

## **Impact on Community Banks of the Regulatory Restructuring Bill**

The Senate bill, S.3217, would subject community banks – which, as many members of Congress have stated, had nothing to do with the financial crisis – to crushing new burdens. Below are 27 areas where there would be new or expanded regulations that would stem from the bill in its current form, and many more regulations are likely to follow in the implementation of the bill if it were to be enacted. Many of these new regulations have nothing to do with solving the problems that led to the crisis. Instead, they pile new burdens onto the industry at a time when the focus should remain on more fundamental reforms and enabling traditional banks to serve their communities and expand lending.

1. New risk committee requirement: The Federal Reserve Board is authorized to require all publicly traded bank holding companies with less than \$10 billion in assets to have a new “risk committee.” The committee will have to have as many independent directors as the Fed dictates and must have at least one risk management expert that has experience in “identifying, assessing, and managing risk exposures of large, complex firms.” (Sec. 165(g)(2)(B) of the Senate bill)
2. Expanded affiliate transactions rules: The definition of “covered transaction” in the affiliate transaction laws would be expanded to include repurchase transactions, derivative transactions, and securities borrowing or lending. It also will require that all covered transactions be secured at all times, instead of just at origination. (Sec. 608(a))
3. Expanded lending limit rules: The lending limit rules would include credit exposures arising from derivatives, repo transactions, and securities lending. (Sec. 610)
4. Lower lending limits for state banks: The lending limits applicable to national banks would apply to state banks as well. Thus, state banks located in states with higher limits would have lower limits under the bill. (Sec. 611)
5. New insider transaction rules: Banks would be subject to new Federal Reserve Board rules governing purchases of assets from, or sales to, insiders. (Sec. 615)
6. Capital rules for holding companies: Bank holding companies would be subject to new capital requirements. (Sec. 616(a))
7. “Source of strength” rules for holding companies: Bank holding companies also would be subject to new rules regarding the company’s role as a source of strength to its bank subsidiaries. (Sec. 616(c))
8. Limits on securitizations: Securitizers and originators would, as a general rule, have to retain at least 5% of the credit risk of any asset that is transferred through an asset-backed security. (Sec. 941)
9. More information collections about consumer loans: Banks will be subject to extensive new information collections imposed by the Consumer Financial Protection Bureau (CFPB). Moreover, the CFPB may disclose nonconfidential information that it gets from banks as it deems to be in the best interest of the public. (Sec. 1022(c)(4) and 1026(b))
10. Prohibition of mandatory arbitration clauses: The CFPB may issue rules prohibiting mandatory arbitration clauses. (Sec. 1028(b))

11. Rules on “unfair, deceptive, or abusive” practices: The CFPB is authorized to issue rules regarding “unfair, deceptive, or abusive” acts or practices. (Sec. 1031(b))
12. Disclosures to consumers about risks of a transaction: The CFPB is authorized to issue rules requiring banks to make disclosures regarding the costs, benefits, and risks, in light of the facts and circumstances of a given transaction, for every covered financial product or service. (Sec. 1032(a))
13. New TILA and RESPA disclosure: The CFPB is to publish new mandatory disclosures that combine requirements of the Truth in Lending Act and the Real Estate Settlement Procedures Act. (Sec. 1032(f)) (Banks currently are working at great expense to comply with yet another rewrite of RESPA rules.)
14. Disclosures about existing customer transactions: The CFPB is to issue rules requiring banks to provide information, including cost, charges, and usage data, to any customer who asks for it regarding any transaction with the bank. The data are to be made available electronically and through standardized formats, including machine-readable files, that that CFPB will design. (Sec. 1033(a))
15. Disproportionate penalty for violations of CFPB rules: It will be unlawful for a bank to enforce, or attempt to enforce, any agreement that does not conform the CFPB’s rules. Thus, any violation of a rule makes the entire transaction unenforceable. (Sec. 1036)
16. More state laws applicable: National banks and federal thrifts will find themselves subject to potentially hundreds of state and local consumer protection rules. The OCC will not be permitted to preempt a state law under the Dodd bill unless there is substantial evidence of a conflict and the OCC finds that there is a “substantive standard” in place that regulates the activity in question. Preemption will be unavailable to subsidiaries of national banks. (Sec. 1044(a))
17. Disclosures regarding deposit accounts: Every bank is to maintain records of the number and dollar amount of the deposit accounts of its customers, for all branches, ATMs, and other deposit-gathering facilities. Customer addresses are to be geo-coded and identified as a residential or commercial customer. Every bank also is to make annual disclosures, for each branch, ATM, or other facility, regarding the type of deposit account (including whether it is a checking or savings account) and data on the number and dollar amount of all accounts, by census tract of the customer. (Sec. 1071(b))
18. Burdens on small business loans: Every bank, when it receives a loan application from a small business, must ask the applicant whether it is women- or minority-owned. The bank is to maintain this information separately from the application file and the bank’s loan underwriter. If the bank determines that the underwriter should have access to the information, the bank is to tell the customer that the underwriter has access to it. Banks are to itemize each loan according to 12 enumerated criteria plus anything else the CFPB thinks is appropriate. All of this info is to be publicly available. (Sec. 1072)
19. Prepayment penalties prohibited: The CFPB is to adopt rules implementing new prohibitions on prepayment penalties. (Sec. 1074)
20. Burdens on remittance transfers: Banks that offer remittances will have to make disclosures, updated daily, for sample transfers of \$100 and \$200 that show what the recipient would

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receive in the 3 currencies into which the dollars are most frequented converted by the bank. Additional disclosures would be required for each remittance. The disclosures would have to be in all of the foreign languages that are principally used by the bank's customers. (Sec. 1076)

21. Expanded HMDA disclosures: Banks would have to report at least 13 new items under the Home Mortgage Disclosure Act based on the dollar amount and number of mortgage loans. (Sec. 1092)
22. Rules regarding "Say on Pay": All public companies would have to give shareholders a non-binding vote on executive compensation. (Sec. 951)
23. Requirement for compensation committees: All companies listed on an exchange would have to have a committee of directors, all of whom are independent, to review compensation practices. (Sec. 952)
24. New compensation disclosures: Public companies would be required to disclose the relationship between the company's performance and compensation as well as whether employees are permitted to hedge their equity holdings in the company. (Sec. 953 and 955)
25. Claw-back provisions: All public companies would have to institute claw-back policies for certain accounting restatements. (Sec. 954)
26. Rules regarding director elections: All public companies would have to comply with new SEC rules regarding the election of directors and disclosure requirements that apply if the Chairman and CEO offices have not been separated. (Sec. 971 – 973)
27. Rules on excessive compensation. The Fed, in consultation with the other banking agencies, is to adopt rules regarding unsafe and unsound compensation plans that will apply to bank holding companies. (Sec. 956)