

AGENCIES & AGENCY OVERSIGHT REFORM

as of July 2011

Regulatory failure—the legal inability or the unwillingness to regulate large sectors of the financial services industry and their lending and secondary market activities—was a major contributor to the financial crisis. The Dodd-Frank Act responds to this judgment with a number of new agencies and the elimination of one. The construction of the new framework has proceeded smoothly in some areas, less so in others (notably the Consumer Financial Protection Board). Many previously unregulated institutions will have to grow accustomed to a new federal regulator. Of course, the success and impact of the new framework will depend in large measure on the substance of new rules, and the vast majority of these rules are still a long way off.

Major Agency Changes

- Financial Stability Oversight Council has been established and has met six times before the first anniversary. Two ex officio seats remain vacant: the Comptroller of the Currency and the Director of the Consumer Financial Protection Board.
- The Consumer Financial Protection Board (CFPB) will formally be established on the anniversary date. In the meantime, the Treasury Department created a consumer financial protection unit that will become the CFPB. It has already staffed the unit and begun to issue guidance on its future activities. The Administration has nominated Richard Cordray to serve as the Director of the CFPB.
- Treasury has established two other required offices within the department: the Office of Financial Research and the Federal Insurance Office.
- The SEC has not yet established the required Office of Credit Ratings.
- The Office of Thrift Supervision will be abolished on October 19, 2011.

Major Changes in Agency Oversight

- Several types of financial institutions and certain financial activities will be subject to substantially new regulation.
- Systemically important nonbank financial companies—The Council has authority to designate these institutions, and the Federal Reserve will regulate them once designated. The Council has proposed a rule on designations. The FRB has begun to propose rules addressing the regulation of systemic risk.
- Thrift institutions—The supervisory and rulemaking authority of OTS over these institutions is transferred to the other three federal bank regulatory agencies.
 - In January 2011, the agencies jointly provided a report to Congress on the OTS transfer issues. By the anniversary date, the agencies will have completed the transfer of OTS staff.
 - Federal Reserve Board—supervision of and rulemaking for all savings and loan holding companies. The FRB has indicated the general supervisory principles it will apply, but no further guidance will be forthcoming until after the transfer date.
 - Office of the Comptroller of the Currency—supervision of all federally-chartered savings associations and savings banks. OCC has rulemaking authority generally over all savings associations, whether federal- or state-chartered.
 - FDIC—supervision of state-chartered savings associations. FDIC has rulemaking authority limited to the state-chartered thrifts.
- Providers of consumer financial products—Rulemaking authority for essentially all federal statutes regulating consumer financial products has been transferred to the CFPB—The allocation of supervisory responsibilities is complicated, but two categories of providers will be governed in almost all respects by the CFPB.

- Nonbank financial companies—These companies currently are unregulated with respect to their consumer businesses. Dodd-Frank grants supervisory, enforcement, and rulemaking authority over many (but not all) of these institutions to the CFPB. Until a director has been confirmed, the CFPB has indicated that it will not attempt to exercise its supervisory or enforcement authority.
- Insured depository institutions with more than \$10 billion in total assets—Supervision of the consumer compliance obligations of these institutions will be transferred from the current regulator—primarily the FRB—to the CFPB. The CFPB has said that it can exercise this authority before a permanent director has been confirmed. The CFPB has primary but not exclusive enforcement authority over these institutions.
- Large hedge funds—the SEC has finalized a rule implementing the Dodd-Frank provision that requires hedge funds that manage over \$100 million as investment advisers to register with the SEC in that capacity. Dodd-Frank repealed an exemption previously set forth in the Investment Advisers Act of 1940.
- Mid-sized investment advisers—the SEC has finalized a rule implementing the provision of Dodd-Frank that transfers the supervision of investment advisers with between \$25 and \$100 million in assets under management from the SEC to state securities regulators.
- Swap dealers and participants—the SEC and CFTC have proposed and are beginning to finalize a variety of rules addressing registration by and operations of swap dealers, major swap participants, and swap clearinghouses. Other agencies, including the FRB and FDIC, have proposed margin and capital requirements for the entities that they regulate that are dealers or participants.
- Clearing organizations—the CFTC has several rulemaking procedures in progress to implement several requirements of Dodd-Frank; none have yet been finalized.
- Financial market utilities—those entities that are deemed systemically important by the Council will be regulated by the FRB. On July 18, 2011, the Council finalized criteria for the designation of these entities as systematically important. The Federal Reserve has proposed a rule establishing risk management standards and requiring such entities to provide advance notice of material changes to their rules, procedures or operations.