

## Highlights of the Obama Financial Regulatory Reform Plan

The Obama Financial Regulatory Reform Plan, announced on June 17, 2009, would change the regulation of all lenders and their holding companies, give the Fed supervisory power over large and complex entities that pose a systemic risk to the financial system, create a new consumer protection agency, and provide for managing future financial crises. Key objectives include restoring consumer and investor confidence in the nation's financial system.

**Strengthen National Policy against Mixing Banking and Commerce.** In contrast to the Bush Administration's Financial Restructuring Blueprint, the Obama plan would strengthen the national policy against mixing banking and commerce—a long-standing NAR goal. Existing institutions that engage in commercial and banking activities, including certain grandfathered thrift holding companies and industrial loan companies, would have five years to comply.

**Future Role of the GSEs.** The Obama Administration will report to Congress and the public in February 2010 at the time it releases its proposed 2011 budget.

**Consumer Financial Protection Agency (CFPA).** The new CFPA would consolidate regulation of consumer protection laws related to financial products in one agency. CFPA would write rules, supervise, examine and enforce violations. The covered statutes would include TILA, HOEPA, RESPA, CRA, ECOA, HMDA, and FDCPA.<sup>1</sup> CFPA is designed to fix regulatory gaps and prevent recurrence of abuses that were a major cause of the credit crunch. States could set higher standards (i.e., no preemption, though there would be a federal regulatory floor). The stated purpose for CFPA is to provide transparency, simplicity, fairness, and access to all.

**Requirement for Mortgage Originators or Securitizers of Asset Backed Securities to Retain Some Economic Interest.** To impose an incentive for lenders and securitizers to consider the quality of the underlying loans, the proposal states that the federal banking agencies should require originators and securitizers to retain 5% of the credit risk (without hedging away their exposure), for a period to be specified. (Similar to Frank concept in H.R. 1728, but without a clear safe harbor for certain tried and true loan products.)

**New Authority to Prevent Systemic Risk.** The Fed would add supervisory authority over Tier 1 Financial Holding Companies (large and complex non-bank entities that could create risk to the financial system) to its existing authority to supervise bank holding companies. Among other responsibilities, a new **Financial Services Oversight Council (FSOC)** would advise the Fed on identifying Tier 1 FHCs, as well as address gaps in consumer and investor protection and promote best practices. The Treasury Secretary would chair the FSOC, whose members would also include the Fed Chairman, the Director of the new National Bank

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<sup>1</sup> Truth in Lending Act, Home Ownership and Equity Protection Act, Real Estate Settlement Procedures Act, Community Reinvestment Act, Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and Fair Debt Collection Practices Act, respectively.

Supervisor (the product of the merger of OCC and OTS (the bank and thrift regulators)), the director of the CFPB, the SEC Chair, the Commodity Futures Trading Commission Chair, the Federal Deposit Insurance Corporation Chair, and the Director of the Federal Housing Finance Agency.

Resolution of at-risk Tier 1 FHCs would be modeled on the existing FDIC system. Treasury, the Fed, the FDIC, or, for securities firms, the SEC could initiate the process. Treasury would decide on how to resolve the firm. Generally, the FDIC would be appointed as conservator or receiver (or the SEC where the largest subsidiary is a securities firm).

**Broader Regulation of Financial Institution Holding Companies Consolidated in the Fed.** Exceptions to the Fed's supervisory authority over bank holding companies would be eliminated. The Fed would supervise any companies that own an FDIC-insured thrift (the thrift charter would be eliminated over time), an industrial loan company ((LC), a credit card bank, or a trust company—a group that is now exempt from Fed supervision.

**Elimination of the Thrift Charter and the OTS.** OCC and OTS would be merged into a new National Bank Supervisor within Treasury (OCC and OTS are now within Treasury). The thrift charter would also be eliminated, and thrifts would have to choose between a national bank or state bank charter.

**Office of National Insurance within Treasury.** A new Office of National Insurance within Treasury would be created to monitor the insurance industry. The proposal does not propose a federal insurance charter, but suggests it may be one way to increase national uniformity.

**Evaluation of Fair Value Accounting.** The proposal includes several recommendations related to proper valuation of assets on the books of financial firms, noting that distortions created by the current credit crisis exacerbated capital problems.

**Supervision of Hedge Funds and Other Private Pools of Capital; Regulation of Derivatives (Including Credit Default Swaps (CDS)).** The proposal would require hedge funds and other pools of private capital to register with a federal financial regulator to close a regulatory gap in the present system. The derivatives market would be subject to comprehensive regulation to prevent risk to the financial system, promote efficiency and transparency, prevent market manipulation and other abuses, and prevent marketing to unsophisticated investors.

**Strengthen Regulation of Credit Rating Agencies.** The plan would strengthen credit rating agency regulation and increase rating transparency, but not make fundamental changes in their structure or funding.