

2010 FINANCIAL REFORM SUMMARY

The law commonly known as the “Financial Reform Law” is an **amalgamation** of many bills, many amendments and, of course, great many political compromises. The whole thing started in the Winter of 2009 and became law on July 21, 2010.

The official name for this law is “Wall Street Reform and Consumer Protection Act of 2009” (H.R. 4173, Public Law #111-203). PL#111-203 collectively created at least **three (3)** brand new Federal Agencies and a number of new Offices and Federal Commissions to regulate and oversee (presumably) many existing Federal and State financial regulatory Agencies, including but not limited to, SEC, Federal Reserve, FDIC, State Consumer Protection Agencies and State Insurance Regulatory Agencies.

The following summary is based on the available May 20, 2010 final version of the law, and it is only **an attempt to reduce** a 850-page difficult legal writing into a 4-page plain and simple summary.

THE NEW FEDERAL AGENCIES

A) The “Financial Stability Oversight Council” (**FSOC**)

FSOC will be created by Title I of PL#111-203, with a stated mission to :

- 1) Create certain “Prudential” regulations for Financial Stability;
- 2) Improve the Supervision and Regulations governing Banks, Bank Holding Companies, Security Holding Companies and other Non Bank Financials;
- 3) Improve and enhance certain Liquidation/Dissolution/Resolution authorities subject to Judicial review ;
- 4) Establish the Office of Financial Research to conduct studies and research; and
- 5) Improve the International financial policy, co-ordination and provisions.

The Council (FSOC) will be subject to GAO audit and will have voting and non voting members. The voting members will be Federal Government senior officials, such as Treasury Secretary, Federal Reserve Chairman, Comptroller of Currency, Head of SEC., etc. The non voting members will be State senior officials, such as State Banking Commissioners, State Insurance Commissioners and State Security Commissioners.

B) The “Bureau of Consumer Financial Protection” (**BCFP**)

BCFP will be established according to Title X of PL#111-203 with a mission to:

- 1) Oversee and Preserve consumer protection State Laws and State Consumer Protection Agencies;
- 2) Regulate consumer financial products and/or services;
- 3) Improve the Federal Trade Commission Act; and
- 4) Overall improve consumer financial protection regulatory environment.

BCFP will be headed by a Director with specific authorities and mandate to regulate and to enforce. Two (2) advisory Boards will be created, the Investor Advisory Committee and the Consumer Advisory Board, to advise the Director of BCFP.

Authorize the GAO to study and audit BCFP's regulations, programs and activities. Periodically report findings to Congress on the effectiveness of the Agency and the impact on small businesses based on the Agency's regulations.

Certain other "**Protection**" for the consumers also came from Title IX of the Law (Sections 911 to 950, and 975 to 989J). These protections include:

- 1) Revise and enhance certain "Private Fund Investment Advisers Registration" and requirements;
- 2) Changes to "Municipal Securities" and "Short Sales" reforms;
- 3) Set up "Accountability & Transparency" rules for Credit Rating Agencies;
- 4) Improve the "Asset-Backed Securitization" process;
- 5) Provide certain specific protection to the Senior Investors; and
- 6) In general, codified certain mandate for "Disclosure", "Enforcement" and "Remedies", including "Whistleblower" protection and reward provisions..

C) The "Office of National Insurance" (**ONI**)

ONI will be created in accordance with Title V of PL#111-203 with a mission to oversee all State Insurance Regulatory Agencies. This Agency will be established within the Department of the Treasury. The head of this new Agency will be the Director of ONI and will be appointed by the Secretary of the Treasury. The most significant functions of this new Agency is the "State-Based" insurance reforms with emphasis in:

- 1) Non admitted insurance;
- 2) Reinsurance; and
- 3) Rules of Construction

OTHER REFORM PROVISIONS

A) Corporate and Financial Institution Compensation and Accountability

Title IX (Sections 951 to 972) of PL#111-203 require the SEC to direct all national security exchanges and associations to prohibit the listing of stocks from any corporations that failed to comply with SEC standards regarding compensation and accountability, such as:

- 1) Independence and authority of compensation committee ;
- 2) Reporting of employee and director hedging activities;
- 3) Executive compensation disclosures;
- 4) Prohibit incentive-based methods which could lead to excessive risk taking; and
- 5) Proxy access and Disclosure of Board Chairman and CEO structures.

B) Provisions affecting the Federal Deposit Insurance Corporation (**FDIC**)

In this regard, Title III, Subtitle C, Sections 331 to 336 specified certain changes to reform the FDIC deposit insurances. These reforms, among others include the following:

- 1) Elimination of “pro-cyclical” assessment;
- 2) Establish new reserve ratio requirements as basis for assessment;
- 3) Increase permanently the deposit and share insurance for member banks;
- 4) Reorganize and improve the management of FDIC; and
- 5) Prohibit FDIC to approve Deposit Insurance to an industrial bank, a credit card bank or a trust bank that is directly or indirectly owned or controlled by a commercial (non bank) firm.

C) Provision affecting the Federal Reserve System (**FED**)

Title XI, Sections 1101 to 1109 stipulated changes to amend certain provisions of the Federal Reserve ACT. These amendments will have effect upon:

- 1) The emergency lending authority of the FED;
- 2) The Federal Reserve Banks’ governance;
- 3) The FED’s supervisory and regulatory policies; and
- 4) The review of FED’s Credit Facilities and their availability.

D) Derivatives, SWAP, Commodity and Futures Markets Reform

Title VII of PL#111-203 authorized and required a join effort between the **CFTC** (Commodity, Futures Trading Commission) and the **SEC** (Security Exchange Commission) to conduct studies regarding domestic Derivative transactions, SWAP and all types of security-based SWAP activities.

They are required to report to Congress and made recommendations for possible legislative and/or regulatory changes to improve financial & commodity markets oversight and accountability.

The CFTC and the SEC are further authorized by Title VII to prohibit any entity domiciled in a foreign country from participating in any U.S. SWAP and/or security-based SWAP activities if such foreign country undermines the stability of the U.S. financial system. Further, Section 716 of this Act prohibits the Federal Government bailout of any SWAP entities, domestic or foreign.

Last but not least, the CFTC and SEC are directed by Section 724, Title VII of this Act to made recommendations to Congress for purpose of changing the Federal Insolvency Laws, particularly regarding SWAP bankruptcy treatment.

NOTE: Act Section 929-I exempting SEC from FOIA (Freedom of Information Act) requests has been repealed in September 2010.

E) Mortgage and Lending Reform

The mortgage reform and anti-predatory lending are provided by Title XIV of PL#111-203 from Section 1401 to Section 1489. In summary, the reforms or changes made by these provisions are as follows:

- 1) Set up new standard for Residential Mortgage Loan Organizations;
- 2) Set up new minimum acceptable standards for Mortgages;
- 3) Set up a new “Office of Housing Counseling” (Sections 1442 to 1452);
- 4) Tight up regulations concerning “High-Cost Mortgage”, “Mortgage Servicing” and “Appraisal Activities” (Subtitles C, E & F of Title XIV); and
- 5) Stress the need for meaningful reforms of Government sponsored Enterprises, Such as **Freddie Mac and Fannie Mae** (Section 1491).

F) Mortgage Resolution and Modification

In an attempt to provide some “mortgage and foreclosure” relief, certain provisions were incorporated in Sections 1481 to 1484, of Title XIV of PL#111-203. They are:

- 1) Multi-family mortgage resolution;
- 2) Home Affordable Modification Program (HAMP);
- 3) Availability of information available to the public regarding “Making Home Affordable” program; and
- 4) Clarification and extension available for the Protections of tenants in foreclosure.

G) Technical and Conforming Amendments

Subtitle E of Title III and Subtitle H of Title X together made numerous Technical and/or Conforming amendments to a host of currently valid Acts of law. These laws (a selected few) include the following:

- 1) Bank Enterprise Act of 1991;
- 2) Bank Holding Company Act of 1956;
- 3) Depository Institution Management Interlocks Act;
- 4) Emergency Homeowners’ relief Act;
- 5) Federal Deposit Insurance Act;
- 6) Security Exchange Act of 1934;
- 7) Inspector General Act;
- 8) Fair Credit Reporting Act and Fair & Accurate Credit Transaction Act of 2003;
- 9) Federal Trade Commission Act;
- 10) Fair Debt Collection Practices Act;
- 11) Homeowners Protection Act of 1998;
- 12) Truth in Lending Act;
- 13) Real Estate Settlement Procedures Act of 1974;
- 14) Paperwork Reduction Act; and
- 15) Etc.

THE END