Dodd-Frank Wall Street Reform and Consumer Protection Act

Enacted on July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act" or "the Act") provides the most comprehensive legislative reform of the U.S. financial sector since the 1930s. Aimed at addressing the causes of the financial crisis of the last few years, the Act, among other things, provides for a more comprehensive, macro perspective for identifying and taking action in response to emerging risks in financial sectors and closing regulatory gaps; heightened prudential supervision of systemically important nonbank financial companies and large, interconnected bank holding companies; orderly liquidation of systemically important nonbank financial companies and bank holding companies; elimination of open assistance to preserve a failing insured depository institution; improved consumer financial protections and mortgage lending practices; and enhanced transparency and supervision of over-the-counter derivatives, swaps, and securities activities; and other investor protections. The Act significantly impacts the FDIC in its roles as supervisor, receiver, and deposit insurer, as well as making changes to the FDIC's corporate structure.

Supervision

The Dodd-Frank Act creates a new risk oversight umbrella group, the Financial Stability Oversight Council (FSOC). In an effort to mitigate potential systemic risks, the FSOC is empowered to designate certain nonbank financial companies for supervision by the Board of Governors of the Federal Reserve System (Federal Reserve) and to make recommendations for heightened prudential supervision of those nonbank financial companies and bank holding companies with total consolidated assets of $50 billion or more. The FSOC also may designate systemically important financial market utilities or payment, clearing or settlement activities. The FDIC is one of ten voting members of the FSOC.

The FSOC's recommendations may include, for example, leverage limits, risk-based capital requirements, liquidity requirements, and concentration limits. The Federal Reserve will be responsible for implementing heightened prudential standards and supervising such firms. These firms also may be subject to orderly liquidation under Title II of the Act, in which the FDIC will act as receiver to resolve the firm through a process similar to that used to resolve failed insured depository institutions. The Act requires the FDIC and the Federal Reserve to issue joint regulations implementing the requirement that these systemically important financial companies develop plans for their rapid and orderly resolution in the event of material financial distress or failure. It also gives the FDIC backup examination authority over these systemically important financial companies.

The Dodd-Frank Act abolishes the Office of Thrift Supervision (OTS) and transfers responsibility for thrift supervision to the Office of the Comptroller of the Currency (OCC) and

the FDIC, as of the statutory "transfer date" (i.e., July 21, 2011). The FDIC will be responsible for the supervision of state chartered thrifts, while the OCC will supervise federal thrifts. The Federal Reserve will supervise thrift holding companies and their non-depository institution subsidiaries.

The Dodd-Frank Act also creates a new Consumer Financial Protection Bureau (CFPB) within the Federal Reserve System. The CFPB will have exclusive rulemaking authority for specified federal consumer protection laws and will also have examination and primary enforcement authority for many nonbank financial service providers and insured depository institutions (IDIs) and credit unions with total assets of over $10 billion (and any affiliated IDIs). With regard to IDIs over $10 billion otherwise in its jurisdiction, the FDIC will have backup enforcement authority for laws over which the CFPB has primary authority. The FDIC retains its current authority and programs under the Community Reinvestment Act and other consumer related laws not specified for all IDIs within its jurisdiction. It also retains all examination and enforcement authorities over IDIs with total assets of $10 billion or less within its jurisdiction. Examination coordination and information sharing with the new CFPB is required.

Receivership

As noted, the FDIC may be appointed as receiver for a failed systemically significant nonbank financial company or large, interconnected bank holding company. The orderly liquidation authority is similar to the resolution authority for IDIs under the Federal Deposit Insurance Act. However, no monies from the DIF may be used in connection with an orderly liquidation under Title II of the Act. Those resolutions will be funded initially by borrowing against the assets of the failed financial company, with the borrowings to be repaid from asset sales and, if necessary, from "clawbacks" of certain additional payments and from additional risk-based assessments against large financial companies. The Act expressly prohibits the use of taxpayer funds to prevent the liquidation of any financial company under Title II, and taxpayers shall bear no losses from the exercise of any authority under Title II.

Deposit Insurance

The Dodd-Frank Act permanently increases the standard maximum deposit insurance amount to $250,000, and made the increase retroactive to January 1, 2008. The Act also provides temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts for two years from December 31, 2010, through December 31, 2012. During this time, all noninterest-bearing transaction accounts are fully insured, regardless of the balance in the account and the ownership capacity of the funds. This coverage is available to all depositors, including consumers, businesses, and government entities. The unlimited coverage is separate from, and in addition to, the standard insurance coverage provided for a depositor's other accounts held at an FDIC-insured bank.

The Act directs the FDIC to amend its regulations to define "assessment base" as average consolidated total assets minus average tangible equity. For custodial banks and banker's banks, the FDIC may subtract an additional amount as necessary to ensure that the assessment appropriately reflects the risk posed by such institutions.

The Act eliminates the maximum limitation on the designated reserve ratio (DRR) and raises the minimum DRR from 1.15 percent to

1.35 percent of estimated insured deposits. It requires the FDIC to take such steps as may be necessary for the reserve ratio of the DIF to reach 1.35 percent of estimated insured deposits by September 30, 2020. The FDIC must offset the effect on IDIs with total consolidated assets of less than $10 billion of this one-time requirement to reach 1.35 percent by that date rather than 1.15 percent by the end of 2016. The Act also eliminates the payment of dividends from the DIF when the reserve ratio is between 1.35 percent and 1.50 percent and provides the FDIC sole discretion to limit or suspend dividends when the reserve ratio exceeds 1.50 percent.

FDIC Corporate Structure

The Dodd-Frank Act places the Director of the CFPB on the FDIC Board in lieu of the Director of the OTS. In addition, the Act requires the FDIC to establish by January 21, 2011, an Office of Minority and Women Inclusion (OMWI) to develop standards for equal employment opportunity and the racial, ethnic, and gender diversity of the agency's workforce and senior management; increase participation of minority- and women-owned businesses in agency programs and contracts; and assess the diversity policies and practices of entities regulated by the agency. The OMWI is also to advise the agency on the impact of policies and regulations on minority- and women-owned businesses. The FDIC transferred the responsibilities of the Office of Diversity and Economic Opportunity to OMWI, effective January 21, 2011.

Other Financial Regulatory Reforms

The Act also makes a number of other reforms, including:

- Requiring that minimum leverage and risk-based capital requirements for IDIs, depository institution holding companies and nonbank financial companies supervised by the Federal Reserve can be no lower than the generally applicable requirements in effect on July 21, 2010 (the "Collins Amendment");
- Prohibiting bank holding companies and their affiliates from engaging in proprietary trading or sponsoring or investing in a hedge fund or private equity fund (the so-called "Volcker Rule");
- Requiring greater transparency and regulation of over-the-counter derivatives, asset-backed securities (including risk retention requirements), hedge funds, mortgage brokers and payday lenders;
- Requiring the financial regulators to prohibit incentive compensation at financial institutions that encourages excessive risk taking;
- Providing new rules for transparency and accountability for credit rating agencies and requiring regulators to eliminate regulatory reliance on credit ratings; and
- Establishing a Federal Insurance Office to, among other things, participate in the FSOC and monitor issues in the insurance industry.