funds to cover the up-front costs of winding down the failed firm, but the government would have to put a "repayment plan" in place. Regulators would recoup any losses incurred from the wind-down afterwards by assessing fees on financial firms with more than \$50 billion in assets.
 - *With orderly liquidation authority, regulators will no longer be forced to choose between letting a large institution fail, with catastrophic consequences for the financial system, and propping it up. No bank will be too-big-to-fail.*

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

OTS Merged into OCC

- ***OTS merged into the OCC.*** The Office of Thrift Supervision would effectively be merged into the Office of the Comptroller of the Currency, with the OCC overseeing the federal thrift charter. Certain OTS responsibilities and authorities are transferred to the FDIC and the Fed. The Fed would retain its supervision of bank holding companies and state-chartered banks, and with the dissolution of the OTS, become the supervisor of savings and loan holding companies. The OTS would be merged into the OCC one year from the date of enactment of the bill, unless the Treasury Secretary opted to delay the transfer for up to an additional six months.
- ***Thrift charter.*** Thrift charter option to be preserved.
 - *ICBA priority.*

Deposit Insurance Provisions

- ***Change to assessment base.*** Changes the assessment base from domestic deposits to assets (minus tangible equity).
 - *This change, for which ICBA alone advocated, will save community banks \$4.5 billion over the next 3 years. This was among our top priorities in financial reform.*
- ***Increase in reserve ratio to fund Dodd-Frank Act.*** Increases reserve ratio from 1.15 to 1.35 with a target date of 9/30/20.
 - *This provision was added to replace, in part, the \$19 billion “bank tax,” which was added to the bill in the closing hours of consideration. At the insistence of ICBA, banks under \$10 billion will be held harmless from premium increases that result from this provision, just as they were carved out from the “bank tax” this provision replaces.*
- ***Increase in deposit insurance.*** Permanently increases the maximum amount of deposit insurance for banks, thrifts, and credit unions to \$250,000 per depositor. This increase would be made retroactive to January 1, 2008.
 - *Offsets the implicit guarantee enjoyed by too-big-to-fail banks and keep deposits in small communities.*
- ***Transaction Account Guarantee program extension.*** The final bill extends for two years unlimited deposit insurance coverage for non-interest bearing transaction accounts only. Program is no longer optional; no separately paid premiums.
 - *Offsets the TBTF advantage enjoyed by large banks in attracting business deposits.*

Title IV – Regulation of Advisors to Hedge Funds and Others

SEC Registration

- Large hedge and private equity funds will be forced to register with the SEC, subjecting them to mandatory federal oversight for the first time. Venture capital funds are exempt.

Accredited Investor Standards

- *Accredited investor standards.* Changes the current wealth test to exclude the value of the investor’s principal residence. The SEC will review the income test every four years.
 - *The Senate bill would have raised the accredited investor wealth test from \$1 million to \$2.25 million and the income test from \$200,000 to \$400,000. ICBA opposed the Senate version of this provision, which would have sharply reduced the pool of capital available to community banks through private offerings.*

Title V – Insurance

- *Federal Insurance Office.* Establishes the Federal Insurance Office (FIO) within the Treasury Department. Originally named the Office of National Insurance, the FIO would monitor all aspects of the insurance industry, including identifying issues or gaps in regulation that could contribute to systemic risk and recommending to the Financial Services Oversight Council that it designate an insurer as an entity subject to heightened regulation. The FIO also would coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters.
- *No Optional Federal Charter included.* Provides for a study on U.S. and global reinsurance markets, but does not otherwise address the issue of an optional federal charter for insurance.

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

- *ILCs.* Imposes a 3-year moratorium on deposit insurance applications for new credit card banks, industrial loan companies, and trust banks owned by commercial companies.
 - *ICBA pressed for a permanent closing of the ILC loophole. However, putting the current, de facto moratorium in statute is helpful.*
- *Expanded affiliate transactions rules.* The definition of “covered transaction” in the affiliate transactions rules would be expanded to include repurchase agreements, derivatives transactions, and securities borrowing and lending.
- *National bank lending limits* will include credit exposure arising from derivatives transactions, repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions. This provision could have the effect of lowering lending limits for national banks.
- *State bank lending limits* will include credit exposure arising from derivatives transactions.
 - *The Senate bill would have subjected state banks to national bank lending limits. Reversing this provision was a top ICBA priority. We are satisfied with the compromise embodied in the final bill.*

- ***New Insider Transaction Rules.*** Banks would be subject to new Fed rules governing purchases of assets from, or sales to, insiders.
- ***Source of Strength Rules for BHCs.*** BHCs would be subject to new “source of strength” rules with regard to their depository institution subsidiary.
- ***Capitalization Standards for Expanded Activities.*** Bank holding companies and savings & loan holding companies must remain well-capitalized and well-managed to engage in expanded activities.
- ***Charter conversions.*** Allows for charter conversions of banks and savings associations subject to an enforcement order, provided that the charter conversion is not opposed by either the old or the new federal banking agency.
- ***Countercyclical Capital.*** Establishes new countercyclical capital requirements for holding companies.
- ***Liabilities Cap.*** Prevents mergers of financial companies that would result in the merged company exceeding 10 percent of the aggregate consolidated liabilities of all financial companies.
- ***Interest on Checking.*** Allow banks to pay interest on demand deposits.
- ***Small Business Credit Cards.*** Allow credit card banks to issue credit cards to small businesses.
- ***Volcker Rule (Proprietary Trading).*** Establishes a modified version of the so-called Volcker Rule. Generally prohibits banks from engaging in proprietary trading or holding or obtaining an interest in a hedge fund or private equity fund. Permitted investments include U.S., state, and local debt, as well as obligations of Ginnie Mae, Fannie Mae, Freddie Mac, a Federal Home Loan Bank, Farmer Mac, a Farm Credit System Institution. Hedging activities are also permitted. In addition, each bank would be permitted to invest up to 3 percent of its Tier 1 capital in hedge funds and private equity funds. A bank's interest in any single hedge fund or private equity fund may not exceed 3 percent of the assets of that fund. Nonbank financial firms that are subject to Fed supervision would be subject to additional capital requirements and quantitative limits with respect to their proprietary trading or investments in or sponsorship of a hedge fund or private equity fund.
 - *ICBA advocated for a strong version of the Volcker Rule to help deter future financial crises. The version embodied in the final bill is reasonably strong.*

Title VII – Wall Street Transparency and Accountability

- ***Derivatives Regulation.*** Provides for federal regulation of the derivatives markets. Requires most derivatives trades to go through a clearinghouse and be exchange-traded and also would require regulators to impose more stringent capital and margin requirements on those derivatives not required to be traded on an exchange. There are limited exemptions from these expanded regulations for certain commercial end users of derivatives.
 - *The derivatives title of the final bill contains provisions advocated by ICBA. Banks that engage in swaps with their customers in connection with providing loans will not*

trigger the definition of “swaps dealer,” which carries a host of regulatory burdens, nor will banks that use swaps to hedge their own interest rate risk. A de minimus provision will exempt banks and other entities that use swaps infrequently. The final bill does not mandate higher capital and margin requirements for customized swaps, as previous versions of the bill had. Instead, it would base capital and margin requirements on the economic risks of swaps, rather than whether they are cleared or uncleared. Unfortunately, conferees removed an exemption from margin requirements for uncleared swaps where one party is an end user. Much is left to the discretion of the regulators.

Title VIII – Payment, Clearing, and Settlement Supervision

- ***Financial Market Utilities.*** Clarifies the Federal Reserve’s authority to prescribe risk management standards for various activities of financial market utilities, and outlines the circumstances under which a particular financial market utility may be provided access to the Fed's discount window.

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

- ***SEC Jurisdiction Over Certain Foreign Conduct.*** Extends the SEC's enforcement jurisdiction to cover significant steps in furtherance of a violation even if the securities transactions occur outside the U.S. and to cover foreign conduct that has a foreseeable substantial effect within the U.S.
- ***Fiduciary Duty.*** Requires the SEC to conduct a study on whether brokers who give investment advice should be held to the same fiduciary standard as investment advisers, namely, to act in their client's best interests. Gives the SEC the authority, once the study is released, to issue rules and impose such a fiduciary duty on broker-dealers if warranted.
- ***Credit Rating Agency Selection Process.*** Requires the SEC to conduct a two year study of the feasibility of creating a panel to randomly assign qualified credit rating agencies to issuers, instead of the current issuer-selects system. After the completion of the SEC's study, the credit rating agency assignment panel would be established, unless the SEC objects and develops what it considers to be a more practicable approach to address the perceived and actual conflicts of interest in the issuer-selects system.
- ***Credit Rating Agency Transparency/Liability.*** Requires nationally recognized statistical ratings organizations to disclose their methodologies, their use of third parties for due diligence efforts, and their ratings track record. Compliance officers would be barred from working on ratings methodologies or sales. Investors could sue ratings agencies for a knowing or reckless failure to investigate the facts or obtain analysis from an independent source. The SEC could deregister an agency for providing bad ratings over time.

- **Risk Retention.** Requires that loan originators retain 5 percent of any loan sold and securitized, unless it is a “qualified residential mortgage.” The bill would exempt from the risk retention standard low risk loans that meet certain standards as outlined in the legislation, and promulgated under rules to be developed by regulators. It also specifically exempts from risk retention FHA, VA, Farmer Mac and Rural Housing Service loans. There is language that gives regulators the authority to exempt commercial loans “sold and securitized” which meet certain underwriting standards.
- **Executive Compensation.** Provides shareholders with a non-binding vote on executive compensation (“a say on pay”). Compensation committees would be required to include only independent directors and such committees would have the authority to hire compensation consultants. Companies also would be required to establish policies to recover executive compensation (“claw back”) if this compensation was based on inaccurate financial statements that do not comply with accounting standards.
 - *The SEC has authority to exempt small companies from “say on pay,” or at least make it less burdensome.*
- **Corporate Governance and Proxy Access.** The SEC would be authorized to grant shareholders proxy access to nominate directors, and to require that issuers follow certain procedures for such proxy access. The conferees indicated that they expect the SEC to consider requiring that a shareholder hold a certain minimum amount of shares and that he or she hold such shares for a certain time period as conditions of obtaining proxy access. Directors also would be required to win a majority vote in an uncontested election.
- **SOX 404(b) Exemption for Small Issuers.** Permanently exempts public companies with capitalization of less than \$75 million from the auditor attestation requirements of SOX 404(b).
 - *ICBA has led the fight for this exemption since SOX was enacted in 2002.*

Title X – Consumer Financial Protection Bureau

- **Structure and General Authority.** Establishes the Consumer Financial Protection Bureau as an independent entity housed within the Federal Reserve led by a director appointed by the President and confirmed by the Senate. The CFPB has the authority to write consumer protection rules for banks and nonbank financial firms offering consumer financial services or products and to ensure that consumers are protected from “unfair, deceptive, or abusive” acts or practices.
- **Exam Authority.** The CFPB also would have authority to examine and enforce regulations for banks and credit unions with greater than \$10 billion in assets, all mortgage-related businesses (such as lenders, servicers, and mortgage brokers), and large nonbank financial companies (such as large payday lenders, debt collectors, and consumer reporting agencies).
- **Rule Writing Oversight.** Prudential regulators will have the opportunity to comment on CFPB rules before they are proposed and the CFPB would have to respond to these

comments in writing. Allows the chairman of the Financial Stability Oversight Council, if petitioned by a member agency, and upon a two thirds vote of the members of the council, to set aside a CFPB regulation. FSOC must determine that rule in question puts at risk safety and soundness of banking system or stability of financial system.

- **Community Bank Exam Carveout.** While banks with assets of \$10 billion or less would be subject to CFPB rules, they will be examined by their respective prudential regulator. However, the CFPB would have authority to participate in exams conducted by the prudential regulator on a “sampling basis” and provide input on the scope and conduct of the exam as well as the content of the exam report and the exam rating. The CFPB would also have authority to make referrals to the prudential regulator, where the CFPB has reason to believe that a material violation of Federal consumer law has occurred, and the prudential regulator would have to respond in writing within 60 days.
 - *The community bank carveout was a key ICBA victory. ICBA defeated an attempt to invest the CFPB with “backup enforcement authority” over otherwise exempt banks.*
- **Exclusions.** There are also various exclusions from the CFPB's authority, including exclusions for auto dealers (which was particularly contentious), insurance, accountants and tax preparers, attorneys, persons regulated by a state insurance regulator, merchants, retailers, other sellers of non-financial services, real estate brokerage activities, manufactured home retailers and modular home retailers.
- **Arbitration.** The use of mandatory arbitration clauses is prohibited.
- **Preemption of State Law.** The OCC may preempt state laws on a case-by-case basis if they "prevent or significantly" interfere with the business of banking.
- **State Attorneys General.** State AGs are authorized to sue a national bank to enforce a CFPB rule.
- **Remittances.** Amends the Electronic Fund transfers Act (Regulation E) to require new disclosures for remittance (consumer-to-consumer international) transfers. Disclosures include sender rights, error resolution procedures, currency exchange rates or reasonable estimate, and fees.
 - *ICBA supported amendments in the final bill include 5-10 year relief from currency exchange disclosure requirements for federally-insured financial institutions and error resolution safe harbors.*
- **Debit Interchange.** Allows Fed to set interchange rate on debit transactions. In setting rate, Fed must consider functional similarity between debit transactions and paper check transactions, which are required to clear “at par” (with no transaction fee). Fed must consider only incremental costs of each transaction. Fed may consider fraud prevention expenses in setting rates. Must be offset by fraud-related reimbursements received by issuer from merchant, consumers, or networks. Fed authority over network (Visa and MasterCard) fees is limited to ensuring that fees are not used to compensate issuers. Cards issued by banks under \$10 billion are exempt from the Fed-established rate, as are government issued cards. Merchants will be allowed to discriminate among methods of payment but not among

issuers. Merchants may set minimum payments, not to exceed \$10. Only institutions of higher learning may set maximums.

- *ICBA fought vigorously against this provision and orchestrated a Dear Colleague letter in opposition to it signed by 131 members of the House. Defeating the provision was ICBA's highest priority. But the strong Senate vote in favor of this provision ultimately proved decisive. Fed-set rates for debit interchange will not account for the full cost of supporting debit transactions. Despite the small bank carveout, community banks will likely see a significant reduction in debit interchange. ICBA will work with the Fed to get the best possible implementation.*

Title XI – Federal Reserve System Provisions

- ***GAO Audit of Fed.*** The Government Accountability Office would be authorized to conduct a one-time audit of the Fed's Section 13(3) emergency lending that took place during the financial crisis, and to audit 13(3), discount window lending, and open market transactions on a going forward basis. The GAO may not audit the Fed's monetary policy operations.
- ***Federal Reserve Bank Governance.*** The GAO would be directed to study the current system for appointing Federal Reserve Bank directors, to assess whether there are actual or potential conflicts of interest, and to identify measures that could improve Reserve Bank governance. Ends the current system in which the representatives of member banks are entitled to vote in the election of their regional Fed Bank president.

Title XII – Improving Access to Mainstream Financial Institutions

- ***Access to Banking Services.*** Authorizes the Treasury Department to establish programs designed to make banking services more accessible to unbanked and under-banked communities.

Title XIII – Pay It Back Act

- ***TARP Authorization Reduced.*** Requires that the authorization for TARP be reduced from \$700 billion to \$475 billion. Prohibits new programs under TARP and ensures the repaid TARP funds are not recycled back into the program.

Title XIV -- Mortgage Reform and Anti-Predatory Lending

- ***Mortgage Reform and Anti-Predatory Lending.*** Includes various mortgage reform and anti-predatory lending provisions.
- ***Underwriting Standards.*** Mortgage originators must determine that the borrower has a “reasonable ability to repay” the loan, and may only propose modifications to a mortgage that provide a “net tangible benefit” to the borrower. There is a presumption of compliance for qualified loans that meet rate restrictions, points and fees restrictions, debt to income

- *As a result of ICBA's advocacy, the final bill gives the Fed flexibility in applying these requirements to rural loans held in portfolio and requires them to adjust the points-and-fees threshold for smaller loans.*
- ***Prepayment Penalties.*** Bans prepayment penalties (with exception for limited, phased out prepayment penalties), with exception for qualified loans that meet certain criteria.
- ***Yield Spread Premiums.*** Restricts mortgage originator compensation and yield spread premiums by clarifying that mortgage compensation can only be financed if all originator compensation is paid by the borrower (not third parties) and the borrower pays the entire fee by financing it.
- ***Foreclosure Rights.*** Allows borrowers in a foreclosure action to offset from the outstanding balance due on their mortgage any damages incurred for violation of the ability to repay and yield spread premium standards.
- ***Unemployed Homeowner Relief.*** Provides \$1.5 billion in emergency mortgage relief for unemployed homeowners and additional funding for the Neighborhood Stabilization Program.

Title XV - Miscellaneous Provisions

- ***International Monetary Fund (IMF).*** Requires the U.S. executive director of the IMF to determine whether IMF loans to countries whose national debt exceeds their GDP will be repaid. If it is determined that a prospective loan is unlikely to be repaid, then the U.S. executive director is instructed to oppose having the IMF provide the loan.

Title XVI –Section 1256 Contracts

- Provides that certain swaps and futures contracts are not treated as Section 1256 contracts under the tax code, which requires that they be marked to market annually and any gain or loss recognized.