

# THE FINANCIAL SERVICES ROUNDTABLE

Impacting Policy. Impacting People.



## COMPARISON OF HOUSE BILL H.R. 4173 WITH SENATE BILL S. 3217

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# Consumer Protection

	House	Senate
<b>Leadership</b>	<p><b>Consumer Financial Protection Agency.</b></p> <p>Headed by a Director for 2 years (the Agency conversion date), and then by a 5 person Commission (including the Chairperson). Staggered 5 year terms. <b>Sec. 4101.</b></p> <p>All appointed by the President with advice and consent of Senate. <b>Sec. 4102, 4103.</b></p> <p>Includes a Consumer Financial Protection Oversight Board to advise the Director, which is made up of agency heads, including HUD and FTC. <b>Sec. 4104.</b></p> <p>Also establishes a Consumer Advisory Board, selected by the Director, to advise and consult with the Director. <b>Sec. 4107.</b></p>	<p><b>Bureau of Consumer Financial Protection.</b></p> <p>Headed by a Director for a 5-year term.</p> <p>Director is appointed by the President, with the advice and consent of the Senate. <b>Sec. 1011.</b></p> <p>Bureau is established within the Federal Reserve, but the Fed is not to intervene in Bureau examinations or enforcement actions, or in delaying or preventing the issuance of any Bureau rule or order.</p> <p>Director establishes and selects members for a Consumer Advisory Board. <b>Sec. 1014.</b></p> <p>Establishes the “Office of Fair Lending and Equal Opportunity.”</p> <p>Establishes the “Office of Service Member Affairs.” Amendment.</p>
<b>Consolidates consumer protection responsibilities from:</b>	<p>Transfer to the CFPA all consumer financial protection functions of the OCC, OTS, FDIC, FRB, NCUA, FTC and HUD (the latter as related to the Real Estate Settlement Procedures Act and the Secure and Fair Enforcement for Mortgage Licensing Act). <b>Sec. 4601.</b></p>	<p>Same, but preserves FTC rulemaking authority under the <b>Rockefeller-Hutchinson #3758 Amendment.</b></p>
<b>Scope of Authority</b>	<p>The CFPA’s authority extends very broadly to any person engaged in a “financial activity” in connection with the provision of a consumer financial product or service.</p> <p>Unless expressly carved out, the CFPA has the broad authority from existing banking and other regulators over 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 consumer financial activities. “Financial activities” include:</p> <ul style="list-style-type: none"> <li>• deposit-taking, money acceptance and money movement;</li> <li>• extension and servicing of credit (including brokering) (e.g., mortgage loans, personal loans, credit cards);</li> <li>• acting as a financial or investment adviser not regulated by the SEC or CFTC;</li> <li>• money transmittal and engaging in the money services business;</li> <li>• sale or issuance of stored value (gift cards/service vouchers);</li> <li>• custodial activities;</li> </ul>	<p>Similar to the House bill, the Bureau would have very broad powers pertaining to the regulation and enforcement of consumer financial services.</p> <p>While the scope of financial products and services is similar to the House, the Senate bill does not include “acting as an investment adviser” or “acting as money services business.”</p>

	<ul style="list-style-type: none"> <li>• check cashing and pay day lending; in certain instances,</li> <li>• consumer reporting/credit bureau activity;</li> <li>• debt collection;</li> <li>• real estate settlement, including title insurance;</li> <li>• acting as a leasing agent, broker or adviser in connection with</li> <li>• rent-to-own activities;</li> <li>• providing certain financial data processing and data transmission services;</li> <li>• tax planning; person-to-person lending;</li> <li>• <b>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;</b></li> <li>• <b>any activity that is incidental or complementary to any other financial activity regulated by the CFPA.</b></li> </ul>	
<b>CFPA Authority and Examination</b>	<p>Banks, thrifts and credit unions with \$10 billion or more in assets are subject to CFPA examination. Those with fewer assets continue to be regulated by prudential regulators with respect to compliance with the Act, CFPA regulations and consumer laws enumerated in the House bill.</p> <p>CFPA also develops risk-based programs to supervise non-depository covered persons by prescribing registration requirements, reporting requirements and examination standards and procedures.</p>	<p>Has exclusive rulemaking and exam authority, and primary enforcement authority over insured depositories with assets of \$10 billion or more and any affiliate (unless carved out, such as broker-dealers and insurance companies). <b>Sec. 1025.</b></p> <p>Bureau has primary enforcement authority to examine and require reports from non-depository institutions where they offer consumer real estate loans, loan modifications or foreclosure relief services, or are large participants for other consumer financial products or services. <b>Sec. 1024.</b></p>
<b>Full or Partial Exclusion from Jurisdiction:</b>	<ul style="list-style-type: none"> <li>• Any person regulated by the SEC, CFTC or a state securities commission.</li> <li>• Insurance companies under state regulation.</li> <li>• Credit extended by and debt collection by merchants and sellers of nonfinancial goods or services.</li> <li>• Auto dealers.</li> <li>• Accountants.</li> <li>• Tax preparers.</li> <li>• Attorneys.</li> <li>• Real estate licensees.</li> <li>• Employee benefit plans.</li> </ul> <p><b>Sec. 4205.</b></p>	<p>Substantially the same as the House bill, and also carves out small businesses but does not carve out autodealers.</p> <ul style="list-style-type: none"> <li>• Any person regulated by the SEC, CFTC or a state securities commission.</li> <li>• Insurance companies.</li> <li>• Merchants and retailers.</li> <li>• Extension of commercial credit to person who originates consumer credit.</li> <li>• Accountants.</li> <li>• Tax preparers.</li> <li>• Attorneys.</li> <li>• Real estate brokerage activities.</li> <li>• Employee benefit plans.</li> <li>• Manufactured home retailers and modular home retailers</li> </ul> <p><b>Sec. 1027.</b></p>
<b>Funding</b>	<p>Authorizes CFPA to levy fees to cover expenses of supervision, enforcements and examination.</p> <p>Fees based on institutions size (smaller firms exempted),</p>	<p>No assessments. Funded by amount determined by the Director to be reasonably necessary for the Bureau's annual budget, not to exceed a specified percentage of the total operating expenses of the Federal Reserve, capped at 12%, adjusted for</p>

	<p>complexity of the risk and compliance record.</p> <p>Beginning on the transfer date, transfer 10% of Federal Reserve’s operating budget. <b>Sec. 4111.</b></p>	<p>inflation. <b>Sec. 1017.</b></p>
<b>Mandatory Arbitration</b>	<p>May issue regulations on use of mandatory arbitration clauses. <b>Sec. 4208.</b></p>	<p>Must conduct study of mandatory pre-dispute clauses before limiting their use; any limits must be consistent with the study findings. <b>Sec. 1028.</b></p>
<b>Preemption</b>	<p>State consumer financial laws are preempted by Federal law if a court or the OCC (by regulation or order) determines that: (a) the State law would have a discriminatory effect on national banks/Federal thrifts in comparison with the effect of the law on a State chartered bank/thrift; (b) the State law prevents, significantly interferes with, or materially impairs the ability of a national bank/Federal thrift to engage in the business of banking and makes a finding that the Federal law provides a “substantive standard;” OR (c) the State law is preempted by other Federal law.</p> <p>While the OCC can act by regulation or order, it must act on a “case-by-case” basis related to a particular State consumer financial law. In other words, the OCC cannot occupy the field of the business of banking. The OCC must have substantial evidence to support a preemption determination.</p> <p>State AG may bring civil action in any Federal or State court with jurisdiction, to enforce and secure remedies under this title, regulations, or <i>otherwise provided under other law</i>. After providing a copy of the complete complaint and written notice to the CFPA, the CFPA may intervene and move the action to Federal court.</p> <p>No provision of this title shall be construed as limiting or restricting the authority of State AGs to bring any action in court to enforce applicable Federal or State law, or on behalf of residents of such State, to enforce or seek relief from any applicable provision of any Federal or non-preempted State law against national bank/Federal thrift. State AG must consult with OCC before acting.</p> <p>CFPA is to issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of additional consumer protection regulations. CFPA must consider whether the proposed regulation would give greater consumer protection, costs and benefits, and safety and soundness. If CFPA decides not to prescribe a final regulation,</p>	<p>Preserves the <i>Barnett</i> preemption standard, but new Federal consumer laws may not be preempted. <b>Sec. 1047. Amendment to Title 10, Subtitle D</b></p> <p>Specifically, State consumer financial laws are preempted if a court or the OCC (by regulation or order) determines that: (a) the State law would have a discriminatory effect on national banks/Federal thrifts in comparison with the effect of the law on a State chartered bank/thrift; (b) <u>the State law is preempted in accordance with the legal standard of <i>Barnett Bank</i></u>; OR (c) the State law is preempted by other Federal law.</p> <p>Same as the House bill.</p> <p>State AG may bring civil action, <i>in the name of the State</i>, in any Federal or State court with jurisdiction, to enforce and secure remedies under this title, regulations, or relief <i>otherwise provided under other law</i>. State AG cannot bring action against national bank/Federal thrift for violation of a provision of this title, but can bring an action to enforce a regulation “prescribed” by the CFPB under a provision of this title and to secure remedies. Notice requirements are the same as the House bill, but notice must also be given to prudential regulator.</p> <p>In accordance with <u>Cuomo v. Clearing House Assn</u>, no provision of this title shall be construed as limiting or restricting the authority of State AGs to bring an action against a national bank/Federal thrift in a court to enforce an applicable law and to seek relief under such law.</p> <p>Same.</p>

	<p>must publish an explanation.</p> <p>OCC must periodically review, through notice and comment, each determination that a provision of Federal law preempts a State consumer financial law. OCC shall publish and update quarterly a list of preemption determinations by the OCC.</p> <p>Regarding interest rates, THE HOUSE BILL. preserve <i>Marquette</i> standard.</p>	<p>Same.</p> <p>Same.</p>
<b>Interchange Fees</b>	<p>While the OCC can act by regulation or order, it must act on a “case-by-case” basis related to a particular State consumer financial law. In other words, the OCC cannot occupy the field of the business of banking.</p>	<p>Restricts interchange fees for debit card payments to “reasonable and proportional to actual costs” of payment processors or issuers. Allows issuers to set a minimum limit for payment cards and offer discounts for using cash or certain cards.</p> <p><b>Amendment 3989.</b></p>
<b>Disclosure &amp; Miscellaneous</b>	<p>Not in House bill.</p>	<p><u>Disclosures</u>: Requires covered persons to comply with consumer requests for information concerning a product or service, but need not disclose commercial information, fraud prevention information, or other nonpublic or confidential information.</p> <p><u>Amends TILA</u> to cover transactions of up to \$50,000 (increase from \$25K) and allows for inflation adjustment in future. <b>Sec. 1103.</b></p> <p><u>Increases next-day available funds</u> to \$200 (from \$100) under Expedited Funds Availability Act. <b>Sec. 1086(e).</b></p> <p><u>Establishes Private Education Loan ombudsmen.</u> <b>Sec. 1035.</b></p>
<b>Office of Fin. Literacy</b>	<p>Office of Financial Literacy to be created by CFPB. <b>Sec. 4106.</b></p>	<p>Housed within Federal Reserve. <b>Sec. 1013.</b></p>
<b>Underserved Communities</b>	<p>Sec. 4106 provides for the Office of Financial Protection for Older Americans as well as the establishment of a unit to assist traditional underserved persons and communities. Sec. 7703 provides for grants to States for enhanced protection of Seniors.</p>	<p><u>Improved Access</u>: <b>Title XIII</b> – “Improving Access to Mainstream Fin. Institutions.” Authorizes Treasury to give grants to provide alternatives to underserved consumers. Encourages creation and promotion of financial products and services for Americans with low and moderate incomes, including small dollar loan programs as alternatives to payday loans.</p> <p><u>Remittances</u>: Protections &amp; disclosure for remittance transfers. <b>Sec. 1076.</b></p>

# Investor Protection

	House	Senate
<b>Duty of Care</b>	The standard of conduct for broker-dealers is the same as that for investment advisors when providing investment advice to “retail customers” about securities. This 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. Nothing in this section requires broker-dealers to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities. Material conflicts of interest must be disclosed, and customer can consent. <b>Sec. 7103.</b>	SEC must study the feasibility of uniform fiduciary standards for financial intermediaries who provide similar investment advisory services (broker-dealers and investment advisers). If the study concludes that gaps exist, the SEC must issue rules within 2 years of enactment. <b>Sec. 726(a)(4).</b>
<b>Custodians</b>	Creates custodial duties for client assets when registered investment advisor has custody of funds or securities of a client the value of which exceeds \$10,000,000. <b>Sec. 7419.</b>	“An investment adviser registered under this title shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation, verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe.” <b>Sec. 411.</b>
<b>Enforcement</b>	<p>SEC has specific authority to bring suit against aiders and abettors of Federal securities laws if act is “reckless or knowing.” <b>Sec. 7207, 7215.</b> Authority to impose penalties for aiding and abetting violations. <b>Sec. 7208.</b></p> <p>Collateral bars for securities law violators prohibiting offenders from associating with a broad range of SEC regulated entities. <b>Sec. 7206.</b></p> <p>Nationwide service of subpoenas. <b>Sec. 7210.</b></p> <p>Authority to impose civil monetary penalties in cease and desist proceedings. <b>Sec. 7211.</b></p>	<p>Aiding and abetting is not in the Senate Bill. Also, they have no nationwide subpoena power or authority to seek civil monetary penalties.</p> <p>Regarding collateral bars for securities law violators, the same as the House Bill. <b>Sec. 925.</b></p> <p>Public Company Accounting Oversight Board oversight of brokers and dealers. <b>Sec. 982.</b></p> <p>Adjusts accredited investor threshold for inflation. <b>Sec. 412.</b></p>
<b>New Committees</b>	Creates Investment Advisory Committee to advise SEC on regulatory priorities. <b>Sec. 7101.</b>	Same. <b>Sec. 911.</b> Also creates Office of Investor Advocate within the SEC to assist retail investors. <b>Sec. 914.</b>
<b>Fund for defrauded investors</b>	Creates SEC Investor Protection Fund (“the Fund”) within the Treasury. <b>Sec. 7203.</b>	Same (“Investor Protection Fund”). <b>Sec. 911.</b> Amends SOX to use CMP’s for fraud victims and increases SIPC borrowing to \$2.5 billion (increase from \$1 billion). <b>Sec. 929B, 929C.</b>
<b>Arbitration</b>	SEC can restrict or ban mandatory predispute arbitration clauses. <b>Sec. 7201.</b>	Similar. SEC will conduct rulemaking to affirm, disaffirm, restrict, and ban mandatory arbitration clauses if it is in best interest of investors to do so. <b>Sec. 921</b>
<b>Whistleblowers</b>	SEC has authority to pay whistleblowers up to 30% of the amount of the sanction if the penalty exceeds \$1 million.	Similar, although award must be between 10% and 30% of penalties over \$1 million and auditors cannot receive whistleblower awards. <b>Sec. 922.</b>

	Expands whistleblower protection by amending Sarbanes-Oxley to prohibit retaliation against whistleblowers by subsidiaries or affiliates of a company. <b>Sec. 7203.</b>	
<b>Effective date of SRO Rule Filings</b>	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 (currently within 180 days). SEC must issue rules implementing a disapproval process for SRO rule filings.	SRO rules would become effective if the SEC failed to approve or disapprove the rule filing within specified times. The filing procedures are streamlined, and the effective date of the SRO filings is the publication date in the Federal Register, as long as SEC sends the filing to the Federal Register within 15 days of receipt. In this case, the date of publication is the date the notice is published on the SRO's website. The category of rule filings "effective on filing" would include fees charged to non-members and market data. <b>Sec. 915.</b>
<b>Study</b>	SEC study and rulemaking on disclosure to retail customers before purchase of products or services. <b>Sec. 7104.</b> SEC study on enhancing investment advisor examinations. <b>Sec. 7107.</b> GAO study on the regulation and oversight of financial planning. <b>Sec. 7108.</b> Comptroller General study to review securities arbitration system. <b>Sec. 7202.</b> Independent study of the SEC and its organization. <b>Sec. 7304.</b>	SEC study on the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisors and persons associated with them, whether there are legal or regulatory gaps in the protection of retail customers, and other obligations. <b>Sec. 913.</b> SEC study on financial literacy among investors. <b>Sec. 916.</b> GAO study on mutual fund advertising. <b>Sec. 917.</b> SEC study on improving investor access to registration information, including disciplinary actions on investment advisors & broker dealers. <b>Sec. 919A.</b> GAO study on effectiveness of state/fed regulations of protecting consumers from misleading "financial advisor" designations; current oversight of financial advisors, gaps in oversight of financial planners. <b>Sec. 919B.</b> GAO study on accredited investors. <b>Sec. 413.</b> GAO study on SRO for private funds. <b>Sec. 414.</b> SEC study and report on short-selling. <b>Sec. 415.</b>
<b>Disclosure</b>	Point of sale disclosure study, see above. <b>Sec. 7104.</b> Institutional investors must give SEC daily reports on short sales.	Point of sale disclosure to retail investors must be concise, and include objectives, strategies, costs, and risks, and any compensation of advisor, broker-dealer, and any intermediaries. <b>Sec. 918</b>
<b>Expanded Anti-fraud Provisions</b>	Expands the Exchange Act market manipulation and short sales authority by extending Section 9, which relates to market manipulation, and 10(a)(1), which relates to short sales, to cover not only securities registered on a national exchange, but any security "other than a government security." Extends Section 9(b) to non-exchange transactions in options. Amends Section 9(c) to subject all brokers and dealers to the provision. Amends Section 15(c)(1)(A) to cover exchange transactions, not just OTC transactions.	N/A

# Systemic Risk Regulation

	House	Senate
<b>Establishes Council</b>	Named Financial Services Oversight Council. <b>Sec. 1001(b).</b>	Named Financial Stability Oversight Council. <b>Sec. 111.</b> (“OVERSIGHT COUNCIL”)
<b>Members</b>	<p>10 voting members, chaired by Treasury Secretary.</p> <ul style="list-style-type: none"> <li>Other members are the heads of FRB, OCC, OTS (until OTS merged into OCC), SEC, CFTC, FDIC, FHFA, NCUA, CFPA;</li> </ul> <p>Nonvoting members:</p> <ul style="list-style-type: none"> <li>Federal Insurance Office Director, a state insurance commissioner, a state banking supervisor, and a state securities commissioner. <b>Sec. 1001(b).</b></li> </ul>	<p>9 voting members, chaired by the Treasury Secretary. § 111(b)</p> <ul style="list-style-type: none"> <li>Other Members include heads of FRB, OCC, SEC, CFTC, FDIC, FHFA, CFPB;</li> <li>Independent insurance expert. (Appointed by President and confirmed by Senate for 6 yr. term).</li> </ul> <p>Nonvoting Member:</p> <ul style="list-style-type: none"> <li>Director of Financial Research, who cannot be excluded from meetings. <b>Sec. 111(b)(2).</b></li> </ul>
<b>Funding</b>	While there is no express provision for funding the Council, the Federal Reserve is required to impose a fee on bank holding companies with greater than \$10 billion in assets an amount sufficient to defray the cost of examining those BHCs.	<p>Establishes a Financial Research Fund that imposes fees on systemically important nonbank financial companies and bank holding companies with more than \$50 billion in assets to fund the Office of Financial Research and Council.</p> <p>Federal Reserve also must impose fees on all systemically important nonbank financial companies and all bank and thrift holding companies larger than \$50 billion in assets in an amount necessary to carry out responsibilities of the Federal Reserve.</p>
<b>Duties of Oversight Council</b>	<p>Council is required to carry out a long and broad list of responsibilities and duties:</p> <ul style="list-style-type: none"> <li>Advises Congress on domestic and international regulatory developments;</li> <li>monitors the financial marketplace to identify systemic risks;</li> <li>identifies potential threats to the stability of the U.S. marketplace that do not arise out of the financial services marketplace;</li> <li>subjects financial companies and financial activities to stricter prudential standards;</li> <li>recommends to member regulatory agencies to adopt stricter prudential standards for firms they regulate to mitigate systemic risk; § 1001(c)</li> <li>at least semiannually, the Council reports to various Congressional committees on financial domestic and international regulatory developments;</li> </ul>	<p>Similarly, the Council is required to carry out a long and broad list of responsibilities and duties:</p> <ul style="list-style-type: none"> <li>Identifies risks to financial stability and responds to emerging threats to U.S. financial markets;</li> <li>promotes market discipline by eliminating expectations of Government protection from losses;</li> <li>identifies regulatory gaps that could pose a threat to stability of U.S. financial markets;</li> <li>requires supervision by Federal Reserve for nonbank financial companies that may pose risks to the financial stability of the U.S. in the event of their material financial distress or failure;</li> <li>recommends to primary functional regulators to apply more stringent standards and safeguards for financial activities or practices;</li> <li>recommends to the Federal Reserve regarding establishment of more stringent standards for nonbank financial companies and large, interconnected bank holding companies supervised by the Federal Reserve;</li> </ul>

	<ul style="list-style-type: none"> <li>• facilitates information sharing among agencies;</li> <li>• resolves supervisory jurisdictional disputes among Council member regulatory agencies;</li> <li>• reviews and submit comments to SEC and any other standards setting body (FASB?) proposed accounting principles, standards or procedures;</li> <li>• studies effects of the CFPA.</li> </ul>	<ul style="list-style-type: none"> <li>• responds to emerging threats to stability of US financial markets;</li> <li>• at least annually reports to Congress on Council activities; <b>Sec. 112(a)(2)(M).</b></li> <li>• collects relevant information from the Office of Financial Research and shares it among regulating agencies. <b>Sec. 112(a)(2)(B); Sec. 112(a)(2)(D).</b></li> <li>• collects information from Council member agencies and other Federal and State financial regulatory agencies and, if necessary to assess risks to the U.S. financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;</li> <li>• resolves supervisory jurisdictional disputes among Council member regulatory agencies if certain conditions satisfied, such as request of an agency involved in dispute or issue;</li> <li>• makes determinations regarding exemptions in the derivatives title, where necessary.</li> </ul>
<p><b>Defining Firms that Pose Systemic Risk</b></p>	<p>With a majority vote of its members, the Council is authorized (in consultation with the Federal Reserve and primary functional regulators) to designate broadly defined financial companies, which includes banks and nonbank financial companies, as systemically important, the result of which is that those companies are subject to higher prudential standards.</p> <p>The Council is also authorized to identify financial activities and practices to be subject to stricter prudential standards.</p> <p>A “financial company” includes any domestic company or foreign company that has significant operations in the U.S. through a branch of a foreign bank or U.S. affiliate or operating entity that is, in whole or in part, directly or indirectly, engaged in financial activities.</p> <p>Once designated a financial company, it is considered a “systemically important financial company.”</p> <p>A financial company is subject to stricter prudential standards if the Council determines that: is systemically risky if the Council determines that:</p> <p>(1) material financial distress at the company could pose a threat to financial stability or the economy, or</p> <p>(2) the nature, scope, size, concentration, and interconnectedness, or mix of the company’s activities could</p>	<p>The Senate bill distinguishes between “bank holding company” and nonbank financial companies.”</p> <p>With a 2/3 vote of its members, including an affirmative vote of the Treasury Secretary, the Council is authorized to identify nonbank financial companies (with no size threshold designated) and activities, financial market utilities and payment activities, clearance and settlement activities.</p> <p>Once designated, a nonbank financial company becomes a “nonbank financial company” supervised by the Federal Reserve and is subject to enhanced standards.</p> <p>Large interconnected bank holding companies are automatically subject to stricter standards, and that determination of a bank holding company as “large, interconnected” is left largely to the Federal Reserve (although a BHC must have at least \$50 billion in assets for enhanced standards to apply, a number which the Federal Reserve can raise but not lower).</p> <p>Nonbank Financial Companies are to be regulated by Federal Reserve, but enhanced supervision by the Federal Reserve is triggered only if the company is predominantly financial. <b>(Am. #4003).</b></p> <p>Federal Reserve Board may exempt nonbanking financial firms from Council/Federal Reserve supervision. <b>Sec. 170.</b></p>

	<p>pose a threat to financial stability or the economy. <b>Sec. 1103.</b></p> <p>Federal Home Loan banks are exempt. <b>Sec. 1104(c)(6).</b></p> <p>Systemic Risk factors the Council shall consider:</p> <ul style="list-style-type: none"> <li>- Leverage, balance sheets, interconnectedness, liquidity supplied by firm, impact on underserved communities, asset management v. ownership, “nature, scope &amp; mix” of companies activities; assets &amp; liabilities; whether firm is already subject to prudential regulation. <b>Sec. 1103(b)(1)-(10).</b></li> <li>- Other factors, as deemed appropriate. <b>Sec. 1103(b)(11).</b></li> </ul> <p>The Council and Federal Reserve must establish an appeal procedure for a financial company designated as systemically important.</p>	<p>Systemic Risk factors the Council shall consider: Leverage; liabilities, assets; off-balance sheet exposure; interconnectedness; source of credit; Oversight Council recommendation; operation/ interest in clearinghouse/ settlement facility; asset management vs. ownership; ownership concentration; any other factors. <b>Sec. 115, 113(a)(2).</b></p> <p>Senate bill includes notice and hearing opportunity for nonbank financial companies to appeal before final designation, and judicial review is available under an arbitrary and capricious standard. Large, interconnected BHCs do not have an appeal opportunity.</p>
<p><b>Prudential Standards</b></p>	<p><b>Capital Requirements: Sec. 1103.</b> Federal Reserve required to establish stricter standards for systemically important firms, including:</p> <ul style="list-style-type: none"> <li>• Risk-based capital requirements that include off-balance sheet activities and are counter-cyclical.</li> <li>• 15:1 leverage ratio.</li> <li>• Liquidity requirements</li> <li>• Resolution plans</li> <li>• Concentration limits</li> <li>• Prompt correction actions</li> <li>• Risk management</li> </ul> <p>Contingent capital: Can be required by Board if systemically important firm.</p> <p>Federal Reserve may exempt or distinguish by class systemically important financial companies from risk-based and leverage requirements if it determines that such requirements are not appropriate in light of company’s activities, line of business or structure.</p> <p>Sets a single counterparty limit at 25% of capital stock and surplus or lower amount set by the Federal Reserve to mitigate risks to financial stability.</p> <p>Also requires Federal Reserve to prescribe standards to limit the risks that a failure of any individual entity could pose to a systemically important firm.</p>	<p><b>Capital Requirements:</b> The 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. Such requirements must be “not less than” the “generally applicable leverage capital requirements” and “generally applicable risk-based capital requirements.” (<b>Am. #3879</b>).</p> <p>Federal Reserve must establish “enhanced” capital, liquidity and leverage requirements on systemically important nonbank and large, interconnected BHCs. Such heightened prudential standards include:</p> <ul style="list-style-type: none"> <li>• Risk-based capital (though off-balance sheet exposures is a consideration only)</li> <li>• Leverage limits</li> <li>• Liquidity requirements</li> <li>• Resolution plans</li> <li>• Concentration limits</li> <li>• Credit exposure reporting</li> <li>• Prompt corrective actions</li> </ul> <p>Federal Reserve is permitted to establish prudential standards on: Contingent capital requirements enhanced public disclosures, overall risk management requirements. <b>Sec. 165(b)(1)(B).</b></p> <p>Federal Reserve must design requirements to account for differences among nonbank financial companies and bank holding companies and increase stringency based on a number of enumerated factors.</p>
<p><b>Regulatory Authority over Firms that Pose</b></p>	<p>Federal Reserve regulates and examines, and can require</p>	<p>Federal Reserve regulates and examines.</p>

<p><b>Systemic Risk</b></p>	<p>firms and subsidiaries to submit reports.</p> <p>Divestiture: Council can “break up” firms' that pose a grave threat. Require financial holding companies to create an intermediate holding company. <b>Sec. 1104(e).</b></p> <p>No “Hotel California” clause in House bill (and nonbank financial company and BHC both designated as systemically important, so Hotel California clause not necessary).</p>	<p>Gives Federal Reserve back-up enforcement authority if systemically important firm (including subsidiary) threatens stability of economy and primary regulator fails to take enforcement action. <b>Sec. 162(b)(2).</b></p> <p>Divestiture: Federal Reserve and FDIC, in consultation with the Council may authorize divestiture only if a firm both (1) fails to have an adequate resolution plan; and (2) fails to remedy. <b>Sec. 165(d)(5)(B).</b></p> <p>Systemically Risky Activities: The Council can make recommendations to financial regulatory agencies to apply heightened standards. Financial regulatory agencies must create procedure to allow firms to appeal continued application of heightened standards <b>Sec. 120.</b></p> <p>Regulated firms subject to Federal Deposit Insurance Act enforcement provisions.</p> <p>“Hotel California” clause is only in the Senate bill. This rule would obviate the benefit of “debanking” (institution ceases to be a bank holding company) in order to escape enhanced regulatory requirements. Even if a firm “debanks” it will be subject to heightened prudential regulations if it has \$50 billion or more in assets as of January 1, 2010 and received capital under TARP. Appeal is possible. <b>Sec. 117.</b></p>
<p><b>Intermediate holding companies &amp; activity restrictions</b></p>	<p>Large nonfinancial firms must create intermediate holding company if engaged in financial activity. <b>Sec. 1301.</b></p> <p>Regulated nonbank financial firms must comply with <b>Sec. 4</b> limitations of the Bank Holding Company Act.</p>	<p>Not required, but Federal Reserve may require nonbanking financial company to create intermediate holding company. <b>Sec. 167.</b></p>
<p><b>Size, Activity and Concentration Limits</b></p>	<p>If the Council determines 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 <i>must</i> mitigate such risk by taking various actions, including:</p> <ul style="list-style-type: none"> <li>• Imposing stricter prudential standards;</li> <li>• ordering conditions on or termination of activities;</li> <li>• limiting the ability to merge, acquire, consolidate or otherwise affiliate with another company;</li> <li>• restricting the ability to offer certain financial products; and</li> <li>• if necessary, requiring a company to sell or otherwise transfer business units, branches, assets or off-balance sheet items to unaffiliated parties.</li> </ul> <p>Requires Treasury Secretary concurrence if the Council requires a sale of more than \$10 billion of total assets.</p> <p>Requires Treasury Secretary to consult with the</p>	<p>With a determination by the Federal Reserve and 2/3 Council approval that a bank holding company with \$50 billion or more in assets or a systemically important nonbank financial company poses a “grave threat” to financial stability, the Federal Reserve <i>must</i> take actions necessary to mitigate such risk, including:</p> <ul style="list-style-type: none"> <li>• termination of activities;</li> <li>• conditions on the manner in which the company conducts activities; and</li> </ul> <p>requiring company to sell or divest assets or off-balance sheet items to unaffiliated parties if other actions are inadequate to mitigate threat</p> <p>Notice required and opportunity for a hearing available. No judicial review.</p>

	<p>President if the Council requires a sale of more than \$100 billion.</p> <p>Also 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.</p> <p>Requires consultation with the FIO if standards would have a significant effect on insurance companies.</p> <p>Requires a systemically important financial company to submit proposed plans for Council approval (and Federal Reserve oversight) to implement the required mitigating actions within no more than 60 days following the notice.</p>	
<b>Proprietary Trading</b>	<p><b>Volcker Implementation Optional:</b> No express prohibition on proprietary trading, but the Federal Reserve is permitted to prohibit a regulated nonbank financial company or bank holding company from proprietary trading if the activity is a safety and soundness risk to the company or the stability of the financial system.</p> <p>Similar to Senate bill, certain proprietary trading is exempt (market-making, hedging, valuation). <b>Sec. 1117.</b></p>	<p><b>Volcker Implementation Required:</b> Provides that appropriate federal banking agencies <i>shall</i> write rules to implement the Volcker Rule – to prohibit the purchasing, selling or otherwise acquiring or disposing of stocks, bonds, options, commodities, derivatives, or other financial instruments for the trading book. <b>Sec. 619(b).</b></p> <p><b>Prohibited activities:</b> Insured depository institutions having investment in private equity or hedge funds.</p> <p><b>Permitted activities:</b> Market making, trading in U.S. debt and GSE obligations, and certain hedging activities.</p> <p><b>Sec. 989</b> GAO study on proprietary trading: Requires study to determine if proposed restrictions on capital market activity are appropriate for insurance companies regulated by State insurance investment laws. <b>Sec. 619.</b></p>
<b>Emergency Financial Stabilities Powers</b>	<p>Under <b>Sec. 1701</b>, in “unusual and exigent circumstances” during a “liquidity event” (such determination requiring 2/3 votes of the Council, written consent of the Treasury Secretary and certification by the President) the Federal Reserve can authorize a Federal Reserve Bank to discount notes, drafts, or bills of exchange as part of broadly available credit. However, it would not be permitted to assist specific individuals, partnerships, or corporations.</p> <p>Removes existing Government Accountability Office (GAO) auditing restrictions over the Federal Reserve.</p> <p>Requires a study by the Comptroller of the Currency of the Federal Reserve’s emergency lending authority under §13(c), a report due to Congress no later than 2 years after enactment. <b>Sec. 1000A.</b></p>	<p>Limits Section 13(3) assistance to a “program or facility with broad-based eligibility,” but not to any single individual, partnership or corporation. All emergency aid subject to Treasury approval, and must be reported to Congress within 7 days. Emergency lending is only for the purpose of providing liquidity to the financial system, and not to aid a failing financial company. Emergency lending contingent upon collateral sufficient to protect taxpayers. Federal Reserve must consult with Treasury on new policies and procedures for emergency lending</p> <p>GAO can audit any utility receiving 13(3) aid and any Federal Reserve credit facility. An amendment authorizes GAO to audit the Federal Reserve (but not interfere with monetary policy) to let the American people know the names of the recipients of over \$2,000,000,000,000 in taxpayer assistance from the Federal Reserve System. <b>(Am. #3738).</b></p>

	<p>Related to direct assistance, FDIC may provide financial assistance to assist in the resolution of the covered financial company. There are some mandatory conditions to providing assistance, including requirement that unsecured creditors bear losses and the management and board members responsible for the failed condition must be removed.</p>	<p>FDIC assistance to failing institutions similar to House. FDIC and Board (not the Council and Federal Reserve) make decisions regarding liquidations and guarantees. <b>Sec. 1154.</b></p>
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## Thrift/ILC Charter

	House	Senate
<b>Thrift/ILC Charters</b>	<ul style="list-style-type: none"> <li>• Preserves thrift charter. <b>Sec. 1301.</b></li> <li>• Requires additional safeguards on industrial loan corporations and other non-bank depository institutions. Current non-bank banks, ILCs, and similar companies that engage in commercial activities but are not currently subject to bank holding company regulation will not be forced to divest, but their financial activities will be brought under a properly regulated holding company structure for the first time and will face limits on transactions with their commercial affiliates to prevent self-dealing.</li> <li>• Closes the ILC loophole going forward, so that no additional commercial companies will be allowed to own banks or ILCs.</li> <li>• Current ILCs required to convert to intermediary “section 6” holding company. <b>Sec. 1301.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Terminates power to grant new federal thrift charters. <b>Sec. 341.</b></li> <li>• Moratorium (3 years) on allowing commercial companies to own banks or ILCs, changes in control is prohibited <i>unless</i> there is danger of default. <b>Sec. 603.</b></li> <li>• Eliminates elective investment bank holding company charter. <b>Sec. 617.</b></li> </ul>
<b>Affiliate Transactions for Section 6 companies</b>	Limits transactions between ILC intermediary holding companies and affiliates, but companies can still make purchase money loans to customers. See <b>Sec. 1301.</b>	Board has rulemaking authority to restrict or limit transaction between nonbank financial firm and affiliates, parent company, subsidiaries, non-subsidiary affiliates. <b>Sec. 167(b).</b>
<b>Exemptions from BHC requirements</b>	Insurance companies that own a thrift are not subject to BHC Act regulation or affiliate limitations. See <b>Sec. 1301.</b>	Study on whether to eliminate the corresponding exceptions to the Bank Holding Company Act. <b>Sec. 603(b)(1).</b>

# Bank Agency Reorganization & Federal Reserve Powers

	House	Senate
<b>Timing</b>	Transfers of agency powers and responsibilities occur one year after enactment, with a possible 6-month extension.	Same, except Treasury Secretary must publish transfer date within 9 months of enactment.
<b>OTS</b>	OTS is abolished 90-days after the transfer date, and Federal thrift charter continues to exist.  Functions transferred to the OCC. <b>Sec. 1204.</b>	OTS is merged into FDIC, OCC, and Federal Reserve Board: <ol style="list-style-type: none"> <li>1. <i>FRB</i>: Takes control of thrift holding companies and their non-depository institution subsidiaries. (<b>Am. #3759</b>). FRB assumes rulemaking authority relating to thrift transactions with affiliates, loans to insiders and tying arrangements.</li> <li>2. <i>FDIC</i>: Takes control of state thrifts and state non-member banks. <b>Sec. 312(b)(2)(B).</b></li> <li>3. <i>OCC</i>: Takes control of federal thrifts <b>Sec. 312(b)(2)(C).</b></li> </ol> CFPB Director assumes OTS position on FDIC Board.
<b>OCC</b>	OCC will receive the functions of OTS, with a new Division of Thrift Supervision. <b>Sec. 1204.</b>	Supervises national banks & federal thrifts
<b>Federal Reserve</b>	Ends the Gramm-Leach-Bliley Act “Fed lite” provisions, and therefore expands the Federal Reserve’s authority to examine, regulate and 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 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. Does not strike the existing definition of “functionally regulated subsidiary” in Section 5 of the Bank Holding Company Act, which includes an insurance company.	Also ends the Gramm-Leach-Bliley Act “Fed lite” provisions, and therefore expands the Federal Reserve’s authority to examine, regulate and 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 examinations, reporting requirements, and information requests.  Does not exclude insurance companies as functionally regulated subsidiaries.
<b>Holding Company Capital</b>	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 is effective upon enactment.	Same as House, but effective as transfer date.
<b>Acquisitions</b>	Federal Reserve required to take into consideration the financial stability of the U.S. when approving a bank or nonbank acquisition. Also requires Federal Reserve	Same as House.

	approval of a financial holding company's acquisition of any nonbank company if the total assets acquired exceed \$25 billion. Institutions must be well capitalized (v. adequately capitalized) and well managed to complete an interstate acquisition.	
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# Deposit Insurance

	House	Senate
<b>Risk-based assessments</b>	<p><b>Calculation:</b> Assessments calculated by reference to amount of average total assets <u>minus</u> the amount of tangible equity. <b>Sec. 1402.</b></p>	<p><b>Calculation:</b> Assessment base equals consolidated assets of the depository institution <u>minus</u> the institution's average tangible equity. <b>(Am. #3749).</b></p> <p><b>Size Discriminate:</b> Assessment rates may discriminate by size, barring certain sized institutions from receiving the FDIC's lowest risk category. <b>Sec. 331(a).</b></p>

# Hedge Funds & Securities

	House	Senate
<b>Banks and Bank Holding Companies</b>	<ul style="list-style-type: none"> <li>Designated financial holding companies are prohibited from proprietary trading, <u>if</u> the Board determines the activity poses an “existing or foreseeable threat” to the safety and soundness of the company or the financial stability of the U.S. <b>Sec. 1117.</b></li> </ul>	<ul style="list-style-type: none"> <li>Prohibited from sponsoring hedge funds and private equity funds, unless bank/bank holding company is foreign-owned. <b>Sec. 619(c).</b></li> <li>Cannot enter a covered transaction (23A) with a hedge fund. <b>Sec. 619(e).</b></li> </ul>
<b>Registration of Funds</b>	<ul style="list-style-type: none"> <li>Eliminates private investor exemption, except for venture capitalists.</li> <li>Eliminates exemption for advisors with &lt; 15 clients.</li> <li>SEC shall consider different risk profiles of different types of funds and entities when writing registration requirements.</li> </ul> <b>Sec. 5003.</b>	<ul style="list-style-type: none"> <li>Similar. Eliminates private advisor exemption, <b>Sec. 403</b>, with exceptions for venture capitalists, <b>Sec. 407</b>, and private equity funds, <b>Sec. 408.</b></li> <li>Raises threshold for federal registration to \$100 million (increase from \$25 million). <b>Sec. 410</b></li> <li>States regulate advisors with &lt; \$100 million in assets. <b>Sec. 410.</b></li> </ul>
<b>Exemptions from Registration &amp; other regulations</b>	<ul style="list-style-type: none"> <li>Adds (1) limited exemption for foreign advisors with no place of business in US, fewer than fifteen U.S. clients and &lt; \$25 million assets under management, doesn’t advertise to US clients. (2) limited intrastate exception; creates (3) Small Business Investment Companies. <b>Sec. 5003.</b></li> <li>Funds with &lt; \$150 million assets exempt. <b>Sec. 5007.</b></li> <li>Clarifies that Investment Advisors Act of 1940 doesn’t apply to state-registered advisors. <b>Sec. 7405.</b></li> <li>Exempts firms with &lt; \$75 million in market capitalization from SOX external audit of internal control criteria. <b>Sec. 7606.</b></li> </ul>	<ul style="list-style-type: none"> <li>Similar. <u>Also exempt:</u> <ul style="list-style-type: none"> <li>Venture capitalists exempt from registration; must disclose information to SEC. <b>Sec. 407.</b></li> <li>Exempts family investment officers. <b>Sec. 409.</b></li> <li>Same exemption for state-registered advisors. <b>Sec. 928.</b></li> <li>Funds with &lt; \$100,000 assets.</li> </ul> </li> <li>SEC must define “private equity” and create registration exemption for private equity firms. <b>Sec. 408.</b></li> <li>For purposes of SEC Rule 206(1) and 206(2) of Inv. Advisers Act, the customers of a private fund should not be considered “clients.” <b>Sec. 406.</b></li> <li>The SEC, not State regulators will decide whether a Reg. D offering is exempt from registration. <b>Sec. 926.</b></li> </ul>
<b>Disclosure</b>	<ul style="list-style-type: none"> <li>All funds with &gt; \$150 million assets under management.</li> <li>Funds report data to SEC, as the SEC deems to be in the public interest, and as the SEC and Federal Reserve deem necessary to assess systemic risk. <b>Sec. 5004.</b></li> </ul>	<ul style="list-style-type: none"> <li>Expands disclosure to include private equity funds with &gt; \$125 million.</li> <li>SEC has authority to demand reports, examinations, and disclosures. <b>Sec. 404</b></li> <li>Venture capital advisors and funds exempt from disclosures. <b>Sec. 407</b></li> </ul>
<b>Miscellaneous &amp; Studies</b>	<p>Extraterritorial jurisdiction of US anti-fraud laws. <b>Sec. 7216.</b>            Study feasibility of SIPC risk-based assessments. <b>Sec. 7510.</b>            GAO study to assess the annual costs on industry members and their investors due to the registration requirements. <b>Sec. 5009.</b></p>	<p>Studies and reports on short selling, hedge funds, SRO for private funds, accredited investors. <b>Sec. 414, 414, 415.</b></p>

# Derivatives

	House	Senate
<b>Push Out</b>	No similar House provision.	<p>Banks and bank holding companies forced to “push out” or spin off their derivatives trading activities, likely moving this business to nonbanks and foreign firms.</p> <p>Specifically, there is a prohibition against federal government assistance, including Federal Reserve credit facility advances, discount window or 13(3) lending, and FDIC insurance or FDIC debt guarantees, to any swap/security-based swap dealer, major swap participant, swap execution facility, designated contract market, national securities exchange, central counterparty, clearing house, clearing agency, or derivatives clearing organization.</p>
<b>Major Swap Participant</b>	<p><u>Major swap participant</u>: Person who maintains a substantial net position in outstanding swaps or security-based swaps, excluded swaps for hedging, reducing or mitigating commercial risk, including operating and balance sheet risk; or one whose default could cause significant losses to counterparties that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets.</p>	<p><u>Major swap participant</u>: Any non-dealer who maintains a substantial net position in outstanding swaps or security-based swaps, excluding positions held for hedging commercial risk, and positions held by any employee benefit plan under ERISA for hedging, or someone whose failure to perform under terms of its swaps could cause serious adverse effects on the financial stability of the U.S. banking system or financial markets.</p>
<b>Swap Dealer</b>	<p>Any person who:</p> <ul style="list-style-type: none"> <li>• holds itself out as a dealer in swaps;</li> <li>• makes a market in swaps;</li> <li>• regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business; or</li> <li>• engages in any activity causing the person to be commonly</li> </ul> <p>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.</p> <p>A person may be designated a major swap participant for one swap and not others.</p>	<p>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.</p> <p>Does not provide for exemptions for <i>de minimis</i> activity.</p> <p>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.</p>
<b>Regulator</b>	<p>CFTC and SEC must consult with each other and primary regulators before making rules.</p> <p>CFTC has jurisdiction over most swap derivatives and the SEC has jurisdiction over swaps that are primarily based on securities.</p>	<p><i>CFTC</i>: Non-securities based swaps, examines registered swap repositories.</p> <p><i>SEC</i>: Mixed swaps, securities-based swaps</p> <p>Functionally, or economically similar products should be treated the same. § 711(b). Derivatives are to be regulated through joint rulemaking by the SEC and the CFTC. If the two agencies do not agree on the level of regulatory oversight, the Council has authority to intervene. Both must consult with each other to</p>

		<p>assure regulations are consistent and comparable with the regulations prescribed by the other.</p> <p><i>Joint-Rule making power:</i></p> <ul style="list-style-type: none"> <li>•Definitions</li> <li>•Clearing rules</li> <li>•Registration</li> <li>•Capital and margin requirements,</li> <li>•Daily trading records for dealers, participants, clearinghouses; audit records</li> <li>•Business conduct standard</li> </ul> <p><i>Limits on Rulemaking Authority of SEC/CFTC:</i></p> <ul style="list-style-type: none"> <li>• Neither SEC nor CFTC can grant exemption from swap or security based swap provisions of OTC Act of 2010, unless explicitly provided for.</li> <li>• SEC/CFTC <u>cannot</u> prescribe prudential rules to registered dealers, participants that are subject to primary federal regulator, although they can set disclosure/reporting rules.</li> <li>• Primary federal regulator of securities-based swap dealers, major securities-based swap participants &amp; swap dealers, major participants retains enforcement authority; but SEC or CFTC retain backstop enforcement power.</li> </ul>
<b>Clearinghouse ownership restrictions</b>	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 clearinghouse, exchange or swap execution facility if it would result in any such entity, in the aggregate, controlling more than a 20% voting interest.	The CFTC and SEC must determine whether to make rules establishing limits on the control. If they find that the rules are necessary, it must adopt such rules.
<b>Central Clearing</b>	<p>Clearing required if a clearing organization will accept the swap; and the CFTC or SEC has determined that clearing is required.</p> <p>Clearing not required if a counterparty is not a swap dealer or major swap participant; is hedging or mitigating commercial risk; and notifies the CFTC or SEC how it meets its financial obligations associated with non-cleared swaps.</p>	<p>Clearing required, unless no clearing organization will accept the swap, or one of the parties is a commercial end user, excluding financial entities</p> <p>Within 180 days of enactment, SEC or CFTC must adopt rules to identify any group, class, type of swaps that should be cleared or exempt from clearing if not accepted for clearing. <b>Sec. 519.</b></p> <p>Clearinghouse must get SEC or CFTC approval for group, category, type, or class that the clearinghouse wants to clear. Also, clearinghouse must have enumerated safeguards to protect against counterparty default.</p> <p>OTC derivatives must be cleared through centralized clearing houses and traded on exchanges. Both regulators and clearing houses are to determine which contracts should be cleared. The SEC and CFTC must approve contracts before clearing houses may clear them.</p> <p>Registered derivatives clearing organizations must get SEC or CFTC approval before a specific group, type, class or category of swaps/security-based swaps can be cleared.</p>
<b>End Users</b>	End users exempt from clearing, as long as transactions don't	If at least one participant is not a swap or security-based swap dealer, major

<b>Exemption</b>	create a systemic risk.	participant, <u>and</u> swap is a hedge that is using the swap to hedge its own commercial risk, <i>and</i> at least 1 of the counterparties is primarily engaged in non-financial activities. SEC & CFTC limit positions on hedged trades.
<b>Trading Mechanism</b>	All swaps/security-based swaps subject to clearing requirement must be exchange-traded or traded on a board of trade, a national securities exchange, or swap execution facility.	All swaps/security-based swaps should be cleared with a registered derivatives clearing organization unless the CFTC or SEC provide an exemption. Contracts are exempt from the clearing requirement if: <ul style="list-style-type: none"> <li>No centralized clearing house, exchange, or alternative swap execution facility will accept the contract for clearing or trading.</li> </ul> Regulators may exempt (after notifying the Financial Stability Oversight Council of a permissive exemption) from the clearing requirement: <ul style="list-style-type: none"> <li>One counterparty is not a swap/security-based swap participant and does not meet the eligibility requirements of a clearinghouse.</li> </ul> One counterparty is not a swap/security-based swap dealer or major swap/security-based swap participant and is using the swap to hedge their own risk activities (that are not financial in nature). <i>Commercial End-User Clearing Exemption.</i>
<b>Reporting transactions</b>	All non-cleared transactions must be reported to a swap repository or the SEC/CFTC. SEC/CFTC must make aggregate data on all cleared and non-cleared swap data public.	Same. Each swap that is not accepted for clearing by a clearing organization shall be reported to a swap data repository or, if none will accept, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe. Clearinghouses must report regularly and keep 5 years of records. Major swap/securities- based swap dealers and participants must keep daily records of trades, customer records, <u>audit trail.</u>
<b>“Swap Execution Facility”</b>	Any person or entity that facilitates or executes swap/securities-based trades including electronic trade execution or voice brokerage facility.	A 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 facilitates the execution of swaps between persons and is not a designated contract market. Facility must establish rules to deter abuses; position limits; publically available trade information; data reporting; recordkeeping; risk management.
<b>Registration with the SEC and/or CFTC</b>	Clearing organizations, major swap participants, repositories, swap dealers, and swap execution facilities must register with the appropriate authority in accordance with the Act; and dual registration is required in applicable cases.	Same.
<b>Bankruptcy</b>		Authorizes the FDIC to repudiate and enforce contracts and handle the financial company’s qualified financial contracts (including derivatives). A counterparty to a qualified financial contract would be stayed from terminating, liquidating, or netting the contract (solely by reason of the appointment of a receiver) until 5:00 PM on the fifth business day after the date that the FDIC was appointed receiver.
<b>Lending Limits</b>		Credit derivatives will affect lending limits.
<b>Miscellaneous</b>	Amends anti-bucket shop laws. <b>Sec. 3026.</b>	Repeals 15 USC 78c (Graham Leach Bliley) prohibition of regulation on security based swaps (SBS) and narrows exemption of CFTC swaps.

		<p>Amends state gaming and anti-bucket shop laws in clarify their applicability to security-based swaps. <b>Sec. 756.</b></p> <p>Imposes a fiduciary duty on swap dealers that provide advice to, or enter into a swap with, a government entity or agency, pension plan, endowment, or retirement plan.</p>
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# Insurance

	House	Senate
<b>Establishes Office</b>	Named Federal Insurance Office. <b>Sec. 8002.</b> FIO Director appointed by Treasury Secretary, who will also serve on Council.	Named Office of National Insurance. <b>Sec. 502.</b> Director will not serve on Council.
<b>Role of Office</b>	Office would monitor the insurance industry, identify regulatory gaps, collect data, and advise regulators. Director also recommends to the Council any insurers that should be treated as systemically important.  Does not establish regulatory or supervisory position over insurance companies. <b>Sec. 8002(a)</b> (creating 31 U.S.C. § 313(c))	Similar to House. <b>Sec. 502(a).</b>  Supervision Recommendation: Recommends to Council whether an insurer should be placed under the supervision of the Federal Reserve.
<b>Preemption</b>	Office may preempt (limited power – De novo review; no Chevron deference) any state insurance regulation that directly results in less favorable treatment of a non-US insurer than a US insurer authorized in that state and that is inconsistent with a covered agreement (between US and foreign government/regulatory entities). <b>Sec. 8002(a)</b> (creating 31 U.S.C. § 313(c)) Determination subject to APA rulemaking procedure. § 8002(a)	Office may preempt state insurance regulations that result in less favorable treatment of a non-US insurer than a US insurer authorized in that state and is inconsistent with an international insurance agreement. <b>Sec. 502.</b>  Slightly broader preemption powers, but still very limited.  Preemption determination subject to notice and comment. <b>Sec. 502.</b> Determinations subject to APA rulemaking procedure.
<b>Information Collection</b>	Office may request information from any insurer, except for small insurers but does not have subpoena power. <b>Sec. 8002(a)</b> (creating 31 U.S.C. § 313(e))	Subpoena Power- The Director of the Office has the power to require information required to carry out the functions of the office. <b>Sec. 502</b> (creating 31 U.S.C. 313(e)(6)) Small Insurer Exception: Small issuers, determined by a threshold the Office may establish, would become exempt. § 502 (creating 31 U.S.C. § 313(e)(3))
<b>Surplus Lines</b>	Only tax policies, licensing, and other regulatory requirements of the home state of the policy holder would govern a surplus line transaction; streamlines access to surplus lines market for certain commercial purchases. <b>Sec. 10101-10104.</b>	(Nearly identical language) Only tax policies, licensing, and other regulatory requirements of the home state of the policy holder would govern a surplus line transaction; streamlines access to surplus lines market for certain commercial purchases. <b>Sec. 521-524.</b>
<b>Study</b>	No later than a year after enactment, the director shall submit a study on how to modernize and improve the system of insurance regulation. <b>Sec. 8004.</b>	No later than 18 months after enactment, the Director shall submit a study on how to modernize and improve the system of insurance regulation in the U.S. <b>Sec. 502</b> (creating 31 U.S.C. § 313(m))

# Securitization & Risk Retention

	House	Senate
<b>Risk Retention</b>	<p>Federal banking agencies and SEC (and, where applicable, HUD, FHFA and Rural Housing Service) to issue regulations requiring creditors 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.</p> <p><b>Requirement</b>                      (1) 5% of credit risk;                      (2) Less than 5% if underwriting and loan standards meet certain requirements set by regs;                      (3) More than 5% if underwriting or due diligence by securitizer is insufficient.</p> <p><b>Sec. 1502.</b></p> <p>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.”</p>	<p>Similar to House bill. Federal banking agencies and SEC to issue regulations that require securitizers of ABS to retain at least 5% of the credit risk in assets transferred, sold or conveyed through the issuance of an ABS by the securitizer.</p> <p><b>Requirement</b>                      (1) Generally not less than 5% of credit risk;                      (2) Less than 5% if underwriting and loan standards meet certain requirements set by regulations (include terms, conditions, and characteristics of loans) specific to the class of assets.</p> <p>Definition of origination: 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. <b>Sec. 941</b> (amending Exch. Act, adding § 15G)</p> <p><b>Sec. 941.</b></p>
<b>Institutions Subject to Requirement</b>	<p>(1) Creditor retains % for all loans that it transfers, sells or conveys to a third party.                      (2) Securitizer retains % for asset backed securities that is backed by assets not described in (1).                      (3) Agencies can apply requirement to securitizers in addition to or in substitution creditors as appropriate.</p> <p><b>Sec. 1502.</b></p>	<p>(1) Securitizers retain a portion of the risk for any asset that it transfers, sells or conveys to a third party through an asset-backed security.                      (2) Agencies must allocate the risk between a securitizer and originator, as the agencies deem appropriate. Agencies must reduce the % of risk retention required of the securitizer by the % required of the originator.</p> <p><b>Sec. 941.</b></p>
<b>Exempted Loans or Securitizations</b>	<p>Education, Agriculture, VA, SBA, FHA loans. Require agencies to set a total or partial exemption for any securitization if appropriate in the public interest or for investor protection.</p> <p><b>Sec. 1502.</b></p>	<p>Require agencies to set a total or partial exemption for any securitization if appropriate in the public interest or for investor protection. <b>Sec. 941</b></p> <p>Qualified residential mortgages are given express exemption from the risk retention requirement. <b>Landrieu # 3956</b></p> <p>As well, after amendment, commercial asset-backed securitizations can have an adjusted risk retention amount. <b>Amendment #3992 (as modified) to Amendment # 3956</b></p>
<b>Form</b>	<p>Retained risk must be no less at risk for loss than the average of the credit risk not retained. <b>Sec. 1502.</b></p>	<p>Agencies specify permissible form (pro rata, first loss). <b>Sec. 941</b></p>
<b>Hedging/ Transferring</b>	<p>Prohibited, but agencies may make adjustments (<i>see below</i>). <b>Sec. 1502.</b></p>	<p>Same. <b>Sec. 941.</b></p>
<b>Exemptions, Exceptions and</b>	<p>Agencies may provide exemptions or adjustments for % retained and hedging prohibition if certain standards are met (public interest, protection of investors) <b>Sec. 1502.</b></p>	<p>Same.. <b>Sec. 941.</b></p>

<b>Adjustments</b>		
<b>Duration</b>	Set by regulators. <b>Set. 1503.</b>	Same.. <b>Sec. 942.</b>
<b>Regulators</b>	Joint regulations by Federal banking agencies and SEC; HUD, FHFA, and RHS as appropriate within 180 days. <b>Sec. 1502.</b>	Joint regulations by Federal banking agencies and SEC. Write regs within 270 days; effective 1 year thereafter.
<b>Disclosure</b>	Set by regulators, but at a minimum it must disclose asset level or loan-level data necessary for investors to perform due diligence. <b>Sec. 1503.</b>	Same.. <b>Sec. 942.</b>
<b>Reps and Warranties</b>	SEC must prescribe regs on reps and warranties for asset-backed securities, including: (1) require credit rating agencies to include in credit ratings reports a description of the reps, warranties, and enforcement mechanisms available to investors, and how they differ from those in similar issuances; and (2) required disclosure on fulfilled repurchase requests across all trusts aggregated by originator, so investors may identify asset originators with clear UW deficiencies. <b>Sec. 1504.</b>	Same as HR 4173. <b>Sec. 943.</b>
<b>Study</b>	Requires Financial Services Oversight Council to conduct a study on the macroeconomic effects of risk retention. Study must be completed within 180 days of enactment. <b>Sec. 1506.</b>	None.

## Corporate Governance/Executive Compensation

	House	Senate
<b>Say on Pay</b>	<p>At the annual meeting of shareholders, or special meeting in lieu of an annual meeting, companies must provide shareholders with an annual non-binding vote to approve the compensation of executives, including golden parachutes, as disclosed pursuant to the SEC rules. Rules required by SEC within months of enactment. <b>Sec. 2002.</b></p> <p>Further, where shareholders asked to approve M&amp;A transactions, companies must provide shareholders with a non-binding vote to approve payments to any named executive officer in connection with such M&amp;A transaction.</p>	<p>Same, but silent on golden parachutes. Advisory vote on pay limited to shareholder director votes. <b>Sec. 951.</b></p>
<b>Financial Institutions</b>	<p>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 in order that regulators can determine whether structures are aligned with sound risk management and do not have serious adverse effects on economic conditions or financial stability.</p> <p>Prohibits incentive-based payment arrangements that regulators determine encourage inappropriate risks.</p>	<p>Federal Reserve to consult with OCC and FDIC to establish 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.</p>
<b>Proxy Access</b>	<p>SEC has authority to increase shareholder's access to proxy for director nominations. <b>Sec. 2002.</b></p>	<p>Same. <b>Sec. 951.</b></p> <p>Also, brokers who are not beneficial owners of stock would no longer be able to vote company proxies unless the customer instructs the broker to do so. <b>Sec. 957.</b></p>
<b>Compensation Committee</b>	<p>Public companies must have Compensation Committees consisting solely of independent directors. <b>Sec. 2003.</b></p>	<p>Same, must disclose whether compensation consultant retained. <b>Sec. 952.</b></p>
<b>Clawback</b>	<p>N/A</p>	<p>The listing exchanges 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. <b>Sec. 954.</b></p>
<b>Compensation restrictions</b>	<p>Companies put into receivership will have TARP compensation restrictions applied. <b>Sec. 1614.</b></p>	<p>Defines unsafe and unsound practice to include providing compensation to employee, director or majority shareholder that is excessive or could lead to material</p>

		loss. Sec. 956
<b>Study</b>	<p>The Comptroller General of the United States shall carry out a study to determine whether there is a correlation between compensation structures and excessive risk taking.</p> <p>The 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> <p><b>Sec. 2004.</b></p>	N/A

# Credit Rating Agencies

	House	Senate
<b>General</b>	<p>Create office to administer credit rating agency (“CRA”), related rules and practice. Also creates seven member CRA Advisory Board. <b>Sec. 6002, 6008.</b></p> <p>All CRAs must file information with the SEC. No longer ensures confidentiality with respect to certain submissions to the SEC. Increases internal controls, requires greater transparency of rating procedures and methodologies, provides investors with a private right of action, and provides the SEC with greater enforcement tools.</p> <p>No similar requirement related to structured finance products.</p> <p>CRAs must designate a compliance officer and carryout various compliance-related tasks.</p>	<p>Similar, but no advisory board. <b>Sec. 932</b></p> <p>Increases controls, requires greater transparency of rating procedures and methodologies and provides investors with a private right of action.</p> <p>Provides the SEC with greater enforcement tools for initial ratings on structured finance products to be issued by qualified CRAs.</p> <p>Similar Compliance Officer requirements.</p>
	No comparable House provision.	<p><b>Sen. Franken’s amendment #3808</b> instructs the SEC to establish a self-regulatory organization to assign credit rating agencies to provide initial credit ratings.</p> <p><b>Sen. LeMieux’s amendment #3774</b> strikes all references to “credit rating agencies.”</p>
<b>Registration &amp; Exemption</b>	<p>CRAs must register as nationally recognized statistical rating organizations (NRSRO) with SEC.</p> <p>Subject to rules and annual examination by SEC.</p> <p>Exemption if CRA doesn’t sell ratings to issuers and publishes ratings in limited publications.</p> <p>SEC has rulemaking authority to create other exemptions.</p> <p><b>Sec. 6002.</b></p>	Same. <b>Sec. 932.</b>
<b>Authority &amp; Oversight</b>	SEC must review ratings, policies, methodology of registered CRAs. <b>Sec. 6002.</b>	Same. <b>Sec. 932.</b>
<b>Company Model</b>	CRA board must include independent directors; a compliance officer; conflict of interest screening procedures. <b>Sec. 6002.</b>	<p>At least 1/2 of NRSROs board of directors must be independent (not fewer than 2). SEC may exempt small NRSROs from board of director ratio as long as at least one director is independent. <b>Sec. 932.</b></p> <p>NRSROs that are subsidiaries are subject to additional SEC regulation. <b>Sec. 932.</b></p> <p>CRA analysts must pass qualifying exams; participate in continuing education. Establish new internal controls, penalties for poor performance. <b>Sec. 936.</b></p>

<p><b>Disclosure</b></p>	<p>SEC must, by rule, require NRSROs to publish a prescribed form disclosing information about (1) assumptions underlying procedures and methodologies; (2) data relied upon to determine the rating; (3) if applicable, how servicer or remittance reports were used and how frequently, to conduct surveillance; (4) other information that would help users of ratings better understand ratings in each class. Information to include due diligence and historical default data.</p> <p>Regarding structured securities, which the SEC must define, the SEC 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 underwriters to assess the accuracy and integrity of their data and fraud detection.</p>	<p>Same, except for requiring different symbols for structured products. NRSROs must establish, define universal ratings symbols. <b>Sec. 932, 938.</b></p> <p>Regarding structured finance products, the issuer or underwriter of an ABS must make publicly available the findings and conclusions of any third-party due diligence report obtained.</p>
<p><b>Liability</b></p>	<p>Makes clear that CRAs can be sued under private rights of action. As well, the House bill eliminates the “forward looking statements” safe harbor of Section 21E of the Exchange Act.</p> <p>Private right of action to sue credit rating agency for gross negligence, if investor can show rating was substantial factor in economic loss. <b>Sec. 6003.</b></p> <p>NRSRO must consent to rating use in registration; is subject to Sec. Act liability if included in registration. Ends Reg FD exemption for information disclosed from issuer to CRA. <b>Sec. 6007.</b></p> <p>Increases civil penalties for violations.</p>	<p>Also makes clear that CRAs can be sued under private rights of action. As well, eliminates the “forward looking statement” safe harbor.</p> <p>Private right of action for “knowing” or “reckless” failure to conduct a reasonable investigation of facts or obtain analysis from independent source. <b>Sec. 933.</b></p> <p>The Exchange Act’s prohibition on regulating the methodologies and procedures of credit ratings is not an antifraud defense to fraud action brought by SEC. <b>Sec. 932.</b></p>
<p><b>Conflicts of Interest</b></p>	<p>Requires CRA 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. Requires SEC to issues rules to prohibit conflicts of interest, including a number of practices spelled out in the bill.</p>	<p>SEC must issue rules to prevent sales and marketing considerations from influencing products of ratings, with exemptions possible for small NRSROs if separation of ratings production and sales and marketing would not be appropriate.</p>
<p><b>NRSRO de-registration</b></p>	<p>May de-register only if the NRSRO received less than \$250,000 in net ratings revenue during its last full fiscal year.</p>	<p>No voluntary withdrawal of registration regime for NRSRO.</p>
<p><b>Study</b></p>	<p>GAO study on implementation of these provisions.</p> <p>SEC study on effects of new requirements on NRSRO registration.</p> <p>SEC study on credit ratings on different classes of bonds.</p> <p><b>Sec. 6013.</b></p>	<p>GAO study on whether federal ratings requirements should be removed. Prudential regulators must review and remove credit rating references that are inappropriate. <b>Sec. 939.</b></p> <p>SEC study on strengthening CRA independence. <b>Sec. 939A.</b></p> <p>GAO study on alternative business models for compensating NRSROs to provide</p>

		incentive for better credit ratings. <b>Sec. 939B.</b> GAO study on the creation of an independent professional analyst organization for analysts employed by NRSROs. <b>Sec. 939C.</b>
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# Mortgage Provisions

	House	Senate
<b>GSE Reform</b>	No mention.	Requires Treasury to conduct a study on ending the conservatorship of Fannie Mae and Freddie Mac, and on the future of housing finance. § 1078. (Am. #3938)
<b>Federal Duty of Care</b>	A Federal duty of care is established for mortgage originators, including ability to repay and net tangible benefit.  Increased liability for violation of this duty, consumers able to rescind a loan if violation.	
<b>“Mortgage Originator”</b>	Anyone that: <ul style="list-style-type: none"> <li>• receives a loan application;</li> <li>• assists a consumer in obtaining or applying for a loan;</li> <li>• prepares loan packages;</li> <li>• collects information on behalf of the consumer on the loan;</li> <li>• offers or negotiates terms of a loan, for direct or indirect compensation;</li> <li>• represents to the public that they can or will provide any of these services.</li> </ul>	Anyone that, for direct or indirect compensation or gain, with respect to credit secured by real property or a dwelling, <ul style="list-style-type: none"> <li>• arranges for an extension, renewal, or continuation of such credit;</li> <li>• takes an application for credit or assists a consumer in applying for such credit; or</li> <li>• offers or negotiates terms of such credit.</li> </ul> Does not include any person who performs administrative or clerical tasks; and does not include a licensed or registered real estate broker, unless the person is compensated by a lender or loan originator.
<b>Disclosure</b>	Federal banking agencies must jointly develop a standard disclosure form that includes information on the total cost, interest rate, and fees.	1 year after enactment, Bureau must issue notice and comment on proposed regulations that combine TILA and RESPA disclosures.
<b>Compensation</b>	Prohibits loan originator compensation to be based on the terms of the loan, other than the loan amount.	Same as House.
<b>Prepayment Penalties</b>	Only qualified mortgages can have prepayment penalties, which must be phased out after the first 3 years of the mortgage. Requires certain disclosures and opt-out opportunities. Originator cannot change the loan transaction to avoid these regulations.	Same as House.
<b>Minimum Standards for Mortgage</b>	Ability to Repay Verification of Income Escrow Accounts Property appraisals for all loans	Ability to Repay Verification of Income
<b>Qualified Mortgages</b>	Include: <ul style="list-style-type: none"> <li>• underwriting at the fully-indexed rate</li> <li>• verified income</li> <li>• meet a certain DTI test</li> <li>• fixed for 30 years or ARM where underwriting is based on maximum interest rate that could be reached in first 7 years.</li> <li>• Limited and rebuttable safe harbor for qualified mortgages.</li> </ul>	For prepayment penalties, qualified mortgage has a similar definition as in the House bill, but does not include adjustable rate mortgages.
<b>Study</b>	GAO must conduct a study on the effect of this Act on the availability of	GAO must conduct study on appraisal and mortgage

	mortgage credit.	valuations.
<b>HOEPA &amp; HERA</b>	HOEPA high-cost mortgage trigger is lowered.	
<b>Foreclosure Prevention</b>	Permits Treasury to transfer \$3 billion of TARP funds to the Emergency Homeowner's relief fund; \$1 billion for Neighborhood Stabilization Program.	
<b>Mortgage Modifications</b>	Mortgage servicers and lenders participating in HAMP to report to the Treasury on a monthly basis on: number of loan modification applications number of loan modification processed number of loan modification approved number of loan modification denied.	
<b>Incentives</b>	Not expressly addressed other than incentives-related provisions in CFPA.	Prohibits originators 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
<b>Ability to Repay</b>	Not in House bill.	Requires 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.
<b>Arbitration</b>	CFPA can prohibit or impose conditions on mandatory pre-dispute arbitration clauses in agreements between covered persons and consumers for consumer financial products or services.	Bureau 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.

# Resolution Authority

	House	Senate
<b>Covered Institutions</b>	<p>Broad applicability. Covers bank holding companies, systemically significant companies, insurance companies, other companies predominantly engaged in financial activities (as defined in Section 4(k) of the Bank Holding Company Act), and any subsidiaries of the above.</p> <p>There are exceptions for subsidiaries that are insured depository institutions and broker-dealers that are members of SIPC; and general exceptions for GSEs, FHLBs, Farm Credit System institutions, insured depository institutions and credit unions.</p>	<p>Broad applicability. Covers bank holding companies, systemically significant companies, insurance companies, other companies predominantly engaged in financial activities (as defined in Section 4(k) of the Bank Holding Company Act), and any subsidiaries of the above provided that those subsidiaries are predominantly engaged in financial activities.</p> <p>There are exceptions for subsidiaries that are insured depository institutions and insurance companies; and general exceptions for GSEs, FHLBs, and Farm Credit System institutions.</p> <p>Insurance subsidiaries to financial companies are not covered. However, Insurance “holding” companies may fall in this bill. <b>Sec. 203(e)</b>.</p> <p>Broker-dealers not part of definition of covered institution.</p>
<b>Trigger &amp; Dissolution</b>	<p>Treasury Secretary determines that failure of financial holding company would have serious adverse effects on financial stability or economic conditions of US. <b>Sec. 1603</b>. Federal Reserve and SEC also must make certain systemic risk determinations.</p>	<p>Similar to the House bill, but Treasury Secretary must also determine the company is a “financial company” and either obtain consent of the company’s board or an order from the U.S. District Court for D.C. The Court must act within 24 hours, otherwise the Treasury Secretary’s petition is deemed granted.</p> <p>A financial company can appeal the District Court’s determination under an “arbitrary and capricious” standard. <b>(Am. #3827)</b>.</p>
<b>Receiver</b>	<p>FDIC acts as receiver for one year, with two 1-year extensions possible. The FDIC has the power to convert receivership into involuntary bankruptcy and to become trustee. The FDIC would have broad discretion to sell or transfer assets and liabilities to a third party, and to cherry pick which assets to transfer.</p> <p>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. The FDIC may only transfer all or none of the QFCs with a particular counterparty and any of its affiliates.</p>	<p>FDIC acts as receiver for 3 years, with two 1-year extensions. The FDIC would have broad discretion to sell or transfer assets and liabilities to a third party, and to cherry pick which assets to transfer.</p> <ul style="list-style-type: none"> <li>• <b>Broad Powers:</b> The FDIC may operate, manage, or merge the company. Further, they may collect obligations and money due to the company, and transfer any asset or liability without prior approval. <b>Sec. 210(a)(1)</b>.</li> <li>• <b>Contracts:</b> The FDIC may repudiate any contract; only ‘direct compensatory damages’ recoverable.</li> </ul>

		<p><b>Sec. 210(c).</b></p> <ul style="list-style-type: none"> <li>• <b>Qualified Financial Contracts:</b> Authorizes a stay on the rights and obligations of “qualified financial contracts” as defined in <b>Sec. 210(c)(8)</b> which covers securities contracts, commodities contracts, forward contracts, swap agreements, and purchase agreements. <b>Sec. 205(a)(3)/ Sec. 210(c)(10).</b></li> </ul>
<b>Counterparty Contracts</b>	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. The FDIC may only transfer all or none of the QFCs with a particular counterparty and any of its affiliates.	Same, except that stay is for 3 business days.
<b>Funding of Authority</b>	<ul style="list-style-type: none"> <li>• \$150 billion pre-funded Systemic Dissolution Fund, funded by firms with \$50 billion or more in assets. <b>Sec. 1609(n).</b></li> <li>• Creates a Systemic Dissolution Authority to manage Fund. <b>Sec. 1613.</b></li> </ul>	What was once a \$50 billion pre-paid resolution authority has been eliminated. ( <b>Am. #3827</b> ). <b>Currently:</b> Costs of receivership are paid by the Federal government, likely through a line of credit from Treasury. Then, the government is reimbursed for their receivership expenses by selling off assets of the failed firm. ( <b>Am. #3827</b> ).
<b>Haircut for Secured Creditors</b>	<p>If there is a shortfall in amount owed to US or to the Fund, FDIC is permitted to treat up to 10% of a secured claim on a qualified financial contract as an unsecured claim. <b>Sec. 1609(a)(4)(D)(iv)-(v).</b></p> <ul style="list-style-type: none"> <li>• Does not apply to: secured claims of the federal government; security interests relating to a debt with an original term of 30 days or more; loans made to an insured depository institution, credit union, or GSE; loans secured by US Treasury or agency issued or guaranteed securities or GSE issued or guaranteed securities; debt secured by residential or commercial real estate.</li> </ul>	Claim value cannot exceed value of collateral (the amount a creditor would receive in Ch. 7 liquidation). <b>Sec. 210(b).</b>
<b>“Living Wills”</b>	Large, complex institutions must develop and submit a rapid resolution plan or “living will.” Regulators must create regulations to establish a “living will.” <b>Sec. 1104(f).</b>	Firms must submit Resolution Plans to address what they would do in the event of failure. <b>Sec. 165(d).</b>

# Federal Reserve Governance

	House	Senate
<b>Leadership</b>	Nothing in House bill.	<p><b>Sec. 1157.</b> The President of the Federal Reserve Bank of New York must be appointed by the President and approved by the Senate for a term of 5 years. This provision takes place on date of enactment.</p> <p>No company, affiliate, or subsidiary of a company supervised by the Federal Reserve Board can vote for a Federal Reserve Bank director, and no company officer, director, or employee can serve as a Federal Reserve Bank director. This also is effective on date of enactment</p>
<b>Supervision</b>	Nothing in the House bill.	<p><b>Sec. 1158.</b> Creates a new position at the Federal Reserve Board of Vice Chairman for Supervision. Term is for a period of 4 years</p> <p>Further, the Board may not delegate regulation and supervision to the Federal Reserve Banks.</p>