



**NCRC Summary of the Obama Administration's  
Financial Regulatory Reform: A New Foundation  
The Establishment of a Consumer Financial Protection Agency**

The Obama Administration believes that consumer protection is a critical foundation for the nation's financial system. It gives the public confidence that financial markets are fair, and enables policymakers and regulators to maintain stability in regulation. Stable regulation, in turn, promotes growth, efficiency, and innovation over the long-term. As such, the Obama Administration has put forth legislative, regulatory, and administrative reforms to promote transparency, simplicity, fairness, accountability, and access in the market for consumer financial products and services.

In an effort to enhance consumer safety in the financial services industry, the Administration has proposed the establishment of a Consumer Financial Protection Agency (CFPA). CFPA would be structured to promote its independence and accountability. It would have a Director and a Board of Directors (with one of the board members a head of the prudential regulator). Funding would come from fees assessed on bank and non-bank institutions.

**CFPA's mission:**

- Ensure that consumers have the information they need to make responsible financial decisions.
- Ensure that consumers are protected against abuse, unfairness, deception, or discrimination.
- Ensure that the financial markets operate fairly and efficiently with room for sustainable growth and innovation.
- Ensure that traditionally underserved consumers and communities have access to lending, investment, and financial services (this is the CRA-related mission statement).

**CFPA would have the following responsibilities:**

- Write rules and regulations, supervise institutions, conduct exams, and engage in enforcement activities.
- Supervise banks in the area of consumer and fair lending regulations. CFPA's jurisdiction would be extended to non-depository affiliates of banks. (Note: The Administration proposes that the Federal Trade Commission maintain its lead role in combating fraud in the financial marketplace, data security, and privacy protection.)

- Rigorously apply CRA so that low-income households and communities have access to responsible financial services. CFPB would have sole authority to conduct CRA evaluations, and the prudential regulators would have jurisdiction over merger applications.
- Maintain a group of examiners “specially trained” to conduct CRA exams.
- Promulgate regulations implementing consumer protection and fair lending statutes, including Truth in Lending Act (TILA), HOEPA, CRA, and the Home Mortgage Disclosure Act (HMDA). Because some questionable practices may arise because of “gaps between these laws,” the Administration proposes that CFPB will have broad authority to promulgate laws against unfair and deceptive practices and apply these protections to any entity that provides financial products and services, including brokers and debt collectors.
- Periodically review its regulations to determine whether they should be strengthened or scaled back, depending on a careful assessment of benefits and costs of the regulations. CFPB would study the effectiveness of a regulation approximately once every three years.
- Use “creative tools” to promote compliance, including best- and worst-practices, mystery shopping, and information collected from investigations.
- Preempt weaker state consumer protection laws, but allow states to enact stronger laws that are consistent with federal law.
- Conduct rigorous research, using HMDA and other databases. CFPB will be the central collection agency for consumer complaints, and compile a robust database using complaint files.
- Play a major role in providing financial education. It will assume a community affairs function, providing expertise to financial institutions and community groups on community development.
- Have broad authority over consumer protection. CFPB will be allowed to ban mandatory arbitration. It would also clarify consumer disclosure and synchronize RESPA and TILA disclosures. (Note: The Administration proposes a review process for considering the adequacy of disclosures when financial institutions introduce new products.)
- Define standards for products that are “plain vanilla” and less complicated, easier for the consumer to understand, and devoid of complex terms and conditions that can make the product more expensive. (Note: In its HOEPA ruling in the summer of 2008, the Federal Reserve applied additional scrutiny, more disclosures, and higher penalties for violations for mortgages that were complex, high-cost, and/or nontraditional. CFPB would investigate whether additional mortgages should be classified in the “non-vanilla” category. CFPB can also survey consumers to determine which products are plain-vanilla. In addition to greater scrutiny and penalties, the plan proposes that non-plain vanilla products can have prominent warning labels or “opt-in” procedures under which a consumer consents in writing to purchase the product.)
- Consider a “life of loan” approach to regulation and provide adequate protections through servicing, loss mitigation, and origination.
- Have the authority to impose a duty of care on financial institutions, including mortgage brokers.

- Have primary authority for fair lending jurisdiction over federally-supervised institutions, and would share fair lending authority with states regarding other institutions. CFPA would have a fair lending unit with attorneys, economists, and statisticians, and target resources to areas of “greatest risk for discrimination.”
- Enhance HMDA data and link it to proprietary databases that allow analyses by loan channel (i.e., broker, bank, or mortgage company), terms and conditions of loans, and other data fields that the mortgage crisis has shown to be of critical importance.

### **New Roles for Federal Agencies**

The existing federal regulatory agencies lagged market developments and issued incomplete regulations. For example, the Federal Reserve’s 2008 Home Ownership and Equity Protection Act (HOEPA) rules were the strongest the agency ever wrote on limiting abusive terms, but still contained significant loopholes and were about several years too late. Also, the federal agencies proposed guidance regarding subprime lending and nontraditional lending in 2005 but finalized the guidance in 2007, missing the time period (2005-2007) of high volumes of subprime and nontraditional lending. Therefore, the existing agencies would no longer have consumer protection duties but would focus on the overall safety and soundness of the financial services industry.

#### *Federal Reserve Board*

The Federal Reserve should have oversight of systemically important firms (including non-banks), that is, firms that are too big to fail or too interconnected to fail. The Federal Reserve would be the consolidated supervisor of bank holding companies. The plan proposes that the Federal Reserve should become the consolidated supervisor because a single regulatory agency can be more effective than a council, and “the public has a right to expect that a clearly identifiable entity, not a committee of multiple agencies, will be answerable for setting standards that will protect the financial system...”

- The prudential standards, such as minimum capital standards for systemically important firms, would be stricter than for other firms.
- The Federal Reserve would be required to obtain the written permission of the Treasury Secretary before making any extensions of credit to companies in “unusual and exigent circumstances.”
- The Federal Reserve would conduct a review of its structure and governance, including the role of the Reserve Banks and the role of the Reserve Bank Boards.

#### *Other Prudential Regulatory Agencies*

- The plan calls for the creation of a National Bank Supervisor (replacing Office of the Comptroller of the Currency and Office of Thrift Supervision) to supervise all federally-chartered banks; the thrift charter would be eliminated. The plan recommends that all limits on interstate branching be eliminated (currently only thrifts do not have limits on interstate branching).

- The Federal Reserve, National Bank Supervisor, and FDIC would no longer have consumer protection responsibilities; instead, they would be prudential regulatory agencies that oversee the safety and soundness of financial institutions.
- A new Financial Services Oversight Council (chaired by Treasury and including heads of federal financial regulators) would have no direct authority; it would play a coordinating role among agencies to identify emerging systemic risks and recommend designating firms that are systemically important.
- The FDIC would gain the power to resolve bank holding companies. The Treasury Department would resolve systemically important non-banks and could authorize the FDIC to resolve these institutions.

### **Elimination of Non-Bank Banks and Exemptions from Bank Holding Company Supervision**

- The plan proposes a separation of banking from commerce. Retailer-owned credit card banks and depositories owned by automobile companies and other commercial firms would be eliminated. Non-bank banks such as industrial loan companies would also be eliminated. The plan would establish a five-year transition for these institutions.
- Currently, thrifts, industrial loan companies, credit card banks, and “nonbank” banks are not required to become bank holding companies (BHC) and are, therefore, not subject to consolidated supervision. In other words, they are lightly regulated. The investment banks (e.g., Bear Stearns and Lehman Brothers) and insurance companies like AIG escaped BHC regulation.

### **Supervision of Securitization Markets**

- *Shared risk*: Loan originators would be required to retain 5 percent of the credit risk of loans they sell on the secondary market. Federal agencies would have authority to specify permissible forms of risk retention and to raise or lower the 5-percent threshold.
- Hedge funds would be required to register with the Securities and Exchange Commission (SEC). This registration would allow data to be collected, and would allow the SEC to assess whether changes in hedge funds merit additional regulation.
- Issuers of asset-backed securities would be subject to more robust reporting requirements, including loan-level data (broken down by loan broker or originator). The industry would create clear and uniform rules authorizing servicers to modify home loans.
- Credit ratings agencies would establish policies for managing conflicts of interest. Credit ratings agencies would be required to distinguish credit ratings for structured credit products from those of unstructured debt.

## **Other Items**

- The Federal Reserve's Consumer Advisory Council would be transferred to CFPB.
- Regulatory agencies would issue standards to align executive compensation with the long-term interests of shareholders. The plan supports legislation requiring all public companies to hold non-binding shareholder resolutions on compensation packages.
- The plan would establish the Office of National Insurance, which would monitor developments in the insurance industry.
- Treasury and HUD will develop recommendations on the future of the Government-Sponsored Enterprises and report to Congress in the 2011 release of the federal budget.
- The plan would establish a fiduciary duty for broker-dealers offering investment advice.
- The plan recommends that Congress establish an automatic IRA with an opt-out feature.