

## **Dodd Regulatory Restructuring Committee Print Executive Summary**

### **OVERVIEW**

Senate Banking Committee Chairman Christopher Dodd (D-CT) released a 1,139 page Committee Print of his financial regulatory reform bill on November 16, 2009. The Committee Print builds on the financial reform proposal of the Administration, but goes much further in several areas.

ABA supports broad regulatory reform to address the financial crisis. In particular, ABA supports creating a systemic oversight council and a method to resolve troubled systemically important firms in a manner that would end too-big-to-fail, closing regulatory gaps relating to non-banks, and improving consumer protections with a focus on non-banks.

ABA is strongly opposed, however, to this legislation because it would create a regulatory structure that would have a disproportionate and detrimental impact on the banking industry and specifically on traditional banking that had little to do with the fundamental causes of the crisis. The Committee Print would:

- Concentrate prudential bank regulatory authority into one monolithic agency, eliminating the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (Fed) from bank supervision, while also eliminating the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS). This raises serious public policy issues regarding the future of the dual banking system, the effectiveness of safety and soundness regulation, and the ability of the FDIC (regarding deposit insurance) and the Fed (regarding monetary policy) to uphold their respective regulatory responsibilities.
- Create a new and very powerful Consumer Financial Protection Agency (CFPA) with broad powers to supervise and enforce consumer protection laws. Separating consumer protection from safety and soundness would lead to conflicts, duplication, and inconsistent rules, and could lead to threats to bank safety and soundness in the name of consumer protection, since it also gives the CFPA unprecedented power to dictate pricing, products, and terms in the financial markets, limiting the ability of banks to make decisions on how best to serve local consumers.
- Eliminate federal preemption for national banks and thrifts and give the states the authority to write stricter rules that would be enforced by both the new CFPA and state Attorneys General. This would balkanize our national financial services market, and subject both federal and state charters to significant new state law restrictions.
- Impose a multitude of new and unnecessary regulatory requirements and costs on the banking industry, including significant potential resolution funding costs and limits on liquidity, lending, compensation, hedging, and holding company capital. This new regulation will impact the availability and cost of credit, as well as the competitive framework within which financial institutions operate in ways that are not currently evident or even understood.
- Prohibit new thrift charters.

ABA and the banking industry have wide-ranging problems with the Committee Print. It is clear that this legislative initiative represents the broadest, most complex, and most important legislation the banking

industry has faced in 70 years. It is no exaggeration to say that what happens with this legislation in the next few months will determine the very future of banking.

## **KEY PROVISIONS**

### **Consumer Financial Protection Agency (CFPA)**

The CFPA would be given oversight of consumer protection laws currently supervised and enforced by the bank and credit union regulators and the Federal Trade Commission (FTC). It would be governed by a five-member board with an independent director.

The CFPA would have broad rule-writing, supervision, and enforcement authority over banks and non-bank financial service providers. Federal preemption would be eliminated and states would be allowed to pass tougher consumer protections that would apply to all lenders, whether state or federally chartered.

The agency would focus resources on companies posing the biggest risk to consumers, which the Committee Print identifies as mortgage bankers, brokers, financial companies, and the largest institutions.

*ABA remains strongly opposed to the CFPA proposal, since it would create unnecessary new regulatory burdens and conflicts with bank safety and soundness rules.*

### **Single Bank Regulator – the Financial Institutions Regulatory Administration (FIRA)**

FIRA would combine the functions of the OCC and the OTS, as well as the state bank supervisory functions of the FDIC and the Fed, and the bank holding company supervision authority of the Fed into a single, new federal regulatory agency.

The FIRA board would be headed by an independent Chairman appointed by the President and would include the Chairmen of the FDIC and Fed. It would be funded primarily by assessments on the industry. It also would include a separate division to regulate community banks.

*Neither the Administration's proposal nor the pending House bill would create a single regulator. ABA strongly opposes the single-regulator concept, since it would undermine the dual banking system.*

### **Too Big To Fail/Systemic Risk**

New and higher regulatory standards would be imposed on financial companies as they grow larger and more complex, including more stringent capital, leverage, and liquidity requirements. Large, complex companies would be required to submit credible “funeral plans” for their rapid and orderly shutdown should they fail.

FDIC would act as receiver to unwind failing institutions where the failure would cause systemic risk. Costs of such a resolution would be charged after the fact to financial firms with assets of more than \$10 billion.

An Agency for Financial Stability would be created, headed by an independent Chairman and including federal financial regulators, which would write rules governing companies that pose systemic risk. Regulators would have the authority to break up large, complex financial companies.

*ABA has testified nine times over the past year in favor of broad, effective reform that would close the gaps in the regulation of nonbanks, create a systemic risk regulator, and end too-big-to-fail.*

*While ABA supports the systemic oversight agency concept and the orderly wind-down of failing systemically important institutions, ABA has urged Congress to use FDIC staff resources, not the FDIC itself, to resolve such institutions, in order to prevent public confusion about the safety of FDIC-insured deposits.*

### **Thrift Charter**

The ability to obtain a new federal thrift charter would be eliminated going forward, although existing savings associations with certain limitations would continue.

*ABA has been the leading advocate for preserving the thrift charter.*

### **Securitization**

A very problematic securitization provision is included that would require companies that sell mortgage-backed securities or similar products to retain at least 10 percent of the credit risk. It is not clear how a secondary market could function effectively, or at all, if this requirement is put in place.

### **Executive Compensation**

Broad restrictions and reporting requirements would be placed on executive compensation in general. The CFPB also would have the authority to regulate sales practices and compensation. This would be a troubling and unnecessary intrusion by the federal government that would likely have long-term and adverse consequences for banks and other financial institutions seeking to attract the best possible people for important positions in the industry.

### **FDIC Assessments**

The Committee Print would broaden the base for FDIC insurance assessments to be assets minus tangible equity instead of just deposits. This would be a dramatic change in the way deposit insurance is paid for and could have unintended consequences for both consumers and the future provision of financial services.

### **Other Provisions**

Other sections of the Committee Print address the regulation of derivatives, hedge funds, municipal securities, and credit rating agencies. These are very complex areas of the financial services market and it is not entirely clear what the consequences would be for the U.S. and international credit markets. It is certainly not something Congress should rush through without weighing the ramifications carefully.

## **CONCLUSION**

If enacted into law, this legislation would have profound implications for the banking industry and our economy that should carefully be thought through before Congress acts. Although it is intended to address important issues surrounding **Too Big to Fail**, the Committee Print also includes ancillary provisions creating regulatory structures and burdens that would have a disproportionate and detrimental impact on the banking industry – especially on traditional banking activities that had little to do with the fundamental causes of the financial crisis.

**ABA is strongly opposed to the legislation in its current form.**

