



## Financial Services Bulletin: Financial Reform Bills

Business

11.19.2009

*With the recent flurry of legislative activity focused on reform of the regulatory framework for financial institutions and the financial markets, the Perkins Coie Financial Services Practice is pleased to bring you the Financial Services Bulletin. This bulletin highlights recent legislative activity impacting financial services and financial institutions. We plan to publish future bulletins as new legal developments are announced.*

On Tuesday, November 10, 2009, Senator Dodd (D-CT), Chairman of the Senate Banking Committee, released a draft of a financial services reform bill, entitled "Restoring American Financial Stability Act of 2009." This legislative proposal is a companion to a similar, albeit less extensive, version that has been introduced in the House of Representatives, amendments to which are addressed below. This most recent piece of legislation has already generated some controversy due to its expansive coverage. The bill contains numerous provisions, the most significant of which are highlighted below.

- The Act establishes a Consumer Financial Protection Agency, an independent agency with consolidated authority to regulate consumer protection. Organizations such as mortgage brokers and payday lenders would fall within the expansive authority of the newly created agency. This provision is similar to legislation recently approved by the House Financial Services Committee.
- The Act provides for the creation of the Agency for Financial Stability, an independent agency tasked with monitoring and addressing systemic risks. Among other powers, the proposed agency will grant regulators the authority to break up companies if the agency determines they pose a threat to financial stability, will require greater transparency of emerging risks, and will identify currently unregulated financial companies and assign them to a specific federal regulator.
- The Act proposes creating a method for closing large companies without threatening the overall economy, by imposing strict standards for companies as they grow in size and complexity, requiring them to periodically submit plans for their immediate and orderly shutdown should such action become necessary. In addition, companies would be required to provide their own capital injections in times of systemic crisis.
- The Act creates an independent single federal bank regulator, the Financial Institutions Regulatory Administration.
- The Act provides the SEC and the Commodities Futures Trading Commission with authority to regulate over-the-counter derivatives.
- The Act requires hedge funds with assets exceeding \$100 million to register with the SEC, disclose financial data, and use independent custodians for client assets.

- The Act establishes the Office of Credit Rating Agencies at the SEC, tasked with examining nationally recognized statistical ratings organizations at least annually, requiring increased disclosure, and allowing investors to bring suits against ratings agencies.
- Companies selling products such as mortgage-backed securities will be required to retain at least 10% of the credit risk and provide disclosure about the underlying assets.
- The Act also requires many changes to existing executive compensation and corporate governance practices, including:
  - Providing for a mandatory annual advisory vote by the shareholders on executive compensation (say on pay) for companies subject to the SEC proxy rules and an advisory vote on any golden parachute payments, or on other compensation arrangements with the CEO that would be payable upon a change of control.
  - Requiring that all companies listed on the national stock exchanges maintain an independent compensation committee and that all compensation consultants, legal counsel, and other advisers also be independent.
  - Mandating the amendment of Item 402 of Regulation S-K, so that it requires disclosure of information regarding the relationship between executive compensation and the company's financial performance.
  - Eliminating staggered boards for public companies and requiring the annual election of all directors.
  - Requiring majority voting for all uncontested director elections; if a director does not receive a majority vote, that director must submit a resignation to the board that must be accepted or unanimously rejected.
  - Allowing shareholders to utilize proxy materials in order to nominate directors.

The Senate Banking, Housing and Urban Affairs Committee will begin a markup to consider Opening Statements of the draft bill on Thursday, November 19th. The first due dates for amendments to the draft bill will then be Tuesday, November 24th and the markup will commence in earnest on Tuesday, December 1st.

Read Senator Dodd's financial reform bill.

Meanwhile, on Wednesday, November 18, 2009, in the House of Representatives, the Financial Services Committee passed an amendment proposed by Congressman Paul Kanjorski (D-PA) to the Financial Stability Improvement Act. The Financial Stability Improvement Act, together with the Consumer Financial Protection Agency Act of 2009 and other legislation in the House, is the companion legislation to the all-encompassing Restoring American Financial Stability Act of 2009, mentioned above. The Kanjorski amendment allows federal regulators to take numerous actions, ranging from imposing conditions on financial firms to breaking-up the firms that are so large, interconnected, and complex that their collapse could threaten the overall economy. This would theoretically prevent financial firms from becoming "too big to fail." The amendment provides for clear and objective standards by which regulators can examine financial firms and take action to avoid systemic risk.

Access the Kanjorski Amendment.

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