Americans for Financial Reform
1825 K St NW, Suite 210, Washington, DC, 20006
202.263.4533

A Brief Summary of the Dodd Frank Wall Street Reform and Consumer Protection Act

CFPB

The new Consumer Financial Protection Bureau is the biggest consumer reform since deposit insurance in the 1930s. Consumers will now have one-stop shopping for consumer protection and an independent advocate on their side to prevent tricks and traps with regard to a range of consumer financial products and services including mortgages, payday loans, bank accounts, credit cards, prepaid cards, credit score usage, student loans, and more.

A. The bill sets up an effectively designed autonomous consumer bureau with broad powers and independent funding. Key features include:

- It is an autonomous Bureau housed at, but not under, the Federal Reserve
- The bureau will have the power to write rules implementing both specific consumer statutes (including Truth in lending, Consumer Leasing Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, HOEPA, HMDA, RESPA, Electronic Funds Transfer Act, AMPTA), and the general charge to prevent 'unfair, abusive, and deceptive practices' covering virtually the entire financial sector (except car dealers).
- The bureau will have the authority to enforce the law and rules and to conduct regular supervision with regard to all large banks, all payday lenders, all mortgage companies and other players in the mortgage market, and all other large non-bank lenders (it will write the rules defining ' large' for this purpose). Supervision and enforcement for banks with under $10 billion in assets will be by their prudential supervisors, and other small non-bank lenders will be subject to FTC and state enforcement.
- The Bureau will have ample independent funding (including increases, so that inflation will not erode the bureau's budget over time) not subject to Congressional oversight.
- Enforcement remedies available to the CFPB include cease and desist administrative orders, fines, requiring repayment to injured customers, rescinding or reforming contracts and filing lawsuits against firms that violate the Act or CFPB rules. There is no private right of action to enforce the Act or the CFPB rules, and the status quo is retained on private rights of action under existing statutes now enforced by the CFPB.
- The Bureau will have a single Presidentially appointed and Senate confirmed director, a structure we advocated as more effective than a governing board.

- The Bureau will have the responsibility to collect, investigate and respond to consumer complaints, as well as to set up procedures for timely responses to consumers, and monitor firms complaint resolution records.

- Dodd Frank rolls back existing overbroad federal preemption of consumer financial protection laws in a number of ways, expanding the areas for state enforcement and state law making including: by making state consumer financial laws fully applicable to the subsidiaries and affiliates of national banks and thrifts, by clarifying that state Attorneys' general can bring actions to enforce any applicable law against national banks, and by otherwise limiting the scope of OCC preemption of State laws. Attorney's General and State regulators are allowed to enforce CFPB rules and regulations against national banks and thrifts, but not to exercise its general authority to policy ' unfair deceptive and abusive practices '

- The Act requires the creation of a set of new offices and units within the CFPB to make sure that particular needs and constituencies are fairly served by financial products and services, and that the Bureau engages with these constituencies, and with specific education and outreach missions:
    - Office of Financial Education (to develop and implement initiatives to educate and empower consumers to make better informed financial decisions)
    - Office of Fair Lending and Equal Opportunity (led by an Assistant Director appointed by the CFPB Director)
    - Office of Financial Protection for Older Americans (led by an Assistant Director appointed by the CFPB Director)
    - Office of Service Member Affairs
    - Private Student Loan Ombudsman
    - Community Affairs Unit (to provide information, guidance, and technical assistance regarding offering products to traditionally underserved communities)

- In addition the Act authorizes the Treasury Secretary to take a variety of steps to expand access to mainstream financial institutions and to provide alternatives to payday loans.

- The Bureau also has a research function and is charged with studying: access to fair and affordable credit for traditionally underserved communities, developments in the market including areas of high risk to consumers, consumer understanding and use of disclosures and communications, and understanding of product costs and benefits, consumer behavior and performance with regard to loans, and the experiences of underserved customers.

- The Bureau is specifically allowed to prescribe rules to ensure that he features of any financial product or serve are fully accurately and effectively disclosed, and may include a model disclosure, validated through consumer testing, as part of such rules. Lenders using the model form have a safe harbor with regard to compliance with the disclosure provision with regard to the model form.

B. Exemptions, Exceptions and Challenges to Bureau effectiveness

- The law includes a “carve out” from the authority of the consumer bureau for auto dealers who sell or broker loans. The Bureau does, however, have authority over other kinds of auto lenders, and can affect the industry in this way. In addition, Dodd Frank provides the FTC, which retains jurisdiction over car auto dealers, with normal rule-making authority over dealers.

- Dodd Frank subjects the CFPB to small business impact preview requirements (along with OSHA and the EPA. In addition to standard compliance with the regulatory flexibility Act) that requires convening a review panel to consider impact on small businesses and take into account their concerns. One important danger of this review is that allows small credit providers (like pay day lenders) a first chance to object to rules including those specifically designed to combat their abusive practices.

- Dodd Frank allows the Systemic Risk Council (made up of the Secretary of the Treasury, FRB Chair, Comptroller of the Currency, CFPB Director, SEC Chair, FDIC Chair, CFTC Chair, FHFA Director, NCUA Chair and an independent member with insurance expertise) to overturn a CFPB regulation if it decides by 2/3 vote that the rule would put at risk the safety and soundness of the US banking system or the stability of the US financial system.

- There are additional specific exemptions to CFPB authority for merchants not principally engaged in extending credit, and for accountants, tax preparers and attorneys not doing so. We do not anticipate that these will present significant problems, but they will need to be watched to prevent evasions.

- The CFPB is prevented from setting interest rate limits / usury caps unless explicitly authorized by law. It will have to prevent abusive payday lending, for example, through other mechanisms.

Mortgage Provisions

The Dodd – Frank Act includes key mortgage reform provisions that advocates have sought to prevent a repeat of the subprime lending crisis.

- Lenders will be required to verify that borrowers have the ability to repay their entire mortgage, taking into account not just initial interest rates, but future rates as well.

- Prepayment penalties, which lock borrowers into high-cost loans, are banned for all but prime, fixed-rate mortgages and are strictly limited for all loans.

- Creditors may no longer pay mortgage originators more for steering borrowers into worse loans than they qualify for. No yield spread premiums may be paid based on the terms of the loan, and the Board/CFPB are required to issue additional regulations preventing steering.

- Remedies are strengthened, making it easier to enforce the law. If a lender violates Dodd-Frank’s origination provisions, the homeowner is able to raise those violations as a defense against foreclosure.

- Mandatory arbitration clauses are prohibited on mortgages, helping make all other laws, rules and guidelines dramatically easier to enforce.

- The legislation sets up a ‘safe harbor’ that creates a legal presumption that lenders have met the “ability to repay” standard if they make a loan with safe features and low origination points and fees.

- Triggers for loans to be considered “high-cost” and subject to HOEPA provisions, providing consumers with additional protections, are lowered. And counseling is now required for borrowers sold high-cost loans.

- Rules governing appraisals will help prevent deliberate inflation or deflation of home values.

<u>Additional consumer protections</u>

- The Bureau has the authority, after completion of a study, and if it is consistent with the findings of this study, to ban or limit forced arbitration clauses in consumer financial contracts. Shaping the study, and ensuring that the agency takes strong action to ban these clauses – which effectively vitiate consumer protections – will be an important priority.

- New disclosures and protections for people sending remittances abroad: The act amends the Electronic Funds Transfer Act to create a new disclosure that will allow senders to see exactly how much their recipient can expect to receive in their home currency. This disclosure will be available pre-transaction, making it easier for consumers to shop wiring funds. Remittance senders will have new remedies should providers lose their funds or charge additional fees previously undisclosed.

- The “swipe fee” or interchange provisions of the Act give the Federal Reserve authority to determine (subject to certain exceptions for EBT cards, prepaid cards and cards issued by credit unions and small banks) that interchange fees imposed by card networks on merchants who accept debit cards are reasonable and proportional to the transaction cost. Further, the networks will be prohibited from restricting merchants from providing cash discounts or suggesting lower-cost methods of payment (such as substituting a lower-interchange debit card for a rewards credit card) or setting minimums for credit card (but not debit card) purchases to offset the high cost of accepting the cards. It will require public engagement to ensure that the potential savings as a result of this change benefit consumers.

- A credit score provision requires that when a consumer is denied credit or pays more for credit they must be provided a copy of the actual credit score used to make the determination to deny or charge a higher price, along with the adverse action notice.

- The Act establishes whistle blower protections for financial industry employees who help to expose violations of consumer laws and other wrongdoing.

- The Act amends TILA to apply to credit transactions and consumer leases below 50,000 instead of 25,000.

- The Act requires a study of reverse mortgages to be completed not more than 1 year after the transfer date to determine if conditions or limitations on such loans are necessary to protect borrowers.

- The Act requires a study of on the nature, range and size of variations between the credit scores sold to consumers and those sold to creditors, and whether the variations disadvantage consumers.

- The Act requires the sentencing commission to review sentencing guidelines for fraud offenses related to financial institutions and mortgage loans, as well as to securities fraud, to reflect the intent that the punishments account for the harm such frauds could cause.

Foreclosure prevention measures

- The legislation does NOT include any dramatic or large-scale measures to stem the continuing foreclosure crisis. It does include a number of very modest but useful steps.

- Assistance for Unemployed Homeowners: the legislation appropriates one billion dollars to HUD to create a program providing low-cost bridge loans to unemployed (or sick) homeowners to help them weather the economic storm and return to successful homeownership once re-employed.

- Legal Aid Foreclosure Prevention: $35 million is authorized (but not appropriated) to support nonprofit programs providing legal assistance to homeowners facing foreclosure.

- Neighborhood Stabilization Program: the legislation appropriates one billion dollars for the third round of HUD's Neighborhood Stabilization Program. Foreclosures have already devastated many neighborhoods, and significant investment is now required to bring back affordable housing and healthy neighborhoods.

- Increased HAMP transparency: the act requires that Treasury make public the "net present value" (NPV) test used determine whether a loan is eligible for modification. It also requires Treasury to release loan-level data it is collecting through the HAMP program. These changes can help ensure that homeowners receive the help to which they are entitled and will enable analysts and advocates to understand the program better.

Data collection enhancements

- The Act requires the collection and reporting of new additional Home Mortgage Disclosure Act (HMDA) data, including information on loan terms and conditions such as whether a loan is fixed or adjustable rate, the existence of prepayment penalties, the channel through which it was made, information about the borrower's qualifications, and property value. This information will help provide a clearer picture of patterns of credit quality and cost.

- The Act requires the collection of new data on small business lending that will help assess whether woman and minority-owned small business are receiving loans to start or expand their businesses (amends ECOA).

- The Act requires HUD to create a default and foreclosure database that would be an early warning system enabling stakeholders to take action if the data shows a spike in foreclosures.

Student loan provisions

- **CFPB rules cover all private student loans, and the CFPB has full supervision and enforcement authority over the private student loans provided by all nonbanks and by banks with more than $10 billion in deposits.** For banks and credit unions under $10 billion their current regulator will be responsible for enforcing CFPB rules. In the case of Sallie Mae *Bank*, the FDIC will be responsible for enforcing CFPB rules, although the CFPB could take enforcement action against Sallie Mae itself, which is not a bank.

- **The Act creates a private student loan ombudsman** charged both with assisting borrowers and with analyzing complaints and making policy recommendations to Congress and the Administration to address them.
- **Required report on private student loans (Sec.1077).** Within two years of enactment, the CFPB is to issue a report on private student loans, including growth and changes in the market, the underwriting and terms of the loans, who is taking them out and why, and if they have taken out the maximum in federal loans first. The report is to include policy recommendations based on the findings.
- The law does NOT include the House private loan certification provisions, despite broad support for this measure from students, schools and lenders.

Improving Access to Mainstream Financial Institutions

- Title 12 of the Act authorizes two grant programs, one to help enable low and moderate-income people to open appropriate bank accounts, and one to enable lenders to provide safe and affordable small dollar loan products. This section also authorizes the use of CDFI funds to establish loan loss reserve funds for small dollar loan programs.

Systemic Risk & Resolution Authority

- **Federal Reserve Governance Reform:**

Today, the powerful Federal Reserve is functionally controlled by its regulated banks, with banks choosing 2 out of every 3 regional Reserve Bank Directors. The law partially ends this conflict of interest by eliminating the ability of the Directors who represent banks to vote for the regional bank Presidents. The most substantial reforms in this area, however - provisions barring member banks from voting for directors or bank officers from serving as directors ("the Jamie Dimon rule") and making the powerful NY Fed Bank President presidentially-elected – did not survive the Conference.

- **Federal Reserve Transparency / Audit:**

The legislation includes a one-time audit of all Federal Reserve 13(3) emergency lending during the '07-'08 financial crisis, and ongoing GAO audit authority for future 13(3) and Fed discount window lending, as well as open market transactions. The conference eliminated the House's more comprehensive audit of the Federal Reserve. The law also ends the Fed's open-ended bailout authority by limiting 13(3) lending only to system-wide support for healthy companies, and disallowing loans to prop up individual troubled firms, and by requiring that taxpayers be paid back.

- **Rebuilding the Regulatory Structure for Wall Street Risk:**

The law creates a new council of regulators (the Financial Stability Oversight Council) to monitor systemic risk and advise the Federal Reserve Board, the primary systemic risk regulator. For the first

time, it imposes higher capital, leverage and liquidity standards on the biggest, riskiest financial firms and creates bank-like oversight for large, interconnected "shadow bank" financial companies like AIG and mortgage financers that were at the center of the crisis, and that were previously essentially unregulated. In a loss, the conference failed to undo a last-minute Senate amendment that unnecessarily allows any financial firm that is just 16% commercial to escape oversight from the systemic risk council, no matter what threat the firm could pose to the economy.

- **Taking on Bank Risk:**

To address the dangerous degree of interconnection on Wall Street (through derivatives contracts, repurchase ("repo") agreements and other non-deposit funding), the final bill ensures that firms don't become too exposed to any single financial counterparty or to their own affiliates. The final law also incorporates the Collins amendment language to improve the quality of capital that banks have to hold and ensure that leverage and capital standards are higher in the future than they are today, but it unfortunately delays implementation of this important provision. The conference also weakened the Speier amendment, which would have required systemically risky financial companies to hold at least $1 in capital for every $15 in debt. The conference turned that reasonable leverage ratio into a discretionary standard the Fed can impose only if the FSOC finds that a firm poses a grave threat to the economy.

- **The Volcker Rule/Merkley-Levin:**

The conference report includes the stronger, statutory version of the Volcker Rule embodied in the Merkley-Levin amendment (as compared to the weaker version included in the Senate bill prior to conference). It ensures that banks do not make risky "proprietary" bets for their own accounts with taxpayer-backed deposit funds, and limits investment in private funds. Proprietary trading and private fund speculation is not only risky; it puts banks in conflict with their clients and diverts bank capital away from lending to America's small businesses and families. Sen. Scott Brown was able to win a carve out in the Volcker Rule's original private fund ban to allow banks to continue to own these funds, and invest up to 3% of their capital in them. However, banks have to set aside in capital reserves every dollar that they invest in these funds. To address the Bear Stearns hedge fund bailout problem (the firm invested just $40 million in a hedge fund that it eventually bailed out for $3.2 billion), the bill prohibits the banks from bailing out their funds. It also includes language banning Goldman-style conflicts-of-interest wherein Wall Street firms package risky securities for customers and then bet that they will fail.

- **Providing an Alternative to Bailouts with Resolution Authority:**

The bill extends FDIC "resolution authority" for the government to safely shut down not just depository banks, but shadow banks like AIG or the conglomerates that own banks (like Citigroup). This will be critical to containing the next financial company failure and providing an alternative to bailouts. While the House's industry-funded $150 billion Orderly Liquidation Fund was the surest way to protect taxpayers from the cost of shutting down a large failed financial firm, the conference rejected this "gambler pays" fund in favor of a line of credit from Treasury to be repaid by Wall Street in the future. To pay for costs associated with the entire bill, the conference included a risk-based assessment on large hedge funds and Wall Street banks, to be used in the event of liquidation or, after 25 years, to pay down the national debt.

Derivatives

- **Overall**

Throughout most of the fight to reform the derivatives market we focused on provisions that will provide safety, soundness and transparency. We fought for comprehensive clearing requirements to ensure that trades are processed through third-party clearinghouses that guarantee payment in case of default and require parties to have cash to back their bets. And we pushed for rules that will bring transparency to the markets by forcing trading on to open exchanges that provide comprehensive information to participants, regulators and the public about each trade. On these two fronts, we were largely successful.

We are disappointed that some other elements of the derivatives title were weakened in Conference as compared to the bill that passed the Senate, in particular the requirement in the Senate bill that taxpayer-backed banks move their swaps desks into separately capitalized subsidiaries, and the provision that would have required swaps dealers to act in the best interest of their clients.

All told, however, the derivatives markets and the overall financial system will be safer and more transparent as a result of this legislation.

- **Clearing -** It is estimated that Dodd Frank will require something like 90% of standard derivatives to clear. This means that large banks, insurance companies, hedge funds and other financial institutions will be required to submit standardized swaps to clearinghouses and post margin to back their bets. There are some exemptions from the clearing requirements that allow commercial companies hedging commercial risk and other small players in the derivatives markets to choose not to process trades through a clearinghouse.

- **Trading –** The Senate's strong language requiring trading and real-time public reporting of all cleared contracts is preserved in the law. With these requirements in place, regulators will have the information they need to oversee risky activities prevent fraud, and understand the shape of the market. Market participants will also be able to access a constant feed of real-time pricing data for standard derivatives that will allow them to shop around for the best deals on derivatives so they can manage price fluctuations in products they use in their day-to-day operations.

- **Enforcement, or the 'Cantwell fix'** – The final legislation includes stronger enforcement language than either the House or Senate bill. It gives regulators authority to take action if a clearinghouse refuses to accept a transaction that regulators have determined must clear. The only limit on this authority is that regulators cannot force a clearinghouse to accept a swap for clearing if it would undermine the financial integrity of the clearinghouse or create systemic risk.

- **Foreign exchange swaps** – The final legislation is stronger than either the Senate or the House language in this area. Foreign exchange swaps are required to clear and trade unless the Treasury Secretary makes a determination that they should not. This determination must be based on a variety of factors including whether comparable regulation is in place, and whether the failure to regulate these trades could result in systemic risk. In addition, if the Secretary determines that clearing and trading are not required, he must report to Congress on this determination. All federal financial regulators will also be required to write rules to protect retail investors in the foreign exchange market.

- **Foreign boards of trade ("London loophole") –** The London loophole is a regulatory gap in the oversight of the UK's main energy futures market that allowed U.S.-based counterparties to trade futures contracts on U.S.-delivered commodities from terminals in the United States but via an exchange registered in London. This enabled them to avoid U.S. position limits and reporting requirements, which in turn is believed to have been responsible for record gas prices in the summer of 2008. The conference report would allow the CFTC to require foreign boards of trade to register with the CFTC, which would give the agency the enforcement authority it needs to close this loophole. Foreign boards of trade will have to adhere to minimum standards comparable to those in the United States, including reporting requirements.

- **Cap on banks' clearinghouse ownership –** The conference committee opted for the Senate provision that gives the SEC and CFTC authority to set a cap on firm's clearinghouse ownership. The House language – which we preferred – would have directly established a limit prohibiting financial firms from controlling more than 20 percent of the voting interests in any clearinghouse. These limits are important because they are needed to prevent big financial institutions from using their ownership interests to block clearing when unregulated trading is more profitable for them, and otherwise to manipulate clearinghouse activities or decision making. We are pleased that regulators will have the authority to put rules in place that can prevent the conflict of interest that exists when the same people who profit from unregulated trades participate in the decision whether trades should be conducted in the less profitable regulated markets.

- **Fiduciary duty** – Whether or not the legislation delivers significant new fiduciary protections to vulnerable institutional investors will hinge on how regulators interpret this provision. As amended in conference committee, the legislation holds swaps dealers and major swaps participants to an enhanced standard of care when they are dealing with pension funds, retirement plans, government entities and endowments only when they are "acting as an adviser" to those special entities. If regulators interpret that term narrowly, as they have done in the past when applying the Investment Advisers Act to securities recommendations by broker-dealers, the legislation is likely to deliver few if any benefits. If, however, they interpret the provision to include recommendations based on the needs of the special entity, it could deliver substantial new protections. Dodd Frank also includes broad authority for the agencies to adopt business conduct rules and enhanced disclosure requirements for the entire market.

- **Swaps desk spin-off (§ 716)** – The provision that would have required taxpayer-backed institutions to move their swaps desks into separately capitalized subsidiaries was substantially weakened. The conference report provides that swaps dealers in banks may continue to deal in swaps if they pertain to "permissible assets", as defined in current banking law. Swaps based on permitted assets include swaps based on interest rates, currency, gold and silver. Insured institutions will also be permitted to trade cleared, investment grade CDS. Taxpayer-backed banks will have to move any swaps related to commodities and equity securities into separately capitalized subsidiaries. Also, if a CDS is uncleared or non-investment grade it has to be moved to a separately capitalized subsidiary. It is estimated that this will result in insured banks having to move 3-20% of derivatives trading into separately capitalized subsidiaries.

Hedge funds and private equity

The final bill requires managers of hedge funds and private equity funds to register with the SEC. This means that the SEC will have authority to conduct on-site examinations of funds that currently operate with no regulatory oversight. Regulators will, for the first time, be able to look in on these highly leveraged, risky investment funds to gather important information about potential risks in the financial system. SEC registration will also mean that managers of hedge funds and private equity funds will have a fiduciary duty to act in the best interest of their investors, which often include pension funds that are responsible for providing financial security for working people when they retire.

Credit Rating Agencies

Rules & Oversight

- For the first time, the SEC will have an Office of Credit Ratings to keep a watchful eye on the rating agencies' critical role in our financial system. The Office will have the authority to write rules and levy fines.
- The SEC will have a new mandate to examine rating agency operations.
- Credit rating agencies will be required to disclose the data and methodologies used in their ratings, as well as ratings performance.
- The SEC will have the authority to deregister an agency for providing unreliable ratings over time.
- Raters must meet standards of training, experience, and competence, and be tested.
- The SEC is required to issue rules to prevent sales and marketing considerations from influencing the production of ratings.
- Raters will have to take into consideration credible information that comes to their attention from a source other than the organizations being rated.
- Credit rating agencies are explicitly prohibited from advising an issuer and rating that issuer's securities.
- The bill eliminates the credit rating agency exemption from the Fair Disclosure rule (Reg. FD). Reg FD provides that when an issuer shares important nonpublic information with certain parties, now including rating agencies, it must make public disclosure of that information.
- The bill replaces the term "furnish" with "file" in existing statute. Information that is "furnished" to the SEC is subject to a lower standard of accuracy and liability than information that is "filed" with the SEC.

Conflict of Interest

With the inclusion of the Franken Amendment language the SEC is required to create a new mechanism to prevent issuers of asset-backed securities from picking the agency they think will give the highest rating, although the language was softened with the insertion of a two year study period, and the proviso that the SEC may, based on its study, propose an alternative method for reducing conflict of interest. The SEC has two years to study the conflict of interest issue, but then, unless a stronger mechanism is identified in that study, it must design a structure in which an independent, investor-led board will assign rating agencies to provide initial ratings of asset-backed securities to accomplish this goal.

Liability

- Investors will now be able to recover damages in private anti-fraud actions brought against rating agencies for gross negligence in ratings.
- Registered credit rating agencies will no longer be exempt from expert liability under the securities laws. The SEC originally exempted rating agencies from liability to encourage reliance on credit ratings in the registration of securities. Eliminating the exemption is consistent with the bill's goal of reducing such reliance.
- The bill clarifies that ratings are ***not*** forward-looking statements entitled to special protections from liability.

Universal Ratings

- Raters must apply ratings consistently for corporate bonds, municipal bonds, and structured finance products and instruments, based on probability of default.

Reliance on Ratings

- All federal agencies are required to review their rules and regulations and eliminate all references to credit ratings. AFR opposed this approach, and supported a more gradual reduction in the over-reliance on ratings contingent on first identifying more reliable and workable alternatives. Unless sound alternative measures of creditworthiness are found, the rapid elimination of reliance on ratings could have the perverse effect of increasing risk in the financial system.

Rating Agency Governance

- At least half of a credit rating agency's boards of directors must be made up of independent members with no financial stake in credit ratings.
- When a rating analyst switches jobs, the analyst's ratings will be reviewed and the job change will be made public.
- Compliance officers isolated from the rating and sales business will be required to file reports on rating agencies' adherence to rules.

Post-Rating Surveillance

The final bill does not include language we supported requiring credit rating agencies monitor and update ratings as market conditions change. However, the initial rating assignment mechanism will take into account long-term rating performance.

Public Rating Utility

Many reformers believed that the best way to solve the problems associated with credit ratings agencies was to create a public agency. This was never given serious consideration in either the House or Senate.

<u>Investor Protection</u>

Fiduciary Duty

Dodd Frank authorizes the SEC to impose the same fiduciary obligation on brokers to act in the best interests of their customers that all other investment advisers already must adhere to. Under current law, they have no such duty, but only the more limited responsibility to make 'suitable' recommendations. Before the SEC acts however, the agency must complete a six-month study and report on its findings to Congress.

Creation of an Investor Advocate position at the SEC.

The Investor Advocate will identify the most significant problem areas investors encounter with securities industry practitioners and products, as well as helping to ensure that investor concerns are incorporated into SEC rulemaking decisions. An ombudsman within the Office of Investor Advocate will be responsible for assisting investors in their dealings with the agency or with industry self-regulatory organizations. The voices of investors too easily can be drowned out in debates over important policies that affect their interests. Steps are being taken to redress that imbalance but more can and should be done to better integrate investor viewpoints into policies and practices at the SEC.

Authority for the SEC to eliminate or limit the use of pre-dispute binding arbitration.
Dodd Frank grants the SEC the authority to prohibit or limit mandatory arbitration. Doing so would preserve the arbitration option, but also facilitate access to the courts where desired and appropriate. Although the arbitration process may be the preferred option for many defrauded investors, it has significant disadvantages, including: high up-front costs; limited access to documents and key information; limited knowledge upon which to base the choice of arbitrator; the absence of a requirement that arbitrators follow the law or issue written decisions; and extremely narrow grounds for appeal.

Improved disclosure to investors.
The legislation clarifies the SEC's authority to require pre-sale disclosures for all investment products and services. It also includes a study of financial literacy that must include an examination of the information investors need to make sound investment decisions. And it clarifies the SEC's authority to test disclosures by gathering information and communicating with investors and other members of the public. Taken together, these provisions have the very real potential to improve the clarity and usefulness of the disclosures that our securities regulatory scheme relies upon as the first line of defense in protecting investors.

Strengthened SEC enforcement tools.
Dodd Frank includes an expansive package of reforms to strengthen the enforcement powers and improve the effectiveness of the SEC, including provisions: authorizing the Commission to bring aiding and abetting cases under all of the securities laws; authorizing nationwide service of subpoenas; clarifying the agency's authority to impose sanctions on individuals who commit violations while associated with a regulated entity but who are no longer associated with that entity; improving the agency's ability to share information with and obtain information from other regulatory authorities; and, perhaps most importantly in this age of global markets, enabling the agency to go after wrongdoers who harm U.S. investors no matter where the fraud is based, and those who commit significant acts in furtherance of a fraud within the United States, even if the victims are located elsewhere.

Weakened protections against accounting fraud.
Dodd Frank includes the three House-passed provisions that undermine the Sarbanes-Oxley Act requirement that the financial statement audits of all public companies include an evaluation by the auditor of the company's internal controls to prevent accounting fraud and promote accurate financial reporting. The most egregious of these would provide a permanent exemption from the requirement for companies with under $75 million in market capitalization. Despite extensive evidence that the costs of compliance with Sarbanes-Oxley are both reasonable and diminishing, this important anti-fraud protection was diminished. This exemption will not only leave investors with fewer defenses against fraud, it likely will have the effect of raising the cost of capital for smaller companies because it will increase the risk premium they must pay to investors wary of that fraud risk.

Equity-indexed annuities oversight loophole.
Conferees agreed to a proposal to exempt equity-indexed annuities from securities regulation and oversight. Equity-indexed annuities are hybrid products that include elements of both insurance and securities, but are sold primarily as investments. Preventing the SEC from adopting appropriate regulations to supplement state insurance department oversight will deny investors needed protections from one of the most abusively sold products on the market today and opens the door for new products to be designed to exploit this loophole.

Corporate Governance

Proxy access

Dodd-Frank expressly authorizes the Securities and Exchange Commission (SEC) to adopt rules under which shareholders are be able to nominate directors using the company's proxy materials, an authority which proxy access opponents had long questioned. .

Other Governance Provisions.

The bill retains the provisions of the Senate bill requiring the SEC to mandate disclosure of whether a company has separated its Chair and CEO positions and why. The bill also requires the stock exchanges to prohibit broker discretionary voting in connection with the election of directors, executive compensation or any other significant matter, as determined by the SEC.

Executive Compensation

Say-on-Pay

Dodd Frank requires (1) a non-binding shareholder vote, at least once every three years, to approve the compensation of named executive officers at annual or other shareholder meetings for which the SEC requires compensation disclosure, and (2) a non-binding vote, at least once every six years, to determine the frequency of say-on-pay votes. Earlier versions of the bill required an annual say-on-pay vote.

Shareholder Approval of Golden Parachute Compensation.

Dodd Frank includes new disclosure and shareholder approval provisions relating to "golden parachute" arrangements. With respect to any proxy statement relating to approval of an M&A transaction, the it mandates disclosure of any compensation arrangement with a named executive officer, including the aggregate amount of the potential payments, if the arrangement is based on or related to the M&A transaction. In addition, the law requires a non-binding shareholder vote with respect to any such arrangement, unless previously subject to a say-on-pay vote.

Disclosure of Say-on-Pay and Golden Parachute Votes.

The law requires certain institutional investors to disclose how they vote with respect to company proposals regarding say-on-pay, frequency of the say-on-pay vote and golden parachute compensation.

The Compensation Committee and its Advisors.

The law requires compensation committee members to satisfy independence standards to be established by the stock exchanges. In addition, a compensation committee is allowed to engage compensation consultants, legal counsel or other advisers to the compensation committee only after considering factors to be promulgated by the SEC that might affect the independence of such advisers. Finally, the bill authorizes compensation committees to retain independent advisers and would require the committees to oversee the advisers they retain.

*Additional Disclosure*s

The law mandates annual proxy disclosure (1) stating the ratio between the CEO's compensation and the median compensation of all other employees, (2) demonstrating the relationship between executive compensation and financial performance, (3) indicating whether the compensation committee has retained a compensation consultant and whether the work of the compensation committee has raised any conflicts of interest and (4) indicating whether employees or directors may engage in hedging transactions on company stock.

Clawbacks.

The law requires companies to adopt a clawback policy applicable in the event of an accounting restatement due to material noncompliance with financial reporting requirements and providing for the recovery of amounts in excess of what would have been paid under the restated financial statements from any current or former executive who received incentive compensation (including stock options) during the 3-year period preceding the date of the restatement.

Financial Institutions.

Dodd Frank includes additional provisions with respect to "covered financial institutions" with assets of $1 billion or more. In particular, the new bill would require the appropriate regulators to issue guidance regarding (1) the disclosure of all company incentive compensation structures, and (2) the prohibition of incentive compensation arrangements that encourage inappropriate risks.

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AARP
- ACORN
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans for Fairness in Lending
- Americans United for Change
- Calvert Asset Management Company, Inc.
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International

- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Leadership Conference on Civil Rights
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Training and Information Center/National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- Opportunity Finance Network
- Partners for the Common Good
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Seminal
- U.S. Public Interest Research Group
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET

- Union Plus
- Unitarian Universalist for a Just Economic Community

Partial list of State and Local Signers

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG

- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG

- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG