

# Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act

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As a reminder, the information contained herein is not legal advice and is not a comprehensive analysis of issues that may impact your business. Specific questions on how it may impact your products and services should be directed to your legal counsel.

## Financial Stability/Oversight

The Act creates a Financial Stability Council to monitor, identify and address systemic risks posed by financial firms, financial products and financial activities. The Council will make recommendations to the Federal Reserve Board (FRB) for rules on capital, leverage, liquidity and risk management as companies grow in size and complexity. The Council can also identify non-bank financial companies that pose systemic risks to the financial stability of the United States, and those companies would also be subject to regulation and prudential standards by the FRB.

The Act creates a liquidation mechanism for the Federal Deposit Insurance Corporation (FDIC) to unwind failing financial companies, and costs would be recouped through a government repayment plan and by assessments on large financial companies, with the riskiest paying more based on a risk matrix.

Under the "Volcker Rule," federal bank regulators will implement regulations for banks, bank affiliates and bank holding companies that prohibit proprietary trading, investment in and sponsorship of hedge funds and private equity funds, and would also limit relationships with these funds. However, banks could make de minimus investments in certain hedge and private equity funds if the investment is limited to 3 percent or less of the bank's Tier 1 capital. Non-bank financial companies supervised by the FRB will also be subject to additional capital requirements and other restrictions on proprietary trading and investments in hedge and private equity funds.

## Derivatives Reform

The Act provides the Securities & Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) with authority to regulate over-the-counter derivatives, including the trading of the products and the companies that sell them. Over-the-counter derivatives will be required to be traded on regulated exchanges, and the trades will have to be submitted to regulated clearinghouses. Clearinghouses must submit proposals to regulators before accepting swaps for clearing, and regulators will be required to evaluate which swaps will be centrally cleared. In an effort to provide for financial safeguards, regulators will have the authority to impose capital, margin, reporting, record-keeping and code of conduct requirements on swap dealers and major swap participants to ensure there are adequate financial resources to meet their responsibilities.

President Obama signed the Wall Street Reform & Consumer Protection Act into law on July 21.

The sweeping regulatory reform package fundamentally changes the financial services landscape and will result in a panoply of new regulations for years to come.

Many provisions in the Act are effective immediately, while others will be implemented in the coming months after rulemaking by various federal regulators. This document provides a high-level summary of the Act's key elements.

Banks would be required to spin off their riskiest derivatives trading operations into affiliates (such as agriculture, uncleared commodities and energy), but banks would be allowed to keep operations for interest-rate swaps, foreign-exchange swaps, and gold and silver swaps, to name a few.

## Mortgage Reform

The Act establishes a federal standard for all home loans that requires institutions to ensure that borrowers have a reasonable ability to repay their mortgage loans (based on verified and documented information of the consumer's financial resources). Each mortgage originator must be qualified, registered and licensed and submit that information to a nationwide mortgage licensing and registry system. Additionally, prepayment penalties, mandatory arbitration, negative amortization loans and balloon payments are generally prohibited. Lenders will be subject to additional disclosures for residential mortgage loans, and consumers are provided a defense to foreclosure if originators have violated steering provisions or ability to repay standards in any material way.

## Credit Rating Agencies

Credit rating agencies will be subject to additional regulatory oversight under a new Office of Credit Ratings within the SEC. The Office will require Nationally Recognized Statistical Ratings Organizations (NRSRO) to disclose their methodologies, their use of third parties for due diligence efforts, and their ratings track record, and the SEC can deregister an NRSRO for providing bad ratings over time. Credit rating agencies may be liable for misstatements or material omissions in registration statements under certain circumstances.



## Hedge Funds

Hedge funds and private equity advisers must register with the SEC as investment advisers and must provide information about their trades and portfolios so that regulators can assess systemic risk. The SEC also has the authority to impose broad record-keeping and reporting requirements on advisers to private funds, whether the advisers are registered or exempt.

## Insurance

The Act establishes a new Federal Insurance Office within the U.S. Treasury Department to monitor much of the insurance industry, to recommend certain insurers be regulated and to coordinate federal efforts with regard to international insurance matters. All lines of insurance will be subject to the Federal Insurance Office's purview, except health insurance, certain long-term care insurance and crop insurance.

## Executive Compensation

The Act provides shareholders of public companies a "say on pay" with a non-binding vote on executive pay and golden parachutes. In addition, public companies will be required to establish clawback policies to recover compensation from current and former executives if their compensation was based on material noncompliance with financial reporting requirements. Separately, bank regulators must establish regulations that require financial institutions with assets of at least \$1 billion to disclose to regulators their incentive-based compensation structure, and regulators may prohibit certain arrangements deemed to encourage inappropriate risks.

## Eliminates the OTS

The Office of Thrift Supervision (OTS) will be eliminated and its authority transferred to the FRB, the FDIC and the Office of the Comptroller of the Currency. However, the thrift charter was preserved.



## Banking Regulation

The Act subjects the FRB to an audit of the emergency lending that took place during the financial crisis and subjects the FRB to more transparency, disclosure and accountability requirements. In addition, financial institutions will be subject to new size- and risk-based capital standards and stronger lending limits. The Act also allows financial institutions to pay interest on business checking accounts.

## Bureau of Consumer Financial Protection

The Act establishes an independent bureau within the Federal Reserve, known as the Bureau of Consumer Financial Protection, which will regulate the offering and provision of consumer financial products and services under federal consumer financial protection laws. The Bureau will be led by a Director who will be appointed by the President and confirmed by the Senate for a five-year term. Although the Bureau will be housed within the Federal Reserve, the Federal Reserve Board may not interfere with the functions or personnel of the Bureau.

The Bureau's primary functions will be to (1) conduct financial education programs; (2) collect, investigate and respond to consumer complaints; (3) collect, research, monitor and publish information relevant to the functioning of markets for consumer financial

products and services, and identify risks to consumers and the proper functioning of such markets; (4) supervise covered entities for compliance with federal consumer financial protection laws and regulations, and take appropriate enforcement action to address violations and (5) issue new rules, orders and guidance implementing federal consumer financial protection laws.

The Bureau will have the authority to examine and enforce regulations for insured depository institutions and credit unions with assets greater than \$10 billion and most mortgage-related businesses, payday lenders, student lenders and non-bank financial companies.

The Bureau will have broad investigative and enforcement authority to enforce existing consumer protection requirements. The Bureau can levy civil penalties against violators ranging from \$5,000 to \$1 million per day of violation. State consumer protection laws that are more stringent than the federal requirements will not be preempted. For national banks, state consumer protection laws will be preempted only if the state law would have a discriminatory effect on national banks or prevent or significantly interfere with the bank's powers (this determination must be made on a case-by-case basis).

## Debit Card Regulations

The FRB will be required to establish parameters for the setting of PIN debit and signature debit card interchange based on a standard that is "reasonable and proportional to the cost incurred by the issuer" (although concessions will be made for fraud prevention and fraud costs). Card issuers with less than \$10 billion in assets will be exempt from these restrictions, as well as government electronic benefit cards and general purpose reloadable prepaid cards, under certain conditions. Network fees may be subject to the FRB's regulatory oversight if it deems that certain fees are being used to circumvent interchange price controls or otherwise compensate issuers.

The Act allows merchants to establish transaction minimums of \$10 or less for the use of a credit card, while government and institutions of higher education will be able to establish maximum credit card transaction amounts. Merchants will also be able to provide discounts to serve as an incentive for consumers to pay with various payment methods such as cash, checks or prepaid cards.

For general questions about this overview, please contact [publicaffairs@firstdata.com](mailto:publicaffairs@firstdata.com).