REPUBLICAN PRESS OFFICE
COMMITTEE ON FINANCIAL SERVICES

# FINANCIAL REGULATORY REFORM

December 3, 2009

| | The Democrat Approach (H.R. 4173) | The Republican Approach |
|---|---|---|
| **Systemic Risk** | Establishes an 11-member Financial Services Oversight Council consisting of federal and state regulators to monitor the financial services marketplace to identify potential threats, including individual companies or activities that might threaten the stability of the financial system or pose systemic risk.<br><br>Authorizes the Council to identify financial firms to be regulated by the Federal Reserve and subject to stricter regulatory requirements if their size or activities pose a risk to the financial system. The prudential standards for these companies, among other things, include stricter risk-based capital requirements; leverage limits; liquidity constraints; market concentration limits; prompt corrective action; and the creation of pre-failure resolution plans (so-called "living wills").<br><br>Authorizes the Council to "break up" a large financial firm by requiring it to divest assets if it finds that the firm poses a "grave threat" to U.S. financial stability. | Establishes a Market Stability and Capital Adequacy Board – chaired by the Secretary of the Treasury and comprised of outside experts as well as representatives from the financial regulatory agencies responsible for supervising large, complex firms – that would be tasked with monitoring the interactions of various sectors of the financial system, and identifying risks that could endanger the stability and soundness of the system.<br><br>Addresses current regulatory gaps by requiring each functional regulator to assess the effects of their regulated entities' activities on macroeconomic stability and review how entities under their regulatory purview interact with entities outside their purview. The Board will not have independent enforcement or supervisory authority over individual firms |
| **Resolving Failed Institutions** | Gives the FDIC the authority to take over and wind down large, complex financial institutions that are in default or in danger of default, and whose failure would – in the judgment of executive branch officials – threaten the financial system.<br><br>Permits the FDIC make loans to a failing firm; purchase the assets of a failing firm; guarantee the obligations of a failing firm to its creditors; take a security interest in the assets of the failing firm; and/or sell or transfer assets that the FDIC has acquired from the failing firm. | Provides for the resolution of insolvent non-bank institutions—no matter how large or systemically important—by creating a new chapter of the bankruptcy code to make it more efficient and better suited for resolving large non-bank financial institutions. This new chapter will facilitate coordination between regulators and the courts to ensure technical and specialized expertise is applied when dealing with these complex institutions. Bankruptcy judges would also have the power to stay claims by creditors and counterparties to prevent runs on troubled institutions. |

| | | |
|---|---|---|
| | Establishes a $150 billion resolution fund that will be capitalized by risk-based assessments levied against financial companies having total assets greater than $50 billion, and against hedge funds with assets greater than $10 billion. If the resolution fund is insufficient, $50 billion more may be borrowed from the Treasury. | Reliance upon an enhanced bankruptcy regime ensures that failed institutions will be resolved according to well-established legal precedents and objective legal standards, not the subjective judgments of executive branch officials seeking to contain "systemic risk." |
| **Powers of the Federal Reserve** | Expands the powers of the Fed in at least 19 different ways, including granting broad discretion to:<br><br>• decide which financial firms need to be put through a resolution process, and<br><br>• require financial firms deemed systemically significant to sell or transfer assets to unaffiliated firms.<br><br>Imposes limitations on the Fed's use of its section 13(3) authority in a manner similar to that proposed by Republicans. | Imposes limitations on the Fed's use of its authority under section 13(3) of the Federal Reserve Act to respond to "unusual and exigent" circumstances by subjecting actions under 13(3) to Treasury approval and giving Congress the ability to disapprove, placing 13(3) transactions on Treasury's balance sheet, and eliminating the use of this authority to benefit specific institutions.<br><br>Removes restrictions on GAO audits of the Fed and calls for an audit to be completed within one year. Allows unreleased minutes and transcripts of Board of Governors and FOMC meetings to be exempt from audit, and sets a 180-day time lag on publication of market interventions, to allay Fed concerns that Congress is attempting to dictate monetary policy. [*Adopted in Financial Services Committee over Chairman Frank's objection]* |
| **Consumer Protection** | Creates a new federal Consumer Financial Protection Agency (CFPA), separate from safety-and-soundness regulation, paid for by transferring up to 10% of the Federal Reserve System's total expenses and by fees and other assessments on providers of financial products and services and financial transactions. A single individual (Presidentially-appointed, Senate confirmed) would have rule-writing authority.<br><br>Provides the CFPA with examination and enforcement authority over credit providers and all consumer financial products and services. (Provides a carve-out from CFPA examination and enforcement authority for smaller banks and credit unions, but the CFPA retains the ability to supplant the safety-and-soundness regulator by fiat.)<br><br>Restricts the use of mandatory pre-dispute arbitration in any agreement between a covered firm and a consumer for a consumer financial product or service | Expands the Federal Financial Institutions Examination Council – comprised of existing Federal and State financial regulatory agencies – and grants it explicit authority to adopt uniform consumer protection rules and examination practices, subject to the Administrative Procedures Act, that would be adopted jointly with and enforced by the prudential regulators. Enforcement of consumer protection rules on state regulated institutions shall be carried out by the appropriate state regulatory authority.<br><br>Simplifies and streamlines the complaint process for consumers and investors who believe they have been wronged by abusive industry practices, by establishing a single, toll-free number and website to field consumer inquiries and direct them to the appropriate regulatory or enforcement agency.<br><br>Amends the mission statements of each regulatory agency to include consumer protection and establishes within each such agency a consumer protection division. |

| | | |
|---|---|---|
| | Protects state laws from federal preemption, unless the law discriminates against national banks or federal thrifts, or "prevents or significantly interferes" with a banking power.<br><br>Allows each of the 50 states to superimpose its own consumer protection regime on top of the CFPA. | Codifies the Supreme Court's decision in *Cuomo vs. Clearing House Association* allowing State Attorneys General to compel national banks to comply with State consumer protection laws. |
| **Investor Protection** | Authorizes the SEC to restrict broker-dealers, municipal dealers or investment advisers from entering into mandatory pre-dispute arbitration agreements for disputes arising under Federal securities laws.<br><br>Harmonizes the standard of conduct for investment advisers and broker-dealers.<br><br>Establishes a whistleblower bounty program to reward individuals whose tips about securities wrongdoing lead to successful SEC enforcement actions.<br><br>Expands the SEC's enforcement and regulatory authorities, and doubles the agency's budget over the next five years.<br><br>Requires the SEC to perform an independent, comprehensive study of the securities regulatory regime to identify possible reforms.<br><br>Amends the Sarbanes-Oxley Act to give the Public Company Accounting Oversight Board (PCAOB) authority to regulate the auditors of all broker-dealers, and allows the PCAOB to share information and coordinate with its foreign counterparts.<br><br>Creates a grant program to provide funding to the states to protect senior citizens from securities fraud.<br><br>Requires SEC registration of municipal financial advisers. | Increases civil money penalties in government enforcement actions.<br><br>Maximizes restitution to victims of fraud.<br><br>Improves surveillance of bad actors who exploit gaps in the current regulatory regime to continue preying upon innocent consumers.<br><br>Provides the SEC with the authority to improve the collection of delinquent judgments.<br><br>Reauthorizes the Financial Crimes Enforcement Network (FinCEN), authorizing an additional $15 million to combat financial fraud. |
| **Derivatives Reform** | Requires institutions dealing in over-the-counter derivatives to be subject to federal regulation; meet new requirements for record-keeping, reporting and capital standards; and maintain adequate margins, or collateral. | Establishes a comprehensive OTC derivatives trade repository that would provide transparency to the market, give regulators the ability to analyze appropriate data to detect and prevent fraud, manipulation, and insider trading, and provide aggregated data to the markets and help regulators understand and analyze counterparty exposures in |

| | | |
|---|---|---|
| | Establishes a regulatory regime for the over-the-counter (OTC) derivatives market requiring clearing and trading on exchanges or electronic platforms for all standardized transactions between dealers and other large market participants. | order to prevent excessive risks from building up within the system.<br><br>Requires regulators to review market data and report back to Congress if they identify an entity not already regulated by a prudential regulator that should be more heavily regulated based on its size or activities in the OTC derivatives markets.<br><br>Codifies commitments that the private sector has made to the Federal Reserve Bank of New York to engage in ever greater amounts of central clearing.<br><br>Establishes margin requirements between dealers and major market participants, and directs regulators to take the swaps activities of supervised entities into account when setting capital requirements for those entities. |
| **GSE Reform** | No provision | Phases out taxpayer subsidies of Fannie Mae and Freddie Mac and sunsets the current GSE conservatorship by a date certain. Requires receivership if the GSEs are not financially viable, and privatization if they are. |
| **Credit Rating Agencies** | Requires new disclosures of NRSRO revenue.<br><br>Adds a duty to supervise employees of the NRSRO and authorizes the SEC to sanction supervisors for failing to do so.<br><br>Mitigates the conflicts arising from the issuer-pays model.<br><br>Requires each NRSRO to have a Board of Directors with at least 2 independent directors, and provides requirements for compensation, term, and duties.<br><br>Creates a public disclosure requirement and a 1-year look-back period for certain former employees of an NRSRO when they go to work for an issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of an NRSRO. | Changes the definition of the Nationally Recognized Statistical Ratings Organization to "nationally registered statistical rating organizations" and removing all references to ratings throughout Federal law and regulation, so that the rating agencies will no longer operate as a government-sanctioned oligopoly. [This provision is included in H.R. 4173.] |
| **Private Pools of Capital** | Eliminates the "private adviser" exemption in the Investment Advisers Act of 1940 commonly relied on by hedge fund advisers to avoid registering with the U.S. Securities and Exchange Commission (SEC), and establishes reporting and recordkeeping requirements to enable the collection of data on systemic risk. | |

<table>
<tr><td>Federal Insurance Office</td><td colspan="2">Establishes the Federal Insurance Office to monitor all aspects of the insurance industry, including issues or regulatory gaps that could contribute to systemic risk; and authorizes the Treasury Secretary to negotiate and enter into international insurance agreements on prudential matters on behalf of the United States.</td></tr>
<tr><td>Executive Pay</td><td>Requires all publicly traded companies to hold an annual, non-binding shareholder vote on compensation for executives, and mandates a separate non-binding shareholder vote on “golden parachute” compensation in the event of a corporate merger or acquisition.<br><br>Requires that all publicly traded companies have compensation committees comprised of independent directors, and requires compensation consultants to the corporate compensation committee to meet independence standards established by the SEC.<br><br>Requires financial institutions to disclose incentive-based compensation arrangements, and grants broad power to Federal regulators to determine if the compensation structure at financial institutions is aligned with sound risk management and meets other criteria appropriate to reduce unreasonable incentives to take undue risks.</td><td>Provides for a triennial, nonbinding shareholder vote on executive compensation and mandates a separate non-binding shareholder vote on “golden parachute” compensation in the event of a corporate merger or acquisition.<br><br>Requires that all publicly traded companies have compensation committees comprised of independent directors, and requires compensation consultants to the corporate compensation committee to meet independence standards established by the SEC.</td></tr>
</table>