



Side-by-Side Comparison Chart – Key Senate and House Bill Issues

June 2, 2010

The following chart compares the provisions of the Restoring American Financial Stability Act of 2010, passed by the Senate on May 20, 2010, and the Wall Street Reform and Consumer Protection Act of 2009, passed by the House on December 11, 2009. It is organized by title of the Senate bill.

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Notice: This chart is a summary intended to be used for general information. It is not a full analysis of the matters presented and should not be relied upon as legal advice. If you have any questions about the matters covered in this publication, the names and office locations of all of our partners appear on our website, davispolk.com.

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TITLE I – FINANCIAL STABILITY

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Subtitle A – Financial Stability Oversight Council (the “Council”)		
Financial Stability Oversight Council	<ul style="list-style-type: none"> ▪ Treasury Secretary would serve as chairman. ▪ Voting Members. Federal Reserve Chairman; Comptroller of the Currency; Director of OTS (until the functions of the OTS are transferred); SEC Chairman; CFTC Chairman; FDIC Chairperson; FHFA Director; NCUA Chairman; and Consumer Financial Protection Agency (“CFPA”) Chairman. <ul style="list-style-type: none"> □ Chairman of CFPA to be appointed by President and confirmed by Senate. ▪ Nonvoting Advisory Members. Federal Insurance Office (“FIO”) Director; a state insurance commissioner; a state banking supervisor; and a state securities commissioner. <ul style="list-style-type: none"> □ Nonvoting members may not be excluded from any Council meetings. 	<ul style="list-style-type: none"> ▪ Treasury Secretary would serve as chairman. ▪ Voting Members. Federal Reserve Chairman, Comptroller of the Currency, Director of Bureau of Consumer Financial Protection (“Consumer Bureau”), SEC Chairman, FDIC Chairperson, CFTC Chairman, FHFA Director, and independent member with insurance expertise named by President and confirmed by Senate. <ul style="list-style-type: none"> □ Director of Consumer Bureau to be appointed by the President and confirmed by Senate. ▪ Nonvoting Advisory Member. Director of Office of Financial Research (“OFR”) is a nonvoting member and cannot be excluded from Council meetings. Director to be appointed by the President and confirmed by Senate.
Role in Making Systemic Designations	<ul style="list-style-type: none"> ▪ Council, in consultation with the Federal Reserve and primary financial regulatory agencies, is authorized to designate “financial companies,” including banks and nonbank financial companies, as systemically important and therefore subjecting these companies to higher prudential standards. <ul style="list-style-type: none"> □ Designation requires a majority vote of the Council. □ Federal Reserve, as agent of the Council, imposes stricter standards. ▪ Council is authorized to identify financial activities and practices to be subject to stricter prudential standards. 	<ul style="list-style-type: none"> ▪ Council authorized to identify systemically important nonbank financial companies and activities, financial market utilities and payment, clearance and settlement activities. <ul style="list-style-type: none"> □ Designation requires 2/3 vote of the Council, including affirmative vote of the Treasury Secretary. ▪ “Large interconnected” bank holding companies are automatically subject to stricter standards, and the identification of a bank holding company as “large, interconnected” is left to the Federal Reserve.

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<p><i>Purpose and Duties of the Council</i></p>	<ul style="list-style-type: none"> ▪ Council is required to, among other things: <ul style="list-style-type: none"> □ facilitate information sharing and coordination among the members of the Council regarding financial services policy development, rulemakings, examinations, reporting requirements, and enforcement actions; □ monitor the financial services marketplace to identify potential threats to the stability of the United States financial system; □ identify potential threats to the stability of the United States financial system that do not arise out of the financial services marketplace; □ issue formal recommendations that a Council member agency adopt stricter prudential standards for firms it regulates to mitigate systemic risk; □ subject financial companies and financial activities to stricter prudential standards in order to promote financial stability and mitigate systemic risk; □ provide a forum for discussion and analysis of emerging market developments and financial regulatory issues among its members; □ advise Congress on financial domestic and international regulatory developments, including insurance and accounting developments, and make recommendations that will enhance the integrity, efficiency, competitiveness, and stability of the United States financial markets; □ resolve supervisory jurisdictional disputes among Council 	<ul style="list-style-type: none"> ▪ General purposes of the Council are to identify risks to financial stability, promote market discipline, and respond to emerging threats to U.S. financial markets. ▪ Council is required to, among other things: <ul style="list-style-type: none"> □ facilitate information sharing and coordination among the member agencies and other Federal and State agencies; □ monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States; □ identify gaps in regulation that could pose risks to the financial stability of the United States; □ require supervision by the Federal Reserve for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure; □ identify systemically important financial market utilities and payment, clearing, and settlement activities; □ make recommendations to the Federal Reserve concerning the establishment of heightened prudential standards for nonbank financial companies and large, interconnected bank holding companies supervised by the Federal Reserve; □ provide a forum for discussion and analysis of emerging market developments and financial regulatory issues; □ annually report to and testify before Congress on, among other things, the activities of the Council; □ recommend to the member agencies general supervisory

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	<p>members if certain conditions satisfied, including upon request of an agency involved;</p> <ul style="list-style-type: none"> □ develop strategies (and conduct exercises in furtherance of those strategies) to prepare for such potential threats; □ review and submit comments to the Securities and Exchange Commission and any standards setting body with respect to an existing or proposed accounting principle, standard, or procedure; □ study effects of regulations and standards of the CFPA on all covered persons; □ monitor international regulatory developments, including both insurance and accounting developments, and to identify those developments that may conflict with the policies of the United States or place United States financial services firms or United States financial markets at a competitive disadvantage; and □ collaborate with participants in the financial sector, financial sector coordinating councils, and any other parties the Council determines to be appropriate. 	<p>priorities and principles reflecting the outcome of discussions among the member agencies;</p> <ul style="list-style-type: none"> □ resolve supervisory jurisdictional disputes among Council members if certain conditions satisfied, including request of an agency involved; □ make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices; □ collect information from member agencies and other Federal and State financial regulatory agencies and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies; □ make determinations regarding exemptions in the derivatives title, where necessary; and □ provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council.
<i>Federal Reserve as Agent of Council</i>	<ul style="list-style-type: none"> ▪ Federal Reserve is the agent of the Council with respect to systemic regulation. 	<ul style="list-style-type: none"> ▪ No language designating the Federal Reserve as the “agent” of the Council.
<i>Council Status as an Agency</i>	<ul style="list-style-type: none"> ▪ Council is not a Federal agency. ▪ Council is not subject to the Administrative Procedure Act, Freedom of Information Act and Sunshine Act, among others. ▪ GAO can audit the activities and financial transactions of the Council, and of any person under its authority or acting on its behalf to the extent of such work for the Council. 	<ul style="list-style-type: none"> ▪ No express provision regarding the Council’s status as a Federal agency. ▪ Administrative Procedure Act, Freedom of Information Act and the Sunshine Act generally apply.

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Applicability of Federal Advisory Committee Act	<ul style="list-style-type: none"> Does not apply to the Council or to any special advisory, technical or professional committee appointed by the Council, except that, if such a committee has one or more members who are not employees of the Federal government, the Council must publish the names of such members. 	<ul style="list-style-type: none"> Same as the House bill.
Systemic Regulation Fees	<ul style="list-style-type: none"> No express provision regarding fees, but administrative expenses of the Council to be paid by the departments and agencies represented by Council voting members on an equal basis. Federal Reserve required, however, to impose fees on bank holding companies with greater than \$10 billion in total consolidated assets in an amount sufficient to defray the cost of examining such bank holding companies. 	<ul style="list-style-type: none"> Establishes a Financial Research Fund that would impose fees on systemically important nonbank financial companies and bank holding companies with assets greater than \$50 billion to cover the costs of the Office of Financial Research, which includes costs of the Council. Federal Reserve also required to impose fees on all systemically important nonbank financial companies and all bank and thrift holding companies with greater than \$50 billion in total consolidated assets in an amount the Federal Reserve estimates is “necessary and appropriate” to carry out the responsibilities of the Federal Reserve with respect to such companies.

Subtitles A and C – Systemic Risk

Systemically Important Designation

Definitions	<ul style="list-style-type: none"> A “financial company” includes any domestic company and any foreign company that has “significant operations” in the U.S. through a Federal or State branch of a foreign bank or a U.S. affiliate or operating entity that is, in whole or in part, directly or indirectly, engaged in “financial activities.” <ul style="list-style-type: none"> The term “financial activities” is not defined in this context. Commercial companies with financial operations are included, but intermediate holding company regime applies to mitigate the breadth of the definition. 	<ul style="list-style-type: none"> Unlike the House bill, the Senate bill distinguishes between “bank holding companies” as defined in the Bank Holding Company Act and “nonbank financial companies.” A “nonbank financial company” is any company that is “predominantly engaged in financial activities,” meaning 85% or more of the company’s and its subsidiaries’ consolidated annual gross revenues or consolidated total assets are attributable to activities that are financial in nature (as defined in Section 4(k) of the Bank Holding Company Act) and, if applicable, attributable to the ownership or control of one or
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	<ul style="list-style-type: none"> ▪ Once designated, a financial company, or its intermediate holding company, if applicable, becomes a “financial holding company subject to stricter standards,” referred to herein as a “systemically important financial company.” ▪ Carve-out for Farm Credit Institutions. 	<p>more insured depository institutions.</p> <ul style="list-style-type: none"> □ Federal Reserve required to establish, by regulation, the requirements for the “predominantly engaged” test. □ For foreign nonbank financial companies, references to “company” or “subsidiary” refer only to the U.S. activities and subsidiaries of a foreign company. See Foreign Financial Companies. ▪ Once designated, a nonbank financial company becomes a “nonbank financial company supervised by” the Federal Reserve, referred to herein as a “systemically important nonbank financial company”. ▪ Carve-out for Farm Credit Institutions.
<i>Applicability of Standards: Systemically Important Designation</i>	<ul style="list-style-type: none"> ▪ Council, in consultation with the Federal Reserve and primary financial regulatory agencies, has authority to subject any “financial company” to stricter prudential standards if the Council determines that: <ul style="list-style-type: none"> □ material financial distress at the company could pose a threat to financial stability or the economy; or □ the nature, scope, size, scale, concentration and interconnectedness, or mix of the company’s activities could pose a threat to financial stability or the economy. ▪ In making this determination, the Council must consider factors, including: <ul style="list-style-type: none"> □ the extent of the company’s leverage; □ the amount and nature of the financial assets of the company; □ the extent and nature of the company’s off-balance sheet 	<ul style="list-style-type: none"> ▪ Federal Reserve determines which bank holding companies are “large, interconnected bank holding companies.” ▪ Council has authority to subject a “nonbank financial company” to stricter prudential standards if the Council determines that material financial distress at the company could pose a threat to financial stability or the economy. ▪ In making this determination, the Council must consider factors, including: <ul style="list-style-type: none"> □ the degree of leverage of the company; □ the amount and nature of the financial assets of the company; □ the amount and types of the liabilities of the company,

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	<p>exposures;</p> <ul style="list-style-type: none"> □ the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; □ the extent and types of the transactions and relationships of the company with other financial companies; □ the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; □ the degree to which the company is already regulated by one or more Federal financial regulatory agencies or, in the case of a foreign financial parent, the extent to which such foreign parent is subject to prudential standards on a consolidated basis in the home country; □ The company’s importance as a source of credit for households, businesses, State and local governments, low-income, minority, or underserved communities and as a source of liquidity for the financial system, and □ any other factor the Council deems appropriate. <ul style="list-style-type: none"> ▪ Standards are generally similar for foreign companies (with a focus on U.S. activities), but with some notable differences. See Foreign Financial Companies. 	<p>including the degree of reliance on short-term funding; the extent and types of the off-balance sheet exposures of the company;</p> <ul style="list-style-type: none"> □ the extent and types of the transactions and relationships of the company with other systemically important financial companies; □ the recommendation, if any, of a Council-member agency; □ the operation of, or ownership interest in, any clearing, settlement, or payment business of the company; □ the extent to which assets are managed rather than owned by the company; □ whether ownership of assets under management is diffuse; and □ any other factor the Council deems appropriate. <ul style="list-style-type: none"> ▪ Standards are generally similar for foreign companies (with a focus on U.S. activities), but with some notable differences. See Foreign Financial Companies.
<p>Appeal and Review of Systemically Important Designation</p>	<ul style="list-style-type: none"> ▪ Council and the Federal Reserve must establish an appeal procedure for a financial company that has been designated as systemically important. <ul style="list-style-type: none"> □ Judicial review of designation is available; no standard specified. □ No express emergency exception for designation of systemically important financial companies. 	<ul style="list-style-type: none"> ▪ Nonbank Financial Companies. Entitled to notice and opportunity for hearing before final designation, subject to an emergency exception that requires 2/3 vote of the Council. <ul style="list-style-type: none"> □ Judicial review of designation is available; conducted under “arbitrary and capricious” standard. □ Re-evaluation of systemically important designation not less frequently than annually; rescission requires 2/3 vote, including affirmative vote of the Treasury Secretary (same

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	<ul style="list-style-type: none"> Federal Reserve must periodically submit a report to the Council containing an assessment of each systemically important financial company. Council must review the report and rescind a company’s systemically important designation if the Council determines that the company is no longer systemically important. See also Standards and Safeguards for Systemically Important Activities and Practices. 	<p>as for designation).</p> <ul style="list-style-type: none"> Large, Interconnected Bank Holding Companies. No notice or appeal procedure. See also Standards and Safeguards for Systemically Important Activities and Practices.
<p>Financial Activities Designation for Anti-Evasion Purposes</p>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Anti-evasion provision addresses the potential for companies to exploit the narrowness of the definition of “financial company” in light of the 85% revenue/asset threshold. For any domestic or foreign company, to avoid evasion of the Act, the Council may determine on its own initiative or upon request by the Federal Reserve, upon a 2/3 vote, including affirmative vote of the Treasury Secretary, that the financial activities (or, for foreign companies, the U.S. financial activities) of such company should be supervised by the Federal Reserve and subject to the same enhanced prudential standards as applied to systemically important nonbank financial companies upon a determination that: <ul style="list-style-type: none"> Material financial distress related to financial activities conducted directly or indirectly by a U.S. company, or related to the U.S. financial activities of a foreign company, would pose a threat to U.S. financial stability. See also Foreign Financial Companies; and The company is organized or operates in such a manner as to evade application of the systemic risk regime. As with other systemically important designations, the Council is required to consult with the primary financial regulatory agency, if any, before subjecting a company to enhanced

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		<p>standards pursuant to the anti-evasion provision.</p> <ul style="list-style-type: none"> ▪ The company is entitled to the same notice, opportunity for hearing and judicial review as is a nonbank financial company that has been designated as systemically important. ▪ Council must submit a report to Congress detailing the reasons for its determination. ▪ Consequences of application of anti-evasion regime <ul style="list-style-type: none"> □ Financial activities, or for foreign companies, U.S. financial activities, supervised by the Federal Reserve and subject to enhanced standards as apply to systemically important nonbank financial companies. <ul style="list-style-type: none"> • Prudential standards and supervision by the Federal Reserve do not apply to the nonfinancial activities of the company. □ Company may establish an intermediate holding company. See Intermediate Holding Companies. □ In this context, “financial activities” are limited to activities that are financial in nature (as defined in Section 4(k) of the Bank Holding Company Act) and include the ownership or control of one or more insured depository institutions, but does not include internal financial activities conducted for the company or any affiliates, including internal treasury, investment and employment benefit functions.
<p>Public Announcement of Designation</p>	<ul style="list-style-type: none"> ▪ Designation to be made public by the Federal Reserve “immediately.” 	<ul style="list-style-type: none"> ▪ No express requirement that designation be made public, although securities laws would likely require disclosure.

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Consultation Regarding Designation	<ul style="list-style-type: none"> ▪ Council required to consult with the Federal Reserve and primary financial regulatory agencies before designating a financial company as systemically important. <ul style="list-style-type: none"> □ The primary financial regulatory agency is, with respect to an insurer, the applicable state insurance authority. □ In the case of an insurance company, the Council must also consult with the Federal Office of Insurance. 	<ul style="list-style-type: none"> ▪ Council required to consult with primary financial regulatory agencies, but not the Federal Reserve as in the House bill, before designating a nonbank financial company as systemically important or subjecting a company to enhanced standards under the anti-evasion provisions. <ul style="list-style-type: none"> □ The primary financial regulatory agency is, with respect to an insurer, the applicable state insurance authority. □ With respect to a financial market utility, Council is required to consult with the relevant supervisory agency and the Federal Reserve. ▪ Relevant supervisory agency does not include any state regulatory authorities.
Quantitative Threshold	<ul style="list-style-type: none"> ▪ No specific size threshold for systemically important bank holding companies or nonbank financial companies. 	<ul style="list-style-type: none"> ▪ Bank holding companies must have at least \$50 billion in assets for enhanced standards to apply. Federal Reserve has authority to raise, but not lower, the threshold, with respect to any particular enhanced standard. ▪ No specific size threshold for systemically important nonbank financial companies.
Safe Harbor Exemption	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Federal Reserve, on behalf of and in consultation with the Council, directed to establish criteria for exempting “types or classes” of nonbank financial companies from enhanced Federal Reserve supervision.

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<i>Increased Capital, Liquidity and Other Requirements</i>		
“Enhanced” Prudential Standards	<ul style="list-style-type: none"> ▪ Federal Reserve must establish stricter standards for systemically important firms including: <ul style="list-style-type: none"> □ Risk-based capital requirements <ul style="list-style-type: none"> • Computed including off-balance sheet activities • Must seek to make countercyclical □ Leverage limit set at 15-to-1 by the bill <ul style="list-style-type: none"> • See Minimum Leverage Capital and Risk-Based Capital Requirements □ Liquidity requirements □ Resolution plans □ Concentration limits □ Prompt corrective action □ Risk management ▪ Federal Reserve may impose short-term debt limits, including on off-balance sheet items. ▪ For foreign companies, the Federal Reserve must consider comparable home country standards and the principal of national treatment. See Foreign Financial Companies. ▪ Council has no specific role to make recommendations on prudential standards, reporting and disclosure requirements. 	<ul style="list-style-type: none"> ▪ Federal Reserve must establish enhanced standards for systemically important firms including: <ul style="list-style-type: none"> □ Risk-based capital requirements <ul style="list-style-type: none"> • Off-balance sheet exposure is a “consideration” • No requirement that capital requirements be countercyclical. □ Leverage limits □ Liquidity requirements □ Resolution plans □ Credit exposure reporting □ Concentration limits □ Prompt corrective action ▪ Federal Reserve may, but is not required to, establish overall risk management requirements and enhanced public disclosures. ▪ No specific Federal Reserve authority to limit short-term debt (although such authority currently exists under current law). ▪ For foreign companies, the Federal Reserve must consider the principles of national treatment, but there is no express comparability review. See Foreign Financial Companies. ▪ Council has an ongoing role to make recommendations to the Federal Reserve concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to systemically important nonbank financial companies and large, interconnected bank holding companies.

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Consultation Regarding Heightened Standards	<ul style="list-style-type: none"> ▪ Federal Reserve, in developing stricter standards, must consult with the Federal financial regulatory agencies with respect to any standard that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a systemically important financial company. <ul style="list-style-type: none"> □ Federal financial regulatory agency does not include state insurance authorities. ▪ For a systemically important financial company that is an insurance company or any insurance company subsidiary of such a company, the Federal Reserve must consult with the Federal Insurance Office. 	<ul style="list-style-type: none"> ▪ Federal Reserve must take into account recommendations of the Council in developing enhanced prudential standards. ▪ The Committee report for the Senate bill indicates that it also intended that the Federal Reserve consult, to the extent appropriate, with foreign regulators. ▪ No provision in the Senate bill regarding consultation with other financial regulatory agencies.
Standards for Functionally Regulated Subsidiaries	<ul style="list-style-type: none"> ▪ With respect to a functionally regulated subsidiary or a subsidiary depository institution of a systemically important financial company, the Federal Reserve may recommend that the relevant Federal financial regulatory agency for such subsidiary prescribe stricter prudential standards. <ul style="list-style-type: none"> □ Within 60 days of the Federal Reserve’s recommendation, the relevant Federal financial regulatory agency must notify the Council and the Board in writing whether and to what extent the agency has imposed the Federal Reserve’s recommendations. ▪ The Federal financial regulatory agency must provide specific justification for failing to impose such recommendations. 	<ul style="list-style-type: none"> ▪ No express procedure for subjecting functionally regulated subsidiaries to heightened standards, but Federal Reserve has enforcement powers with respect to functionally regulated subsidiaries. See Functionally Regulated Subsidiaries.
Guidelines for Designing Heightened Standards	<ul style="list-style-type: none"> ▪ Standards must: <ul style="list-style-type: none"> □ Be designed to maximize financial stability, taking into account costs to long-term financial and economic growth, □ Be heightened when compared to the standards that otherwise would apply to non-systemically important 	<ul style="list-style-type: none"> ▪ Standards must: <ul style="list-style-type: none"> □ Be more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States,

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	<p>financial companies (including by addressing additional or different types of risks than otherwise applicable standards), and</p> <ul style="list-style-type: none"> □ Reflect the potential risk posed to financial stability by the systemically important financial company. 	<ul style="list-style-type: none"> □ Be designed to ensure, to the extent possible, that small changes in factors used to develop enhanced prudential standards do not result in sharp, discontinuous changes in the standards, and □ Take into account the recommendations of the Council.
Customizing Standards	<ul style="list-style-type: none"> ▪ Federal Reserve may exempt a systemically important financial company from risk-based capital and leverage requirements if it determines that such requirements are not appropriate in light of the company’s activities, predominant line of business (such as investment company activities or assets under management) or structure, in which case the Federal Reserve must apply other standards that result in appropriately stringent controls. <ul style="list-style-type: none"> □ Provision appears to be designed to permit tailoring for insurance industry, hedge funds and asset management industry rather than impose bank-sector standards. □ Unclear whether the Federal Reserve is permitted to exempt certain companies from the leverage requirements in light of the 15-to-1 leverage ratio. ▪ Permits the Federal Reserve to differentiate among systemically important financial companies on an individual basis or by category, taking into consideration their capital structure, risk, complexity, financial activities, the financial activities of their subsidiaries, and any other factors that the Federal Reserve deems appropriate. 	<ul style="list-style-type: none"> ▪ Standards must be designed to take into account differences among nonbank financial companies and bank holding companies and increase in stringency, based on enumerated factors, including: <ul style="list-style-type: none"> □ the degree of leverage of the company; □ the amount and nature of the financial assets of the company; □ the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; the extent and types of the off-balance-sheet exposures of the company; □ the extent and types of the transactions and relationships of the company with other systemically important companies; □ the operation of, or ownership interest in, any clearing, settlement, or payment business of the company; □ the extent to which assets are managed rather than owned by the company; □ whether ownership of assets under management is diffuse; □ whether the company owns an insured depository institution; □ nonfinancial activities and affiliations of the company; and

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		<ul style="list-style-type: none"> □ any other factors that the Federal Reserve determines appropriate. ▪ Standards are generally the same for foreign firms, except with a focus on the firms’ U.S.-related exposures.
<p>Minimum Leverage Capital and Risk-Based Capital Requirements</p>	<ul style="list-style-type: none"> ▪ Capital Requirements. Regulators required to impose “stricter” risk-based capital requirements with specifics to be determined by regulators. ▪ Leverage Limitation. Statutorily imposed maximum 15-to-1 leverage ratio for each systemically important financial company. <ul style="list-style-type: none"> □ Requires the Federal Reserve to issue regulations containing procedures and timelines for how a financial company designated as systemically important with a debt-to-equity ratio of more than 15-to-1 will reduce such ratio. ▪ Exception. Federal Reserve may exempt a systemically important financial company from risk-based capital and leverage requirements if it determines that such requirements are not appropriate in light of the company’s activities, predominant line of business (such as investment company activities or assets under management) or structure, in which case the Federal Reserve must apply other standards that result in appropriately stringent controls. <ul style="list-style-type: none"> □ Unclear whether the Federal Reserve is permitted to exempt certain companies from the leverage limitations in light of the maximum 15-to-1 leverage ratio. ▪ No specific implementation timelines. 	<ul style="list-style-type: none"> ▪ General Requirements. Regulators required to impose “enhanced” risk-based capital and leverage requirements on systemically important nonbank financial companies and large, interconnected bank holding companies not later than 18 months after the transfer date, which is defined as 12 months from the date of enactment, subject to an extension for up to an additional 6 months (the “transfer date”). ▪ Collins Amendment. The appropriate Federal banking agencies must establish minimum leverage and risk-based capital requirements to apply to insured depository institutions, depository institution holding companies and systemically important nonbank financial companies. The leverage and risk-based capital requirements must be “not less than” the “generally applicable leverage capital requirements” and “generally applicable risk-based capital requirements,” respectively, which serve as a floor, nor “quantitatively lower than” the above requirements that were in effect for insured depository institutions as of the date of enactment. <ul style="list-style-type: none"> □ “Generally applicable risk-based capital requirements” and “generally applicable leverage capital requirements” mean the risk-based capital requirements and minimum ratios of Tier 1 capital to average total assets, respectively, established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing Section 38 of the Federal Deposit Insurance Act, regardless of total

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		<p>consolidated asset size or foreign financial exposure.</p> <ul style="list-style-type: none"> • As drafted, the definition appears to eliminate the small bank holding company (those with less than \$500 million in total consolidated assets) exemption from consolidated capital requirements. • The formula for “generally applicable risk-based capital requirements” must include the required ratio of regulatory capital components (numerator) over risk-weighted assets (denominator). • The formula for “generally applicable leverage capital requirements” must include the required ratio of regulatory capital components (numerator) over average total assets (denominator). <p>□ As drafted, the current leverage and risk-based capital requirements applicable to insured depository institutions – not those currently applicable to bank holding companies – will set the new minimum standard for leverage and risk-based capital requirements for insured depository institutions, depository institution holding companies and systemically important nonbank financial companies. Consequently:</p> <ul style="list-style-type: none"> • Trust preferred and hybrid securities (including TARP preferred) may be included only in Tier 2 capital, whereas the Federal Reserve currently allows bank holding companies to include such securities, subject to quantitative limits and other restrictions, in Tier 1 capital. • Minimum leverage ratios will be 3% for institutions rated “1” (and meeting certain other conditions, such as not anticipating or experiencing significant growth), and for all others 4% for “adequately

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		<p>capitalized,” and 5% for “well capitalized.”</p> <ul style="list-style-type: none"> • Minimum risk-based capital ratios will be 4% Tier 1 capital ratio for “adequately capitalized” and 6% for “well capitalized,” and 8% total capital ratio for “adequately capitalized” and 10% for “well capitalized.” □ Application of bank-centric minimum leverage capital and risk-based capital requirements to systemically important nonbank financial companies represents a significant expansion of prudential oversight of such firms. ▪ Transitioning and grandfathering of these provisions are unclear.
Capital Requirements to Address Systemic Risk	<ul style="list-style-type: none"> ▪ No express requirements, but the Council may subject an activity to stricter standards if the Council determines that such activity could give rise to liquidity, credit, or other problems. See Standards and Safeguards for Systemically Important Activities and Practices. 	<ul style="list-style-type: none"> ▪ Collins Amendment. Capital requirements must address risks posed by certain activities that contribute to systemic risk, including: <ul style="list-style-type: none"> □ significant volumes of activity in derivatives, securitized products, financial guarantees, securities borrowing and lending, and repos; □ concentrations in assets for which reported values are model-based; and □ concentration in market share for any activity that would substantially disrupt financial markets if the institution is forced to unexpectedly cease the activity.
Liquidity Requirements	<ul style="list-style-type: none"> ▪ Yes. 	<ul style="list-style-type: none"> ▪ Yes. Federal Reserve must issue final regulations imposing liquidity requirements within 18 months of the transfer date.
Well Capitalized and Well Managed	<ul style="list-style-type: none"> ▪ Requires all systemically important financial companies to be well capitalized and well managed at all times. ▪ Furthermore, any financial holding company must be well 	<ul style="list-style-type: none"> ▪ No requirement that systemically important nonbank financial companies be well capitalized and well managed at all times. ▪ However, any financial holding company must be well

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	<p>capitalized and well managed at the holding company level. See Holding Company Level Capital and Management Requirements.</p> <ul style="list-style-type: none"> □ Current law places the requirement only on depository institution subsidiaries. 	<p>capitalized and well managed at the holding company level. See Holding Company Level Capital and Management Requirements.</p> <ul style="list-style-type: none"> □ Current law places the requirement only on depository institution subsidiaries.
Contingent Capital	<ul style="list-style-type: none"> ▪ Permits the Federal Reserve, in coordination with the appropriate regulator, to issue rules requiring contingent capital after notice and opportunity for comment. <ul style="list-style-type: none"> □ Exchange to equity triggered when systemically important financial company fails to meet prudential standards or a threat to U.S. financial stability demands it. ▪ See Office of Financial Research – Council Study. 	<ul style="list-style-type: none"> ▪ Council required to conduct study on the feasibility, benefits, costs and structure of a contingent capital requirement. <ul style="list-style-type: none"> □ Council is required to submit its report within 2 years of the date of enactment. ▪ Federal Reserve may impose a contingent capital requirement after the Council study and report to Congress.
Prompt Corrective Action	<ul style="list-style-type: none"> ▪ Requires the Federal Reserve to take prompt corrective action with respect to systemically important financial companies with weakening capital cushions. <ul style="list-style-type: none"> □ Federal Reserve to define capital levels of “well capitalized,” “undercapitalized,” “significantly undercapitalized,” and “critically undercapitalized,” which must define “significantly undercapitalized” at a threshold it determines prudent for the effective monitoring, management and oversight of the financial system. □ No capital distributions if, following a distribution, the systemically important financial company would be undercapitalized, subject to certain exceptions □ If the company is “undercapitalized,” the Federal Reserve must increase monitoring, require a capital restoration plan, impose limits on asset growth, require prior approval for acquisitions and new lines of businesses and take certain other actions as it determines appropriate. 	<ul style="list-style-type: none"> ▪ Unlike the House bill, does not provide detail in statute, but instead requires the Federal Reserve, in consultation with the Council and FDIC, to establish requirements for early remediation of financial distress that must include: <ul style="list-style-type: none"> □ requirements for a company in the initial stages of financial decline, including limits on capital distributions, acquisitions and asset growth; and □ requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales. ▪ No express carveout for foreign financial parents.

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	<ul style="list-style-type: none"> □ If the company is “significantly undercapitalized,” or fails to submit and implement an acceptable capital restoration plan, the Federal Reserve must do one or more of the following: <ul style="list-style-type: none"> • require a recapitalization, whether by capital raise or an acquisition; • restrict transactions with affiliates; • restrict asset growth; • require the company or any of its subsidiaries to alter, reduce or terminate any activity that the Federal Reserve determines poses excessive risk to the company; • replace management; • require divestiture of assets; or • require the company to take any other action the Board determines will better carry out the purposes of the prompt corrective action regime. □ In implementing prompt corrective action for “significantly undercapitalized” companies, the bill creates a presumption in favor of a recapitalization or restricting transactions with affiliates. <ul style="list-style-type: none"> ▪ Express carve-out for Foreign financial parents. See Foreign Financial Companies. 	
Limits on Credit Exposures to Non-Affiliates	<ul style="list-style-type: none"> ▪ Sets a single counterparty limit for a systemically important financial company at 25% of capital stock and surplus of the systemically important financial company or lower amount set by Federal Reserve regulation to mitigate risks to financial stability. ▪ Also includes general requirement that the Federal Reserve 	<ul style="list-style-type: none"> ▪ Same as the House bill, but does not exempt federal home loan banks from compliance with this section, and no express carveout to credit exposure reporting requirement for foreign financial parents. <ul style="list-style-type: none"> □ Instead, the concentration limit of a foreign financial parent must be calculated using risk-weighted asset and capital of

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	<p>prescribe standards to limit the risks that the failure of any individual company could pose to a systemically important financial company.</p> <ul style="list-style-type: none"> ▪ Credit exposure broadly defined to include derivatives, repos, securities loans, and anything the Federal Reserve determines to be similar. <ul style="list-style-type: none"> □ Federal Reserve given broad rulemaking authority to define scope of credit exposure. ▪ Exempts federal home loan banks from compliance with the concentration limits, and permits the Federal Reserve to exempt transactions from the definition of credit exposure if the exemption is in the public interest and consistent with the purpose of the requirement. ▪ Limits subject to a transition period of 3 years from the date of enactment, extendible by the Federal Reserve for 2 more years to promote stability. ▪ Systemically important financial companies must periodically report credit exposures of the firm and credit exposures of others to the firm to the Federal Reserve. ▪ Application to foreign financial parents is unclear. Foreign financial parents are expressly not subject to credit exposure reporting requirements. 	<p>U.S. operations. See Foreign Financial Companies.</p>
<i>Risk Committees at Public Companies</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Requires risk committees for systemically important, publicly traded nonbank financial companies, as well as publicly traded bank holding companies with total consolidated assets of \$10 billion or more. <ul style="list-style-type: none"> □ Risk committees must be established within one year of triggering the requirement. □ Federal Reserve may impose the requirement on publicly

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		<p>traded bank holding companies with less than \$10 billion in assets as necessary or appropriate to promote sound risk-management practices.</p> <ul style="list-style-type: none"> □ Risk committees must have the number of independent directors determined by the Federal Reserve (independence is not defined in this context), and include one risk management expert having experience in risk management at large complex companies. ■ Federal Reserve must issue final rules to carry out this provision within one year after the transfer date and such rules must take effect within 15 months after the date of enactment.
Stress Tests	<ul style="list-style-type: none"> ■ Federal Reserve, in coordination with primary financial regulatory agency, must conduct annual stress tests of each systemically important financial company, and any other company as the Federal Reserve deems appropriate, and publish a summary of the results. ■ Separately, systemically important financial companies must conduct quarterly stress tests, and report results to the Federal Reserve and primary financial regulatory agency. ■ Any other financial company with more than \$10 billion in total assets must conduct semiannual stress tests and report results to the Federal Reserve and primary financial regulator agency. ■ Stress tests must be conducted under, at least, baseline, adverse and severely adverse scenarios. 	<ul style="list-style-type: none"> ■ Requires stress tests to be conducted by the Federal Reserve but does not specify frequency.

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<i>Living Wills / Funeral Plans</i> ¹	<ul style="list-style-type: none"> Required by systemically important financial companies and must be periodically updated and reported to the Federal Reserve and approved by the Federal Reserve and the FDIC. Application to foreign financial companies is unclear. See Foreign Financial Companies. 	<ul style="list-style-type: none"> Requires systemically important nonbank financial companies and large, interconnected bank holding companies to prepare and maintain extensive rapid and orderly resolution plans, which must be approved by the Federal Reserve and the FDIC. FDIC and the Federal Reserve may subject firms that fail to adopt acceptable plans to more stringent capital, leverage, or liquidity requirements, or restrictions on growth, activities or operations. After having imposed other requirements, the FDIC and Federal Reserve may require a company to divest assets if the company’s living will is deficient and a suitable, revised living will is not resubmitted within 2 years.

Standards and Safeguards for Systemically Important Activities and Practices

<i>Designating Activities</i>	<ul style="list-style-type: none"> General. Permits the Council to subject a financial activity or practice to stricter prudential standards if it finds that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice give rise to significant liquidity, credit, or other problems that may threaten the stability of the financial system or economy. Who is covered. Standards may impact all companies subject to regulation by a primary financial regulatory agency, including state insurance companies. Process of Designation and Rescission <ul style="list-style-type: none"> Absent an emergency, requires the Council to inform the 	<ul style="list-style-type: none"> General. Permits the Council to recommend to the primary financial regulatory agencies heightened prudential standards or safeguards for particular financial activities or practices if it finds that the conduct of the activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or the financial markets of the United States. Who is covered. Same as the House bill. Notice of Designation <ul style="list-style-type: none"> Requires Council to provide notice to the public and
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¹ Separately, the FDIC has recently proposed a rule that would require insured depository institutions with greater than \$10 billion in assets that are controlled by a holding company with greater than \$100 billion in assets to submit a living will, regardless of whether the parent company would be required to submit a living will under the legislation.

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	<p>Federal Reserve when it is considering to subject or cease to subject an activity to stricter standards.</p> <ul style="list-style-type: none"> □ Requires the Federal Reserve to provide notice to a financial company engaged in such activities, and companies are given 30 days to submit written materials to inform the Council’s decision. □ Within 60 days of the notice, the Council must make its determination. <ul style="list-style-type: none"> ▪ Process of Rescission. If the Council rescinds its recommendation that an activity or practice be subject to heightened prudential scrutiny, the Board must inform the relevant primary financial regulatory agencies, and each primary financial regulatory agency may choose whether to maintain heightened standards. ▪ Periodic Review of Systemic Risk Determination. Requires the Federal Reserve to submit periodic reports assessing whether each activity subjected to stricter standards should continue to be so subject. 	<p>opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.</p> <ul style="list-style-type: none"> ▪ Process of Rescission. If Council rescinds its recommendation that a particular financial activity be subject to standards or safeguards, each primary financial regulatory agency may choose to maintain them but must establish an appeals process for entities subject to the agency’s jurisdiction. ▪ Reports. Requires reports to Congress.
<p>Setting Heightened Prudential Standards with Respect to Designated Activities</p>	<ul style="list-style-type: none"> ▪ Requires the Federal Reserve, as agent of the Council, to recommend prudential standards to the appropriate primary financial regulatory agencies. Such requirements on activities may include: <ul style="list-style-type: none"> □ Limitations on size and application of capital or risk-management standards □ Prohibiting the activity or practice altogether. ▪ Recommended standards must be designed to maximize financial stability, taking costs to long-term financial and economic growth into account. 	<ul style="list-style-type: none"> ▪ Permits the Council to recommend heightened standards, including: <ul style="list-style-type: none"> □ Prescribing the conduct of an activity in certain ways □ Prohibiting the activity together ▪ Recommended standards must take long-term economic growth into account.

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	<ul style="list-style-type: none"> ▪ Consultation <ul style="list-style-type: none"> □ Requires the Federal Reserve to consult with the relevant primary financial regulatory agencies with respect to any standard likely to have a significant effect on entities under its jurisdiction. Primary financial regulatory agencies include state insurance regulators. □ Requires the Federal Reserve to consult with the Federal Insurance Office with respect to a systemically important financial company that is an insurance company (or any insurance company subsidiary). ▪ No foreign reach. Provides that the standards will not apply to activities that a foreign financial parent conducts solely outside the United States by a non-U.S. company. See Foreign Financial Companies. 	<ul style="list-style-type: none"> ▪ Consultation. Requires the Council to consult the primary financial regulatory agencies, which include state insurance regulators.
Implementation of Heightened Capital Standards	<ul style="list-style-type: none"> ▪ Authorizes primary financial regulators to: <ul style="list-style-type: none"> □ impose heightened standards □ require reports □ examine for compliance □ enforce standards for agencies under its jurisdiction. ▪ Requires the primary financial regulatory agency to either: <ul style="list-style-type: none"> □ impose the recommended standards; □ impose similar standards that the Council deems acceptable; or □ provide a written explanation to the Council within 60 days after the date of the recommendation explaining why the agency has not followed the recommendation. 	<ul style="list-style-type: none"> ▪ Same as the House bill. ▪ Same as the House bill, but requires the written explanation within 90 days if the primary financial regulatory agencies decide not to adopt the heightened prudential standards.

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Proprietary Trading	<ul style="list-style-type: none"> See Volcker Rule. 	<ul style="list-style-type: none"> See Volcker Rule.
Asset Sales and Breakup Powers	<ul style="list-style-type: none"> Upon a finding by the Council that the size or the scope, nature, scale, concentration, interconnectedness, or mix of activities of a systemically important financial company poses a “grave threat” to financial stability, the Council must take actions necessary to mitigate such risk, including: <ul style="list-style-type: none"> □ modifying the stricter prudential standards already imposed; □ ordering termination of activities; □ imposing conditions on activities; □ limiting the ability to merge with, acquire, consolidate or otherwise become affiliated with another company; □ restricting the ability to offer a financial product or products; and □ if other actions are inadequate, requiring a company to sell or otherwise transfer business units, branches, assets or off-balance sheet items to unaffiliated companies. Treasury Secretary Concurrence. Requires the Treasury Secretary concurrence if the Council requires a sale of more than \$10 billion of total assets. Also requires the Treasury Secretary to consult with the President if the Council requires a sale of more than \$100 billion. Consultation. Requires the Council to consult with the Federal financial regulatory agencies if a requirement would have a significant impact on an entity under their jurisdiction. Requires consultation with the FIO if standards would have a significant effect on insurance companies. 	<ul style="list-style-type: none"> Upon a finding by the Federal Reserve, with approval of 2/3 vote of the Council, that a bank holding company with \$50 billion or more in total consolidated assets or a systemically important nonbank financial company poses a “grave threat” to financial stability, the Federal Reserve must take actions necessary to mitigate such risk, including: <ul style="list-style-type: none"> □ ordering termination of activities; □ imposing conditions on the manner in which the company conducts activities; and □ if the Federal Reserve determines that such actions are inadequate to mitigate a threat to U.S. financial stability, requiring the company to sell or otherwise transfer assets or off-balance sheet items to unaffiliated entities. Federal Reserve may prescribe rules regarding applicability of asset sale/breakup provisions to foreign companies posing a “grave threat” to U.S. financial stability, but must take into account national treatment and competitive equity.

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	<ul style="list-style-type: none"> ▪ Notice and opportunity for a hearing available. Judicial review of the decision possible. ▪ Prior to ordering a mitigatory action, the Council must consider international competitiveness of the United States financial sector and the extent to which other countries with significant financial services industries have established corresponding regimes. ▪ Mitigatory Plan <ul style="list-style-type: none"> □ Requires a systemically important financial company to submit its proposed plan to implement the required mitigatory actions within 60 days following the notice, or a shorter period if the Council requires. □ Council required to approve or disapprove a plan. □ If the company fails to implement the plan, the Council must direct the Federal Reserve to take actions necessary to ensure compliance with the plan. 	<ul style="list-style-type: none"> ▪ Notice required and opportunity for a hearing available. Company must request a hearing within 30 days of receipt of notice, which will take place within 30 days of such request. A final decision will be rendered within 60 days of the hearing. No judicial review. ▪ Senate bill also includes “Volcker Rule,” which prohibits proprietary trading and certain fund activities by bank holding companies and their affiliates and imposes enhanced capital and other quantitative limits on such activities by systemically important nonbank financial companies, including systemically important hedge funds. See Volcker Rule. ▪ Penalty for Deficient Living Will. Asset sales can also be applied as ultimate sanction, after the Federal Reserve and FDIC have imposed other requirements, if a living will that was found lacking is not resubmitted within 2 years in revised form. See Living Wills / Funeral Plans.

Bank-Centric Regulation of Systemically Important Nonbank Financial Companies

<p>“As if” Bank Holding Companies</p>	<ul style="list-style-type: none"> ▪ A financial company that, before its identification as systemically important, was not a bank holding company, will be treated “as if” it were a bank holding company that is a financial holding company as far as certain banking laws described below are concerned. <ul style="list-style-type: none"> □ Foreign banks with branches and agencies in the U.S. do not fall under this category as they are already “treated as” bank holding companies. ▪ This category could cover insurance companies whether or not they own a thrift and any other type of financial company, 	<ul style="list-style-type: none"> ▪ As for applicability of sections of the Bank Holding Company Act and related Acts to systemically important nonbank financial companies, see Bank Regulation of Systemically Important Nonbank Companies.
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	such as hedge funds or asset managers, newly identified as systemically important, that is not already a bank holding company or treated as if it were one.	
Greater Flexibility in Imposing Stricter Standards	<ul style="list-style-type: none"> ▪ For “as if” bank holding companies, the Federal Reserve is instructed to take into account whether the financial company owns or controls an insured depository institution and must adapt the prudential standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which the heightened capital requirements are not appropriate. <ul style="list-style-type: none"> □ Federal Reserve may exempt such a company from risk-based capital requirements and leverage limits if deemed inappropriate because of such company’s activities or structure, but must apply other standards that result in appropriately stringent controls. ▪ See Customizing Standards. 	<ul style="list-style-type: none"> ▪ Federal Reserve is required to consider differences between bank holding companies and systemically important nonbank financial companies in formulating prudential standards. See Customizing Standards.
Requirement to Form Intermediate Holding Companies	<ul style="list-style-type: none"> ▪ Systemically important financial companies that are engaged in commercial activities must establish intermediate holding companies as a general rule. <ul style="list-style-type: none"> □ Exception for Firms “Predominantly Engaged” in Financial Activities. Federal Reserve, in consultation with any appropriate Federal or State financial regulators (and, in the case of a systemically important financial company that is an insurance company, the FIO) must, at the request of such a company, consider whether to grant an exemption from the intermediate holding company requirement for systemically important financial companies predominantly engaged in financial activities as defined in Section 4(k) of the Bank Holding Company Act. <ul style="list-style-type: none"> • Federal Reserve must consider, among other things, 	<ul style="list-style-type: none"> ▪ No requirement that systemically important nonbank financial companies segregate their financial activities from their commercial activities through an intermediate holding company or comply with restrictions on transactions between the financial and commercial arms. Exception for anti-evasion. See Financial Activities Designation for Anti-Evasion Purposes. <ul style="list-style-type: none"> □ Federal Reserve is granted discretion to impose such requirements and restrictions within 90 days of the nonbank financial company’s designation as systemically important. <ul style="list-style-type: none"> • Federal Reserve must issue regulations to establish criteria for determining whether to impose intermediate holding company requirement.

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	<p>the extent to which such exemption would facilitate the extension of credit to households and businesses, potentially threaten the safety and soundness of the financial holding company and its subsidiaries, potentially have an anticompetitive effect that is not outweighed by other public interest concerns, or potentially increase systemic risk or threaten stability of the financial system.</p> <ul style="list-style-type: none"> □ General Exemptive Authority. Requires the Federal Reserve to prescribe exemptions from the intermediate holding company requirements if it finds that such exemption would, among other things, facilitate the extension of credit to households and businesses, would not threaten the safety and soundness of intermediate holding company or any subsidiary (including depository institution subsidiaries) of such holding company and would not increase systemic risk or threaten the financial system, would not substantially lessen competition (unless the anticompetitive effects are outweighed by other public interest concerns). □ See Intermediate Holding Companies. 	<ul style="list-style-type: none"> • If an intermediate holding company is required, the systemically important nonbank financial company must segregate all activities that are financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act (other than internal financial activities) from its commercial activities.
Registration	<ul style="list-style-type: none"> ▪ No express registration requirement for systemically important financial companies. ▪ Where an intermediate holding company is required, however, it must register with the Federal Reserve within 90 days of designation, subject to ability of the Federal Reserve to grant an extension not to exceed an additional 180 days. See Intermediate Holding Companies. 	<ul style="list-style-type: none"> ▪ Once designated, systemically important nonbank financial companies must register with the Federal Reserve within 180 days. ▪ Purpose and effect of registration is unclear.

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Bank Regulation of Systemically Important Nonbank Companies	<ul style="list-style-type: none"> ▪ Certain Bank Holding Company Act and Federal Deposit Insurance Act provisions will apply to “as if” bank holding companies regarding administration, restrictions on non-banking activities, enforcement and sanctions, as if the firm were a bank holding company with elective financial holding company status, bank holding company subsidiaries and the Federal Reserve as regulator. ▪ Activities Restrictions. Activities restrictions of Section 4 of the Bank Holding Company Act apply to a systemically important nonbank financial company. ▪ In applying the activity restrictions and ownership limitations in Section 4 of the Bank Holding Company Act, the Federal Reserve must flexibly adapt such requirements taking into account the usual and customary practices in the business sector of the company so as to avoid unnecessary burden and expense. ▪ Prior Approval for Bank Acquisitions. Unlike the Senate bill, systemically important nonbank financial companies are not subject to limits on bank acquisitions under Section 3 of the Bank Holding Company Act. ▪ Reporting and Examination. Subjects systemically important nonbank financial companies and their subsidiaries to the reporting and examination requirements in Section 5 of the Bank Holding Company Act. See also Repeal of Fed Lite. <ul style="list-style-type: none"> □ New requirement for nonbank financial companies; bank holding companies already subject. ▪ Before requiring the submission of reports from foreign financial parents, the Council or Federal Reserve must to the extent appropriate, coordinate with foreign regulators and 	<ul style="list-style-type: none"> ▪ While no “as if” bank holding company regime exists, systemically important nonbank financial companies will be subject to certain banking laws as described below. ▪ No Activities Restrictions. No requirement for systemically important nonbank financial companies to conform to Section 4 of the Bank Holding Company Act. ▪ Prior Approval for Bank Acquisitions. Subjects systemically important nonbank financial companies to limits on bank acquisitions under Section 3 of the Bank Holding Company Act as if the company were a bank holding company. ▪ Reporting and Examination. Subjects systemically important nonbank financial companies and their subsidiaries to the reporting and examination requirements in Section 5 of the Bank Holding Company Act. See also Repeal of Fed Lite. <ul style="list-style-type: none"> □ New requirement for nonbank financial companies; bank holding companies already subject. □ Federal Reserve must use existing reports and other supervisory information already available to the fullest extent possible.

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	<p>multilateral organizations and, whenever possible, rely on information already being collected by such foreign regulators or multilateral organizations with English translation.</p> <ul style="list-style-type: none"> ▪ Enforcement. Subjects systemically important nonbank financial companies to the enforcement provisions in Section 8 of the Federal Deposit Insurance Act, such as cease and desist, removal and prohibition, and penalties, as if the company were a bank holding company. 	<ul style="list-style-type: none"> ▪ Functionally Regulated Subsidiaries. Federal Reserve is authorized to examine a functionally regulated subsidiary of a systemically important nonbank financial company, but must provide reasonable notice to, and consult with, the appropriate federal banking agency. See also Repeal of Fed Lite. ▪ Enforcement Against Functionally Regulated Subsidiaries. For depository institution and functionally regulated subsidiaries of such companies, the Federal Reserve can recommend action or enforcement proceeding to primary financial regulator. If the primary financial regulator does not take action within 60 days of the Federal Reserve’s recommendation, the Federal Reserve has back-up authority to take the recommended supervisory or enforcement action as if the depository institution or functionally regulated subsidiary were a bank holding company. ▪ Enforcement. Subjects systemically important financial companies to the enforcement provisions in Section 8 of the Federal Deposit Insurance Act, such as cease and desist, removal and prohibition, and penalties, as if the company were a bank holding company.
<p>Management Interlocks Prohibition</p>	<ul style="list-style-type: none"> ▪ Management interlocks provisions and board independence requirements apply to an intermediate holding company that is required to be established by a systemically important financial company under the bill. <ul style="list-style-type: none"> □ At least 25% of the board of such an intermediate holding 	<ul style="list-style-type: none"> ▪ Systemically important nonbank financial companies and their subsidiaries are subject to prohibition on management interlocks as if they were bank holding companies, and the Federal Reserve cannot by regulation permit management interlocks between other systemically important nonbank

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	<p>company, and each subsidiary of such holding company, must be independent of the parent company and any subsidiary of the parent company, and</p> <ul style="list-style-type: none"> □ No executive officer of such an intermediate holding company or any subsidiary of such intermediate holding company may serve as a director, officer or employee of an affiliate of such intermediate holding company that is not a subsidiary of the intermediate holding company. <ul style="list-style-type: none"> ▪ See Intermediate Holding Companies. 	<p>financial companies or bank holding companies with assets over \$50 billion other than on a temporary basis in the case of a merger, acquisition or consolidation.</p>
<p>“Hotel California” Provision (De-banking)</p>	<ul style="list-style-type: none"> ▪ No similar de-banking provisions. ▪ Because both a bank holding company and a nonbank financial company must be designated as systemically important in order to be subject to heightened prudential standards, switching status between a bank holding company and a nonbank financial company presumably would not impact the systemically important designation. 	<ul style="list-style-type: none"> ▪ Mechanism is unique to the Senate bill. ▪ Any bank holding company with \$50 billion or more in assets as of January 1, 2010, which received assistance or participated in the capital purchase program under TARP, will automatically be designated as a systemically important nonbank financial company if it subsequently ceases to be a bank holding company. Appeal to the Council is possible and annual review is required. <ul style="list-style-type: none"> □ Applicability of Bank Holding Company Act. Such a former bank holding company would no longer be subject to the restrictions on nonbanking activities and investments in Section 4 of the Bank Holding Company Act, but it would continue to be subject to the prior approval requirements on bank acquisitions in Section 3 of the Bank Holding Company Act. See Bank Regulation of Systemically Important Nonbank Companies. □ Enhanced Prudential Standards presumably, as applicable to comparable nonbank financial companies, would apply. □ Capital and Quantitative Limits in Volcker Rule. Instead of the restrictions on proprietary trading and

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		<p>sponsoring or investing in private funds, the company would be subject to “additional” capital requirements and other quantitative limits on systemically important nonbank financial companies that engage in proprietary trading and investing and sponsoring private funds. See Volcker Rule.</p>

Foreign Financial Companies

Foreign Financial Companies

- **Reach to Foreign Parent.** If a foreign financial company has significant operations in the U.S. through a Federal or State branch or agency of a foreign bank or a U.S. affiliate or other U.S. operating entity, it is a “foreign financial parent,” and it and/or its U.S. operations can be made subject to the systemic risk provisions of the Act.
- **Foreign Banking Entities.** Systemic risk provisions apply to foreign bank holding companies, foreign financial companies that are treated as bank holding companies for purposes of the Bank Holding Company Act (e.g., foreign banks with a U.S. branch, agency or commercial lending company subsidiary).

 - The Senate bill does not expressly limit the Federal Reserve to assessing the U.S. operations of a foreign bank holding company in determining whether a bank holding company is “large, interconnected” or look to only those U.S. assets when calculating the \$50 billion asset threshold.
- **Foreign Financial Companies.** Senate bill provides that for foreign nonbank financial companies, references to the Federal Reserve’s authority over a “company” or its “subsidiaries” include only such company’s U.S. activities and subsidiaries. The House bill has no directly analogous language.
- **Identification as Systemically Important and Application of Prudential Standards**

 - **Identification.** In identifying a foreign financial company as systemically important, the Council must consider the
- **Foreign Nonbank Financial Companies.** A foreign nonbank financial company can be designated as systemically important by the Council if it is “predominantly engaged in financial activities,” meaning that 85% or more of the consolidated annual gross revenues or consolidated total assets of the company and its subsidiaries are attributable to activities that are financial in nature (as defined in Section 4(k) of the Bank Holding Company Act) and, if applicable, attributable to the ownership or control of one or more insured depository institutions.

 - **U.S. Activities and Subsidiaries Only.** References to

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<p>Foreign Financial Companies (cont'd)</p>	<p>extent to which it is subject to prudential standards on a consolidated basis in its home country, administered and enforced by a comparable supervisory authority.</p> <ul style="list-style-type: none"> □ Prudential Standards. In subjecting a systemically important foreign financial company to stricter standards, the Federal Reserve must take into account the extent to which the parent is subject to comparable home country standards on a consolidated basis, to give due regard to the principle of “national treatment,” which requires treatment on par with U.S. institutions, and to ensure that foreign institutions and U.S. institutions have equality of competitive opportunity. ▪ Termination Authority <ul style="list-style-type: none"> □ Termination of Conditions, Activities or Practices. Upon a finding by the Federal Reserve that a condition, practice, or activity of a systemically important foreign financial company poses a threat to financial stability or does not comply with the Act or with the Federal Reserve’s rules or orders, the Federal Reserve may take actions necessary to mitigate such risk, including ordering termination of the activities of the U.S. branch, agency or subsidiary. Notice and opportunity for a hearing available, other than in urgent cases. □ Termination/Establishment of a Foreign Bank Office in the U.S. Federal Reserve may terminate the activities of the U.S. branch, agency or commercial lending company of a foreign institution that presents a systemic risk to the U.S. if the Federal Reserve determines that the home country has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate 	<p>“the company” or “subsidiary” include only the U.S. activities and subsidiaries of a foreign company.</p> <ul style="list-style-type: none"> □ For designation as systemically important, Council to consider, among other things, the company’s U.S.-related off-balance sheet exposure, U.S. financial assets and importance as a source of credit and liquidity in the U.S. ▪ Anti-Evasion. In addition, the U.S. financial activities of any other foreign company can be made subject to supervision and enhanced prudential standards if the company is determined to be organized or operated in a manner as to evade the application of the systemic risk provisions, and such financial activities in the U.S. are determined to pose a threat to U.S. financial stability. The anti-evasion provision of the Act appears to apply only to financial activities in the U.S. See Financial Activities Designation for Anti-Evasion Purposes. ▪ Application of Enhanced Prudential Standards. In recommending and applying enhanced prudential standards to foreign companies, including foreign bank holding companies and foreign banks treated as bank holding companies, Federal Reserve must give due regard to the principle of national treatment and competitive equity. <ul style="list-style-type: none"> □ No Explicit Comparability Review. Unlike House bill, no explicit requirement to take into account the extent to which the parent is subject to comparable home country standards. ▪ Modifications to Asset Sale/Breakup Provision. Federal Reserve may prescribe regulations regarding applicability of the asset sale/breakup provisions to foreign companies, but the regulations must give due regard to the principle of

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<p>Foreign Financial Companies (cont'd)</p>	<p>such systemic risk. Federal Reserve may also take these criteria into account when deciding to approve a new branch, agency or commercial lending application. SEC may terminate U.S. broker-dealer registrations under the same circumstances. The Act does not define the circumstances under which a firm is deemed to present a systemic risk to the U.S.</p> <ul style="list-style-type: none"> ▪ Requirements that Do Not Appear to Apply to Foreign Entities <ul style="list-style-type: none"> □ No Prompt Corrective Action. Foreign financial parents are not subject to the Federal Reserve’s prompt corrective action regime. □ Living Will or Credit Exposure Reports. The House bill appears to exempt foreign institutions from living will requirements, although there is ambiguity in the current language. Foreign financial parents are not subject to the reporting requirements for living wills or credit exposures. ▪ Prudential Requirements Not Applicable to Activities Abroad <ul style="list-style-type: none"> □ Activities Restrictions. The activities restrictions of the Bank Holding Company Act do not apply to any activities that a foreign systemically important financial company conducts solely outside the U.S. if such activities are conducted solely by a company or other entity that is located outside the U.S. □ Where stricter prudential standards are adopted with respect to financial activities and practices because of their systemic risk, they do not apply to activities that a foreign financial parent conducts solely outside the U.S. if such activities are conducted solely by a company or other 	<p>national treatment and competitive equity. See also Asset Sales and Breakup Powers.</p> <ul style="list-style-type: none"> ▪ Concentration Limits. For foreign-based financial companies, the concentration limit prescribed is calculated using risk-weighted assets and capital of U.S. operations.

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operating entity that is located outside the U.S.

- **International Policy Coordination.** The President or his designee must coordinate to establish through all available international policy channels similar policies as found in U.S. law related to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies in order to protect financial stability and the global economy.
 - Federal Reserve and the Treasury Secretary must consult with their foreign counterparts and through appropriate multilateral organizations to reach agreement to extend comprehensive and robust prudential supervision and regulation to all highly leveraged and substantially interconnected financial companies.

Subtitle B – Office of Financial Research

Office of Financial Research

- No separate data-gathering entity, but grants the Council information gathering powers.
- **Information Gathering Abilities of the Council**
 - Council or the Federal Reserve may require submission of periodic and other reports from any financial company solely for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the company itself, poses a threat to financial stability.
 - Council and the Federal Reserve are authorized to receive, and may request the production of, any data or information from members of the Council, as necessary to monitor the financial system and any threats posed to the system. Any information provided by Council members is subject to confidentiality restrictions.

▪ **Institutional Structure**

- The Office of Financial Research (the “**OFR**”) is created within the Treasury Department. The Director of the OFR is appointed to a 6-year term by the President, with advice and consent of the Senate. The OFR has a nonvoting seat on the Council.
- **Assessments.** After a 2-year start-up period, the expenses of the OFR and the Council will be covered by assessments imposed on bank holding companies with total assets of \$50 billion or more and systemically important nonbank financial companies.

▪ **Rulemaking Authority**

- OFR appears to have independent authority to issue regulations and collect reports, data and information without approval from the Council.

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	<ul style="list-style-type: none"> □ Provision of information to the Council does not waive any applicable privileges. □ Any information obtained by the Council is exempt from the disclosure requirements under the Freedom of Information Act. ▪ Data and Information Sharing. Council may establish procedures for the sharing of information collected by the Council with Council members and the Chairman of the Federal Reserve. ▪ Council Study. The Chairman of the Council is required to conduct a study of the economic impact of possible financial services reforms intended to reduce systemic risks. The study must estimate the effect on the efficiency of the capital markets, costs imposed on the financial sector, and on national economic growth, among other things: <ul style="list-style-type: none"> □ explicit or implicit limits on the size of banks, bank holding companies and other large financial institutions; □ limits on organizational complexity and diversification of large financial institutions; □ requirements for operational separation between business units in order to expedite resolution in case of a failure; □ requirements to carry contingent capital or similar mechanisms; □ limits on commingling commercial and financial activities; and □ segregation requirements between traditional financial activities and trading or other high-risk operations. 	<ul style="list-style-type: none"> □ OFR is required to issue, and Council-member agencies are required to implement, regulations that standardize the scope and format of data collected by Council-member agencies. The OFR has back-up authority to implement the regulations if member agencies fail to do so within 3 years of issuance. ▪ Data Collection and Publication <ul style="list-style-type: none"> □ Subpoena Power. OFR’s data collection efforts are backed by subpoena power. □ The Power to “Validate” Data. OFR has the power to “collect, validate and maintain data.” □ Data Publication and Confidentiality. OFR is required to publish databases on financial companies and financial instruments. While the OFR may not publish “confidential data,” the term is not defined. Furthermore, the Freedom of Information Act applies to any data gathered by the OFR. □ Scope of Information. Senate bill does not clearly define or limit the data that the OFR can collect, and there is no apparent oversight of the OFR’s data collection. □ Mitigation of Reporting Burden. OFR is required to coordinate with financial regulatory agencies “whenever possible.” ▪ Analytical Capabilities. OFR is required to develop and maintain independent analytical capabilities to, among other things: promote best practices for financial risk management, monitor and report on changes in system-wide risk and to evaluate and report on stress tests. ▪ Required Reports. OFR is required to submit to Congress a report on the state of the U.S. financial system not later than 2 years after the date of enactment, and annually thereafter.

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		<ul style="list-style-type: none">□ The Director is required to testify annually to Congress on the activities of the OFR and its assessment of systemic risk, and no government officer or agency has the right to review the Director’s testimony prior to its submission.

TITLE II – ORDERLY LIQUIDATION AUTHORITY

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Applicability	<ul style="list-style-type: none"> ▪ Any U.S. bank holding company, systemically important financial company, insurance company, other company predominantly engaged in financial activities (as defined in Section 4(k) of the Bank Holding Company Act), and any subsidiaries of the foregoing. <ul style="list-style-type: none"> □ Exceptions for subsidiaries that are insured depository institutions and broker-dealers that are members of SIPC. □ Also, general exceptions for GSEs, FHLBs, Farm Credit System institutions, insured depository institutions and credit unions. ▪ FDIC takes view that broker-dealers, even if SIPC members, are covered if they independently satisfy any of the non-subsidiary tests. ▪ Insurance companies are covered, but would be resolved under state insurance insolvency regimes. FDIC has back-up authority to resolve such insurance companies under applicable state insurance insolvency law, if the appropriate state regulatory agency has not filed the appropriate judicial action to place the company in orderly liquidation under state law within 60 days of a determination by the Treasury Secretary to appoint the FDIC as receiver for such company. 	<ul style="list-style-type: none"> ▪ Any U.S. bank holding company, systemically important nonbank financial company, other company predominantly engaged in financial activities (as defined in Section 4(k) of the Bank Holding Company Act), and any subsidiaries of the foregoing that are themselves predominantly engaged in financial activities. <ul style="list-style-type: none"> □ Exceptions for subsidiaries that are insured depository institutions and insurance companies. □ Also general exceptions for FHLBs, GSEs, Farm Credit System Institutions and government entities. “Government entities” is not defined. □ Covered broker-dealers are excluded from the definition of covered subsidiary for technical reasons. ▪ No companies can be deemed to be predominantly engaged in financial activities unless 85% or more of the company’s consolidated annual gross revenues are attributable to such activities. ▪ Insurance companies may be covered by one or more of the non-subsidiary tests, but would be resolved by state authorities as provided under state insurance insolvency law. FDIC has back-up authority to resolve such insurance companies under applicable state insurance insolvency law, if the appropriate state regulatory agency has not filed the appropriate judicial action to place the company in orderly liquidation under state law within 60 days of a determination by the U.S. District Court for the District of Columbia to authorize the Treasury Secretary to appoint the FDIC as receiver for such company.

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Commencement of Proceedings	<ul style="list-style-type: none"> Three keys approach: Federal Reserve, the Treasury Secretary and the FDIC (or the SEC in the case of a broker-dealer or the state insurance regulator in the case of an insurance company) must make certain financial distress and systemic risk determinations. 	<ul style="list-style-type: none"> Same as the House bill, except that the Treasury Secretary must also determine that the company falls within the definition of “financial company” and either obtain the consent of the company’s board of directors or an order from the U.S. District Court for the District of Columbia authorizing the appointment of the FDIC as receiver. The District Court must act on the Secretary’s petition within 24 hours in a confidential proceeding with notice and opportunity for hearing for the company. If the District Court does not act within 24 hours, the petition is deemed granted as a matter of law. Court can only review whether the Treasury Secretary’s determinations as to the financial distress of the company and whether the company is a “financial company” were “arbitrary and capricious.” Appellate review available to the D.C. Circuit and then to the U.S. Supreme Court, but no stay is available. Since the statute also provides boards of directors with immunity from liability for breaching their fiduciary duties if they give consent to the appointment of the FDIC as receiver, the Treasury Secretary is likely to avoid any court review by imposing intense pressure on boards to give their consent, and boards are likely to determine that it is in their personal interests to acquiesce.
Control of Business	<ul style="list-style-type: none"> FDIC, As Receiver. The receivership would be limited to one year, subject to two 1-year extensions. Maximum of 3 years. FDIC can convert the receivership to an involuntary bankruptcy at any time and become the trustee in bankruptcy. 	<ul style="list-style-type: none"> FDIC, As Receiver. The receivership would be limited to 3 years, subject to two 1-year extensions. Maximum of 5 years. Further extension only available for completing ongoing litigation and, in such a case, the receivership must end within 90 days after the litigation is completed. FDIC has no liability for unresolved claims after termination of the receivership.

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	HOUSE BILL	SENATE BILL
<i>Close-out of Certain Financial Contracts by Counterparties</i>	<ul style="list-style-type: none"> Close-out/netting of qualified financial contracts (“QFCs”) by counterparties temporarily stayed for one business day in the case of a receivership to allow receiver to determine which QFCs to transfer. FDIC may only transfer all or none of the QFCs with a particular counterparty and any of its affiliates. 	<ul style="list-style-type: none"> Same as the House bill, except temporary stay is for three business days.
<i>Customer Property</i>	<ul style="list-style-type: none"> Incorporates by reference Bankruptcy Code rules for customer property held by non-SIPC member stockbrokers and commodity brokers. No express provisions protecting customer property held by broker-dealers that are members of SIPC or by non-broker-dealer custodians that are covered financial companies. Under very old case law on which the new bank resolution authority is modeled, customer property rights are respected only if properly segregated from the bank’s assets. <ul style="list-style-type: none"> Substantial legal uncertainty under that case law regarding what is required to satisfy segregation requirements short of physical segregation given the dematerialization of securities and other assets since those cases were decided. 	<ul style="list-style-type: none"> Incorporates by reference Bankruptcy Code rules for customer property held by non-SIPC member stockbrokers and commodity brokers. Includes express provisions designed to protect customer property held by covered broker-dealers that are members of SIPC to the same extent as in a normal SIPC proceeding. It is unclear whether these customer protections work as a technical matter, but the intent seems to be as follows: FDIC appoints SIPC as trustee for the liquidation of the covered broker-dealer under normal SIPC rules, except that QFCs would be governed by special provisions that supersede the Bankruptcy Code and SIPC practices. FDIC can create a “bridge financial company” and transfer any assets and liabilities, including any customer accounts, customer name securities and customer property, to the bridge company from the covered broker-dealer. Despite this transfer, SIPC would be required to satisfy remaining customer claims “in the same manner and amount” as if the FDIC was not involved in the liquidation. The bridge financial company would be deemed registered with the SEC and SROs and could operate as a broker-dealer, though the operation of capital rules and clearing arrangements for the bridge broker-dealer are unclear.

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Financial Assistance	<ul style="list-style-type: none"> ▪ Emergency Open Assistance. Limited to solvent insured depository institutions, their holding companies and affiliates, pursuant to widely available programs, and a determination by the Financial Council that a liquidity event exists. ▪ Emergency Closed Assistance. FDIC may provide a wide range of financial assistance to assist in the resolution of the covered financial company. There are some mandatory conditions to providing closed assistance, including, among others: <ul style="list-style-type: none"> □ unsecured creditors must bear losses; and □ the management and board members responsible for the failed condition must be removed. 	<ul style="list-style-type: none"> ▪ Emergency Open Assistance. No emergency open assistance. ▪ Emergency Closed Assistance. Broadly similar to the House bill.
Prompt Transfer of Assets and Liabilities to Buyer	<ul style="list-style-type: none"> ▪ FDIC would have broad discretion to sell or transfer assets and liabilities to a third party, notwithstanding any otherwise applicable consent requirements, subject to certain limitations in the statute but no meaningful judicial review. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
Cherry-Picking Powers	<ul style="list-style-type: none"> ▪ FDIC would have broad discretion to cherry-pick which assets or liabilities to transfer even if it results in unequal treatment of similarly situated creditors, subject to three limits: <ul style="list-style-type: none"> □ the minimum recovery rights (described below) of any left-behind claimants; □ if the FDIC transfers any QFCs with a particular counterparty or any of its affiliates, it must transfer all QFCs with that counterparty and any of its affiliates (if the FDIC repudiates any such QFCs, it must repudiate all such QFCs); and □ all assets are transferred subject to pre-existing liens unless the FDIC is able to invalidate the lien pursuant to one of its “super powers” discussed below. 	<ul style="list-style-type: none"> ▪ Same as the House bill.

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<i>Minimum Recovery Rights</i>	<ul style="list-style-type: none"> To ensure minimum due process, all unsecured creditors would be entitled to receive at least what they would have received in a liquidation of the covered financial company under Chapter 7 of the Bankruptcy Code. (Secured creditors would generally receive the collateral or the value thereof.) Although these minimum recovery rights apply notwithstanding any other provision of the statute, certain other provisions define various creditors rights in ways that are materially different from how they are defined under the Bankruptcy Code, which is likely to result in materially different outcomes. Nor is there an express, practical remedy for creditors who do not receive their minimum recovery rights. FDIC would be required to make periodic reports while acting as receiver on the extent to which creditors will receive this minimum recovery amount. 	<ul style="list-style-type: none"> Same as the House bill, except that the Senate bill reduces the gap between the rules defining creditors’ rights under the Bankruptcy Code so that material differences in outcomes are less likely to occur.
<i>Damages for Rejected or Repudiated Contracts</i>	<ul style="list-style-type: none"> Damages for repudiation or disaffirmance are limited to “actual direct compensatory damages,” resulting in smaller damages claims than for identical contracts rejected under the Bankruptcy Code, determined as of the date of the appointment of the receiver, with the exception of QFCs, for which damages are calculated as of the date of disaffirmance or repudiation and are measured in accordance with market custom (cost of cover included). 	<ul style="list-style-type: none"> Basically the same as the House bill, except that damages for repudiated debt obligations would be calculated as the face amount of the obligation plus accrued interest and accreted original issue discount, determined as of the date of the receiver’s appointment. Similar to “post-petition” interest provisions of the Bankruptcy Code, for a secured claim, any accrued interest would be calculated through the date of repudiation, to the extent that such allowed secured claim is secured by property the value of which is greater than the amount of such claim. This is closer to the Bankruptcy Code.
<i>Enforceability of Ipso Facto Clauses</i>	<ul style="list-style-type: none"> Unenforceable in any contracts other than QFCs in receivership, D&O insurance policies, and other very limited exceptions. 	<ul style="list-style-type: none"> Same as the House bill.

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Oral Contracts	<ul style="list-style-type: none"> Only written contracts signed by properly authorized officers will be recognized under the statute. 	<ul style="list-style-type: none"> Although agreements against the interest of the receiver or a bridge financial company would still have to be in writing and meet certain other special enforceability requirements, any written agreement that is duly executed or confirmed in the ordinary course of business is enforceable. This standard is closer to the Bankruptcy Code.
Contingent Claims	<ul style="list-style-type: none"> FDIC takes the position under the bank insolvency statute on which this proposed statute is modeled that contingent claims, such as under undrawn guarantees or letters of credit, unused loan commitments or unused portions of committed lines of credit, are not provable or, if provable, generate zero damages if repudiated. 	<ul style="list-style-type: none"> Contingent claims in the form of guarantees, letters of credit, loan commitments and other similar claims would be recognized as provable claims equal to their estimated value as of the date of the receiver’s appointment, similar to estimation under the Bankruptcy Code if the FDIC so prescribes. This standard is closer to the Bankruptcy Code.
Less than Fully Secured Creditors	<ul style="list-style-type: none"> Portion of claim that exceeds the value of the collateral considered unsecured. No payments may be made with respect to unsecured claims other than in connection with the disposition of all unsecured claims. 	<ul style="list-style-type: none"> Same as the House bill.
Guaranteed Subsidiary Contracts	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> FDIC given power to enforce subsidiary contracts (including QFCs) guaranteed by a covered financial company in receivership notwithstanding any cross-default in the underlying contract based solely on the insolvency of the guarantor, if the guarantee and all related assets/liabilities are transferred to a bridge financial company or a third party.
Clearing Organizations	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Receiver required to use best efforts to meet margin, collateral and settlement obligations with respects to any QFCs of a covered financial company with a clearing organization; if the receiver defaults on these obligations, the clearing organization may exercise rights and remedies immediately with respect to such QFCs despite an otherwise applicable stay on the exercise of close-out or other rights.

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<i>Setoff Rights</i>	<ul style="list-style-type: none"> ▪ No provision expressly recognizing setoff rights or protecting creditors where the FDIC destroys the mutuality of offsetting claims. 	<ul style="list-style-type: none"> ▪ Respected as under the Bankruptcy Code, with qualifications to permit the receiver to transfer liabilities to a third party or bridge financial company even if it destroys the mutuality of offsetting claims subject to a priority over general creditors if mutuality is destroyed by the FDIC.
<i>Haircut on Secured Creditors</i>	<ul style="list-style-type: none"> ▪ In the event there is shortfall in the amount owed to the U.S., the FDIC is permitted to treat up to 10% of a secured claim, including a repo claim, other than a security interest of the federal government, as an unsecured claim, if: <ul style="list-style-type: none"> □ the security interest secures a QFC with an original term of 30 days or less; □ the collateral is other than certain government-issued securities; and □ no funds are available for payment, in whole or in part, to any unsecured creditors or shareholders. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.
<i>Post-Insolvency Interest</i>	<ul style="list-style-type: none"> ▪ Generally not payable because damages calculated as of the date receiver is appointed, but exceptions for QFCs (where damages are calculated as of date of repudiation or disaffirmance) or as the FDIC may provide by regulation, policy statement or staff interpretation. 	<ul style="list-style-type: none"> ▪ Same as the House bill, except that post-appointment interest would be available on repudiated debt obligations through the date of repudiation to the extent that the allowed claim is secured by property with a value greater than the claim. Closer to treatment under the Bankruptcy Code.
<i>Priority of Unsecured Claims</i>	<ul style="list-style-type: none"> ▪ The following unsecured claims generally have priority over the claims of general unsecured creditors: <ul style="list-style-type: none"> □ Claims by the FDIC for administrative expenses as receiver; and □ Claims of amounts owed to the U.S. 	<ul style="list-style-type: none"> ▪ The following unsecured claims generally have priority over the claims of general unsecured creditors: <ul style="list-style-type: none"> □ Claims by the FDIC for administrative expenses as receiver; □ Claims of amounts owed to the U.S. and any claims of a Federal Reserve bank related to loans made under Section 13(3) of the Federal Reserve Act; □ Wages, salaries or commissions to those other than senior

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		<p>executives and directors (up to \$11,725 each) and certain contributions to employee benefit plans generally have priority over general or senior liabilities of the company; and</p> <ul style="list-style-type: none"> □ Claims of creditors with otherwise enforceable setoff rights where the FDIC destroys the mutuality of their offsetting claims by transferring one of the otherwise offsetting claims to a third party or bridge financial company. ▪ The following unsecured claims generally rank junior to general unsecured creditors and subordinated debt, and senior only to the claims of shareholders: <ul style="list-style-type: none"> □ Wages, salaries or commissions to senior executives and directors.
<i>Choice of Law Rules</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Confirms that noninsolvency choice of law rules determine which noninsolvency law governs the perfection of security interests and the creation and enforcement of security entitlements.
<i>Preferential Transfers</i>	<ul style="list-style-type: none"> ▪ “Preferential” transfers may be avoided, consistent with the Bankruptcy Code. Bankruptcy Code defenses are available to a transferee. ▪ Security interests taken to secure QFCs are avoidable only if taken with actual intent to hinder, delay or defraud. 	<ul style="list-style-type: none"> ▪ Legally enforceable or perfected security interests and other transfers of property would be avoidable as preferential transfers only if they amounted to a preferential transfer under the Bankruptcy Code. Bankruptcy Code defenses are available and spelled out. More legal certainty than under the House bill. ▪ Security interests taken to secure QFCs are avoidable only if taken with actual intent to hinder, delay or defraud.
<i>Fraudulent Transfer</i>	<ul style="list-style-type: none"> ▪ FDIC has the power to set aside fraudulent transfers based on applicable state fraudulent transfer law. In addition, the FDIC has the power to set aside transfers by certain insiders or debtors of the financial company if made within 5 years of 	<ul style="list-style-type: none"> ▪ Legally enforceable or perfected security interests and other transfers of property would no longer be avoidable as fraudulent transfers only if they amounted to a fraudulent transfer under the Bankruptcy Code. Bankruptcy Code

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	the receivership with the intent to hinder, delay or defraud. FDIC’s power under this special provision is superior to that of a trustee in bankruptcy.	defenses are available and spelled out. More legal certainty than under the House bill.
Judicial Supervision of Claims Process	<ul style="list-style-type: none"> FDIC has broad authority to conduct the administrative claims process, subject only to after-the-fact <i>de novo</i> judicial review. 	<ul style="list-style-type: none"> Narrows the gap between the due process protections of the Bankruptcy Code and those provided under the bank resolution statute, for example, by including the gatekeeping role of the U.S. District Court for the District of Columbia, additional opportunity for judicial review of the claims process and certain notice and hearing rights.
Rulemaking and Legal Guidance	<ul style="list-style-type: none"> Mandatory Rulemaking. FDIC would be required to make rules and regulations governing the allowance or disallowance of claims, but without any further guidance as to the goals of any such rules or regulations. FDIC would also be required to prescribe rules regarding the priority of expenses and unsecured claims. Otherwise, the FDIC’s rulemaking power is permissive only. 	<ul style="list-style-type: none"> Mandatory Rulemaking. FDIC would be required to prescribe rules and regulations to implement its authority, including a specific requirement that rules and regulations be promulgated that would clarify the rights, interests and priorities of creditors, counterparties, security entitlement holders and other persons. In addition, the FDIC would be required, in consultation with the Treasury Secretary, to issue rules and regulations to govern the assessment process. While resolution authority is immediately effective, no deadline is given for issuing rules or regulations.
Fund and Assessments	<ul style="list-style-type: none"> A systemic dissolution fund would be established, pre-funded by FDIC risk-based assessments on large financial companies having assets of \$50 billion or more, to pay for the authorized actions under the authority. The maximum size of the fund is set at \$150 billion. 	<ul style="list-style-type: none"> No pre-funded dissolution fund. FDIC’s resolution expenses are funded by borrowings from Treasury up to certain maximum amounts equal to certain percentages of the book or fair value of the covered financial company’s assets. Borrowings must be repaid within 5 years, first, by making assessments on claimants that received “additional payments” or other “amounts” from the FDIC in order to recover any excess benefits they received in the liquidation (<i>i.e.</i>, amounts in excess of their minimum recovery rights)

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		and, second, by making assessments for any shortfall on large financial companies with assets of \$50 billion or more.
Officers and Directors	<ul style="list-style-type: none"> Officers and directors of a covered financial company may be held personally liable for monetary damages in civil actions by the FDIC for gross negligence or greater disregard of a duty of care. 	<ul style="list-style-type: none"> Same personal liability for officers and directors of a covered financial company as the House bill. FDIC may recover up to 2 years of compensation from any senior executives or directors substantially responsible for the failure of a covered financial company. Federal Reserve or the FDIC may prohibit senior executives and directors from working in the financial industry for no less than 2 years, if they benefited from certain egregious violations, unsafe or unsound practices or breach of duties.
Monitoring and Oversight	<ul style="list-style-type: none"> Various Inspectors General and regulatory agencies provided oversight and investigative authority over the resolution process. Periodic reports required by FDIC related to the receivership of a covered company. Monitoring and studies by GAO and Administrative Office of the United States Courts. 	<ul style="list-style-type: none"> Similar monitoring and oversight to the House bill.

TITLE III – TRANSFER OF POWERS TO THE OCC, FDIC, AND THE FEDERAL RESERVE

	HOUSE BILL	SENATE BILL
Implementation Timing: Transfer date	<ul style="list-style-type: none"> ▪ Institutional changes to the banking system occur one year after the date of enactment, subject to an extension for up to an additional 6 months (the “transfer date”). 	<ul style="list-style-type: none"> ▪ Same as the House bill, except Treasury Secretary must publish the transfer date in the Federal Register within 9 months of the date of enactment. ▪ No explicit authority to extend the transfer date once it has been published.
OTS Abolished	<ul style="list-style-type: none"> ▪ Abolishes OTS effective 90 days after the transfer date. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
Thrift Charter	<ul style="list-style-type: none"> ▪ Federal thrift charter continues to exist. 	<ul style="list-style-type: none"> ▪ Terminates the power to grant new federal thrift charters. ▪ Provides that a thrift that becomes a bank is permitted to retain its branches.
Reallocation of Powers Among Federal Reserve, OCC and FDIC	<ul style="list-style-type: none"> ▪ Federal Reserve: Assumes OTS powers with respect to thrift holding companies. ▪ OCC: Assumes OTS powers with respect to federal thrifts. A Division of Thrift Supervision is established within the OCC. ▪ FDIC: Assumes OTS powers with respect to state thrifts. ▪ OTS’s position on FDIC board of directors assumed by Chairman of the Federal Reserve. 	<ul style="list-style-type: none"> ▪ Federal Reserve: Assumes OTS powers with respect to thrift holding companies and their nondepository institution subs. Also assumes rulemaking authority relating to thrift transactions with affiliates, loans to insiders and tying arrangements. ▪ OCC: Assumes OTS powers with respect to federal thrifts, as well as rulemaking authority over state thrifts. ▪ FDIC: Assumes OTS powers other than rulemaking authority with respect to state thrifts. ▪ OTS’s position on FDIC board of directors assumed by director of the Consumer Bureau.
FDIC Assessments	<ul style="list-style-type: none"> ▪ Requires the FDIC to base deposit insurance assessments on an insured depository institution’s average total assets minus its average tangible equity during the assessment period, rather than on its deposit base. ▪ Permits FDIC to reduce the assessment base for custodial 	<ul style="list-style-type: none"> ▪ Same as the House bill.

TITLE III – TRANSFER OF POWERS TO THE OCC, FDIC, AND THE FEDERAL RESERVE

	HOUSE BILL	SENATE BILL
	<p>banks and banker’s banks.</p> <ul style="list-style-type: none"> ▪ Repeals provision that no institution may be denied the lowest-risk category solely because of its size. ▪ This provision is effective upon the date of enactment. 	
<i>Office of Minority and Women Inclusion</i>	<ul style="list-style-type: none"> ▪ Requires each agency to establish an Office of Minority and Women. The director of each agency’s office will be appointed by the President, with the advice and consent of the Senate. ▪ Requires each director to develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels. Requires the agency to take affirmative steps to seek diversity in its workforce. ▪ With respect to all contracts of an agency for services: <ul style="list-style-type: none"> □ requires agencies to consider the diversity of the applicant □ requires the contract proposal to include a written assurance that the contractor must ensure, to the maximum extent possible, the inclusion of minorities and women in its workforce and by its subcontractors □ permits the director to terminate any contract upon a finding that the contractor has failed to make a good faith effort to comply with the written assurance to include minorities and women. ▪ Requires each agency’s director to report to the Congress detailed information describing the actions taken by the agency and the Director pursuant to this section not later than 90 days before the end of each Federal fiscal year. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.

TITLE IV – REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

	HOUSE BILL	SENATE BILL
SEC Registration Required for a Broader Range of Advisers	<ul style="list-style-type: none"> ▪ “Private Investment Adviser” Registration Exemption (fewer than 15 clients). Eliminates this exemption from SEC registration. ▪ Intrastate Registration Exemption. Eliminates the intrastate registration exemption for investment advisers with any private fund client and the CFTC-registered commodities trading advisor registration exemption where such commodities trading advisor is an investment adviser to a private fund. ▪ “Mid-sized private funds.” Permits the SEC to issue rules requiring the registration and examination of investment advisers to “mid-sized private funds” that “reflect the level of systemic risk posed by such funds.” <ul style="list-style-type: none"> □ The term “mid-sized private funds” is not defined. 	<ul style="list-style-type: none"> ▪ “Private Investment Adviser” Registration Exemption (fewer than 15 clients). Same as the House bill. ▪ Intrastate Registration Exemption. Similar to the House bill, eliminates the intrastate registration exemption for investment advisers with any private fund client. Unlike the House bill, retains the CFTC-registered commodities trading advisor registration exemption even where such commodities trading advisor is an investment adviser to a private fund. ▪ “Mid-sized private funds.” Not in the House bill.
“Private Fund” Definition	<ul style="list-style-type: none"> ▪ A private fund is defined as a fund that would be an investment company under the Investment Company Act but for the exemptions for a fund with fewer than 100 investors and for a fund in which all investors are sophisticated investors known as “qualified purchasers.” 	<ul style="list-style-type: none"> ▪ Same as the House bill.
Significant Registration Exemptions	<ul style="list-style-type: none"> ▪ Advisers to Venture Capital Funds. Requires the SEC to issue a rule providing a registration exemption applicable to an investment adviser to a “venture capital fund,” which the SEC must define. Such advisers would, however, be subject to recordkeeping and reporting requirements as determined by the SEC. ▪ Advisers to Private Equity Funds. Not in the House bill. 	<ul style="list-style-type: none"> ▪ Advisers to Venture Capital Funds. Exempts advisers to venture capital funds from SEC registration. SEC given 6 months from the date of enactment to issue final rules defining the term “venture capital fund” for purposes of this exemption. Unlike the House bill, does not impose recordkeeping and reporting requirements on such advisers. ▪ Advisers to Private Equity Funds. Exempts advisers to private equity funds from SEC registration. SEC given 6 months from the date of enactment to issue final rules: <ul style="list-style-type: none"> □ Defining the term “private equity fund” for purposes of this

TITLE IV – REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

	HOUSE BILL	SENATE BILL
Minimum Assets Under Management for SEC Registration	<ul style="list-style-type: none"> ▪ \$100 million. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
Records and Reports	<ul style="list-style-type: none"> ▪ Generally. Authorizes the SEC, in consultation with the Federal Reserve, to require registered advisers to maintain such records and file such reports with the SEC regarding private funds advised by the adviser as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk. ▪ Required Records. Requires, for each private fund advised by a registered investment adviser, the adviser to maintain or file with the SEC records detailing each private fund’s: <ul style="list-style-type: none"> □ assets under management; □ use of leverage, including off-balance sheet leverage; □ counterparty credit risk exposure; □ trading and investment positions; □ trading practices; and □ other information that the SEC and the Federal Reserve deem necessary or appropriate “in the public interest and for the protection of investors or for the assessment of systemic risk.” ▪ Records Subject to Examination. Subjects all records of a private fund maintained by a registered investment adviser to such fund to periodic and special examination by the SEC. Not limited to simply the records required to be kept by law. 	<ul style="list-style-type: none"> ▪ Generally. Same as the House bill, except the SEC does not need to consult with the Federal Reserve (or another regulator) in establishing these recordkeeping and reporting requirements. ▪ Required Records. Same as the House bill, except also requires an adviser to maintain (but not necessarily file with the SEC) records detailing each private fund’s: <ul style="list-style-type: none"> □ valuation policies and practices; □ types of assets held; and □ side arrangements or side letters. ▪ Records Subject to Examination. Same as the House bill except explicitly directs the SEC to conduct periodic examinations of all records of private funds maintained by a registered investment adviser and authorizes the SEC to conduct special examinations as the SEC may prescribe as necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

TITLE IV – REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

	HOUSE BILL	SENATE BILL
	<ul style="list-style-type: none"> ▪ Availability of Records. Requires registered advisers to make available to the SEC or its representatives any copies or extracts from such records as may be prepared without undue effort, expense or delay as the SEC or its representative may reasonably request. 	<ul style="list-style-type: none"> ▪ Availability of Records. Same as the House bill.
Information Sharing and Confidentiality	<ul style="list-style-type: none"> ▪ Requires the SEC to share information filed with or provided to the SEC with the Federal Reserve and the Council. Information shared to be kept confidential, except it may be disclosed to Congress, to a Federal department or agency or any self-regulatory organization for purposes within the scope of its jurisdiction, or by court order in an action brought by the U.S. or the SEC. Information provided to SEC is explicitly carved out from FOIA disclosure. 	<ul style="list-style-type: none"> ▪ Similar to the House bill, except that the information is required to be shared with the Council, not the Federal Reserve and the Council. Also clarifies that information provided by the SEC to the Council will be exempt from FOIA disclosure (House bill was arguably ambiguous on this point).
Proprietary Information	<ul style="list-style-type: none"> ▪ Proprietary information subject to enhanced confidentiality measures. <ul style="list-style-type: none"> □ Defines the term “proprietary information” to include: sensitive, non-public information regarding the investment or trading strategies of the investment adviser; analytical or research methodologies; trading data; computer hardware or software containing intellectual property; any additional information that the SEC determines to be proprietary. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
“Public” Disclosure	<ul style="list-style-type: none"> ▪ SEC granted the authority to issue rules requiring registered investment advisers to provide reports, records and other documents to investors, prospective investors, counterparties and creditors of any private fund advised by that adviser. <ul style="list-style-type: none"> □ SEC may not, however, compel the disclosure of a private fund’s proprietary information to its counterparties and creditors. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.

TITLE IV – REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

	HOUSE BILL	SENATE BILL
Annual Report to Congress	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Requires the SEC to report annually to Congress on how the SEC has used data collected from registered advisers to monitor the markets for the protection of investors and the integrity of the markets.
Disclosure of Client Identity	<ul style="list-style-type: none"> Removes the Investment Advisers Act provision that currently prohibits the SEC from requiring an investment adviser to disclose “the identity, investments or affairs of any client” except for purposes of enforcement proceedings and related investigations. 	<ul style="list-style-type: none"> Modifies current Investment Advisers Act prohibition limiting the SEC’s ability to require investment advisers to disclose the identity, investments or affairs of their clients by adding an exception enabling the SEC to require the disclosure of such information insofar as such disclosure is sought “for purposes of assessment of potential systemic risk.”
SEC/CFTC Disclosure Rules	<ul style="list-style-type: none"> Requires the SEC and the CFTC, within one year of the date of enactment and after having consulted with the Federal Reserve, to issue rules regarding the form and content of reports required to be filed with both agencies by dually-registered advisers. 	<ul style="list-style-type: none"> Same as the House bill, except the SEC and the CFTC must consult with the Council instead of the Federal Reserve.
Custody of Client Assets	<ul style="list-style-type: none"> Requires the SEC to adopt a rule requiring investment advisers to use a qualified custodian to custody any client accounts with more than \$10 million worth of client funds or securities. <ul style="list-style-type: none"> If the SEC rule includes exceptions, the exceptions must require that at least once per year clients receive a report from an independent entity with a fiduciary responsibility to the client to verify that the assets in the client’s account are in accord with those stated on the client’s account statement. 	<ul style="list-style-type: none"> Allows for, but does not require, the SEC to promulgate rules to require registered investment advisers to take steps to safeguard client assets over which the adviser has custody. Suggests that such rules may, among other things, provide for verification of client assets by independent public accountants.
Adjustments to the Accredited Investor Standard	<ul style="list-style-type: none"> Does not adjust the accredited investor standard. <ul style="list-style-type: none"> Instead adjusts the “qualified client” standard. Requires periodic adjustment for inflation when the SEC grants certain exemptions under the Investment Advisers Act. The \$750,000 assets under management and \$1.5 million 	<ul style="list-style-type: none"> Upon enactment, and for 4 years following the date of enactment, the accredited investor net worth threshold for natural persons will be \$1 million, excluding the value of the investor’s primary residence. One year after the date of enactment, the SEC is authorized

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	<p>net worth tests for determining a client’s status as a “qualified client” would be adjusted for inflation no later than one year after the date of enactment and every 5 years thereafter.</p>	<p>to review the definition of the term “accredited investor,” as applied to natural persons, and to promulgate rules adjusting the provisions of the definition, provided that the SEC may not adjust or modify the net worth threshold.</p> <ul style="list-style-type: none"> ▪ Requires the SEC, 4 years after the date of enactment and every 4 years thereafter, to review the entirety of the definition of the term “accredited investor,” as applied to natural persons, and authorizes the SEC to modify the definition “as appropriate for the protection of investors, in the public interest, and in light of the economy.” <ul style="list-style-type: none"> □ Any net worth threshold must be an amount exceeding \$1 million, excluding the value of the investor’s primary residence.
Definition of “Client”	<ul style="list-style-type: none"> ▪ Prohibits the SEC from defining the term “client” in a manner that would include an investor in a private fund managed by an investment adviser. 	<ul style="list-style-type: none"> ▪ Prohibits the SEC from defining the term “client” for purposes of Sections 206(1) and 206(2) of the Investment Advisers Act to include investors in a private fund.
One-Year Transition Period	<ul style="list-style-type: none"> ▪ Provisions become effective one year after the date enactment. 	<ul style="list-style-type: none"> ▪ Unless otherwise specified (e.g., with respect to rulemaking regarding the definitions of “venture capital fund” and “private equity fund”), provisions become effective one year after the date of enactment.
Studies	<ul style="list-style-type: none"> ▪ Within 2 years of the date of enactment, the GAO must conclude a study assessing the annual costs on industry members and their investors due to the registration and reporting requirements established by the legislation and submit a report regarding the same to Congress. 	<ul style="list-style-type: none"> ▪ Within one year of the date of enactment, the GAO must conclude a study on the feasibility of forming a self-regulatory organization to oversee private funds and submit a report regarding the same to Congress. ▪ Within 2 years of the date of enactment, the SEC must conclude a study on the state of short selling on national securities exchanges and in the over-the-counter markets, the impact of recent rule changes and the incidence of failures to deliver shares sold short and the delivery of shares on the fourth day following a short sale transaction and submit a

TITLE IV – REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

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report regarding the same to Congress.

- Within 3 years of the date of enactment, the GAO must conclude a study on the criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in private funds and submit a report regarding the same to Congress.
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TITLE V – INSURANCE

	HOUSE BILL	SENATE BILL
Federal Insurance Office / Office of National Insurance	<ul style="list-style-type: none"> Creates a Federal Insurance Office (“FIO”) within Treasury. The FIO will have a Director appointed by the Treasury Secretary, who will also be an advisory member of the Council. 	<ul style="list-style-type: none"> Creates substantially similar Office of National Insurance (“ONI”) within Treasury. The Director will not serve on the Council, but Council will have independent member with “insurance expertise” appointed by the President.
Functions and Powers of FIO / ONI	<ul style="list-style-type: none"> In addition to any other assigned duties, the FIO would: <ul style="list-style-type: none"> monitor the insurance industry and identify regulatory gaps, recommend to the Council any insurers that should be treated as systemically important, assist in administering the Terrorism Insurance Program, represent the U.S. in the International Association of Insurance Supervisors, and consult with states and determine whether state insurance measures are preempted by international agreements. 	<ul style="list-style-type: none"> Duties are substantially the same as the House bill.
Information-gathering Powers	<ul style="list-style-type: none"> FIO may actively request information from any insurer or affiliate of an insurer, with an exception for small insurers. Does not grant the FIO subpoena power and FIO is required to coordinate with other applicable federal and state regulators. 	<ul style="list-style-type: none"> Similar information gathering powers with respect to insurers and their affiliates, with additional grant of subpoena authority if information is determined to be required in order to carry out the ONI’s functions.
Preemption	<ul style="list-style-type: none"> Grants the FIO limited power to preempt any state insurance regulation that directly results in less favorable treatment of a non-U.S. insurer than a U.S. insurer authorized in that state and that is inconsistent with a covered agreement. <ul style="list-style-type: none"> Power reaches “covered agreements,” which must be written agreements between the U.S. and foreign government/regulatory entities. They must “achieve[] a level of protection for insurance or reinsurance consumers 	<ul style="list-style-type: none"> Preemption powers are also very limited, but are slightly broader in that: <ul style="list-style-type: none"> state regulation need only “result” in less favorable treatment (no requirement that impact be “direct”); there is no requirement that international agreements achieve “substantially equivalent” consumer protection; and

TITLE V – INSURANCE

	HOUSE BILL	SENATE BILL
	<p>that is substantially equivalent to the level of protection achieved under [state regulation].”</p> <ul style="list-style-type: none"> □ State capital/solvency requirements are exempt unless they have a direct less favorable effect on a foreign insurer. ▪ <i>De novo</i> judicial review, not <i>Chevron</i> deference, for FIO findings of inconsistency. ▪ Before making any determination, Director must consult with the state and notify the U.S. Trade Representative. 	<ul style="list-style-type: none"> □ there is no provision providing for <i>de novo</i> judicial review.
Report	<ul style="list-style-type: none"> ▪ Requires the Director of the FIO, within 12 months, to submit a report to Congress on improving U.S. insurance regulation, which must consider, among other things: <ul style="list-style-type: none"> □ effective systemic risk regulation; □ strong capital standards and an appropriate match between capital allocation and liabilities for all risk; □ meaningful and consistent consumer protection for insurance products and practices; □ increased national uniformity through either a Federal charter or effective action by the states; □ improved regulation of insurance companies and affiliates on a consolidated basis; and □ international coordination. 	<ul style="list-style-type: none"> ▪ Requires the Director of the ONI, within 18 months, to submit a report to Congress on improving U.S. insurance regulation, which must cover a similar set of factors as the House bill, as well as: <ul style="list-style-type: none"> □ costs and benefits of potential federal regulation of insurance across various lines (except health insurance); □ feasibility of regulating only certain lines at the federal level while leaving other lines for state regulation; □ ability of federal regulation to minimize regulatory arbitrage; □ developments in the international regulation of insurance; □ ability of federal regulation to provide robust consumer protection; and □ potential consequences of subjecting insurance companies to a federal resolution authority.

TITLE V – INSURANCE

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Nonadmitted Insurance Provisions

- Limits state regulatory authority with respect to nonadmitted insurance strictly to the home state of the insured, except with respect to certain workers compensation coverages. In addition, it would:
 - prohibit states from imposing eligibility requirements on nonadmitted insurers domiciled in a U.S. jurisdiction except in conformance with the criteria set forth in the National Association of Insurance Commissioners (“NAIC”) model law or otherwise developed to be consistent across states,
 - prohibit any state, other than an insured’s home state, from requiring a surplus lines broker to be licensed in order to sell nonadmitted insurance, and
 - eliminate state prohibitions on surplus lines brokers procuring insurance from nonadmitted insurers domiciled outside the U.S. and included on an NAIC list.

- The House bill also prohibits states, other than home state of the insured, from requiring premium tax payments for nonadmitted insurance and encourages the development of an interstate compact to provide for payment, collection and allocation of such taxes.

- For certain sophisticated parties who request coverage from nonadmitted insurers, the House bill eliminates state requirements that surplus lines brokers undertake diligence searches to determine whether coverage can be obtained from admitted insurers. Such “exempt commercial purchaser” is defined as any person who retains a qualified risk manager to negotiate insurance coverage, has paid aggregate commercial property and casualty insurance premiums in excess of \$100,000, and meets one of another set of criteria (net worth, annual reviews, number of employees, etc.).

TITLE V – INSURANCE

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- The Comptroller General is required to conduct a study to determine effect of legislation on the nonadmitted insurance market.

Reinsurance Provisions

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| <ul style="list-style-type: none"> ▪ The House bill prohibits a state from denying credit for reinsurance if the state of domicile of the ceding insurer recognizes such credit. The bill also reserves the sole responsibility of regulating a reinsurer’s financial solvency to its state of domicile. <ul style="list-style-type: none"> □ In each case, the home state must be NAIC-accredited or have requirements substantially similar to those necessary for accreditation. ▪ It also prohibits a state from requiring a reinsurer to provide financial information other than that which it is required to file with its domiciliary state. | <ul style="list-style-type: none"> ▪ Substantially identical to the House bill. |
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TITLE VI – IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

	HOUSE BILL	SENATE BILL
<i>Repeal of Fed Lite</i>	<ul style="list-style-type: none"> ▪ Reverses the Gramm-Leach-Bliley Act “Fed lite” provisions, and therefore expands the Federal Reserve’s authority to examine, prescribe regulations or otherwise take any action pursuant to any provision of the Bank Holding Company Act or Section 8 of the Federal Deposit Insurance Act with respect to all subsidiaries of a bank holding company, including functionally regulated subsidiaries. ▪ Defines “functionally regulated subsidiary” for certain purposes, which are not clear, as any bank holding company subsidiary, except a depository institution, that is a broker dealer, investment company, investment advisor, or a futures commission merchant, commodity trading advisor or commodity pool operator. While the new definition does not treat an insurance company as a functionally regulated subsidiary for such purposes, the House bill does not strike the existing definition of “functionally regulated subsidiary” in Section 5 of the Bank Holding Company Act, which includes an insurance company. ▪ Does not strike the provisions of Section 5 of the Bank Holding Company Act, which: <ul style="list-style-type: none"> □ Prohibit the Federal Reserve from prescribing or imposing capital adequacy rules on nondepository institution functionally regulated subsidiaries that are either in compliance with federal regulatory or state insurance 	<ul style="list-style-type: none"> ▪ Like the House bill, reverses the Gramm-Leach-Bliley Act “Fed lite” provisions, and therefore expands the Federal Reserve’s authority to examine, prescribe regulations or otherwise take any action pursuant to any provision of the Bank Holding Company Act or Section 8 of the Federal Deposit Insurance Act with respect to all subsidiaries of a bank holding company, including functionally regulated subsidiaries. ▪ Requires the Federal Reserve to coordinate with other regulators of functionally regulated subsidiaries to avoid duplication of examination efforts, reporting requirements, and information requests. ▪ Does not define “functionally regulated subsidiary” to exclude insurance companies. ▪ Strikes the provisions of Section 5 of the Bank Holding Company Act, which: <ul style="list-style-type: none"> □ Prohibit the Federal Reserve from prescribing or imposing capital adequacy rules on nondepository institution functionally regulated subsidiaries that are either in compliance with federal regulatory or state insurance

TITLE VI – IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

	HOUSE BILL	SENATE BILL
	<p>capital requirements, properly registered as investment advisers, or state licensed as insurance agents; and</p> <ul style="list-style-type: none"> □ Provide that securities activities or insurance activities conducted in a functionally regulated subsidiary of a depository institution are subject to regulation by the SEC or the state insurance authority, as applicable, to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company. □ Unclear whether these provisions would apply to insurance companies because they are excluded from the new definition of functionally regulated subsidiary. <ul style="list-style-type: none"> ▪ Provisions are effective on the date of enactment. 	<p>capital requirements, properly registered as investment advisers, or state licensed as insurance agents; and</p> <ul style="list-style-type: none"> □ Provide that securities activities or insurance activities conducted in a functionally regulated subsidiary of a depository institution are subject to regulation by the SEC or the state insurance authority, as applicable, to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company. <ul style="list-style-type: none"> ▪ Makes a corresponding change to the Home Owners’ Loan Act to provide the Federal Reserve with similar powers over thrift holding companies and their subsidiaries. ▪ Provisions are effective on the transfer date, which is defined as 12 months after the date of enactment, subject to a 6-month extension (the “transfer date”).
<p><i>Back-Up Enforcement Authority Against Nondepository Subsidiaries</i></p>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Requires the “lead Federal banking agency” of a depository institution holding company to examine the bank permissible activities of each nondepository institution subsidiary that is not a functionally regulated subsidiary to determine whether the activities present safety or soundness risks to the depository institution and are subject to appropriate systems for monitoring and controlling the financial, operating, and other risks of the activity and protecting the depository institution subsidiaries. ▪ The lead Federal banking agency can recommend that the Federal Reserve take enforcement action against any of these nondepository institution subsidiaries. If the Federal Reserve does not do so within 60 days of receiving the “recommendation,” the lead Federal banking agency may

TITLE VI – IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

	HOUSE BILL	SENATE BILL
		<p>take such enforcement action.</p> <ul style="list-style-type: none"> ▪ Provision is effective on the transfer date.
<i>Holding Company Level Capital and Management Requirements</i>	<ul style="list-style-type: none"> ▪ A financial holding company must be well capitalized and well managed at the holding company level, not just at the depository institution subsidiary level, to qualify for financial holding company status. ▪ This provision is effective on the date of enactment. 	<ul style="list-style-type: none"> ▪ Same as the House bill, except the provision is effective on the transfer date.
<i>Acquisition Limits</i>	<ul style="list-style-type: none"> ▪ New Financial Stability Factor. Requires the Federal Reserve to take into consideration the financial stability of the United States when approving a bank or nonbank acquisition. ▪ Prior Approval Requirement for Large Nonbank Acquisitions. Requires prior approval from the Federal Reserve for a financial holding company’s acquisition of any nonbank company if the total assets to be acquired in the transaction exceed \$25 billion. ▪ Capital and Management Requirements for Interstate Acquisitions. Requires the acquiring bank to be well capitalized and well managed to make an interstate bank acquisition, not merely adequately capitalized and adequately managed. Prior to approval of an interstate acquisition, the Federal Reserve must determine that the resulting bank will be well managed and well capitalized upon consummation of the transaction. ▪ Expansion of Nationwide Deposit Cap. Prohibits an interstate merger if the resulting insured depository institution (including all insured depository institution affiliates), upon 	<ul style="list-style-type: none"> ▪ New Financial Stability Factor. Same as the House bill. ▪ Prior Approval Requirement for Large Nonbank Acquisitions. Same as the House bill. ▪ Capital and Requirements for Interstate Bank Acquisitions. Same as the House bill, except provision takes effect on the transfer date. ▪ New Liability Cap. See Concentration Limits.

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	HOUSE BILL	SENATE BILL
	<p>consummation of the transaction, would control more than 10% of the total amount of insured deposits in the U.S.</p> <ul style="list-style-type: none"> □ Expanded requirement applies to all insured depository institutions (including thrifts), not just banks 	
Source of Strength	<ul style="list-style-type: none"> ▪ Requires a company that controls an intermediate holding company to serve as a source of strength to that intermediate holding company. See Intermediate Holding Companies. ▪ This provision is effective on the date of enactment. 	<ul style="list-style-type: none"> ▪ Requires companies that directly or indirectly control insured depository institutions (<i>i.e.</i>, all depository institution holding companies, including commercial companies that own industrial banks or industrial loan companies or are grandfathered thrift holding companies) to serve as a source of strength for the insured depository institution. <ul style="list-style-type: none"> □ Depository institution holding companies that are not bank or thrift holding companies may be required to submit reports under oath concerning their ability to comply with the source of strength requirement. ▪ This provision is effective on the transfer date.
Treatment of Bank Holding Company “Bank” Exemptions	<ul style="list-style-type: none"> ▪ Elimination of Bank Exemptions. The House bill generally expands the range of companies treated as bank holding companies to include most thrift holding companies, as well as companies that acquire industrial banks or industrial loan companies in the future, by eliminating the exemptions from the term “bank” for: <ul style="list-style-type: none"> □ Insured thrifts, other than thrifts that are controlled by a company that is, together with its affiliates, predominantly engaged in the insurance business or is a fraternal beneficiary society. □ Industrial banks and industrial loan companies, other than entities that predominantly provide financial products and services to current and former members of the military and 	<ul style="list-style-type: none"> ▪ Moratorium on “Bank” Exemptions <ul style="list-style-type: none"> □ Effective immediately, the FDIC may not approve an application for deposit insurance that is received after November 10, 2009, for an industrial bank, credit card bank or trust bank that is directly or indirectly owned or controlled by a commercial firm. <ul style="list-style-type: none"> • A “commercial firm” is defined as one that derives at least 15% of its consolidated revenue from activities that are not financial in nature, as defined in Section 4(k) of the Bank Holding Company Act. □ Federal Reserve, FDIC or OCC, as appropriate, must disapprove a change of control of an industrial bank,

TITLE VI – IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

HOUSE BILL	SENATE BILL
<p>their families and is controlled by a savings and loan holding company.</p> <ul style="list-style-type: none"> ▪ Preservation of Credit Card Bank Exemption. Clarifies that the exemption from the term “bank” for credit card banks extends to credit card issuers and issuers of other credit devices (including virtual or intangible devices) that function as credit cards and that the exemption is not lost if the credit card bank also makes small business commercial loans. ▪ Grandfather. The House bill clarifies that savings and loan holding companies that become bank holding companies under the bill may continue to engage in certain listed activities that they have continuously conducted since June 30, 2009. ▪ Registration <ul style="list-style-type: none"> □ A company that, before the date of enactment, was not a bank holding company, but by virtue of the bill becomes a bank holding company, must register with the Federal Reserve within 90 days of the date of enactment, with possibility for the Federal Reserve to grant temporary exemptions or other appropriate temporary relief. □ Companies eligible for the section 6 holding company regime lose exemption if they do not establish and register a section 6 holding company within 180 days of adoption of rules required for this provision, which the Federal Reserve can generally extend for another 180 days. ▪ Effective Date. This provision is effective on the date of enactment. 	<p>credit card bank or trust bank if the transaction would result in a commercial firm having direct or indirect control over such institution, unless the institution is in danger of default or the change of control results from the acquisition of a commercial firm that controls such an institution.</p> <ul style="list-style-type: none"> □ The moratorium expires 3 years after the date of enactment. ▪ Study on “Bank” Exemptions <ul style="list-style-type: none"> □ Calls for a GAO study on whether it would be appropriate to continue Bank Holding Company Act exemptions for holding companies of credit card banks, trust companies, industrial banks or industrial loan companies; thrift holding companies that control certain limited banks; and certain trust companies and certain mutual savings banks that have a single bank subsidiary in the same state. □ GAO would be required to report to the Senate Banking and House Financial Services Committees within 18 months after the date of enactment.

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<i>No Conversions When Formal or Informal Supervisory Action is Pending</i>	<ul style="list-style-type: none"> ▪ Prohibits conversion of national banks and thrifts into state banks or thrifts, and vice versa, during any period in which the entity is subject to formal and informal enforcement actions, including memoranda of understanding. ▪ This provision is effective upon the date of enactment. 	<ul style="list-style-type: none"> ▪ Prohibits conversion of national banks into state banks or thrifts, and vice versa, during any period in which the entity is subject to formal and informal enforcement actions, including memoranda of understanding. ▪ This provision is effective upon the date of enactment.
<i>De Novo Interstate Branching</i>	<ul style="list-style-type: none"> ▪ Permits <i>de novo</i> interstate branching by national banks and insured state banks by amending the state “opt-in” election. Although not precisely the same interstate branching rule as thrifts now enjoy, due to technical requirements in the Home Owners’ Loan Act, this provision would place banks and thrifts generally on equal footing. <ul style="list-style-type: none"> □ Applications for out-of-state <i>de novo</i> branches would be approved if, under the law of the state in which the branch is to be located, a state bank chartered by such state would have been permitted to establish the branch. ▪ This provision is effective upon the date of enactment. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
<i>Expansion of 23A and 23B Restrictions</i>	<ul style="list-style-type: none"> ▪ Ban on Covered Transactions. Except as described below with respect to intermediate holding companies, there is no analogous provision. 	<ul style="list-style-type: none"> ▪ Volcker Rule Ban on Covered Transactions. Ban on new Section 23A covered transactions between a bank holding company affiliate: <ul style="list-style-type: none"> □ that serves as an investment adviser to a private equity or hedge fund and any parent or subsidiary of such affiliate; and □ any such private equity or hedge fund. In addition, Section 23B limits apply to all Section 23B covered transactions. ▪ Drafting creates ambiguity regarding whether the ban is immediately effective or whether the ban would be implemented 9 months after the completion of the Council’s study on the Volcker rule.

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	HOUSE BILL	SENATE BILL
<p>Expansion of 23A and 23B Restrictions (cont'd)</p>	<ul style="list-style-type: none"> ▪ Expansion of Covered Transactions <ul style="list-style-type: none"> □ Treats “current and potential future” credit exposure on derivatives transactions with respect to affiliates as covered transactions. □ Treats credit exposure on securities borrowing and lending transactions with affiliates as a covered transaction. □ Treats acceptance of debt obligations issued by an affiliate as collateral security for a loan or extension of credit as a covered transaction. □ Reallocates treatment of repos from being a purchase of assets to being an extension of credit. ▪ Collateral Requirements <ul style="list-style-type: none"> □ Treats purchase of assets under a repo as an extension of credit and therefore subject to the collateral requirements of Section 23A. □ Does not provide that credit exposure on derivatives and securities lending and borrowing transactions are subject to the collateral requirements of Section 23A. □ Requires collateral be maintained at all times for transactions where collateral is required to be maintained. Currently, collateral is required to be maintained only at the time of the transaction. □ Prohibits debt obligations issued by an affiliate as acceptable collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit. 	<ul style="list-style-type: none"> ▪ Expansion of Covered Transactions. Similar to House bill except: <ul style="list-style-type: none"> □ Treats credit exposure on derivatives as covered transactions, but does not include “current and potential future” language as in the House bill. □ Same as the House bill. □ Same as the House bill. □ Same as the House bill. ▪ Collateral Requirements <ul style="list-style-type: none"> □ Same as the House bill. □ Expressly provides that credit exposure on derivatives and securities lending and borrowing transactions are subject to the collateral requirements of Section 23A. □ Same as the House bill. □ Same as the House bill.

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<p>Expansion of 23A and 23B Restrictions (cont'd)</p>	<ul style="list-style-type: none"> ▪ Financial Subsidiaries. Eliminates exemptions from the restrictions on covered transactions for certain transactions with financial subsidiaries. ▪ Investment Advisers. Not in the House bill. ▪ Revises Exemptive Authority for Covered Transactions <ul style="list-style-type: none"> □ In general. Requires the Federal Reserve to obtain concurrence from the Chairperson of the FDIC in order to grant an exemption from Sections 23A and 23B. □ OCC Concurrence. Requires the Federal Reserve to obtain concurrence from the Comptroller of the Currency before granting an exemption from Section 23A with respect to a transaction or relationship involving a national bank or thrift. 	<ul style="list-style-type: none"> ▪ Financial Subsidiaries. Same as the House bill, but provides for only prospective application. ▪ Investment Advisers. Treats investment companies for which a covered bank is an investment adviser (apparently registered or not) as an affiliate. ▪ Revises Exemptive Authority for Covered Transactions <ul style="list-style-type: none"> □ In general. Permits the FDIC and OCC, in addition to the Federal Reserve, to grant exemptions from Section 23A with respect to banks and thrifts under their supervisory power. □ FDIC Concurrence. Prohibits the FDIC, OCC and the Federal Reserve from granting an exemption from Section 23A if the FDIC determines that such exemption presents an unacceptable risk to the Deposit Insurance Fund. □ Federal Reserve. In order to issue an exemption from Section 23A, the Federal Reserve must notify the FDIC of the proposed exemption and provide the FDIC 60 days to object in writing to the exemption if the FDIC determines that the exemption presents an unacceptable risk to the Deposit Insurance Fund. □ OCC. In order to issue an exemption from Section 23A with respect to a national bank or thrift, the OCC must notify the FDIC of the proposed exemption and provide the FDIC 60 days to object in writing to the exemption if the FDIC determines that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

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	HOUSE BILL	SENATE BILL
<p>Expansion of 23A and 23B Restrictions (cont'd)</p>	<ul style="list-style-type: none"> ▪ Effective upon the date of enactment. ▪ Application to Intermediate Holding Companies. See Intermediate Holding Companies. 	<ul style="list-style-type: none"> □ With respect to exemptions to Section 23B, requires the Federal Reserve to notify the FDIC and provide 60 days to object in writing to the exemption if the FDIC determines that the exemption presents an unacceptable risk to the Deposit Insurance Fund. ▪ Netting Arrangements. Permits the Federal Reserve to issue regulations or interpretations with respect to the manner in which a bank may take netting agreements into account under Section 23A in determining the amount of a covered transaction with an affiliate, including whether a covered transaction is fully secured. <ul style="list-style-type: none"> □ Requires an interpretation with respect to a specific member bank, subsidiary or affiliate to be issued jointly with the appropriate Federal banking agency. ▪ Effective one year after the transfer date. As noted above, effective date of Volcker Rule ban on covered transactions is unclear. ▪ Application to Intermediate Holding Companies. Not in the Senate bill.
<p>Transactions with Insiders</p>	<ul style="list-style-type: none"> ▪ Strengthens lending restrictions (including credit exposures on derivative transactions with insiders) and imposes limitations on asset purchases with insiders. ▪ FDIC may prescribe rules to implement the limitations on asset purchases to and from insiders. ▪ This provision is effective upon the date of enactment. 	<ul style="list-style-type: none"> ▪ Same as the House bill, except: <ul style="list-style-type: none"> □ Federal Reserve must consult with OCC and FDIC before proposing or adopting rules under the asset purchase provision. □ Effective on the transfer date.

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<i>Inclusion of Derivatives, Repos, and Securities Lending Transactions in Lending Limits</i>	<ul style="list-style-type: none"> ▪ Revises lending limits applicable to national banks and thrifts to treat credit exposure from derivatives, repos, and securities lending transactions as a “loan or extension of credit.” ▪ Permits the Comptroller of the Currency to include liabilities to advance funds to or on behalf of a person in this calculation. ▪ Requires the Comptroller of the Currency to prescribe rules to give effect to the statutory limitations with respect to credit exposures arising out of any derivative transaction, repurchase agreement or securities lending transaction. ▪ OCC rules must be effective no later than 180 days after the date of enactment. 	<ul style="list-style-type: none"> ▪ Same as the House bill, except: <ul style="list-style-type: none"> □ The provisions are effective one year after the transfer date. □ The Comptroller of the Currency is not required to promulgate rules.
<i>Application of National Bank Lending Limits to Insured State Banks</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Applies national bank lending limits to insured state banks. ▪ The provision is effective one year after the transfer date.
<i>Intermediate Holding Companies</i>	<ul style="list-style-type: none"> ▪ The intermediate holding company regime is a creation of the House bill, designed to facilitate targeted Bank Holding Company Act regulation of certain companies that own insured thrifts, industrial banks or industrial loan companies and systemically important financial companies that do not control a U.S. bank by requiring them to segregate their financial and nonfinancial activities. ▪ Federal Reserve must prescribe rules and regulations or issue orders providing for the establishment of special purpose holding companies, including intermediate holding companies (referred to in the bill as “section 6 holding companies”). 	<ul style="list-style-type: none"> ▪ No requirement that systemically important nonbank financial companies segregate their financial activities from their commercial activities through an intermediate holding company or comply with restrictions on transactions between the financial and commercial arms. <ul style="list-style-type: none"> □ However, within 90 days after the Council’s designation, the Federal Reserve may require a systemically important nonbank financial company to conduct its financial activities through an intermediate holding company. □ No requirement for systemically important nonbank financial companies to conform to Section 4 of the Bank Holding Company Act.

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Intermediate Holding Companies (cont'd)	<ul style="list-style-type: none"> ▪ As a general principle, in the case of a non-systemically important financial company with a “bank” subsidiary, both the intermediate holding company and the parent would be treated as bank holding companies. <ul style="list-style-type: none"> □ In the case of a grandfathered unitary thrift holding company under the Gramm-Leach-Bliley Act of 1999 or a company that controlled or had an application pending to acquire control of an industrial bank or industrial loan company before November 23, 2009, the intermediate holding company, but not the parent, would be treated as a bank holding company. <ul style="list-style-type: none"> • Such a parent will lose its grandfathered status and be treated as a bank holding company if, among other things, its thrift, industrial bank or industrial loan company subsidiaries fail to comply with any of the conditions for exemption in effect prior to the date of enactment or if it acquires control of another bank or insured depository institution after June 30, 2009. <ul style="list-style-type: none"> • One of the conditions is establishing and registering an intermediate holding company within 180 days after adoption of rules required by the appropriate provision, generally subject to an extension not to exceed an additional 180 days. □ Non-systemically important financial companies that own a thrift and are predominantly engaged in the insurance business on a consolidated basis are neither treated as bank holding companies nor required to set up intermediate holding companies. 	<ul style="list-style-type: none"> ▪ Federal Reserve: <ul style="list-style-type: none"> □ must issue regulations on criteria for determining whether to require a systemically important nonbank financial company to establish an intermediate holding company; and □ may issue regulations and restrictions or limitations on transactions between an intermediate holding company or systemically important nonbank financial company and its affiliates. ▪ Anti-Evasion. Intermediate holding company may be required under the Federal Reserve’s anti-evasion provisions. See Financial Activities Designation for Anti-Evasion Purposes. <ul style="list-style-type: none"> □ If financial activities of a non-financial company are determined to be systemically significant under the Council’s anti-evasion provisions: <ul style="list-style-type: none"> • The company can choose to set up an intermediate holding company, or • Federal Reserve may require, within 90 days of the Council’s determination that such activities are systemically significant, that such an intermediate holding company be established to facilitate supervision of the financial activities.

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<p><i>Intermediate Holding Companies (cont'd)</i></p>	<ul style="list-style-type: none"> ▪ As a general principle, in the case of a systemically important financial company that does not control a U.S. bank, the intermediate holding company, but not the parent, would be treated as a bank holding company for the purposes of administration, non-banking activities, enforcement and sanctions. <ul style="list-style-type: none"> □ For systemically important financial companies, exemption from treatment of the parent company as a bank holding company is conditional upon proper establishment and registration of an intermediate holding company within 90 days after designation, subject to an extension not to exceed an additional 180 days. <ul style="list-style-type: none"> • If the company requests an exemption from the intermediate holding company requirement, it has 90 days after a negative decision by the Federal Reserve on such request to establish and register an intermediate holding company, subject to an extension not to exceed an additional 180 days. □ Subject to certain conditions, the Federal Reserve has the discretion to exempt such companies from the intermediate holding company requirement if they are predominantly engaged in financial activities or activities that are incidental to a financial activity, and general exemptive authority which requires the Federal Reserve to balance a number of public-interest considerations. See Requirement to Form Intermediate Holding Companies. □ If the Federal Reserve grants such an exemption from the intermediate holding company requirement, the parent would be treated as if it were a bank holding company, but 	

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<p>Intermediate Holding Companies (cont'd)</p>	<p>the Federal Reserve would be required to “flexibly adapt” the otherwise applicable activities restrictions and ownership limitations “taking into account the usual and customary practices in the business sector of” the parent “so as to avoid unnecessary burden and expense.” See “As if” Bank Holding Companies.</p> <ul style="list-style-type: none"> □ Federal Reserve may also grant exemptions from any of the intermediate holding company requirements. ▪ Financial activities must generally be conducted within the intermediate holding company, and the intermediate holding company is generally subject to activities restrictions under the Bank Holding Company Act. <ul style="list-style-type: none"> □ Internal financial activities, certain financial activities with both affiliates and non-affiliates, and transactions involving credit for certain purchase/lease transactions need not be conducted within the intermediate holding company. □ Permanent grandfathering for any impermissible non-banking activities of an existing intermediate holding company engaged in for 6 months before the date of enactment and related securities and other assets and the retention of anything owned on the date of enactment. ▪ Sections 23A and 23B <ul style="list-style-type: none"> □ Provides that the Sections 23A and 23B restrictions would generally apply to any transactions between the intermediate holding company and its subsidiaries, on the one hand, and any affiliate (including the parent) not in the intermediate holding company chain, on the other hand, except for covered transactions in connection with certain 	

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Intermediate Holding Companies (cont'd)	<p>leases and sales of assets, goods and services.</p> <ul style="list-style-type: none"> □ Prohibits a depository institution controlled by such an intermediate holding company from engaging in any Section 23A covered transaction with any non-subsidiary affiliate of the intermediate holding company, except for covered transactions in connection with certain leases and sales of assets, goods and services. □ Requires the Federal Reserve to provide for exceptions from affiliate transaction requirements, including exceptions that would facilitate extension of credit to third parties. <ul style="list-style-type: none"> ▪ Source of Strength. Parent must serve as a source of strength to the intermediate holding company. ▪ Firewalls <ul style="list-style-type: none"> □ 25% board independence requirement and limitations on officer interlocks. □ Anti-tying provisions made applicable to parent and nonbank affiliates as if the parent or affiliate were a bank. □ Operational and legal separation pursuant to Federal Reserve regulations, except for internal functions. 	
Securities Holding Companies	<ul style="list-style-type: none"> ▪ Replaces the elective investment bank holding company regime with a new “securities holding company regime” implemented and overseen by the Federal Reserve. ▪ “Securities holding companies,” or firms that own or control an SEC-registered broker-dealer, are permitted to register with the Federal Reserve in order to satisfy foreign regulatory requirements to be subject to comprehensive consolidated 	<ul style="list-style-type: none"> ▪ Generally the same as the House bill, except: <ul style="list-style-type: none"> □ Expressly permits the Federal Reserve to differentiate among supervised securities holding companies on an individual basis or by category. □ Exempts bank subsidiaries of a securities holding company (for example, an uninsured national trust bank) from the Federal Reserve’s examination powers and

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	<p>supervision.</p> <ul style="list-style-type: none"> ▪ The regime is not available for firms already subject to comprehensive supervision by an appropriate federal banking agency or a foreign regulator, or for systemically important nonbank financial companies. ▪ Federal Reserve’s supervisory powers: <ul style="list-style-type: none"> □ Requires the Federal Reserve to impose recordkeeping requirements, including balance sheets, capital and liquidity assessments, and independent audit reports. Requires the Federal Reserve to use existing reports to the fullest extent possible. □ Permits the Federal Reserve to examine a supervised securities holding company and any affiliate. Requires deference to other examinations. □ Requires the Federal Reserve to prescribe capital adequacy and other risk management standards for supervised securities holding companies, taking into account differences among types of business activities and other enumerated factors. 	<p>capital adequacy standards.</p>
<i>National Banks and Federal Mutual Bank Holding Companies</i>	<ul style="list-style-type: none"> ▪ Creation of a Mutual National Bank Charter <ul style="list-style-type: none"> □ Provides for “mutual national banks,” which are national bank associations operated as mutual depositories. Chartered and regulated by the OCC. □ For up to 3 years from the date of enactment, certain existing regulations of the OTS also apply. □ The Comptroller of the Currency is authorized to prescribe appropriate rules and regulations in accordance with this 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.

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	<p>section for the organization, incorporation, examination, operation and regulation of mutual national banks.</p> <ul style="list-style-type: none"> □ The Comptroller of the Currency must prescribe regulations regarding application of capital stock requirements and other limitations to apply to mutual national banks. □ The Comptroller of the Currency is authorized to prescribe rules for the protection of depositor’s rights. □ Any mutual depository may convert to a mutual national bank with at least 30 days’ notice, and mutual national banks may reorganize as stock national banks or convert to a state bank charter. Demutualization must be done by liquidation or conversion to a stock national banking association. □ Members are all tax-liable depositors of mutual national banks as well as of depository subsidiaries of a federal mutual bank holding company. Members have rights agreed upon, as well as the right to elect directors, attend board meetings, subscription rights, residual assets on liquidation, and proxy rights. <ul style="list-style-type: none"> ▪ Federal Mutual Bank Holding Companies are mutual holding companies that own a majority of shares of one or more depository subsidiaries, subject to certain conditions. <ul style="list-style-type: none"> □ Mutual national banks may reorganize to become federal mutual bank holding companies subject to approval under the Bank Holding Company Act, submission of a reorganization plan to the bank holding company regulator for approval and issuance of appropriate charters. Approval of plan by a majority of directors and 	

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members required.

- Regulated under the Bank Holding Company Act like any other company that controls a bank, consequently, the Federal Reserve has supervisory and regulatory authority over such companies.
 - Subject to regulations by the chartering authority.
 - Members have same rights as in a mutual national bank. Members include the deposit account holders of each depository subsidiary.
 - Bank holding company regulator may petition for bankruptcy in case of default or foreclosure, with residual proceeds to members. If FDIC incurs a loss, FDIC succeeds to depositors’ rights as members of the holding company to the extent of the loss.
 - Mutual holding companies, including State mutual depository holding companies, may convert to federal mutual bank holding companies with at least 30 days’ notice.
- This section takes effect on the date of enactment.

The Volcker Rule

Prohibition on Proprietary Trading by Banking Entities

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| <ul style="list-style-type: none"> ▪ None, but the Federal Reserve is permitted to prohibit proprietary trading by a systemically important financial company, including a bank, if it determines that the proprietary trading poses an existing or foreseeable threat to the safety and soundness of the company or to the financial stability of the United States. No express right to notice and a hearing. | <ul style="list-style-type: none"> ▪ Yes. Prohibition on proprietary trading by insured depository institutions, their holding companies, any company treated as a bank holding company for purposes of the Bank Holding Company Act and any of their subsidiaries (including broker-dealer and fund manager subsidiaries). |
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<i>Definition of Proprietary Trading</i>	<ul style="list-style-type: none"> ▪ Trading of stocks, bonds, options, commodities, derivatives, or other financial instruments with the company’s own money and for the company’s own account. ▪ Permits the Federal Reserve to exempt from any prohibition activities determined to be ancillary to other operations of the company and not to pose a threat to the safety and soundness of the company or to the financial stability of the United States, including: <ul style="list-style-type: none"> □ market making in securities issued by such company, □ hedging or managing risk, □ determining the market value of assets of such company, and □ proprietary trading for such other purposes allowed by the Federal Reserve by rule. 	<ul style="list-style-type: none"> ▪ Purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments for the trading book (or such other portfolio as the Federal banking agencies may determine). ▪ Subject to such restrictions as the Federal banking agencies may determine, the following activities are carved out of the definition of “proprietary trading”: <ul style="list-style-type: none"> □ Purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments: <ul style="list-style-type: none"> • on behalf of a customer, • as part of market -making activities, or • otherwise in connection with or in facilitation of customer relationships, • including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal. ▪ The following investments are exempted from the prohibition on proprietary trading: <ul style="list-style-type: none"> □ in U.S. government, agency, state, or municipal debt; □ in small business investment companies; or □ designed primarily to promote the public welfare as provided in 12 U.S.C. 24 (Eleventh). ▪ No insurance exemption, although Hutchison motion (passed by 87-4 margin) instructs conferees to ensure that proprietary trading restrictions do not prevent insurance company affiliates of depository institutions from engaging in such trading in the ordinary course of business.

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		<ul style="list-style-type: none"> ▪ The prohibition on proprietary trading does not apply to an investment or activity conducted by a company under Section 4(c)(9) or 4(c)(13) of the Bank Holding Company Act, but only if conducted solely outside of the United States and the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.
<i>Prohibition on Private Fund Investment by Banking Entities</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Prohibited from sponsoring or investing in a hedge fund or private equity fund.
<i>Definition of Sponsoring</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Defines “sponsoring” to mean: <ul style="list-style-type: none"> □ serving as a general partner, managing member, or trustee of the fund; □ in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or □ sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.
<i>Exemptions from the Prohibition on Sponsoring or Investing in Hedge Funds or Private Equity Funds</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ The prohibition on sponsoring or investing in hedge funds or private equity funds does not apply to investments: <ul style="list-style-type: none"> □ in small business investment companies; or □ designed primarily to promote the public welfare as provided in 12 U.S.C. 24 (Eleventh). ▪ No insurance exemption.

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		<ul style="list-style-type: none"> ▪ The prohibition on sponsoring or investing in hedge funds or private equity funds does not apply to an investment or activity conducted by a company under Section 4(c)(9) or 4(c)(13) of the Bank Holding Company Act but only if conducted solely outside of the United States and the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.
<i>Restrictions on “Covered Transactions” with Advised Private Funds</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Ban on new 23A covered transactions between a bank holding company affiliate: <ul style="list-style-type: none"> □ that serves as an investment adviser to a private equity or hedge fund and a parent or subsidiary of such affiliate; and □ any such private equity or hedge fund. ▪ In addition, Section 23B limits apply to all covered transactions. ▪ Drafting creates ambiguity regarding whether the ban is immediately effective or whether the ban would be implemented 9 months after the completion of the Council’s study on the Volcker rule.
<i>Application to Nonbank Financial Companies</i>	<ul style="list-style-type: none"> ▪ None, but the Federal Reserve is permitted to prohibit proprietary trading by a systemically important financial company, including a nonbank financial company, if it determines that the proprietary trading poses an existing or foreseeable threat to the safety and soundness of the company or to the financial stability of the United States. 	<ul style="list-style-type: none"> ▪ Federal Reserve is required to adopt rules imposing additional capital requirements and specifying additional quantitative limits for systemically important nonbank financial companies that engage in proprietary trading or sponsoring and investing in hedge funds and private equity funds.

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<i>Role of Council Study</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Not later than 6 months after the date of enactment, the Council must study the definitions and the other provision to determine whether they would promote safety and soundness, minimize risk that banks engage in unsafe and unsound activities, limit transfer of federal subsidies to unregulated entities, reduce conflicts of interests, raise the cost of credit, limit activities that have caused undue risk or loss, and appropriately accommodate insurance. ▪ Council must make recommendations for implementing the section, including any modifications to the definitions, prohibitions, requirements, and limitations contained therein that the Council determines would more effectively implement the purposes of the section, and may make recommendations for prohibiting proprietary trading and private fund investment above a specific threshold amount and imposing additional capital requirements on activities conducted below such threshold amount. <ul style="list-style-type: none"> □ The Dodd committee report states that the purpose of the study is to determine how to effectively implement the Volcker Rule, not to weaken it.
<i>Rulemaking</i>	<ul style="list-style-type: none"> ▪ Requires the primary financial regulatory agencies of banks and bank holding companies to jointly issue regulations to carry out this section. 	<ul style="list-style-type: none"> ▪ Not later than 9 months after the date of completion of the Council’s study: <ul style="list-style-type: none"> □ The appropriate Federal banking agencies must jointly issue final regulations implementing subsections (b) through (e), which must reflect any recommendations or modifications made by the Council. <ul style="list-style-type: none"> • The exclusion of subsection (a), including the definitions of “proprietary trading” and “sponsoring” a private fund could be a drafting error.

TITLE VI – IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

	HOUSE BILL	SENATE BILL
		<ul style="list-style-type: none"> □ Federal Reserve must issue final regulations implementing heightened capital requirements and quantitative limits on nonbank financial companies, which must reflect any recommendations or modifications made by the Council.
<p><i>Timing of Implementation / Transition</i></p>	<ul style="list-style-type: none"> ▪ The provisions take effect after the end of the 180-day period beginning on the date of enactment. 	<ul style="list-style-type: none"> ▪ The final regulations must provide that, effective 2 years after the date on which final regulations are issued, no covered company may retain any investment or relationship prohibited by such regulations. ▪ Appropriate federal banking agencies may extend the 2-year period by three 1-year extensions. ▪ The drafting creates ambiguity regarding whether the ban on covered transactions is immediately effective or whether the ban would be effective upon the issuance of final regulations. ▪ No grandfathering.
<p><i>Study on Proprietary Trading</i></p>	<ul style="list-style-type: none"> ▪ No specific study on proprietary trading, however, the Chairman of the Council is required to conduct a study on the impact on the capital markets, financial sector and the economy generally of certain financial reforms, including limits on “high-risk operations.” See Office of Financial Research – Council Study. 	<ul style="list-style-type: none"> ▪ Scope of Study. Requires GAO to conduct a study of proprietary trading, including risks (both systemic and to particular institutions), conflicts, disclosure and control systems associated with proprietary trading by and within covered entities and produce a report within 15 months of enactment. ▪ Considerations of Study. Requires GAO to consider the current practice and the advisability of a complete ban on the activity, limitations on scope of activities, additional capital requirements, enhanced restrictions on intra-affiliate transactions, enhanced public accounting or disclosure requirements, and any other option deemed appropriate. ▪ Broad Access to Records. Provides GAO with access to a broad range of information and data and access to officers, directors, employees, independent public accountants and

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	HOUSE BILL	SENATE BILL
		<p>representatives. Comptroller General is able to make and retain copies of books, records, and accounts.</p> <ul style="list-style-type: none"> ▪ Confidentiality Limits. Requires confidentiality of reports, but permits the GAO to disclose information obtained to a department, agency or official of the federal government for official use, a Congressional committee upon request and to a court, upon a court order.
<p>Concentration Limits</p>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Liability Cap. Prohibits any insured depository institution, depository institution holding company, company treated as a bank holding company or systemically important nonbank financial company from merging with or acquiring substantially all of the assets or control of another company if the resulting company’s total consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the prior calendar year. <ul style="list-style-type: none"> □ Exceptions. Subject to the Federal Reserve’s consent, the liability cap will not apply to an acquisition: <ul style="list-style-type: none"> • of a bank in default or in danger of default, • that would result only in a <i>de minimis</i> increase in the liabilities of the financial company. ▪ Council Study. Council required to complete a study of the concentration limits within 6 months of its enactment and make recommendations regarding their implementation, including any “modifications” to the concentration limit that would “more effectively implement” the concentration limits. ▪ Rulemaking. Within 9 months after the completion of the study, the Federal Reserve must issue final rules, which must “reflect” any of the Council’s recommendations.

TITLE VII – DERIVATIVES

	HOUSE BILL	SENATE BILL
Prohibition on Federal Assistance (“Swaps Pushout”)	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Federal assistance including Federal Reserve credit facility advances, discount window or 13(3) lending, FDIC insurance, or guarantees such as the FDIC debt guarantees may not be provided to any “swaps entity” (which includes swap dealers, major swap participants, clearing houses and exchanges) for the purpose of making any loan to or purchasing any stock, equity interest or debt obligation of a swaps entity, purchasing the assets of any swaps entity, guaranteeing any loan or debt issuance of any swaps entity or entering into any assistance arrangement including tax breaks, loss sharing, or profit sharing with any swaps entity.
Definition of Major Swap Participant	<ul style="list-style-type: none"> ▪ Not a swap dealer, and: <ul style="list-style-type: none"> □ maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing, or mitigating commercial risk; or □ whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets. 	<ul style="list-style-type: none"> ▪ Not a swap dealer, and: <ul style="list-style-type: none"> □ maintains a substantial position in swaps for any of the major swap categories as determined by the relevant Commission, excluding positions held for hedging or mitigating commercial risk and positions held by any employee benefit plan under ERISA for the primary purpose of hedging or mitigating risk directly associated with the operation of the plan; □ whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or □ is a financial entity (other than, for CFTC-regulated swaps but not SEC-regulated security-based swaps, an entity predominantly engaged in providing financing for the purchase of an affiliate’s merchandise or manufactured goods): <ul style="list-style-type: none"> • that is highly leveraged relative to the amount of capital it holds, and

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HOUSE BILL	SENATE BILL
<ul style="list-style-type: none"> ▪ Subject to general consultation requirements for rulemaking or issuing of orders, CFTC and SEC independently define “substantial net position” for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the U.S. financial system. ▪ A person may be designated a major swap participant for one swap and not others. 	<ul style="list-style-type: none"> • maintains a substantial position in outstanding swaps in any major swap category as determined by the relevant Commission. ▪ CFTC is independently given the authority to adopt a rule defining “commercial risk.” ▪ Subject to general coordination requirements in prescribing rules to carry out the purposes of the title, CFTC and SEC must independently define “substantial position” for the effective monitoring, management, and oversight of nonbank financial companies that are systemically important or can significantly impact the U.S. financial system. ▪ A person may be designated a major swap participant for one type, class or category of swap and not others.
<p>Definition of Swap Dealer</p> <ul style="list-style-type: none"> ▪ Any person who: <ul style="list-style-type: none"> □ holds itself out as a dealer in swaps; □ makes a market in swaps; □ regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business; or □ engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. ▪ CFTC or SEC may exempt an entity that engages in a <i>de minimis</i> amount of swap dealing in connection with transactions with or on the behalf of its customers. ▪ A person may be designated a major swap dealer for one 	<ul style="list-style-type: none"> ▪ Same definition as House, except that “regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business” is replaced by “regularly engages in the purchase and sale of swaps in the ordinary course of business,” which does not appear to require the involvement of customers. ▪ Does not provide for exemptions for <i>de minimis</i> activity. ▪ A person may be designated a major swap dealer for one

TITLE VII – DERIVATIVES

	HOUSE BILL	SENATE BILL
	type of swap and not others.	type of swap and not others.
		<ul style="list-style-type: none"> Does not include a person that buys or sells swaps for their own account, either individually or in a fiduciary capacity, but not as a part of a regular business.
Mandatory Clearing	<ul style="list-style-type: none"> Clearing required if: <ul style="list-style-type: none"> a clearing organization will accept the swap; and the CFTC or SEC has determined that clearing is required. Clearing not required if a counterparty: <ul style="list-style-type: none"> is not a swap dealer or major swap participant; is hedging or mitigating commercial risk; and notifies the CFTC or SEC how it generally meets its financial obligations associated with entering into non-cleared swaps. Swaps entered into before effectiveness of the clearing requirement are exempt if the counterparties timely report the swap to a registered swap repository or the relevant Commission. 	<ul style="list-style-type: none"> Clearing required unless: <ul style="list-style-type: none"> no clearing organization will accept the swap; one of the parties is a commercial end user (specifically excluding financial entities) that is using the swap to hedge its own commercial risk, or certain of a commercial end user’s affiliates who, acting on behalf of the commercial end user and as agent, are using the swap to hedge or mitigate the commercial risk of the commercial end user party or other non-financial affiliate of the commercial end user. Clearing houses must submit any group, category, type or class of swaps to the relevant Commission for prior approval. There are additional related rulemaking provisions for CFTC-registered entities. In addition, the relevant Commission must promulgate rules identifying other groups, categories, types or classes of swaps that are required to be cleared. These rules do not require notice or comment periods. Swaps entered into before the effectiveness of the clearing requirement are exempt if the counterparties timely report the swap to a registered swap repository or the relevant Commission. Even if exempt due to the commercial end user exemption, a swap must be submitted for clearing upon the request of the

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	HOUSE BILL	SENATE BILL
	<ul style="list-style-type: none"> Effective the later of 270 days after the date of enactment or 60 days after the publication of a final rule. 	<p>party qualifying for the exemption.</p> <ul style="list-style-type: none"> Effective 180 days after the date of enactment.
Mandatory Exchange Trading	<ul style="list-style-type: none"> Swaps that are required to be cleared must be traded on or through an exchange or swap execution facility, unless none makes the swap available for trading. 	<ul style="list-style-type: none"> Same as the House bill with the addition that a commercial end user may opt to use its clearing exemption.
Definition of Swap Execution Facility	<ul style="list-style-type: none"> Any person or entity that facilitates the execution or trading of swaps between two persons through any means of interstate commerce, but that is not an exchange, including any electronic trade execution or voice brokerage facility. 	<ul style="list-style-type: none"> For CFTC-regulated swaps, any facility in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that: <ul style="list-style-type: none"> facilitates the execution of swaps; and is not a designated contract market. For SEC-regulated security-based swaps, any facility in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, <i>or confirmation facility</i>, that: <ul style="list-style-type: none"> facilitates the execution of security-based swaps; and is not a designated contract market.
Mandatory Margin	<ul style="list-style-type: none"> Swap dealers and major swap participants for which there is a Prudential Regulator must meet minimum initial and variation margin requirements prescribed by the Prudential Regulators. Swap dealers and major swap participants for which there is not a Prudential Regulator must meet minimum initial and 	<ul style="list-style-type: none"> As in the House bill, swap dealers and major swap participants must meet initial and variation margin requirements. The margin requirements do not apply to an uncleared swap in which one party is not:

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	HOUSE BILL	SENATE BILL
	<p>variation margin requirements prescribed by the CFTC or SEC.</p> <ul style="list-style-type: none"> ▪ Prudential Regulator for a swap dealer, major swap participant, security-based swap dealer, or major security-based swap dealer means: <ul style="list-style-type: none"> □ if it is a State-chartered bank that is a member of the Federal Reserve or a State-chartered branch or agency of a foreign bank, then the Federal Reserve; □ if it is a national bank or a federally chartered branch or agency of a foreign bank, then the OCC; and □ if it is a State-chartered bank that is not a member of the Federal Reserve, then the FDIC. 	<ul style="list-style-type: none"> □ a swap dealer; □ a major swap participant; or □ a financial entity and such counterparty is eligible for and using the commercial end user clearing exemption. ▪ Margin requirements for nonbank swaps dealers and major swap participants must be at least as strict as those for banks. ▪ The appropriate Federal banking agencies, CFTC and SEC, as appropriate, may permit use of noncash collateral if consistent with preserving the financial integrity of markets trading swaps and preserving the stability of U.S. financial system. At the request of any party to a swap that is exempt from margin, a counterparty that otherwise would be exempted must provide the requested margin.
Capital	<ul style="list-style-type: none"> ▪ Swap dealers and major swap participants for which there is a Prudential Regulator must meet minimum capital requirements prescribed by the Prudential Regulators. ▪ Swap dealers and major swap participants for which there is not a Prudential Regulator must meet minimum capital requirements prescribed by the CFTC or SEC. 	<ul style="list-style-type: none"> ▪ For depository institutions, the appropriate Federal banking agencies, and for nondepository institutions, the CFTC and SEC, are directed to adopt capital requirements for swap dealers and major swap participants that are greater than zero for cleared swaps and “substantially higher” capital requirements for swaps that are not cleared. Capital requirements for nonbank swaps dealers and major swap participants must be at least as strict as those for banks.
Margin Segregation	<ul style="list-style-type: none"> ▪ For swaps and security-based swaps that are not cleared, a swap dealer or security-based swap dealer must segregate and maintain initial margin in an independent third-party custodian account at the request of its counterparty. 	<ul style="list-style-type: none"> ▪ Any person accepting money, securities or property or extending any credit in lieu thereof from, for, or on behalf of a swaps customer to margin, guarantee or secure a cleared swap must register as a futures commission merchant (with respect to CFTC-regulated swaps) or a broker, dealer or security-based swap dealer (with respect to SEC-regulated security-based swaps).

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	HOUSE BILL	SENATE BILL
		<ul style="list-style-type: none"> ▪ Cleared swaps. A futures commission merchant, broker, dealer or security-based swap dealer must treat and deal with held margin as belonging to the customer, separately account for it, not commingle it with the receiver’s funds, and not use it to margin any swap of a person other than the customer, subject to certain exceptions. ▪ Non-cleared swaps. For CFTC-regulated swaps (but not SEC-regulated security-based swaps), at the request of its counterparty a swap dealer or major swap participant is required to segregate initial margin and maintain funds or other property in a segregated account carried by an independent third-party custodian.
Foreign Exchange	<ul style="list-style-type: none"> ▪ The term “swap” does not include any foreign exchange forward or any foreign exchange swap, but the CFTC can override that by making a determination they should be regulated as swaps, if Treasury concurs. 	<ul style="list-style-type: none"> ▪ Foreign exchange swaps and foreign exchange forwards are swaps under the CFTC’s jurisdiction unless Treasury makes a written determination that such transactions: <ul style="list-style-type: none"> □ should not be regulated as swaps; and □ are not structured to evade the bill. ▪ Cleared, exchange-traded and swap execution facility-traded foreign exchange swaps and foreign exchange forwards cannot be exempt from prohibitions on fraud and manipulation.
Transaction Reporting	<ul style="list-style-type: none"> ▪ Swaps and security-based swaps that are not accepted for clearing must be reported to a swap repository, or, if there isn’t one that would accept the swap or security-based swap, to the CFTC or SEC. Parties can agree which counterparty will report. 	<ul style="list-style-type: none"> ▪ Swaps and security-based swaps that are not cleared (including those entered into before the date of enactment, if their terms have not expired as of the date of enactment) must be reported by both parties to a registered swap repository, or, if no swap repository accepts the swap, to the CFTC or SEC.

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	HOUSE BILL	SENATE BILL
Restrictions on Ownership of Clearing Houses, Exchanges, and SEFs	<ul style="list-style-type: none"> ▪ Lynch Amendment.: A swap dealer, security-based swap dealer, major swap participant, major security-based swap participant or person associated with any of the above that is an identified financial holding company may not acquire an ownership interest in a clearing house, exchange or swap execution facility if it would result in such entities, in the aggregate, controlling more than a 20% voting interest. A majority of the directors may not be associated with such entities. 	<ul style="list-style-type: none"> ▪ Subject to general coordination requirements in prescribing rules to carry out the purposes of the title, within 180 days of the date of enactment, the CFTC and SEC independently determine whether to promulgate rules to establish limits on the control of any swap clearing house or swap exchange by a bank holding company with consolidated assets of \$50 billion or more, a nonbank financial company supervised by the Federal Reserve, an affiliate of such a bank holding company or nonbank financial company, a swap dealer, a major swap participant, or an associated person of a swap dealer or major swap participant. If either the CFTC or SEC finds that the rules are necessary or appropriate to improve the governance of swap clearing houses and exchanges, mitigate systemic risk, promote competition or mitigate conflicts of interest, it must adopt such rules.
Application of New Regulations to Existing Transactions	<ul style="list-style-type: none"> ▪ Clearing requirement is not retroactive, but swaps entered into before the date of enactment must be reported. ▪ No express grandfathering with respect to margin or capital requirements. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
Exemptive Authority for CFTC and SEC	<ul style="list-style-type: none"> ▪ Except as expressly authorized, the CFTC may not grant exemptions from specified sections of the Act, including those covering definitions, reporting and recordkeeping, regulation of swap dealers and major swap participants, and position limits; among the sections not covered by the limitation on exemptions are those covering clearing, exchange trading, and margin. ▪ Except as expressly authorized, the SEC may not grant exemptions from the security-based swap provisions of the Act. 	<ul style="list-style-type: none"> ▪ CFTC’s exemptive authority appears to vary by provision of the Act. ▪ SEC may not grant exemptions from the security-based swap provisions of the Act, except as expressly authorized.

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	HOUSE BILL	SENATE BILL
<i>Preemption of State Insurance Law</i>	<ul style="list-style-type: none"> States may not regulate security-based swaps as insurance contracts under State law. 	<ul style="list-style-type: none"> Same as the House bill.
<i>Definition of “Security” to include Security-based Swap</i>	<ul style="list-style-type: none"> Security-based swap added to definition of “security” in the Securities Act and the Exchange Act. Any security-based swap that is not otherwise a security, and that satisfies such conditions as are established by rule by the SEC consistent with the provisions of the Act, is exempt from registration. 	<ul style="list-style-type: none"> Same as the House bill, except no exemption is provided.
<i>Application of Sections 13 and 16 of the Exchange Act Based on Swaps</i>	<ul style="list-style-type: none"> SEC may by rule determine, after consultation with the Prudential Regulators and Treasury, that the security-based swap or other derivative instrument, or class of such, provides incidents of ownership that are comparable to direct ownership of the equity security and that it is necessary to achieve the purposes of sections 13 and 16. 	<ul style="list-style-type: none"> Same as the House bill.
<i>Real-Time Public Reporting of Swap Transaction Data</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> The CFTC and SEC are required to promulgate rules for real-time public data reporting of swap transaction and pricing data for: <ul style="list-style-type: none"> swaps subject to prior approval by the relevant Commission for mandatory clearing, including those exempted by the commercial end user exemption; swaps not subject to the mandatory clearing requirement that are cleared at a clearing agency; and swaps exempted from mandatory clearing through the end-user clearing exemption. The CFTC and SEC real-time reporting rules must protect the anonymity of traders.

TITLE VII – DERIVATIVES

	HOUSE BILL	SENATE BILL
Municipal Issuers	<ul style="list-style-type: none"> Definition of “eligible contract participant” amended to require that a governmental entity own and invest on a discretionary basis \$50 million or more in investments, which is an increase from the prior \$25 million threshold. 	<ul style="list-style-type: none"> Same as the House bill. Fiduciary duty imposed on swap dealers in their swap dealings with government entities as well as pension plans, endowments, and retirement plans.
Effective Date	<ul style="list-style-type: none"> Unless otherwise provided, the later of: <ul style="list-style-type: none"> 270 days after the date of enactment; or to the extent a provision requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision. 	<ul style="list-style-type: none"> Except as specifically provided, 180 days after the date of enactment. Reporting provisions for uncleared swaps and security-based swaps, as described above, take effect upon enactment. Uncleared swaps entered into before the date of enactment, if their terms have not expired as of the date of enactment, must be reported to a trade repository or to the CFTC or SEC, as appropriate within 30 days following the adoption of an interim final rule (which must take place within 90 days of the date of enactment) or such other period as the relevant Commission determines to be appropriate. Whistleblower protection and incentive provisions are effective on the date on which the final rule promulgated by the CFTC takes effect and such rulemaking may be undertaken prior to the effective date of the relevant provisions.
General Rulemaking Timeline	<ul style="list-style-type: none"> Except as described below, CFTC and SEC required rulemaking must be done within one year of the date of enactment. 	<ul style="list-style-type: none"> Except as described below, CFTC and SEC required rulemaking must be done within 180 days of the date of enactment.
Specific Rulemaking Timeline Provisions	<ul style="list-style-type: none"> Within 180 days of the date of enactment, the SEC, CFTC and Prudential Regulators must send Congress recommendations for legislative changes to the Federal insolvency laws. Within 180 days of the date of enactment, the CFTC and 	<ul style="list-style-type: none"> Within 90 days of the date of enactment, the CFTC and SEC must issue interim final rules providing for the reporting of uncleared swaps entered into before the date of enactment. Within one year of the date of enactment, the SEC must issue rules to provide for the registration of security-based swap

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HOUSE BILL	SENATE BILL
<p>Federal Energy Regulatory Commission must negotiate a memorandum of understanding regarding overlapping jurisdiction and information sharing.</p> <ul style="list-style-type: none"> ▪ Within 180 days of the date of enactment, the CFTC must establish position limits for exempt commodities. ▪ Within 270 days of the date of enactment, the CFTC must establish position limits for agricultural commodities. 	<p>dealers and major security-based swap participants.</p> <ul style="list-style-type: none"> ▪ CFTC rules must provide for the registration of swap dealers and major swap participants not later than one year after the date of enactment. ▪ Within 270 days of the date of enactment, the CFTC must issue rules implementing the commodity whistleblower incentives and protection provisions. Such rulemaking may be undertaken prior to the effective date of the relevant provisions.

TITLE VIII – PAYMENT, CLEARING, AND SETTLEMENT

	HOUSE BILL	SENATE BILL
<p><i>Payment, Clearance and Settlement</i></p>	<ul style="list-style-type: none"> ▪ Dropped from the House bill during the Financial Services Committee amendment process. 	<ul style="list-style-type: none"> ▪ Allows the Council to designate systemically important financial market utilities and payment, clearing and settlement activities of financial institutions. See Title I. ▪ Systemically important financial market utilities and payment, clearing and settlement activities of financial institutions are subject to extensive supervision by the Federal Reserve and the supervisory agency of the institution. <ul style="list-style-type: none"> □ Payment, clearing and settlement activities of financial institutions potentially can include their normal back office activities. ▪ Federal Reserve, in consultation with the Council, is authorized to prescribe risk management standards that can include margin and collateral requirements, capital and financial resource requirements and participant or counterparty default policies and procedures for financial market utilities. ▪ Designated financial market utilities are subject to examinations by the relevant supervisory agency (the federal agency with primary jurisdiction over the designated financial market utility, such as the SEC, CFTC, Federal Reserve or the appropriate federal banking agency) at least once per year. Federal Reserve, at its discretion, may participate in these examinations. <ul style="list-style-type: none"> □ Authorizes the Federal Reserve to take emergency enforcement action against a designated utility if the Federal Reserve has reasonable cause to believe that either an action engaged in, or contemplated by, the utility, or the condition of the utility itself, poses an imminent risk of substantial harm to financial institutions or the financial system, and the imminent risk requires immediate action.

TITLE VIII – PAYMENT, CLEARING, AND SETTLEMENT

	HOUSE BILL	SENATE BILL
		<ul style="list-style-type: none"> ▪ Council may require a designated financial market utility or a financial institution engaged in a systemically important payment, clearing or settlement activity to submit reports and data to assess whether the financial institution is in compliance with the Federal Reserve’s rules and whether such rules are adequate to address the risks posed by the activity. ▪ Requires a designated financial market utility to provide 60-days’ advance notice to its supervisory agency and the Federal Reserve of any proposed change to its rules, procedures or operations that could materially affect the level of risk presented to the utility. ▪ Provides access to the Federal Reserve’s discount window for systemically important financial market utilities. ▪ These provisions become effective on the date of enactment.

TITLE IX – INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

	HOUSE BILL	SENATE BILL
Subtitles A and I – Increasing Investor Protection (Broker-Dealer Regulation)		
<i>Fiduciary Duty</i>	<ul style="list-style-type: none"> ▪ Requires the SEC to adopt rules specifying that the standard of conduct for broker-dealers must be the same as the standard of conduct for investment advisers when providing personalized investment advice to a retail customer about securities. ▪ The standard is to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer or investment adviser. ▪ Any material conflicts of interest must be disclosed to and must be consented to by the customer. ▪ There is no continuing duty of care or loyalty to the customer after advice is provided, and commissions are not by definition a violation of the standard. 	<ul style="list-style-type: none"> ▪ Requires an SEC study of the effectiveness of existing standards of care for broker-dealers and investment advisers for providing personalized investment advice and recommendations about securities to retail customers. ▪ The topics to be addressed are expressly prescribed in the bill. SEC is required to seek and consider public input, comments and data. ▪ If the study concludes that gaps or overlaps exist, SEC required to promulgate rules under its existing statutory authority within 2 years of the date enactment.
<i>Short Sales</i>	<ul style="list-style-type: none"> ▪ Requires institutional investment managers to provide the SEC with daily reports regarding short sales. <ul style="list-style-type: none"> □ Requires SEC to issue rules for public disclosure of such information, which, at a minimum, would need to occur every month. □ Requires broker-dealers to provide notice to customers that they may elect not to allow their fully paid securities to be used in connection with short sales (<i>i.e.</i>, loaned by their broker). □ Adds manipulative short selling as an unlawful activity. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.
<i>Securities Lending</i>	<ul style="list-style-type: none"> ▪ Provides the SEC with explicit authority to regulate securities lending, but does not include a rulemaking mandate like the Senate bill. 	<ul style="list-style-type: none"> ▪ Requires the SEC, within 2 years after the date of enactment, to promulgate rules designed to increase the transparency of information available regarding securities lending. No similar mandate is included in the House bill.

TITLE IX – INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

	HOUSE BILL	SENATE BILL
Records Maintenance Obligations for Investment Companies	<ul style="list-style-type: none"> Authorizes the SEC to adopt new records maintenance obligations for persons having custody or use of a registered investment company’s securities, deposits or credits, and SEC examination authority over such persons and persons with custody or use of an investment adviser’s securities, deposits or credits. 	<ul style="list-style-type: none"> Not in the Senate bill.
SIPC Assessment	<ul style="list-style-type: none"> Sets as a floor the minimum assessment paid by SIPC members to be 0.02 percent of gross revenues from the securities business of the member. 	<ul style="list-style-type: none"> Not in the Senate bill.
Portfolio Margining	<ul style="list-style-type: none"> Encourages portfolio margining by providing SIPC protection to futures and options on futures in portfolio margining accounts; does not resolve futures segregation obstacles. 	<ul style="list-style-type: none"> Same as the House bill.
SRO Filing Procedures	<ul style="list-style-type: none"> Requires proceedings to determine whether a proposed rule change should be disapproved to be concluded within 200 days after the date of receipt of a proper filing, as opposed to within 180 days of the date of publication of the notice of the proposed rule change (as Section 19(b)(2) of the Exchange Act provides at present). Requires the SEC, within 12 months after the date of enactment, to issue rules implementing a disapproval process for SRO rule filings. 	<ul style="list-style-type: none"> SRO rules would become effective if the SEC fails to approve or disapprove the rule filing within specified times. The effective of date of the rule filing, which triggers the time periods, is the date of publication of the rule filing in the Federal Register, unless the SEC fails to send the filing to the Federal Register within 15 days after the filing is posted on the SRO’s website. In this case, the date of publication is deemed to be the date the notice is published on the SRO’s website. The category of rule filings that are “effective on filing” would be expanded to include fees charged to non-members, such as market data fees. The Senate bill’s revision to SRO filing procedures generally would allow rules to become effective more quickly than the House bill’s revisions.

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<i>Point of Sale Disclosures</i>	<ul style="list-style-type: none"> Requires a study prior to proposing any rules regarding the provision of documents or information to retail customers prior to the purchase of investment products or services. The study must be completed by the SEC within 180 days after the date of enactment. 	<ul style="list-style-type: none"> Provides the SEC with express authority to issue rules designating disclosure that must be provided by a broker-dealer to a retail investor before the purchase of an investment product or service by the retail investor. Requires that any documents or information that the SEC requires to be disclosed to retail investors include information about investment objectives, strategies, costs, and risks, and any compensation or financial incentive received by a broker-dealer or other intermediary in connection with the retail customer’s purchase of the product.
<i>Investment Company Examinations</i>	<ul style="list-style-type: none"> Authorizes the SEC to conduct periodic examinations of investment companies, as well the underwriter, broker, dealer, or investment adviser of those investment companies. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Investor Advisory Committee / Investor Advocate / Investor Testing</i>	<ul style="list-style-type: none"> Establishes an Investor Advisory Committee. Like the Senate bill, provides the SEC with express authority to engage in investor testing programs. 	<ul style="list-style-type: none"> Establishes an Investor Advisory Committee. SEC is required to issue a public statement assessing any findings or recommendations of the committee. Establishes an Office of Investor Advocate, appointed by, and reporting directly to, the Chairman, that is charged with assisting retail investors. Provides the SEC with express authority to engage in investor testing programs.
<i>Studies Regarding Financial Literacy and Mutual Fund Advertising</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> SEC is required to study the financial literacy of retail investors. GAO is required to study mutual fund advertising.
<i>GAO Study on Conflicts of Interest</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Requires a new GAO study within 18 months after the date of enactment regarding the potential conflicts of interest that exist between securities underwriting and securities analyst functions within the same firms.

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<i>SEC Study on Investor Access to Information About Investment Advisers and Broker-Dealers</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Requires a new SEC study within 6 months after the date of enactment regarding ways to improve access of investors to registration information about investment advisers, broker-dealers and their associated persons, and requires the SEC to implement any recommendations of the study.
<i>GAO Study on Financial Planners</i>	<ul style="list-style-type: none"> Requires a new GAO study within 180 days after the date of enactment regarding the regulation and oversight of financial planning. Senate study mandate is broader. 	<ul style="list-style-type: none"> Requires a new GAO study within 180 days after the date of enactment to evaluate the effectiveness of state and federal regulations to protect consumers from misleading financial advisor designations, oversight structure and regulations for financial planners and gaps in the regulation of financial planners.
Subtitle B – Securities Laws Enforcement		
<i>SEC Authority to Restrict Mandatory Pre-Dispute Arbitration</i>	<ul style="list-style-type: none"> Authorizes the SEC to consider prohibiting or limiting the use of mandatory pre-dispute arbitration agreements by broker-dealers and investment advisers. 	<ul style="list-style-type: none"> Authorizes the SEC to conduct rulemaking reaffirming or prohibiting the use of mandatory arbitration pre-dispute agreements between broker-dealers and investment advisers.
<i>SEC’s Aiding and Abetting Authority</i>	<ul style="list-style-type: none"> With respect to the Securities Act and the Investment Company Act, extends the SEC’s aiding and abetting enforcement authority. With respect to the Investment Advisers Act, clarifies the SEC’s aiding and abetting enforcement authority. <ul style="list-style-type: none"> Clarifies that SEC authority to pursue aiders and abettors would extend to reckless, as well as knowing, conduct, resolving a split among the U.S. Courts of Appeals. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Whistleblower Protection</i>	<ul style="list-style-type: none"> Authorizes the SEC, in any action in which it levies sanctions in excess of \$1 million, to compensate whistleblowers who provide original information with an 	<ul style="list-style-type: none"> Same as the House bill except establishes a minimum compensation percentage of 10% of the sanctions.

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	<p>amount not exceeding 30% of the amount of the sanctions, an increase from the SEC’s current authority under the Exchange Act, which caps such compensation at 10% of collected penalties, and restricts it to the insider trading context. Also establishes an Investor Protection Fund funded through revenues from certain sanctions. Provides whistleblowers with an express private right of action against employers who retaliate against them.</p>	<ul style="list-style-type: none"> □ Also extends whistleblower protection to employees of NRSROs.
<i>Extends Whistleblower Protection</i>	<ul style="list-style-type: none"> ▪ Amends the Sarbanes-Oxley Act to prohibit retaliation against whistleblowers by subsidiaries or affiliates of a company. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
<i>Collateral Bars</i>	<ul style="list-style-type: none"> ▪ Permits the SEC to impose collateral bars under the Exchange Act and the Investment Advisers Act, prohibiting offenders from associating with a broad range of SEC regulated entities rather than only those entities regulated under the particular statutory provisions under which the violation occurred. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
<i>Extraterritorial Jurisdiction under the Federal Securities Laws</i>	<ul style="list-style-type: none"> ▪ In actions by the U.S. or SEC, expands extraterritorial jurisdiction under the anti-fraud provisions of the securities laws to include “conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors” as well as “conduct occurring outside the United States that has a foreseeable substantial effect within the U.S.” 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.
<i>Control Person Liability under the Exchange Act</i>	<ul style="list-style-type: none"> ▪ Clarifies that the SEC may impose joint and several liability on control persons. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.

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<i>Authority to Share Certain Information with Domestic and Foreign Authorities</i>	<ul style="list-style-type: none"> Allows the SEC and domestic and foreign securities authorities and law enforcement authorities to share information without waiving any privilege applicable to that information. Prevents the SEC from being compelled to disclose privileged information obtained from a foreign securities authority or law enforcement authority, if the foreign authority represented to the SEC in good faith that the information is privileged. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Nationwide Service of Subpoenas</i>	<ul style="list-style-type: none"> Provides that nationwide service of subpoenas is available in civil SEC actions filed in federal courts. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Authorize SEC to Order Penalties in Cease and Desist Proceedings</i>	<ul style="list-style-type: none"> Amends the securities acts to give the SEC uniform authority to seek civil penalties in cease and desist proceedings. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Fair Fund Amendments</i>	<ul style="list-style-type: none"> Allows the SEC to add civil penalty payments to a fund for distribution to the victims of a securities law violation regardless of whether the SEC also obtains disgorgement against the violator, as is required by current law. 	<ul style="list-style-type: none"> Same as the House bill.
<i>Authority over Formerly Associated Persons</i>	<ul style="list-style-type: none"> Makes clear that the SEC may bring suits against persons formerly associated with a registered entity to prevent individuals from avoiding a penalty or bar simply because they are no longer associated with that registered entity. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Expanded Access to Grand Jury Material</i>	<ul style="list-style-type: none"> Permits disclosure to the SEC by a court, upon motion by a government attorney, of matters occurring before a grand jury that relate to conduct that “may constitute a violation of any provision of the securities laws,” if the court determines there is a “substantial need in the public interest.” 	<ul style="list-style-type: none"> Not in the Senate bill.

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<i>Exemption for Nonaccelerated Filers</i>	<ul style="list-style-type: none"> ▪ Removes the requirement that an auditor attest to internal controls for any issuer that is not an accelerated filer. Commissions a study to determine how the SEC can reduce the costs of complying with the auditor attestation requirement for companies with a market capitalization between \$75,000,000 and \$200,000,000. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.
<i>Expanded Anti-fraud Provisions</i>	<ul style="list-style-type: none"> ▪ Expands the Exchange Act market manipulation and short sales authority. <ul style="list-style-type: none"> □ Extends Section 9, which relates to market manipulation, and 10(a)(1), which relates to short sales, to cover any security “other than a government security,” rather than just securities “registered on a national securities exchange.” □ Extends Section 9(b), which relates to options, to non-exchange transactions in options. □ Amends Section 9(c) to subject all brokers and dealers to the provision, not just “member[s] of a national securities exchange.” □ Amends Section 15(c)(1)(A) to cover exchange transactions, not just over-the-counter transactions. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.
<i>Deadline for Completing Examinations, Inspections and Enforcement Actions</i>	<ul style="list-style-type: none"> ▪ Requires the SEC to file an enforcement action no later than 180 days after it has provided any person with a written “Wells” notification. SEC must inform the subject of an examination that the examination has concluded without findings or request the entity undertake corrective action within 180 days from when the SEC completes the on-site portion of an examination or inspection. In both instances there is a 180-day extension for complex matters. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.

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<i>Disqualifying Felons and other “Bad Actors” from Regulation D Offerings</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Requires that the SEC issue rules disqualifying an offering or sale of securities as a Regulation D offering where the person offering the securities: <ul style="list-style-type: none"> has been convicted of a felony or misdemeanor in connection with purchase or sale of any security or in connection with a false filing with the SEC; or is barred from association with regulated entities or from engaging in the business of securities, insurance, banking or in savings association or credit union activities for fraud, manipulation or deception.

<i>Clarification that Section 205 of the Investment Advisers Act Does not Apply to State Registered Advisers</i>	<ul style="list-style-type: none"> Revises Section 205 to clarify that any investment adviser not registered or required to be registered with the SEC is not subject to Section 205’s restrictions on investment advisory contracts. Deletes the condition that investment advisers must use mails or any means or instrumentality of interstate commerce in order to be subject to Section 205. 	<ul style="list-style-type: none"> Same as the House bill.
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Subtitle C – Credit Rating Agencies

<i>Credit Rating Agency Regulation Generally</i>	<ul style="list-style-type: none"> All credit rating agencies must register as nationally recognized statistical rating organizations (“NRSROs”) by filing an application with the SEC. Registration exemption available to any credit rating agency that does not provide credit ratings to issuers for a fee and issues credit ratings only in certain publications of general and regular circulation. SEC may provide other registration exemptions. Requires all information previously furnished to the SEC now be filed with the SEC and no longer ensures confidentiality with respect to certain submissions to the SEC. 	<ul style="list-style-type: none"> Generally increases internal controls, requires greater transparency of rating procedures and methodologies, provides investors with a private right of action, provides the SEC with greater enforcement tools, provides for initial ratings on structured finance products to be issued by qualified NRSROs through an SRO-administered assignment program and provides for SEC examination of NRSROs.
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	<ul style="list-style-type: none"> ▪ Modifies NRSRO designation to signify “nationally registered statistical rating organization.” ▪ Generally increases internal controls, requires greater transparency of rating procedures and methodologies, provides investors with a private right of action, provides the SEC with greater enforcement tools, and provides for SEC examination of NRSROs. 	
<i>Establishment of SEC Office of Credit Ratings</i>	<ul style="list-style-type: none"> ▪ SEC must establish an office of sufficient size to administer SEC rules with respect to the practices of credit rating agencies. ▪ SEC must establish a 7-member Credit Ratings Agency Advisory Board to: <ul style="list-style-type: none"> □ advise the SEC concerning required rules; □ ensure that the SEC properly and fully executes its oversight functions and responsibilities; and □ issue, annually or when it believes the SEC is not properly executing its oversight function, a report to Congress recommending additional actions. 	<ul style="list-style-type: none"> ▪ SEC must establish an Office of Credit Ratings of sufficient size to administer the SEC’s rules with respect to NRSRO practices, promote accuracy in ratings, and to ensure that ratings are not unduly influenced by conflicts of interest.
<i>SEC Annual Review</i>	<ul style="list-style-type: none"> ▪ SEC must, at least annually, examine each registered credit rating agency’s ratings, policies, procedures, and methodologies to review whether the credit rating agency has established, and adheres to, a documented system of internal controls, due diligence and implementation of methodologies for determining credit ratings and whether the credit rating agency’s required public disclosures are consistent with such system. 	<ul style="list-style-type: none"> ▪ SEC’s newly established Office of Credit Ratings must, at least annually, examine each NRSRO, including a review of its: <ul style="list-style-type: none"> □ conduct of business in accordance with its policies, procedures and rating methodologies; □ management of conflicts of interest; □ ethics policy implementation; □ internal supervisory controls and governance; □ designated compliance officer’s activities and the processing of complaints by the NRSRO; and

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		<ul style="list-style-type: none"> □ policies governing post-employment activities of former staff. ▪ SEC will make publicly available an annual report summarizing essential findings, responses by the NRSRO to any material deficiencies identified and whether recommendations from previous reports have been addressed.
<p>Initial Credit Ratings for Structured Finance</p>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Requires the SEC to establish a new self-regulatory organization (the Credit Rating Agency Board), which will, through an application process, designate NRSROs as “qualified nationally recognized statistical rating organizations” with respect to specific categories of structured finance products and assign such qualified NRSROs to provide initial ratings to structured finance products. <ul style="list-style-type: none"> □ The term “category of structured finance products” initially includes any asset-backed security and any structured product based on an asset-backed security and may be further defined and expanded by the SEC. □ Issuers seeking an initial credit rating for a structured finance product must submit a request to the Credit Rating Agency Board and may not request an initial rating from an NRSRO. □ Issuers may still request or receive additional credit ratings with respect to a debt security, if the initial credit rating is assigned through the Credit Rating Agency Board system. □ The Credit Rating Agency Board will choose a method for assignment of qualified NRSROs that does not allow for the solicitation or consideration of an issuer’s preferred qualified NRSRO. □ A qualified NRSRO may refuse an assignment by notifying the Credit Rating Agency Board and submitting a written

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		<p>explanation, which would be submitted to the SEC and included in the SEC’s annual inspection report.</p> <ul style="list-style-type: none"> □ Initial ratings issued through this process will include a disclaimer that such initial ratings have not been evaluated, approved or certified by the U.S. government or any Federal agency. □ Qualified NRSROs may charge a to-be-defined “reasonable fee” for an initial credit rating and the Credit Rating Agency Board is authorized to issue rules on fees. □ The Credit Rating Agency Board may levy fees from qualified NRSROs to fund its expenses. □ The Credit Rating Agency Board may issue regulations requiring an issuer that has received an initial rating to request a revised initial rating each time the issuer experiences a material change in circumstances. <ul style="list-style-type: none"> ▪ The Credit Rating Agency Board will conduct an annual evaluation of the performance of each qualified NRSRO. <ul style="list-style-type: none"> □ The annual evaluation will consider the results of the SEC’s annual examination, surveillance of credit ratings conducted by the qualified NRSRO, including the performance of the rated instruments, the accuracy of the ratings compared to other NRSROs, and the effectiveness of the methodologies used. ▪ NRSROs may continue to issue unsolicited ratings as long as the NRSRO has not entered into a contract to provide the initial rating and is not paid by the issuer to provide the initial rating. ▪ The Credit Rating Agency Board must be established no later than 180 days after the date of enactment and the Board will begin assigning qualified NRSROs no later than one year

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		later.
		<ul style="list-style-type: none"> ▪ SEC must submit a report to Congress providing recommendations as to the continuation of the Board and any necessary modifications not later than 5 years after the Board begins assigning qualified NRSROs.
<i>Voluntary Withdrawal of Registration</i>	<ul style="list-style-type: none"> ▪ Permits voluntary withdrawal of registration only if the NRSRO received less than \$250,000 in net ratings revenue during its last full fiscal year. Unclear how this provision is intended to be read in light of requirement that all credit rating agencies must register as NRSROs. 	<ul style="list-style-type: none"> ▪ Does not change current voluntary withdrawal of registration regime for NRSROs.
<i>Board of Directors</i>	<ul style="list-style-type: none"> ▪ Each credit rating agency must have a board of directors with independent directors composing 1/3 of the board (no fewer than 2). <ul style="list-style-type: none"> □ Directors serve a fixed term, not to exceed 5 years, and compensation is not linked to business performance. ▪ The board’s oversight responsibility covers: <ul style="list-style-type: none"> □ the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings and with respect to addressing, managing and disclosing conflicts of interest; □ the effectiveness of the internal controls system with respect to the policies and procedures for determining credit ratings; and □ compensation and promotion policies and practices. 	<ul style="list-style-type: none"> ▪ Each NRSRO must have a board of directors with independent directors composing at least 1/2 of the board (no fewer than 2) and some portion of which must be users of NRSRO ratings. <ul style="list-style-type: none"> □ Directors serve a fixed term, not to exceed 5 years, and compensation is not linked to business performance. ▪ The board’s oversight responsibility covers the same topics as the House bill. ▪ When the NRSRO is a subsidiary, permits the parent’s Board to satisfy requirements by assigning duties to a committee meeting certain independence criteria.

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Compliance Officer	<ul style="list-style-type: none"> ▪ Each credit rating agency must designate a compliance officer. <ul style="list-style-type: none"> □ Compliance officer may not determine credit ratings; perform marketing or sales functions; participate in the establishment of procedures and methodologies used to determine ratings; or participate in establishing compensation for non-compliance personnel. □ Compensation not linked to business performance. ▪ Specified responsibilities include: <ul style="list-style-type: none"> □ direct reporting to the board of directors; □ review of compliance with policies and procedures to manage conflicts of interest and assess risk to the integrity of the credit-rating process; □ review of compliance with internal control system with respect to rating procedures and methodologies and assess risk that internal control system is reasonably designed to ensure integrity and quality of rating process; □ resolve conflicts of interest in consultation with board of directors; □ administration of policies and procedures required to be established by NRSROs; □ ensure compliance with securities laws and the rules and regulations thereunder; □ establish procedures for receipt, retention and treatment of complaints, including confidential, anonymous complaints by employees, obligors, issuers and investors; □ establish procedures for remediation of any identified 	<ul style="list-style-type: none"> ▪ Each NRSRO must designate a compliance officer. <ul style="list-style-type: none"> □ Same limitations as in the House bill. ▪ Specified responsibilities include: <ul style="list-style-type: none"> □ establish procedures for receipt, retention and treatment of complaints, including confidential, anonymous complaints by employees or users of credit ratings.

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	<p>non-compliance issues; and</p> <ul style="list-style-type: none"> □ establish procedures designed so that ratings reflect consideration of all information in a manner consistent with the NRSRO’s published rating methodology. <ul style="list-style-type: none"> ▪ Requires an annual report on compliance with the securities laws and the NRSRO’s internal policies and procedures, certified under penalty of law to be accurate and complete. <ul style="list-style-type: none"> □ Filed with the SEC along with annual filing of financial reports. 	<ul style="list-style-type: none"> ▪ Requires an annual report on compliance with securities laws and the NRSRO’s policies and procedures, certified to be accurate and complete. Must describe material changes to code of ethics and conflict of interest policies. <ul style="list-style-type: none"> □ Submitted to the NRSRO and filed with the SEC along with submission of annual financial reports.
Penalties for Certain Actions	<ul style="list-style-type: none"> ▪ No Anti-Fraud Defense. Clarifies that the Exchange Act’s prohibition against regulating the substance of credit ratings (or procedures and methodologies for determining ratings) may not be construed as affording a defense to an anti-fraud action or proceeding brought by the SEC. ▪ Penalties. Broadens penalties that SEC may impose for specified violations to include fines and expands the specified violations to which such penalties apply to include a failure to conduct sufficient surveillance and a failure to reasonably supervise an individual under his or her supervision. <ul style="list-style-type: none"> □ Provides a safe harbor with respect to the newly established failure to supervise violation where procedures and a system for their application have been established, which would reasonably be expected to detect such violations and such person has reasonably discharged his or her duties under such procedures. □ Expands applicability of penalties to persons associated or seeking to become associated with an NRSRO. 	<ul style="list-style-type: none"> ▪ No Anti-Fraud Defense. Same as the House bill. ▪ Penalties. Broadens penalties that SEC may impose for specified violations to include fines and expands the specified violations to which such penalties apply to include a failure to reasonably supervise an individual who commits a violation of the securities laws. ▪ Suspension or Revocation of Registration. Allows SEC to suspend or revoke registration of an NRSRO with respect to a particular class or subclass of ratings upon a determination, after notice and hearing, that the NRSRO lacks adequate financial or managerial resources to consistently produce ratings with integrity. <ul style="list-style-type: none"> □ SEC must consider, among other factors, whether NRSRO failed to produce accurate ratings over a sustained period.

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	<ul style="list-style-type: none"> SEC is required to establish fines and other penalties for violations by registered credit rating agencies. 	<ul style="list-style-type: none"> SEC is required to establish fines and other penalties for violations by NRSROs.
<i>Obligation to Report Violations of Law</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Each NRSRO must refer to law enforcement or regulatory authorities any information received from a third party that the NRSRO finds credible and that alleges that an issuer of securities rated by the NRSRO committed or is committing a material violation of law.
<i>Private Right of Action</i>	<ul style="list-style-type: none"> Clarifies that credit rating agencies can be sued under private rights of action. Eliminates the ability of credit rating agencies to rely on the forward-looking statements safe harbor provided by Section 21E of the Exchange Act. Establishes gross negligence as the requisite state of mind for private securities fraud actions for money damages against credit rating agencies. <ul style="list-style-type: none"> Provides that a purchaser of a rated security has a right to recover damages if the process of determining the rating was both grossly negligent and a substantial factor in the investor’s economic loss. Provides for a statute of limitations of 2 years from discovery of facts constituting the violation or 3 years from the initial rating. 	<ul style="list-style-type: none"> Clarifies that credit rating agencies can be sued under private rights of action. Eliminates the ability of NRSROs to rely on the forward-looking statements safe harbor provided by Section 21E of the Exchange Act. For private securities fraud actions for money damages against credit rating agencies, establishes that it is sufficient to state with particularity, facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed to conduct a reasonable investigation of a rated security with respect to factual elements relied upon by its own methodology or to obtain reasonable verification of such factual elements from sources independent of the issuer and underwriter that the credit rating agency considered competent.
<i>Expert Liability</i>	<ul style="list-style-type: none"> Would rescind the force and effect of Rule 436(g) under the Securities Act. Renders credit rating agencies experts subject to Securities Act liability in the same manner as accountants when ratings are included in a registration statement and requires the credit rating agency’s consent for such inclusion. 	<ul style="list-style-type: none"> The Senate bill does not include rescission of Rule 436(g). Establishes that enforcement and penalty provisions of the Exchange Act apply to statements made by credit rating agencies in the same manner and to the same extent as they apply to statements made by registered public accounting firms or securities analysts under the securities laws.

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<i>Elimination of Regulation FD Exemption</i>	<ul style="list-style-type: none"> ▪ SEC must revise Regulation FD to remove the exemption for entities whose primary business is the issuance of credit ratings. <ul style="list-style-type: none"> □ SEC must make this revision not later than 90 days from the date of enactment. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.
<i>Conflicts of Interest</i>	<ul style="list-style-type: none"> ▪ Requires a credit rating agency to establish, maintain and enforce written policies and procedures reasonably designed to address, manage, and disclose any conflicts of interest that can arise from its business. <ul style="list-style-type: none"> □ SEC will review the code of ethics and conflicts of interest policy of each NRSRO whenever such policies are materially modified and at least annually. ▪ Requires the SEC to issue rules to prohibit, or require the management and disclosure of, conflicts of interest. Specifies that such rules must include rules regarding: <ul style="list-style-type: none"> □ conflicts relating to the manner in which a credit rating agency is compensated by the obligor or its affiliates; □ conflicts relating to business relationships, ownership interests, or any other financial or personal interests between NRSROs or any associated persons (including board members) and an obligor or its affiliates; □ conflicts relating to any affiliation of an NRSRO or its associated persons with any underwriter of instruments that are the subject of a credit rating; □ a requirement that each NRSRO disclose on its website a consolidated annual report showing: (1) the percent of net revenue earned by the NRSRO, its affiliates or associated persons for providing services and products other than credit rating services to each person who paid for a credit rating and (2) the relative standing of each 	<ul style="list-style-type: none"> ▪ SEC must issue rules to prevent sales and marketing considerations from influencing production of ratings, with exemptions possible for small NRSROs if separation of ratings production and sales and marketing would not be appropriate for such small NRSROs. <ul style="list-style-type: none"> □ If upon notice and hearing, SEC finds a violation that affected a rating, rules must provide for suspension or revocation of the NRSRO’s registration.

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	<p>person who paid for an outstanding credit rating in terms of the amount of net revenue earned by the NRSRO attributable to such person;</p> <ul style="list-style-type: none"> □ the establishment of a system of payment for credit ratings that requires payments to be structured in a manner designed to ensure that the NRSRO conducts accurate and reliable surveillance and that incentives for reliable credit ratings are in place; and □ a requirement that NRSROs disclose with each credit rating the type and number of credit ratings it has provided to the person being rated or its affiliates, the fees billed for the credit rating and the aggregate amount of net revenue earned in the preceding 2 fiscal years attributable to such person and its affiliates. <ul style="list-style-type: none"> ▪ Requires each NRSRO to establish, maintain and enforce a look back policy that applies when a former-NRSRO employee who participated in determining credit ratings (within the one year period preceding any rating action) is employed by an issuer, underwriter or sponsor of an instrument subject to a credit rating. In such instances, the NRSRO will review whether any conflicts of interest of an employee influenced a rating and take action to revise the rating if appropriate. ▪ Where an NRSRO has provided a credit rating to an issuer, underwriter or placement agent, prohibits the NRSRO, the affiliates of the NRSRO and any person associated with the NRSRO from providing any non-rating service to that issuer, underwriter or placement agent. <ul style="list-style-type: none"> □ Effective 180 days from the date of enactment. 	

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Internal Controls Structure	<ul style="list-style-type: none"> ▪ See Credit Rating Methodologies (below). 	<ul style="list-style-type: none"> ▪ Each NRSRO must establish, maintain, enforce and document an internal control structure to govern implementation of, and adherence to, policies, procedures and methodologies for determining ratings. ▪ SEC to require an annual internal controls report, including an attestation by the NRSRO’s CEO, to the SEC that describes management responsibility in establishing and maintaining an effective internal control structure and assesses effectiveness of internal control structure.
Credit Rating Methodologies	<ul style="list-style-type: none"> ▪ SEC must issue rules to require credit rating agencies to establish, maintain, and enforce written procedures and methodologies and an internal control system reasonably designed to: <ul style="list-style-type: none"> □ Ensure that credit ratings are determined using procedures and methodologies that are determined in accordance with the NRSRO’s policies and procedures for the development and modification of such procedures and methodologies. □ Ensure that when major changes to credit rating procedures and methodologies are made: they are applied consistently to all credit ratings to which the changed procedure or methodology applies; they are applied to current ratings within an SEC-determined time period to the extent the changes are to surveillance procedures and methodologies; and the reason for the change is publicly disclosed. □ Notify persons who have access to an NRSRO’s credit ratings of the procedure or methodology used with respect to a particular credit rating and any changes made to, or errors identified in, a procedure or 	<ul style="list-style-type: none"> ▪ SEC must issue rules with respect to procedures and methodologies (including qualitative and quantitative data and models) used by NRSROs that require each NRSRO to: <ul style="list-style-type: none"> □ Ensure ratings are determined in accordance with procedures and methodologies approved by the NRSRO’s board of directors or the senior credit officer and in accordance with policies and procedures for development of such procedures and methodologies. □ Ensure that when material changes to rating procedures and methodologies occur, they are applied consistently to all ratings to which they apply, including current ratings (to the extent surveillance procedures and methodologies are impacted), and the reason for the change is publicly disclosed. □ Notify ratings users of: the version of a procedure or methodology used with respect to ratings; when a material change is made to a procedure or methodology and the likelihood of this resulting in a change to current ratings;

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	<p>methodology that may result in credit rating actions as well as the likelihood of the change resulting in rating actions.</p> <ul style="list-style-type: none"> ▪ Permits SEC to require NRSROs to establish credit rating symbols that distinguish structured product ratings from others. ▪ SEC must require NRSROs to establish, maintain and enforce written policies and procedures that: <ul style="list-style-type: none"> □ assess the risk, with respect to credit ratings of securities and money market instruments, that investors may not receive payment in accordance with the instrument’s terms; □ to define clearly any credit rating symbol used and apply credit rating symbols in a consistent manner for all types of securities and money market instruments. <ul style="list-style-type: none"> • Does not prohibit an NRSRO from using additional credit factors that are documented and disclosed that have a demonstrated impact on the risk that an investor will not receive payment in accordance with the terms of issuance, considering credit factors unique to municipal securities, or using an additional symbol to distinguish certain types of securities or money market instruments. ▪ Requires a written certification from any third-party due diligence service provider used in connection with a rating action. 	<p>when a significant error is identified in a procedure or methodology that may result in credit rating actions.</p> <ul style="list-style-type: none"> ▪ In producing a rating, an NRSRO must consider information about an issuer that it has or receives (other than from issuer), if it finds the information credible and potentially significant to the rating decision. ▪ SEC must require NRSROs to establish, maintain and enforce policies and procedures that: <ul style="list-style-type: none"> □ assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments in accordance with the instrument’s terms; and □ clearly define and disclose the meaning of any ratings symbol and apply this symbol consistently for all instruments for which the symbol is used. <ul style="list-style-type: none"> • An NRSRO may still utilize distinct sets of symbols to denote credit ratings for different types of instruments.

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Disclosure of Methodologies	<ul style="list-style-type: none"> ▪ SEC must, by rule, require each NRSRO to include with the publication of each rating a prescribed form that discloses information about: assumptions underlying procedures and methodologies; data relied upon to determine the rating; if applicable, how servicer or remittance reports were used, and how frequently, to conduct surveillance; other items that might help users of ratings better understand ratings in each class. <ul style="list-style-type: none"> □ Form must be user-friendly and helpful to investors and must present information in a manner directly comparable across securities. □ NRSRO must certify that the information on the form is true and accurate. ▪ The required form must include specified content: <ul style="list-style-type: none"> □ the main assumptions included in constructing procedures and methodologies; □ the potential shortcomings of the credit ratings, and the types of risks not measured in the credit ratings that the NRSRO is not commenting on; □ information on the certainty of the rating, including information on the reliability, accuracy and quality of the data relied on in determining the rating; □ a statement on the extent to which key data inputs for the credit rating were reliable or limited, including limits on the reach of historical data and limits on accessibility to information; □ whether and to what extent third party due diligence services have been utilized and a description of the information reviewed by such services; 	<ul style="list-style-type: none"> ▪ SEC must, by rule, require each NRSRO to include with the publication of each rating with an NRSRO-prescribed form that discloses information about: assumptions underlying procedures and methodologies; data relied upon to determine the rating; if applicable, how servicer or remittance reports were used, and how frequently, to conduct surveillance; and other items that might help users of ratings better understand ratings in each class. <ul style="list-style-type: none"> □ Form must be easy to use and helpful for users of ratings to understand the presented information., must present information in a manner directly comparable across types of securities and must be made readily available to users of credit ratings. ▪ The required form must include qualitative and quantitative content substantially similar to that specified in the House bill.

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	<ul style="list-style-type: none"> □ a description of relevant data used and relied on for determining a credit rating; □ a statement containing an overall assessment of the quality of information available and considered in producing a rating in relation to the quality of information available in issuing similar ratings; □ an explanation or measure of the potential volatility of the credit rating, including factors that might lead to a change in the credit rating, and the extent of the change that might be anticipated under different conditions; □ information on the content of the rating, including the expected default probability and the loss given a default; □ information on the sensitivity of the rating to assumptions, including the 5 assumptions that would have the greatest impact on the rating if proven false or inadequate and an analysis, using concrete examples, of how these assumptions impact a rating; and □ if applicable, how the NRSRO used servicer or remittance reports, and with what frequency, to conduct surveillance. 	
<i>Disclosure Relating to Structured Products</i>	<ul style="list-style-type: none"> ▪ With respect to structured securities, the SEC’s rules relating to the disclosure of procedures and methodologies must specify the information required to be disclosed to NRSROs by sponsors, issuers and underwriters on the collateral underlying such securities and must establish and implement procedures to collect and disclose information about the processes used by sponsors, issuers and 	<ul style="list-style-type: none"> ▪ The issuer or underwriter of an asset-backed security must make publicly available the findings and conclusions of any third-party due diligence report obtained.

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	<p>underwriters to assess the accuracy and integrity of their data and fraud detection.²</p> <ul style="list-style-type: none"> □ SEC is required to define “structured securities.” 	
Due Diligence Services	<ul style="list-style-type: none"> ▪ Third-party due diligence providers conducting due diligence in connection with the issuance of a credit rating must provide to the NRSRO a written certification, in a format determined by the SEC to ensure that such due diligence services have conducted a thorough review of the relevant information necessary for the NRSRO to provide a reliable rating. <ul style="list-style-type: none"> □ Certifications will be subject to the SEC’s review. □ Any reports provided by a third-party due diligence provider must be provided to the NRSRO. □ SEC must adopt a rule requiring the NRSRO to disclose the third-party due diligence provider’s certification to persons who have access to the credit rating with the publication of the rating. 	<ul style="list-style-type: none"> ▪ Third-party due diligence providers must provide to any NRSRO producing a rating to which such services relate a written certification, in a format determined by the SEC to ensure that such due diligence services have conducted a thorough review of the relevant information necessary for the NRSRO to provide an accurate rating. <ul style="list-style-type: none"> □ SEC must adopt rules requiring NRSROs to disclose the certification to the public. □ Limited to due diligence services for asset-backed securities.
Disclosure of Ratings Performance	<ul style="list-style-type: none"> ▪ For purposes of allowing assessment of accuracy and establishing comparability across NRSROs, SEC must issue rules to require each NRSRO to publicly disclose information on initial ratings and any subsequent changes. <ul style="list-style-type: none"> □ Disclosures must be comparable among NRSROs, must be clear and informative for a wide range of investor sophistication, must include performance information over a range of years and for a variety of classes of 	<ul style="list-style-type: none"> ▪ For purposes of allowing assessment of accuracy and establishing comparability across NRSROs, SEC must issue rules to require each NRSRO to publicly disclose information on initial ratings and any subsequent changes for each type of obligor, security and money market instrument. <ul style="list-style-type: none"> □ Disclosures must be comparable among NRSROs, must be clear and informative for investors, must include performance information over a range of years and for a variety of types of ratings, must be published and freely

² Separately, the SEC on April 7, 2010 proposed a rule that would significantly revise Regulation AB and other rules regarding the offering process, disclosure and reporting for asset-backed securities. See SEC Release No. 33-9117.

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	<p>ratings, must be published and freely available on the NRSRO’s website and in writing.</p> <ul style="list-style-type: none"> □ Each NRSRO must include an attestation with any credit rating issued affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the rated instruments, and that the rating was an independent evaluation of risks and merits. ▪ SEC must require each NRSRO to establish and maintain on the NRSRO’s website a facility to disclose, in a central database, the historical default rates of all classes of financial products rated by the NRSRO. ▪ SEC must require that the random sample of ratings histories required under current SEC rules to be disclosed on an NRSRO’s website must be provided in a format consistent with publication on EDGAR. <ul style="list-style-type: none"> □ SEC must modify current rules not later than 180 days from the date of enactment. 	<p>available on the NRSRO’s website and in writing, and must be appropriate to the business model of the NRSRO.</p>
<i>Disclosure of Preliminary Ratings</i>	<ul style="list-style-type: none"> ▪ SEC must adopt rules to require issuers to disclose preliminary credit ratings received on structured products and all forms of corporate debt. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.
<i>Qualifications for Ratings Analysts</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ SEC must issue rules to ensure persons employed to perform ratings are tested for knowledge of the rating process and meet standards of training, experience and competence necessary to produce accurate ratings.
<i>Removal of Statutory References</i>	<ul style="list-style-type: none"> ▪ Requires the removal of numerous statutory references to credit ratings. <ul style="list-style-type: none"> □ Substantively identical to the Senate bill. 	<ul style="list-style-type: none"> ▪ Requires removal of numerous statutory references to credit ratings. <ul style="list-style-type: none"> □ Substantively identical to the House bill.

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	<ul style="list-style-type: none"> □ Effective 6 months after the date of enactment. ▪ Requires specified federal agencies to modify regulations to remove references to or reliance upon credit ratings and to substitute an alternative standard of credit-worthiness. <ul style="list-style-type: none"> □ Instructed to attempt to establish, to the extent feasible, uniform standards of creditworthiness for use by each such agency. □ Must be completed not later than one year after the date of enactment. ▪ Comptroller General must conduct a comprehensive review of the use of credit ratings by federal agencies not specified by the bill and report to Congress with recommendations for any legislation or rulemaking necessary or appropriate in order for such agencies to reduce their reliance on credit ratings. <ul style="list-style-type: none"> □ Report must be submitted not later than 18 months after the date of enactment. 	<ul style="list-style-type: none"> □ Effective 2 years from enactment. ▪ No review of rules and regulations by federal agencies is required.
Timing	<ul style="list-style-type: none"> ▪ Unless otherwise specified, SEC must adopt rules and regulations not later than one year after the date of enactment. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
Studies and Reports	<ul style="list-style-type: none"> ▪ Implementation Study. Requires Comptroller General to conduct a study of the implementation of the bill, the appropriateness of relying on ratings for use in securities and banking regulations, the effect of liability in private actions, alternative means for compensating credit rating agencies that would create incentives for accurate credit ratings, and alternative methodologies to assess credit risk. <ul style="list-style-type: none"> □ Report to Congress and the SEC not later than 30 	<ul style="list-style-type: none"> ▪ NRSRO Independence Study. Requires SEC study of independence of NRSROs and how this affects ratings issued. Must evaluate, among other things, management of conflicts of interest by NRSROs providing non-rating services and potential impact of a prohibition on such services. <ul style="list-style-type: none"> □ Report to the Senate Banking Committee and House Financial Services Committee on the results no later than 3 years after the date of enactment.

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	<p>months after the date of enactment.</p> <ul style="list-style-type: none"> ▪ Rotation Assignment Study. SEC must conduct a study on creating a system whereby NRSROs are assigned on a rotating basis to issuers and obligors seeking a rating. <ul style="list-style-type: none"> □ Report to Congress not later than one year after the date of enactment. ▪ NRSRO Registration Study. SEC must conduct a study on effect of new requirements on credit rating agencies seeking to register as NRSROs. <ul style="list-style-type: none"> □ Report to the House Financial Services Committee and Senate Banking Committee not later than one year after the date of enactment. ▪ Bond Rating Study. SEC must conduct a study of the treatment of different classes of bonds by NRSROs. Study must examine whether there are fundamental differences in the treatment of different classes of bonds that cause them to suffer undue discrimination, if such differences exist, what the causes of such differences are and how they can be alleviated, whether there are factors other than risk of loss that are appropriate to consider in rating bonds, the types of financing available to municipal issuers, the extent to which retail investors could be disadvantaged by a single ratings scale and practices, policies and methodologies of NRSROs with respect to municipal bonds. <ul style="list-style-type: none"> □ Report to the House Financial Services Committee and Senate Banking Committee not later than 6 months after the date of enactment. ▪ Multi-digit Symbols Study. SEC must conduct a study on the feasibility and desirability of implementing a standardized rating system utilizing symbols containing 	<ul style="list-style-type: none"> ▪ Alternative Business Model Study. Comptroller General must conduct a study of alternative means for compensating NRSROs to create incentives to provide more accurate ratings. <ul style="list-style-type: none"> □ Report to the Senate Banking Committee and House Financial Services Committee on the results no later than one year after the date of enactment. ▪ Independent Professional Analyst Organization Study. Comptroller General must conduct a study on feasibility and merits of creating an independent professional organization for NRSRO rating analysts that would establish independent standards and an ethics code and oversee the profession. <ul style="list-style-type: none"> □ Report to the Senate Banking Committee and House Financial Services Committee on the results no later than one year after the date of enactment. ▪ Credit Rating Agency Board Study. Comptroller General must conduct a study of the effectiveness and implementation of the changes with respect to initial ratings for structured finance products, including the selection method utilized by the Credit Rating Agency Board. <ul style="list-style-type: none"> □ Must be conducted not later than one year after the Credit Rating Agency Board begins assigning qualified NRSROs.

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	<p>multiple characters, each representing a range of default probabilities and loss expectations under various levels of market stress.</p> <ul style="list-style-type: none"> □ Report to Congress not later than one year after the date of enactment. ▪ Standardization Study. SEC must study the feasibility and desirability of standardizing credit ratings terminology across credit rating agencies and across asset classes; standardizing market stress conditions under which ratings are evaluated; and requiring a quantitative correspondence between ratings and a range of default probabilities and loss expectations under standardized stress conditions. ▪ Report to Congress not later than one year after the date of enactment. 	<ul style="list-style-type: none"> ▪ Standardization Study. Same as the House bill.

Subtitle D – Improvements to the Asset-Backed Securitization Process (Credit Retention Requirements)

Implementation Timing	<ul style="list-style-type: none"> ▪ Except as noted below, regulations are to be prescribed within 180 days from the date of enactment. 	<ul style="list-style-type: none"> ▪ Except as noted below, regulations are to be prescribed within 270 days from the date of enactment. ▪ Regulations become effective one year after publication of the final rules in the Federal Register for residential mortgage-backed securities, and 2 years after such publication for all other classes of securities.
Credit Retention Requirements	<ul style="list-style-type: none"> ▪ Federal banking agencies (Federal Reserve, OCC, OTS and FDIC) and SEC (or in some cases, HUD, FHFA or Rural Housing Service) to jointly prescribe regulations that require creditors making loans and securitizers of ABS, by default, to retain at least 5% of the credit risk of any loan that is transferred, sold or conveyed by such creditor or secured by such securitizer. 	<ul style="list-style-type: none"> ▪ Federal banking agencies (OCC and FDIC) and SEC to jointly prescribe regulations that require securitizers of ABS, by default, to retain at least 5% of the credit risk in assets transferred, sold or conveyed through the issuance of an ABS by the securitizer.

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	<ul style="list-style-type: none"> □ Risk retention requirement may be less than 5% if the underwriting/diligence meets standards prescribed by regulation. □ Risk retention requirement may be more than 5% if the underwriting/diligence is insufficient. 	<ul style="list-style-type: none"> □ Risk retention requirement is to be less than 5% if underwriting/diligence meets standards to be prescribed by regulation specific to the class of the securitized asset.
Allocation of Credit Retention Requirement	<ul style="list-style-type: none"> ▪ Regulators may apply risk retention requirements to securitizers in addition to or in substitution for any or all requirements that apply to creditors. 	<ul style="list-style-type: none"> ▪ Regulators to allocate risk retention obligation between the securitizer and originator, where applicable, by reducing amount of risk retention required of a securitizer by that required of the originator.
Definition of Asset-backed Security	<ul style="list-style-type: none"> ▪ Asset-backed security has the same meaning given to such term under existing SEC regulations (17 C.F.R. § 229.1101(c)). 	<ul style="list-style-type: none"> ▪ Asset-backed security is defined as a “fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset,” specifically including collateralized mortgage obligations, collateralized debt obligations (CDOs), collateralized bond obligations, CDOs of ABS, CDOs of CDOs, and any security that the SEC determines to be an ABS for this purpose. <ul style="list-style-type: none"> □ Exclusion for securities “issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.”
Definition of Securitizer	<ul style="list-style-type: none"> ▪ Securitizer is defined as “the person that transfers, conveys or assigns, or causes the transfer, conveyance, or assignment of, loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans for the benefit of the securitization vehicle.” 	<ul style="list-style-type: none"> ▪ Securitizer is defined as: <ul style="list-style-type: none"> □ an issuer of an asset-backed security; or □ a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.

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Definition of Creditor / Originator	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Originator is defined as “[a] person who: (A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and (B) sells an asset to a securitizer.”
“Qualified Residential Mortgage” Carveout	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Does not require a securitizer to retain any part of the credit risk for an asset that is transferred, sold or conveyed through the issuance of an ABS by the securitizer, if all of the assets that collateralize the ABS are qualified residential mortgages which meet high underwriting standards. <ul style="list-style-type: none"> Federal banking agencies, the SEC, the Secretary of HUD, and the Director of FHFA to jointly issue regulations to exempt qualified residential mortgages from the risk retention requirements and to jointly define the term “qualified residential mortgage.” However, such regulations cannot exempt an ABS that is collateralized by tranches of other ABSs. SEC must require an issuer to certify, for each issuance of an ABS collateralized exclusively by qualified residential mortgages, that the issuer has evaluated the effectiveness of the internal supervisory controls of the issuer with respect to the process for ensuring that all assets that collateralize the ABS are qualified residential mortgages which meet high underwriting standards.
Asset Classes	<ul style="list-style-type: none"> Regulators may establish different risk retention requirements for different types of loans. 	<ul style="list-style-type: none"> Regulators must establish different asset classes with different credit retention rules, including ABS backed by residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets deemed appropriate.
No Hedging of Retained Credit Risk	<ul style="list-style-type: none"> By default, covered party may not hedge the required retained credit risk. 	<ul style="list-style-type: none"> Same as the House bill.

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<i>Exemptions and Exclusions</i>	<ul style="list-style-type: none"> ▪ Regulatory agencies have authority to provide exemptions or adjustments to risk retention rules. ▪ Specific exclusions for: <ul style="list-style-type: none"> □ loans insured, guaranteed or administered by the Secretary of Education, Secretary of Agriculture, Secretary of Veterans affairs, or the Small Business Administration, or □ made, insured, guaranteed, or purchased by any person that is subject to the supervision of the Farm Credit Administration. 	<ul style="list-style-type: none"> ▪ Regulatory agencies have authority to provide exemptions or adjustments to risk retention rules. ▪ Specific exclusion for Farm Credit System institutions.
<i>Heightened Reporting and Disclosure</i>	<ul style="list-style-type: none"> ▪ Requires heightened reporting and disclosure related to ABS. (Timing for requirements to be adopted by regulation not specified.) 	<ul style="list-style-type: none"> ▪ Substantially the same as the House bill.
<i>Disclosure of Repurchase Requests</i>	<ul style="list-style-type: none"> ▪ SEC to require by regulation disclosure on fulfilled repurchase requests across all trusts aggregated by originator. (Timing for regulations not specified.) 	<ul style="list-style-type: none"> ▪ Within 180 days, SEC to require similar disclosure, but also with regard to unfulfilled repurchase requests.
<i>Removal of Exemption from Registration</i>	<ul style="list-style-type: none"> ▪ Deletes the exemption from registration for certain specific categories of mortgage-backed securities provided by Section 4 of the Securities Act. Effective immediately. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
<i>Due Diligence Analysis</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Within 180 days, SEC to issue rules relating to the registration statement required to be filed by an issuer of an ABS requiring the issuer to perform a due diligence analysis of the assets underlying the ABS and to disclose the nature of the analysis.
<i>Studies and Reports</i>	<ul style="list-style-type: none"> ▪ Regulatory agencies, led by the Federal Reserve, to carry out study of impact on each individual class of ABS and report to Congress within 90 days. ▪ Chairman of Financial Services Oversight Council to carry 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.

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out study on macroeconomic effects of risk retention requirements and report to Congress within 180 days.

Subtitle E – Executive Compensation		
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Hedging Disclosure for Employees and Directors

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| | <ul style="list-style-type: none"> ▪ Not in the House bill. | <ul style="list-style-type: none"> ▪ Requires companies to disclose whether employees and directors are allowed to hedge the value of any equity securities. |
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Independence of Compensation Committee Members and Advisors

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| | <ul style="list-style-type: none"> ▪ Listed companies must have compensation committees consisting of independent directors, meaning that members of the compensation committee may not receive any consulting, advisory or other non-director compensatory fee from the issuer. ▪ The compensation committee must have sole authority to engage compensation consultants and advisors. All such advisors must be independent, as defined by the SEC. ▪ The compensation committee must be directly responsible for the appointment, compensation and oversight of the work of its compensation consultants and other advisors. ▪ Companies are required to disclose whether the compensation committee retained a compensation consultant. ▪ Within 9 months of the date of enactment, the SEC must issue rules directing the national securities exchanges to prohibit the listing of any class of securities that is not in compliance with this provision. <ul style="list-style-type: none"> □ SEC will provide for procedures for an issuer to cure any defects that would be the basis of a listing prohibition under this provision before the imposition of | <ul style="list-style-type: none"> ▪ Like the House bill, provides that listed companies must: <ul style="list-style-type: none"> □ have a compensation committee consisting of independent directors; □ authorize the compensation committee, in its sole discretion, to engage compensation consultants, legal counsel and other advisors; □ require the compensation committee to be directly responsible for the appointment, compensation and oversight of the work of such compensation consultants, legal counsel and other advisors; and □ disclose whether a compensation consultant was retained. ▪ No express requirement for independence of compensation committee advisors. Independence of consultants, legal counsel and other advisors must be taken into account by the compensation committee when selecting such advisors. SEC will identify factors that affect independence. ▪ Within one year of the date of enactment, the SEC must issue rules directing the national securities exchanges to prohibit the listing of any class of securities that is not in compliance with this provision. <ul style="list-style-type: none"> □ SEC will provide for procedures for an issuer to cure any |
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	<p>such prohibition.</p> <ul style="list-style-type: none"> □ SEC may exempt certain categories of issuers from the requirements of this provision where appropriate. ▪ SEC is directed to undertake a study of the use of compensation consultants within two years after issuance of its final rules implementing this provision. 	<p>defects that would be the basis of a listing prohibition under this provision before the imposition of such prohibition.</p> <ul style="list-style-type: none"> □ SEC will permit a national securities exchange to exempt certain categories of issuers from the requirements of this provision where appropriate.
<i>Pay and Performance Disclosure</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Requires the SEC to amend Item 402 of Regulation S-K to require companies to disclose the relationship between a company’s executive compensation actually paid and financial performance, taking into account any change in the value of the company’s shares, dividends and distributions.
<i>Internal Pay Equity Disclosure</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Requires the SEC to amend Item 402 of Regulation S-K to require companies to disclose: (1) the median annual total compensation of all employees, except the CEO; (2) the annual total compensation of the CEO; and (3) the ratio of the median employee annual total compensation to that of the CEO. Annual total compensation for the purposes of this disclosure is calculated in accordance with the rules governing the calculation of the “Total” column in the Summary Compensation Table.
<i>Broker Discretionary Vote Eliminated for Certain Matters</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Amends the Exchange Act to prohibit broker discretionary voting in connection with a shareholder vote with respect to the election of directors, executive compensation or any other significant matter, as determined by the SEC. Under this provision, listing exchanges are not prohibited from allowing broker discretionary voting on other matters.

TITLE IX – INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

	HOUSE BILL	SENATE BILL
Say on Pay	<ul style="list-style-type: none"> At any annual meeting of shareholders, or special meeting in lieu thereof, occurring after 6 months after the SEC’s issuance of final rules implementing the Act, companies must provide shareholders with an annual non-binding vote to approve the compensation of executives as disclosed pursuant to the SEC rules. SEC must issue final rules implementing this provision within 6 months of the date of enactment. 	<ul style="list-style-type: none"> Provides that at any annual meeting of shareholders, or special meeting in lieu thereof, held within 6 months after the date of enactment, companies must provide their shareholders with an annual non-binding shareholder vote to approve the compensation of executives as disclosed pursuant to the SEC rules.
Say on Golden Parachutes	<ul style="list-style-type: none"> At any meeting of shareholders where shareholders are asked to approve an M&A transaction that occurs after 6 months after the SEC’s issuance of final rules implementing this provision, companies must provide shareholders with a non-binding vote to approve payments to any named executive officer in connection with such M&A transaction. SEC must issue final rules implementing this provision within 6 months of the date of enactment. 	<ul style="list-style-type: none"> Not in the Senate bill.
Clawback	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> The listing exchanges are directed to enforce the implementation of policies on incentive-based compensation that is based on publicly reported financial information and clawback policies enabling the recovery of incentive-based compensation from current or former executive officers following a restatement. The trigger would be based on material noncompliance with any financial reporting requirements that led to the restatement, during the three-year period preceding the date on which a company is required to prepare the restatement. The amount to be clawed back is the amount in excess of what would have been paid under the restated results.

TITLE IX – INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

	HOUSE BILL	SENATE BILL
<i>Executive Compensation at Financial Institutions</i>	<ul style="list-style-type: none"> ▪ Covered financial institutions with assets of at least \$1 billion must disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements. ▪ Disclosure must allow regulators to determine whether structures are aligned with sound risk management and do not have serious adverse effects on economic conditions or financial stability. ▪ Prohibition against any incentive-based payment arrangements that regulators determine encourage inappropriate risks. ▪ Violation of these compensation provisions will be treated as a violation of the Gramm-Leach-Bliley Act. ▪ Regulators to issue regulations under these compensation provisions within 9 months of the date of enactment. ▪ Within one year of the date of enactment, the Comptroller General of the United States will carry out a study to determine whether there is a correlation between compensation structures and excessive risk taking. 	<ul style="list-style-type: none"> ▪ Requires the Federal Reserve to consult with the OCC and the FDIC, rather than act alone, in establishing standards making it an unsafe and unsound practice for the holding companies of depository institutions to provide an employee, director or principal shareholder with compensation that is excessive or could lead to material financial loss to the bank holding company. Also directs the appropriate bank regulator to prohibit such unsafe and unsound practices. ▪ The Comptroller of the Currency and the FDIC must establish rules within 180 days of the date of enactment implementing this provision.

Subtitle F – Improvements to the Management of the Securities and Exchange Commission

<i>Report and Certification of Internal Supervisory Controls</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Requires the SEC to submit a yearly report to Congress that contains an assessment of the effectiveness of the internal supervisory controls of the SEC and the procedures that SEC staff use to perform examinations, investigations, and reviews of entities.
<i>Triennial Report on Personnel Management</i>	<ul style="list-style-type: none"> ▪ Specific provision is not in the House bill. For elements of this report, see Commission Organization. 	<ul style="list-style-type: none"> ▪ Requires the GAO to submit a triennial report to Congress that evaluates the following areas in the SEC: the effectiveness of supervisors, promotion decisions, communication between

TITLE IX – INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

	HOUSE BILL	SENATE BILL
		<p>different units of the SEC, turnover, whether there are excessive numbers of managers, initiatives to improve staff competency, and actions taken regarding employees who fail to perform their duties.</p> <ul style="list-style-type: none"> □ The report must also include recommendations on how the SEC can use human resources more effectively. □ SEC must submit a response 90 days after the GAO report is submitted detailing its response to the recommendations.
<i>Annual Financial Controls Audit</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ SEC must submit a yearly report to Congress describing and assessing the SEC’s establishment and maintenance of an adequate internal control structure and procedures for financial reporting. <ul style="list-style-type: none"> □ Requires a similar report from the GAO.
<i>Report on Oversight of National Securities Associations</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Requires the GAO to submit a report on the oversight by the SEC of national securities associations to Congress once every 3 years that evaluates: the governance of such associations; the examinations carried out by such associations; the executive compensation of such associations; arbitration services provided by such associations; the review performed by such associations on advertising by its members; the cooperation between such associations and state securities administrators to promote investor protection; the funding of such associations; the policies of such associations regarding employment of former employees of such associations by regulated entities; the effectiveness of the rules of such associations in achieving the goals of the rules; the transparency or such associations; and the effectiveness of such associations along with both public and internal confidence in such associations.

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	HOUSE BILL	SENATE BILL
Compliance Examiners	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Provides the Division of Trading and Markets and the Division of Investment Management of the SEC with a staff of examiners to perform compliance inspections and examinations of entities under the jurisdiction of those Divisions. <ul style="list-style-type: none"> Effectively reorganizes the Office of Compliance Inspections and Examination.
Suggestion Program for Employees of the Commission	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> The Inspector General of the SEC must establish a hotline for the receipt of suggestions by employees of the SEC for improvements and allegations by employees of waste, abuse, misconduct, or mismanagement. <ul style="list-style-type: none"> Requires Inspector General to take appropriate action in response to such suggestions and allegations. Also requires a yearly report to Congress on such suggestions and allegations.
SEC Funding	<ul style="list-style-type: none"> Authorizes additional appropriations for the SEC until 2015. Requires rulemaking in order to collect fees from investment advisers to pay for costs of inspections and examinations. 	<ul style="list-style-type: none"> Self-funding for the SEC. Requires the Chairman of the SEC to submit a budget to Congress, but this is not considered a request for appropriations and the amount requested would automatically be given to the SEC.
Commission Organization	<ul style="list-style-type: none"> Requires a study by an independent consultant of the organizational structure of the SEC. Establishes the Capital Markets Safety Board to conduct investigations of failed institutions to determine the reason for their failure. Requires a study by the SEC of post-Madoff reforms. Authorizes the formation of a joint advisory committee composed of SEC members and industry experts to develop solutions to issues in the securities markets and identify emerging regulatory risks. 	<ul style="list-style-type: none"> Study of the organizational structure is covered in the triennial report on personnel management mentioned above. Other provisions are not in the Senate bill.

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	HOUSE BILL	SENATE BILL
Senior Investment Protection	<ul style="list-style-type: none"> Provides grants to states contingent on their limiting use of misleading designations for persons selling securities and insurance and adopting suitability rules for recommendations of securities and insurance, including annuities. 	<ul style="list-style-type: none"> Substantially similar to the House bill.
Investor Advisory Committee	<ul style="list-style-type: none"> Establishes an Investor Advisory Committee within the SEC to advise and consult with SEC on regulatory priorities and initiatives to protect investors and promote investor confidence in the integrity of the marketplace. Members of the Committee are appointed by the SEC Chairman, and must represent the interests of individual investors and institutional investors, and use a wide range of investment approaches. 	<ul style="list-style-type: none"> Substantially similar to the House bill.
Consumer Testing	<ul style="list-style-type: none"> Clarifies the SEC’s authority to engage in consumer testing. 	<ul style="list-style-type: none"> Not in the Senate bill.
Studies	<ul style="list-style-type: none"> Requires studies on the following subjects by the agency noted in parentheses: Disclosure to retail customers before the purchase of products or services (SEC); Enhancing investment adviser examinations (SEC); Financial planning (GAO); SEC “revolving door” (GAO); Internal control and evaluation for smaller issuers (GAO); the feasibility of risk-based assessments for SIPC members (GAO); FINRA arbitration. 	<ul style="list-style-type: none"> Not in the Senate bill.
Subtitle G – Corporate Governance		
Proxy Access	<ul style="list-style-type: none"> Makes clear that the SEC has the authority to prescribe rules and regulations, including procedures, relating to the inclusion of shareholder nominees for the board of directors in a company’s proxy solicitation. 	<ul style="list-style-type: none"> SEC “may,” but is not required to, issue rules permitting shareholders to use issuer proxy solicitation materials to nominate director candidates.

TITLE IX – INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

	HOUSE BILL	SENATE BILL
Majority Voting	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Listed companies must require that directors are elected in uncontested elections by a majority of the votes cast (the plurality standard applies if the election is contested). Directors who receive less than a majority of the votes cast must tender their resignation and the board must: <ul style="list-style-type: none"> □ accept the resignation within a period of time as established by the SEC; or □ decline to accept the resignation upon unanimous vote and publicly provide the reasons, together with a discussion of the analysis used in reaching the conclusion, within 30 days. ▪ Within 1 year of the date of enactment, the SEC must issue rules directing the national securities exchanges to prohibit the listing of any class of securities that is not in compliance with this provision. <ul style="list-style-type: none"> □ SEC will provide for procedures for an issuer to cure any defects that would be the basis of a listing prohibition under this provision before the imposition of such prohibition. □ SEC may exempt certain categories of issuers from the requirements of this provision where appropriate.
Chairman and CEO Structure Disclosure	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Requires the SEC to issue rules requiring companies to disclose in the proxy statement why they have separated or combined the offices of chairman and CEO. ▪ SEC must issue rules implementing this provision within 180 days after the date of enactment.

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	HOUSE BILL	SENATE BILL
Risk Committees Required	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Requires risk committees for systemically important, publicly traded nonbank financial companies, as well as publicly traded bank holding companies with total consolidated assets of \$10 billion or more. <ul style="list-style-type: none"> Risk committees must be established within 1 year of triggering the requirement. Federal Reserve may impose the requirement on publicly traded bank holding companies with less than \$10 billion in assets as necessary or appropriate to promote sound risk-management practices. Risk committees must have the number of independent directors determined by the Federal Reserve (independence is not defined in this context), and include one risk management expert having experience in risk management at large complex companies. Federal Reserve must issue final rules to carry out this provision within 1 year after the transfer date and such rules must take effect within 15 months after the date of enactment.

Subtitle H – Municipal Securities

Registration and Oversight of Municipal Advisors	<ul style="list-style-type: none"> Requires broad SEC regulation of persons engaged in the municipal securities market, using a slightly different definition of who this includes than the Senate bill. There are various carveouts, including for lawyers, credit rating agencies acting in their capacity as such, and broker-dealers acting as underwriters. Provides that a municipal financial adviser and any person associated with such municipal financial adviser must be deemed to have a fiduciary duty to any municipal securities issuer for whom such municipal financial adviser acts as a 	<ul style="list-style-type: none"> Requires registration and oversight of persons engaged in the municipal securities market, using a slightly different definition of who this includes than the House bill. There are various carveouts, including for registered investment advisers, lawyers, and broker-dealers acting as underwriters. However, the Senate bill carveouts are more limited than the House bill and do not include credit rating agencies and accountants. The Senate definition is, arguably, slightly broader since it is not as specific as the House definition and does not contain the carveouts for accountants and credit rating agencies as the House bill does.
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TITLE IX – INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

	HOUSE BILL	SENATE BILL
	<p>municipal financial adviser.</p> <ul style="list-style-type: none"> ▪ Reconstitutes the Municipal Securities Rulemaking Board (“MSRB”) with a majority of board members that are not affiliated with broker-dealers, municipal dealers or municipal advisors. 	<ul style="list-style-type: none"> ▪ Reconstitutes the MSRB with a majority of board members that are not affiliated with broker-dealers, municipal dealers or municipal advisors.
<i>Expands MSRB Rulemaking Authority</i>	<ul style="list-style-type: none"> ▪ Gives the SEC enhanced rulemaking authority. <ul style="list-style-type: none"> □ Includes rulemaking authority associated with a fiduciary duty of a municipal financial adviser to any municipal securities issuer for whom it acts. □ Includes rulemaking authority relating to standards, tests and qualifications for municipal securities advisers. 	<ul style="list-style-type: none"> ▪ Expands the rulemaking authority of the MSRB over broker-dealers, municipal securities dealers and municipal advisors with respect to the issuance of municipal securities, investment of proceeds of municipal offerings or derivatives on municipal securities. Otherwise provides the MSRB with rulemaking authority regarding municipal advisors comparable to its authority regarding municipal securities dealers. Extends MSRB rulemaking authority over sales by a broker-dealer of any part of a new issue of municipal securities to a related account during the underwriting period and solicitation of municipal entities. ▪ Expands the MSRB’s authority to regulate advice provided to or on behalf of “obligated persons,” which includes any person who is committed to support the payment of all or part of the obligations on municipal securities. ▪ Requires the MSRB to adopt rules that require continuing education requirements for municipal advisors and professional standards. ▪ Requires the MSRB rules to not impose an inappropriate regulatory burden on small municipal advisors. ▪ Authorizes the MSRB to impose penalties for violations of its rules. ▪ Authorizes the MSRB to assist the SEC and FINRA in examinations and enforcement actions regarding MSRB rules, and to retain half of any penalties imposed by the SEC in such

TITLE IX – INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

	HOUSE BILL	SENATE BILL
		<p>enforcement actions.</p> <ul style="list-style-type: none"> ▪ Authorizes the MSRB to establish information systems and impose fees for submission of information to these systems. ▪ Subjects securities transactions by national securities exchanges and broker-dealers with municipal advisers to the recordkeeping requirements of section 17(a)(1) of the Exchange Act. ▪ Formalizes within the SEC an Office of Municipal Securities.
<p>MSRB Authority</p>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Requires the GAO to study the value of enhanced municipal issuer disclosure and the repeal of the Tower Amendment prohibition on the MSRB requiring issuer disclosure. A report of the results must be submitted to Congress not later than one year after the date of enactment. ▪ Requires the GAO to study the municipal securities markets, including an analysis of the mechanisms for trading, quality of trade executions, market transparency, trade reporting, price discovery, settlement, clearing, and credit enhancements, and how to improve transparency, fairness and liquidity. A report of the study results must be submitted to Congress not later than 180 days after the date of enactment. ▪ Requires the SEC to study the funding mechanism for the Government Accounting Standards Board. A report on the results of the study must be submitted to Congress not later than 270 days after the date of enactment. ▪ Effective Date: October 1, 2010.

TITLE IX – INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

	HOUSE BILL	SENATE BILL
Subtitle I – PCAOB and Inspectors General		
<i>PCAOB Review of Auditors of Broker-Dealers</i>	<ul style="list-style-type: none"> ▪ Authorizes the Public Company Accounting Oversight Board (the “PCAOB”) to review auditors of registered broker-dealers. Permits PCAOB to refer investigations, as well as release documents and information gathered in investigations, to a registered broker-dealer’s SRO. <ul style="list-style-type: none"> □ Under current law, auditors of registered broker-dealers must be registered with the PCAOB. However, these auditors are not otherwise subject to the PCAOB oversight, which applies only to public companies. 	<ul style="list-style-type: none"> ▪ Same as the House bill.
<i>Sharing Information with Foreign Authorities</i>	<ul style="list-style-type: none"> ▪ Amends the Sarbanes-Oxley Act to provide for the sharing of information with foreign auditor oversight authorities without waiving confidentiality or privilege. Requires assurances from foreign authority that the information will remain confidential. 	<ul style="list-style-type: none"> ▪ Substantially similar provision with regard to foreign auditor oversight authorities. Requires foreign authority to also provide a description of the applicable information systems and controls of the foreign authority as well as a description of the laws and regulations of the foreign government that are relevant to information access.
<i>Expansion of Audit Information To Be Produced and Exchanged with Foreign Counterparts</i>	<ul style="list-style-type: none"> ▪ Provides that a foreign public accounting firm must, if requested, produce its audit work papers to the SEC and PCAOB if it “issues an audit report, performs audit work, conducts interim reviews, or performs material services upon which a registered public accounting firm relies.” ▪ Provides that any registered public accounting firm that relies on the work of a foreign public accounting firm in issuing an audit or interim review must produce the foreign firm’s audit work papers, if asked, and secure the agreement of the foreign firm that it will cooperate as a condition of such reliance. 	<ul style="list-style-type: none"> ▪ Not in the Senate bill.

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	HOUSE BILL	SENATE BILL
<i>Congressional Access to Information</i>	<ul style="list-style-type: none"> Clarifies that the PCAOB must provide access to records under the Right to Financial Privacy Act and provide Congress or a court with information. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Creation of an Ombudsman for the PCAOB</i>	<ul style="list-style-type: none"> Creates an ombudsman who acts as a liaison between the PCAOB and private firms and assures that complainants come forward. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Changes in Appointments of Certain Inspectors General</i>	<ul style="list-style-type: none"> Requires presidential appointment and Senate approval for certain Inspectors General. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Council of Inspectors General on Financial Oversight</i>	<ul style="list-style-type: none"> Establishes a Council of Inspectors General on Financial Oversight, composed of heads of the Federal Reserve Board, CFTC, HUD, Treasury, FDIC, FHFA, NCUA, SEC and TARP to address concerns that apply to the broader financial sector and ways to improve financial oversight. Requires annual report to be submitted to Congress. 	<ul style="list-style-type: none"> Substantially similar to the House bill.
<i>Removal of Certain Inspectors General</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> If a board of commission is the head of the designated Federal entity, removal of an Inspector General may only be made by a 2/3 majority of that board of commission. With the exception of the Consumer Bureau, requires the heads of each of these entities to address deficiencies identified by a report or investigation of the Inspector General of the entity.

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
Composition; Independence	<ul style="list-style-type: none"> ▪ Headed by a Director for a 2-year term, and thereafter by a 5-person Commission, including a Chair, in each instance appointed by the President by and with the advice and consent of the Senate. <ul style="list-style-type: none"> □ Commissioners and the Chair serve for 5-year staggered terms. ▪ Independent agency. 	<ul style="list-style-type: none"> ▪ Headed by a Director appointed by the President by and with the advice of the Senate for a 5-year term. ▪ Consumer Bureau is established within the Federal Reserve System (<i>i.e.</i>, not an independent agency), but the Director is appointed by the President, by and with the advice and consent of the Senate. Federal Reserve is forbidden from intervening in Consumer Bureau examinations or enforcement actions or delaying or preventing the issuance of any Consumer Bureau rule or order.
Scope of Authority	<ul style="list-style-type: none"> ▪ The CFPA’s authority extends to any person engaged in a “financial activity” in connection with the provision of a consumer financial product or service. ▪ The CFPA will assume broad authority from existing banking and other regulators over – unless explicitly carved-out – all financial institutions with respect to any product or service that, directly or indirectly, results from or is related to engaging in one or more financial activities. “Financial activities” include: <ul style="list-style-type: none"> □ deposit-taking, money acceptance and money movement; □ extension and servicing of credit (<i>e.g.</i>, mortgage loans, personal loans, credit cards); □ acting as a financial or investment adviser not regulated by the SEC, CFTC or similar body; □ money transmittal and engaging in the money services business; □ sale or issuance of stored value (gift cards/service vouchers); □ custodial activities; □ check cashing and payday lending; in certain instances, 	<ul style="list-style-type: none"> ▪ As in the House bill, Consumer Bureau would have very broad powers to regulate and enforce substantive standards for any person, other than those explicitly carved out from the Consumer Bureau’s authority, engaged in offering or selling a “consumer financial product or service.” <ul style="list-style-type: none"> □ Covered consumer financial products or services substantially similar to the House bill. <ul style="list-style-type: none"> • Unlike the House bill, does not include “acting as an investment adviser” (other than an investment adviser regulated by the CFTC, SEC or any securities commission), or “acting as a money services business.”

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
	<p>consumer reporting/credit bureau activity;</p> <ul style="list-style-type: none"> □ debt collection; □ real estate settlement, including title insurance; □ acting as a leasing agent, broker or adviser in connection with rent-to-own activities; □ providing certain financial data processing and data transmission services; □ tax planning; person-to-person lending; □ any other activity that the Commission defines, by regulation, as a financial activity after finding that the activity is financial in nature or is otherwise a permissible activity for a bank or bank holding company, including a financial holding company; and □ any activity that is incidental or complementary to any other financial activity regulated by the CFPA. 	
<i>Institutional Checks on Rulemaking Authority</i>	<ul style="list-style-type: none"> ▪ None, although the Commission must “coordinate with” the SEC, the CFTC, the Treasury Secretary, the FTC and other federal agencies and state regulators to promote consistent regulatory treatment of, and enforcement related to, consumer and investment products, services and laws. 	<ul style="list-style-type: none"> ▪ Chairman of the Council may temporarily stay the effectiveness of a Consumer Bureau regulation if petitioned to do so by a member agency, and upon a 2/3 vote of its members the Council may permanently set aside a Consumer Bureau regulation. ▪ If a prudential regulator objects in writing to a proposed Consumer Bureau rule, the Consumer Bureau must include the objection in the rule’s adopting release and explain the Consumer Bureau’s decision regarding the objection. ▪ SEC and Consumer Bureau must coordinate rulemaking only where “feasible.” Requires the SEC to develop procedures for providing advance notice to the Consumer Bureau when the SEC is initiating such a rulemaking.

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
<i>Smaller Financial Institutions Will Continue To Be Subject to the Examination and Enforcement Authority of Their Current Regulators</i>	<ul style="list-style-type: none"> ▪ With respect to banks, thrifts and credit unions with assets of \$10 billion or less, prudential regulators will retain examination and enforcement authority with respect to compliance with the Act, CFPA-issued regulations and the consumer laws enumerated in the Act. <ul style="list-style-type: none"> □ The CFPA retains backstop authority to take enforcement actions if the prudential regulators do not take action within 120 days of a written referral from the Agency. □ Under certain circumstances and subject to appeal, Commission may order the removal of a prudential regulator from its examination and enforcement authority with respect to consumer protection upon a written finding of failure to conduct consumer compliance exams or to bring appropriate enforcement actions. 	<ul style="list-style-type: none"> ▪ With respect to banks, thrifts and credit unions with assets of \$10 billion or less, prudential regulators will retain exclusive enforcement authority. <ul style="list-style-type: none"> □ Prudential regulators must “consider input” of the Bureau concerning the scope and conduct of examinations, the contents of exam reports and exam ratings. □ Bureau can require reports from such entities as well. □ No provision for Bureau backstop authority or recapture of authority, as in the House bill.
<i>Authority over Large Insured Depository Institutions</i>	<ul style="list-style-type: none"> ▪ The CFPA has exclusive rulemaking and examination authority, and primary enforcement authority, with respect to compliance with the Act, CFPA-issued regulations and the consumer laws enumerated in the Act for any insured depository institution with total assets of \$10 billion or more and any affiliate thereof (except those affiliates explicitly carved out of the CFPA’s authority, such as broker-dealers and insurance companies). 	<ul style="list-style-type: none"> ▪ Same as the House bill.
<i>Authority over Nondepository Covered Persons</i>	<ul style="list-style-type: none"> ▪ Although the text of the House bill as passed is not entirely clear, the House Financial Services Committee interprets it to provide the CFPA with exclusive rulemaking and examination authority, and primary enforcement authority, with respect to compliance with the Act, CFPA-issued regulations and the consumer laws enumerated in the Act for all nonbank financial institutions. ▪ The CFPA must develop risk-based programs to supervise nondepository covered persons by prescribing registration 	<ul style="list-style-type: none"> ▪ Consumer Bureau has primary enforcement authority and the ability to examine and require reports with respect to nondepository covered persons to the extent that they: <ul style="list-style-type: none"> □ offer, provide or service consumer real estate loans, or provide loan modification or foreclosure relief services in connection with such loans; or □ are “larger participants” of a market for other consumer financial products or services as defined by rule by the

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
	requirements, reporting requirements and examination standards and procedures.	Consumer Bureau in consultation with the FTC.
Securities-Related Carveouts from Authority of Consumer Agency / Bureau	<ul style="list-style-type: none"> ▪ SEC-Regulated Persons. The Commission and CFPA has “no rulemaking, supervisory, enforcement or other authority, including the authority to order assessments” with respect to a person regulated by the SEC, including: <ul style="list-style-type: none"> □ broker-dealers, □ registered investment advisers, registered investment companies and any investment company that is excepted from the definition of investment company under section 3(c) of the Investment Company Act, □ national securities exchanges, □ transfer agents, □ clearing corporations, □ self-regulatory organizations, □ credit rating agencies, □ municipal securities dealers and the Municipal Securities Rulemaking Board, and □ any employee, agent or contractor acting on behalf of, registered with or providing services to, any such person, to the extent such persons act “in such exempt capacity.” ▪ CFTC-Registered Persons. CFPA has “no authority to exercise any authority to enforce this title” with respect to any person that is regulated by the CFTC, including: <ul style="list-style-type: none"> □ futures commission merchants, 	<ul style="list-style-type: none"> ▪ SEC-Registered Persons. Consumer Bureau has “no authority to enforce this title” with respect to any person required to be registered with the SEC under the Exchange Act, including: <ul style="list-style-type: none"> □ broker-dealers, □ registered investment advisers, registered investment companies and companies that elect to be regulated as a business development company under the Investment Company Act, □ national securities exchanges, □ transfer agents, □ clearing corporations, □ self-regulatory organizations, □ credit rating agencies, □ securities information processors □ municipal securities dealers, and □ any other person required to be registered under the Exchange Act and any employee, agent or contractor acting on behalf of, registered with or providing services to, any such person, to the extent such persons act “in a regulated capacity.” ▪ CFTC-Registered Persons. Consumer Bureau has “no authority to enforce this title” with respect to any person that is registered, or required by statute or regulation to be registered, with the CFTC, to the extent such persons act “in a regulated capacity.”

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
	<ul style="list-style-type: none"> □ commodity trading advisers, □ commodity pool operators, □ introducing brokers, □ boards of trade, □ derivatives clearing organizations, □ multilateral clearing organizations, □ retail foreign exchange dealers, □ swap execution facilities, and □ any employee, agent or contractor acting on behalf of, registered with or providing services to, any such person, to the extent such persons act “in a registered capacity.” 	
Other Notable Carveouts from Authority of CFPA / Consumer Bureau	<ul style="list-style-type: none"> ▪ Business of insurance. ▪ Most extensions of purchase money credit and collection of debt related thereto. ▪ Persons regulated by a state insurance regulator. ▪ Auto dealers. ▪ Accountants, tax preparers and attorneys, real estate licensees. ▪ Employee benefit plans. ▪ Consumer reporting agencies. 	<ul style="list-style-type: none"> ▪ Substantially similar carveouts, but also: <ul style="list-style-type: none"> □ Carves out small businesses. □ Does not carve out auto dealers, although the Senate voted (on a 60-30 margin) to instruct conferees to include Senator Brownback’s amendment that would carve out auto dealers.
Relationship to State Law	<ul style="list-style-type: none"> ▪ The Comptroller of the Currency and courts authorized to preempt state law if such law is found to discriminate against national banks or to “prevent, significantly interfere with, or materially impair the ability of a national bank [or thrift] to engage in the business of banking.” 	<ul style="list-style-type: none"> ▪ The Comptroller of the Currency and courts authorized to preempt state law that discriminates against national banks and also “in accordance with the legal standard of the decision of the Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner,

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
	<ul style="list-style-type: none"> □ Preemption determinations: <ul style="list-style-type: none"> • Must be made on the basis of substantial evidence. • Must be made on a case-by-case basis, although to the extent that they are substantively equivalent, state consumer protection laws can be preempted as a class with respect to all national banks and thrifts. • Comptroller of the Currency must consult with CFPA with respect to whether state laws are “substantively equivalent.” • Are not delegable and are subject to less than deferential judicial review. • May be made only following a finding in writing that a federal law provides a substantive standard applicable to a national bank or thrift that regulates the particular conduct, activity or authority that is subject to the preempted state consumer financial law. ▪ State attorneys general may bring any action to enforce any applicable federal or non-preempted state law against a national bank or thrift. <ul style="list-style-type: none"> □ No requirement, as in Senate bill, that such actions be brought in an attorney general’s own state. ▪ Provides that this Act does not preempt or alter the applicability of any state law to any nondepository subsidiary or affiliate of a national bank (other than an institution chartered as a national bank). 	<p>et al.,” which holds that states may regulate national banks where “doing so does not prevent or significantly interfere with” a national bank’s exercise of its powers.</p> <ul style="list-style-type: none"> □ Evidentiary burden, case-by-case determination standard, delegation and deference standards imported from the House bill. □ No “substantive standard” provision. <ul style="list-style-type: none"> ▪ Generally, state attorneys general may bring civil actions to enforce the consumer protection provisions of the Senate bill or regulations prescribed by the Consumer Bureau thereunder. ▪ With respect to national banks and thrifts, however, state attorneys general may bring civil actions only to enforce Consumer Bureau regulations, and not violations of provisions of the Senate bill itself. <ul style="list-style-type: none"> □ Any state regulator may bring a civil action to enforce the consumer protection provisions of the Act or regulations prescribed by the Consumer Bureau thereunder with respect to any entity (other than a national bank or thrift) that is state-chartered, incorporated, licensed or otherwise authorized to do business in the state.

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
		<ul style="list-style-type: none"> □ Any actions brought by state attorneys general must be brought in a federal or state court in the attorney general’s own state. □ State attorneys general may also bring enforcement actions against a national bank or thrift for violations of a non-preempted State law. ▪ Substantially similar to the House bill, provides that state consumer financial law will apply to any subsidiary or affiliate of a national bank (other than those chartered as national banks) to the same extent as such law applies to any person subject to such law.

Funding

- Authorizes the CFPA to levy fees to cover the expenses of its supervision, examination and enforcement activities.
 - Smaller institutions still subject to the examination and enforcement authority of their current regulators will not be subject to assessment by the CFPA.
 - Fees will be based on an institution’s size, the complexity of the risk it poses and its compliance record.
 - A nondepository institution will not be subject to assessment if the assets of and gross revenues derived by that institution are not substantially related to “financial activities,” although the Director can still impose assessments if he or she determines that the institution has an “extensive” consumer financial product or services operation.
 - Assessment funds will be established separately for depository and nondepository institutions, although a nondepository institution will not be subject to lower assessments to the extent that it exhibits the characteristics of a depository institution.
- Consumer Bureau would not be funded by assessments on covered companies, but would receive annually from the Federal Reserve an amount equal to 10-12% of the Federal Reserve’s total operating expenses.

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
<i>Private Right of Action</i>	<ul style="list-style-type: none"> Does not create any new federal private right of action, but does not deny any private rights of action under existing state and federal consumer protection laws, including those federal private rights of action to be transferred to the CFPA from other agencies. 	<ul style="list-style-type: none"> Private parties are not precluded from enforcing applicable rights under Federal or State law.
<i>Community Reinvestment Act Not an “Enumerated Consumer Law”</i>	<ul style="list-style-type: none"> Consumer financial protection functions relating to an existing agency’s responsibilities under the Community Reinvestment Act not transferred to the CFPA. 	<ul style="list-style-type: none"> Same as the House bill.
<i>Federal Trade Commission to Retain Authority</i>	<ul style="list-style-type: none"> FTC retains all existing authority under the Federal Trade Commission Act or any other law other than the enumerated consumer laws, with respect to which the FTC’s existing authority is transferred to the Bureau. 	<ul style="list-style-type: none"> Same as the House bill, although FTC also granted explicit authority to enforce Consumer Bureau-issued regulations with respect to covered persons subject to FTC jurisdiction under the FTC Act.
<i>Bank-Related Catch-All in Definition of “Financial Product or Service”</i>	<ul style="list-style-type: none"> Any “activity [that] is financial in nature or is otherwise a permissible activity for a bank or bank holding company, including a financial holding company, under any provision of federal law or regulation applicable to a bank or bank holding company, including a financial holding company” 	<ul style="list-style-type: none"> Any financial product or service permissible for a bank or for a financial holding company to offer or provide under federal law or regulation that has, or likely will have, a “material impact on consumers,” as determined by the Consumer Bureau satisfies the definition.
<i>Restrictions on Card Networks and Card Issuers</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Interchange transaction fees must be “reasonable and proportional to the actual cost” of the card network’s expense for processing the transaction. Exempts card issuers with less than \$10 billion in assets. Prohibits card issuers from establishing anti-competitive payment card network restrictions, including: inhibiting the ability of any person to provide a discount or in-kind incentive for the use of cash, check or another payment card; or inhibiting the ability of any person to set minimum or maximum dollar amounts for the use of card.

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
<i>Prohibition on Steering Incentives for Mortgage Originators</i>	<ul style="list-style-type: none"> No corresponding provision in the CFPA title, but Title VII of the House bill contains substantially the same provisions as in the Senate bill. 	<ul style="list-style-type: none"> Prohibits an originator from receiving compensation that varies based on the terms of the loan other than the amount of the principal. Prohibits the inclusion of most loan origination fees in the interest rate charged on consumer credit transactions secured by real property except in certain limited circumstances.
<i>Requirement to Verify Ability to Repay Residential Mortgage Loans</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Prohibits consumer lending secured by real property or a dwelling without a determination by the lender, based on “verified and documented information,” that the consumer has a “reasonable ability to repay” the loan and all applicable taxes, insurance and assessments. Does not apply to bridge loans of 12 months or less or to reverse mortgages.
<i>Authority to Restrict Mandatory Pre-dispute Arbitration</i>	<ul style="list-style-type: none"> The Commission can issue regulations prohibiting or imposing conditions on mandatory pre-dispute arbitration clauses in agreements between covered persons and consumers for consumer financial products or services. 	<ul style="list-style-type: none"> Consumer Bureau must conduct a study of mandatory pre-dispute arbitration provisions before it may determine to limit their use; any such limits must be consistent with the findings of the study.
<i>Prohibition on Certain Prepayment Penalties</i>	<ul style="list-style-type: none"> Prohibits prepayment penalties on residential mortgage loans that are not “qualified mortgages,” which include fixed-rate fully amortizing mortgages and adjustable rate mortgages that fully amortize over the loan term; also limits and phases out prepayment penalties with respect to qualified mortgages, requiring lenders offering products containing such penalties to offer products without them. The departments of Housing and Urban Development, Veterans Affairs and Agriculture, and the Federal Housing Agency and Rural Housing Service, must, in consultation with the federal banking agencies, prescribe regulations regarding revisions to the criteria that define a “qualified mortgage” in the context of the prohibition on certain types of prepayment penalties. 	<ul style="list-style-type: none"> Substantially similar to the House bill.

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
Remittance Transfers	<ul style="list-style-type: none"> Imposes disclosure obligations on remittance transfer providers; requires Commission to establish standards with respect to error resolution, cancellation and refunds to consumers covering fees or exchange rates, and in the case of an exchange rate not fixed on send, the exchange rate range for the prior 30-day period. 	<ul style="list-style-type: none"> Substantially similar to the House bill.
Expanded Application of Truth in Lending Act	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Amends the Truth in Lending Act to apply to credit transactions and consumer leases below \$50,000 (instead of \$25,000).
Consumer Information Requests	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Requires that covered persons comply with consumer requests for information concerning a consumer financial product or service obtained from the covered person, but excludes from the disclosure obligation confidential commercial information, information collected to prevent fraud or money laundering, or to detect or make a report regarding other unlawful conduct, or other nonpublic or confidential information.
Adverse Actions Based on Consumer Credit Reports	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Any person who takes an adverse action with respect to any consumer based in whole or in part on consumer report information must provide that consumer with his or her numerical credit score; the consumer’s current or most recent credit score; the range of possible credit scores under the model used; up to four key factors that adversely affected the credit score of the consumer; the date on which the credit score was created; and the name of the person or entity that provided the credit score or credit file.
Miscellaneous	<ul style="list-style-type: none"> The Commission must issue a new rule mandating overdraft protection disclosures in consumer banks’ branch offices. The Commission must issue new rules covering reverse 	<ul style="list-style-type: none"> Not in the Senate bill.

TITLE X – CFPA/CFPB

	HOUSE BILL	SENATE BILL
	<p>mortgages, including provisions mandating certain disclosures and identifying what constitutes an “unlawful, unfair, deceptive or abusive” act or practice.</p> <ul style="list-style-type: none"> Private educational lenders must now secure certain certifications from prospective borrowers’ schools, and will be subject to new regulations to be issued by the CFPA. 	
GSE Reforms	<ul style="list-style-type: none"> Includes a sense of Congress for the importance of meaningful structural reforms of GSEs. 	<ul style="list-style-type: none"> Requires the Treasury Secretary to conduct a study of and develop recommendations regarding the options for ending the conservatorship of Fannie Mae and Freddie Mac and to report its findings to the Congressional Banking Committees by January 31, 2011. Options to be studied include: gradual wind-down and liquidation; privatization; incorporation of functions into a governmental agency; and dissolution into smaller components.
Effective Date	<ul style="list-style-type: none"> Most provisions will become effective 180 days after the date of enactment. 	<ul style="list-style-type: none"> Most of the institutional changes and rule changes will become effective on the designated transfer date, which will occur between 6 and 18 months after enactment, subject to extension to up to 24 months after enactment. Within 60 days after enactment, the Treasury Secretary, in consultation with the heads of the Federal Reserve, FDIC, FTC, NCUA, OCC, OTS, HUD and OMB, must specify the designated transfer date. <ul style="list-style-type: none"> Treasury Secretary must also consult with the above-mentioned regulators before extending the designated transfer date.

TITLE XI – FEDERAL RESERVE SYSTEM PROVISIONS

	HOUSE BILL	SENATE BILL
Limits to Federal Reserve Emergency Lending	<ul style="list-style-type: none"> Lending must be part of a broadly available credit or other facility and can no longer be exclusively to a single or specific individual, partner or corporation. Limits aggregate borrowing to \$4 trillion. 	<ul style="list-style-type: none"> Limits Section 13(3) assistance to a “program or facility with broad-based eligibility,” but not to any single individual, partnership or corporation.
Policies and Procedures	<ul style="list-style-type: none"> Requires 2/3 of the Council and written consent by the Treasury Secretary that a destabilizing liquidity event exists, and requires a finding by each Federal Reserve Board member voting to approve emergency financing and the Treasury Secretary that there is a 99% likelihood of repayment of all funds put at risk and the interest thereon. Exercise of emergency lending power triggers Congressional consideration of a joint resolution of disapproval. Borrowing cannot be secured by low-quality assets, and the Federal Reserve must obtain evidence that the borrower is unable to find adequate credit accommodations from the private sector. 	<ul style="list-style-type: none"> Federal Reserve must establish by regulation, in consultation with the Treasury Secretary, policies and procedures governing emergency lending designed to ensure that any emergency lending program or facility is designed to provide liquidity to the financial system and not to aid a failing financial company; that collateral for emergency loans is sufficient to protect taxpayers from losses and that any such program is terminated in a timely and orderly fashion. <ul style="list-style-type: none"> The policies and procedures must require that a Federal Reserve Bank assign a lendable value to all collateral for any loan executed by such a Federal Reserve Bank under amended Section 13(3) to determine whether the loan is secured satisfactorily. Federal Reserve must also establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Any program or facility must not be structured to assist a single and specific company. Treasury Secretary must provide prior approval of any such assistance. If a recipient of a loan under 13(3) becomes subject to FDIC resolution authority, the Federal Reserve bank has a claim against the covered entity equal to the amount of any net realized losses on such loans, with the same priority as an obligation to the Treasury Secretary.

TITLE XI – FEDERAL RESERVE SYSTEM PROVISIONS

HOUSE BILL	SENATE BILL
	<ul style="list-style-type: none"> ▪ Federal Reserve must provide to Congress, within 7 days, a report that justifies the exercise of authority and describes the material terms of the assistance. ▪ Upon the request of the Chairman of the Federal Reserve, certain information, including the identity of the participants in the program or facility, may be kept confidential. ▪ GAO is required to commence one-time audit of past financial assistance provided, with such report to be submitted to Congress within 12 months of the date of enactment.
<p><i>Audit of the Federal Reserve</i></p> <ul style="list-style-type: none"> ▪ Requires GAO audit of the Federal Reserve Board of Governors and Federal Reserve Banks within one year of the date of enactment. This is the Ron Paul (R-TX) provision. ▪ Expands the scope of GAO audits. Removes the limitation on GAO audits with respect to monetary policy deliberations and operations, including open market and discount window operations, transactions made under the direction of the Federal Open Markets Committee, and transactions with or for foreign central banks, foreign governments and public international financing organization from GAO audits. ▪ Requires a 180-day lag period between GAO’s release of records related to individual market actions and such actions. ▪ Excludes unreleased transcripts or minutes of Federal Reserve Board of Governors or Federal Open Market Committee meetings. 	<ul style="list-style-type: none"> ▪ Requires GAO to commence a one-time audit of all loans or other financial assistance provided through the Federal Reserve’s exercise of 13(3) authority between December 1, 2007 and the date of enactment. Federal Reserve must publish, on its website, the receipts and terms of 13(3) assistance provided. <ul style="list-style-type: none"> □ Within 12 months after the date of enactment, the GAO must also complete an audit of the governance of the Federal Reserve Bank system.

TITLE XI – FEDERAL RESERVE SYSTEM PROVISIONS

	HOUSE BILL	SENATE BILL
<i>Eliminates the FDIC's Open Bank Assistance</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Limits the FDIC's authority to provide assistance to individual banks upon a systemic risk finding to only those banks that have been placed in receivership and only for the purpose of winding up the institution. ▪ Requires the Treasury Secretary to report to Congress on the systemic risk finding within 3 days.
<i>Liability Guarantee Programs</i>	<ul style="list-style-type: none"> ▪ Upon a financial distress determination by the Council, and with the consent of the Treasury Secretary, the FDIC can create a widely-available program to guarantee obligations of solvent banks, bank holding companies or affiliates, if necessary to prevent financial instability during times of severe economic distress. <ul style="list-style-type: none"> □ FDIC can require collateral for any such guarantee. □ The maximum guaranteed debt amount would be \$500 billion, subject to increased authority in exceptional circumstances. □ The period for any such program would expire at the end of December 2013. □ In the event of a default on an FDIC-guaranteed obligation, the FDIC could appoint itself as receiver of the bank that defaults, or invoke resolution authority or involuntary bankruptcy with respect to nonbank defaulting entities. □ Amends the Federal Deposit Insurance Act so an obligation to the FDIC as a result of a default on FDIC-guaranteed debt would rank next in priority after deposit liabilities and higher in priority than other liabilities of the institution. 	<ul style="list-style-type: none"> ▪ Provides that the FDIC can create a widely available program to guarantee obligations of solvent depository institutions, depository institution holding companies and affiliates during times of severe economic distress. This authority would replace Section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act as the source of authority for widely available guarantee programs.

TITLE XI – FEDERAL RESERVE SYSTEM PROVISIONS

	HOUSE BILL	SENATE BILL
<i>Policies and Procedures</i>	<ul style="list-style-type: none"> ▪ Upon a financial distress determination by the Council, and with the consent of the Treasury Secretary, the FDIC can create a widely-available program to guarantee obligations of solvent banks, bank holding companies or affiliates, if necessary to prevent financial instability during times of severe economic distress. 	<ul style="list-style-type: none"> ▪ FDIC must establish by regulation, in consultation with the Treasury Secretary, policies and procedures governing issuance of such guarantees. ▪ Terms and conditions of any guarantee program must be established by the FDIC with the concurrence of the Treasury Secretary. ▪ Triggering of guarantee program requires finding by 2/3 of the FDIC and Federal Reserve that there has been a liquidity event and that a failure to take action would have serious adverse effects on financial stability or economic conditions in the U.S., as well as a joint resolution of Congressional approval of the maximum amount of debt that can be guaranteed. <ul style="list-style-type: none"> □ Liquidity event means either: <ul style="list-style-type: none"> • an exceptional and broad reduction in the general ability of financial market participants either to sell financial assets without an unusual and significant discount or borrow using financial assets as collateral without an unusual and significant increase in margin; or • an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.
<i>No Equity Investments</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ The guarantee may not include the provision of equity in any form.
<i>Borrowing Power and Costs</i>	<ul style="list-style-type: none"> ▪ The program would be funded solely by fees on participants. 	<ul style="list-style-type: none"> ▪ FDIC can borrow from Treasury but must charge fees and other assessments to participants in such amounts as are necessary to offset projected losses and administrative expenses.

TITLE XI – FEDERAL RESERVE SYSTEM PROVISIONS

	HOUSE BILL	SENATE BILL
<i>International Sovereign Assistance</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Amends Bretton Woods Agreements Act to require the President to direct the United States Executive Director of the International Monetary Fund to evaluate any proposed loan to a country by the Fund if the amount of the public debt of the country exceeds the gross domestic product of the country and determine whether or not the loan will be repaid and certify that determination to Congress. If the Executive Director determines that a loan by the International Monetary Fund to a country will not be repaid, the President is required to direct the Executive Director to vote in opposition to the proposed loan.
<i>New Senate Confirmation Requirement for President of Federal Reserve Bank of New York</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> The President of the Federal Reserve Bank of New York to be appointed by the President with the advice and consent of the Senate.
<i>Change in Procedures for Electing Federal Reserve Bank Directors</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> No company, or subsidiary or affiliate of a company, that is supervised by the Federal Reserve may vote for members of the board of directors of a Federal Reserve Bank. No past or current officer, director or employee of such company, or subsidiary or affiliate of such company, may serve as a member of the board of directors of a Federal Reserve bank.
<i>New Federal Reserve Board Vice Chairman of Supervision</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Creates position of Vice Chairman of Supervision on the Federal Reserve Board, with such individual to be designated by the President by and with the advice and consent of the Senate and to report semi-annually to Congress. The Vice Chairman is to oversee the supervision and

TITLE XI – FEDERAL RESERVE SYSTEM PROVISIONS

HOUSE BILL		SENATE BILL
		regulation of firms under the Federal Reserve’s supervisory jurisdiction and make policy recommendations for the Federal Reserve with respect to such firms.
<i>New Express Systemic Risk Duties</i>	<ul style="list-style-type: none"> Not in the House bill. 	<ul style="list-style-type: none"> Identification and mitigation of risks to financial stability added as a responsibility of the Federal Reserve.
<i>Council</i>	<ul style="list-style-type: none"> Establishes a Council of Inspectors General on Financial Oversight, comprised of the inspectors general of the Federal Reserve Board, CFTC, HUD, Treasury, FDIC, FHFA, NCUA, SEC and TARP (until termination of TARP authority) to address concerns that apply to the broader financial sector and ways to improve financial oversight. Requires annual report to be submitted to Congress. 	<ul style="list-style-type: none"> Not in the Senate bill.
<i>Restricted Open Market Activities with Respect to Foreign Currency Swaps</i>	<ul style="list-style-type: none"> Prevents a Federal Reserve Bank from engaging in open market activities with respect to foreign currency swaps unless the activity is approved by 5 or more members of the Federal Reserve Board and with the written concurrence of the Treasury Secretary. 	<ul style="list-style-type: none"> Not in the Senate bill.

TITLE XII – IMPROVING ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS

	HOUSE BILL	SENATE BILL
<i>Improving Access to Mainstream Financial Institutions</i>	<ul style="list-style-type: none"> ▪ Not in the House bill. 	<ul style="list-style-type: none"> ▪ Authorizes Treasury Secretary to establish multiyear grants, cooperative agreements and other programs to expand access to mainstream financial institutions and provide alternatives to payday loans. Authorizes the Community Development Financial Institutions Fund to make grants to community development financial institutions to support small dollar loan programs.

TITLE XIII – PAY IT BACK ACT

HOUSE BILL

SENATE BILL

Pay It Back Act

- Not in the House bill.
 - Reduces TARP authorization to \$550 billion.
 - Eliminates revolving feature of TARP authorization, except to the extent TARP funds are returned and disbursement of such funds is necessary to address an immediate and substantial threat to economy from financial instability.
 - Requires proceeds from sale of Fannie, Freddie and FHLB debt purchased under Treasury’s emergency authority and unused funds under the American Recovery and Reinvestment Act to be used solely for deficit reduction.
-

DAVIS POLK CONTACTS

If you have questions regarding this chart, please call any of the lawyers listed below, or your regular Davis Polk contact.

Financial Stability

Luigi L. De Ghenghi	212 450 4296	luigi.deghenghi@davispolk.com
John L. Douglas	212 450 4145	john.douglas@davispolk.com
Randall D. Guynn	212 450 4239	randall.guynn@davispolk.com
Arthur S. Long	212 450 4742	arthur.long@davispolk.com
Reena Agrawal Sahni	212 450 4801	reena.sahni@davispolk.com
Margaret E. Tahyar	212 450 4379	margaret.tahyar@davispolk.com

Orderly Liquidation Authority

John L. Douglas	212 450 4145	john.douglas@davispolk.com
Randall D. Guynn	212 450 4239	randall.guynn@davispolk.com
Arthur S. Long	212 450 4742	arthur.long@davispolk.com
Reena Agrawal Sahni	212 450 4801	reena.sahni@davispolk.com

Transfer of Bank Regulatory Powers

Luigi L. De Ghenghi	212 450 4296	luigi.deghenghi@davispolk.com
John L. Douglas	212 450 4145	john.douglas@davispolk.com
Randall D. Guynn	212 450 4239	randall.guynn@davispolk.com
Arthur S. Long	212 450 4742	arthur.long@davispolk.com
Reena Agrawal Sahni	212 450 4801	reena.sahni@davispolk.com
Margaret E. Tahyar	212 450 4379	margaret.tahyar@davispolk.com

Regulation of Advisers to Hedge Funds and Others

John G. Crowley	212 450 4550	john.crowley@davispolk.com
Yukako Kawata	212 450 4896	yukako.kawata@davispolk.com

Insurance

Randall D. Guynn	212 450 4239	randall.guynn@davispolk.com
Ethan T. James	212 450 4244	ethan.james@davispolk.com
Annette Nazareth	202 962 7075	annette.nazareth@davispolk.com
Margaret E. Tahyar	212 450 4379	margaret.tahyar@davispolk.com

Changes to Bank and Thrift Holding Company Regulation

Luigi L. De Ghenghi	212 450 4296	luigi.deghenghi@davispolk.com
John L. Douglas	212 450 4145	john.douglas@davispolk.com
Randall D. Guynn	212 450 4239	randall.guynn@davispolk.com
Arthur S. Long	212 450 4742	arthur.long@davispolk.com
Reena Agrawal Sahni	212 450 4801	reena.sahni@davispolk.com
Margaret E. Tahyar	212 450 4379	margaret.tahyar@davispolk.com

Derivatives and Credit Retention Requirements

Daniel N. Budofsky	212 450 4907	daniel.budofsky@davispolk.com
Robert L.D. Colby	202 962 7121	robert.colby@davispolk.com
Randall D. Guynn	212 450 4239	randall.guynn@davispolk.com
Annette L. Nazareth	202 962 7075	annette.nazareth@davispolk.com
Lanny A. Schwartz	212 450 4174	lanny.schwartz@davispolk.com

Payment, Clearance and Settlement

Robert L.D. Colby	202 962 7121	robert.colby@davispolk.com
Luigi L. De Ghenghi	212 450 4296	luigi.deghenghi@davispolk.com
Randall D. Guynn	212 450 4239	randall.guynn@davispolk.com
Annette L. Nazareth	202 962 7075	annette.nazareth@davispolk.com
Margaret E. Tahyar	212 450 4379	margaret.tahyar@davispolk.com

Investor Protection, Securities Laws Enforcement, SEC Management and PCAOB and Inspectors General

Robert L.D. Colby	202 962 7121	robert.colby@davispolk.com
Annette L. Nazareth	202 962 7075	annette.nazareth@davispolk.com
Jennifer G. Newstead	212 450 4999	jennifer.newstead@davispolk.com
Lanny A. Schwartz	212 450 4174	lanny.schwartz@davispolk.com
Linda Chatman Thomsen	202 962 7125	linda.thomsen@davispolk.com

Credit Rating Agencies and Municipal Securities

Robert L.D. Colby	202 962 7121	robert.colby@davispolk.com
Annette L. Nazareth	202 962 7075	annette.nazareth@davispolk.com

Corporate Governance

Ning Chiu	212 450 4908	ning.chiu@davispolk.com
Louis Goldberg	212 450 4539	louis.goldberg@davispolk.com
William M. Kelly	650 752 2003	william.kelly@davispolk.com
Phillip R. Mills	212 450 4618	phillip.mills@davispolk.com
Richard J. Sandler	212 450 4224	richard.sandler@davispolk.com

Executive Compensation

Kyoko Takahashi Lin	212 450 4706	kyoko.lin@davispolk.com
Barbara Nims	212 450 4591	barbara.nims@davispolk.com

Bureau of Consumer Financial Protection

Robert L.D. Colby	202 962 7121	robert.colby@davispolk.com
Arthur S. Long	212 450 4742	arthur.long@davispolk.com
Annette L. Nazareth	202 962 7075	annette.nazareth@davispolk.com
Jennifer G. Newstead	212 450 4999	jennifer.newstead@davispolk.com
Margaret E. Tahyar	212 450 4379	margaret.tahyar@davispolk.com
Linda Chatman Thomsen	202 962 7125	linda.thomsen@davispolk.com

Federal Reserve System Provisions

John L. Douglas	212 450 4145	john.douglas@davispolk.com
Randall D. Guynn	212 450 4239	randall.guynn@davispolk.com
Arthur S. Long	212 450 4742	arthur.long@davispolk.com
Reena Agrawal Sahni	212 450 4801	reena.sahni@davispolk.com