Regulatory Reform: An Overview of the Administration's Draft Legislation

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Introduction

Spurred by the devastating effects of the current financial crisis, the Obama administration on June 17, 2009, announced its plan for reform of the U.S. financial and securities markets. The proposal was described by President Obama as a "sweeping overhaul of the financial regulatory system, a transformation on a scale not seen since the reforms that followed the Great Depression."

In a June 15 op-ed piece in The Washington Post, Treasury Secretary Timothy Geithner and National Economic Council director Lawrence Summers stressed that "now is the time to act." The overall goal of reform, the officials said, is to create a more stable, flexible and effective regime that guards the system against its own excess.

Since the announcement of its reform plan, the Obama administration has delivered to Congress a number of pieces of draft legislation on the various elements of the plan. Certain elements of the plan, such as the expanded role planned for the Federal Reserve Board, have raised a fair amount of controversy and debate. As Congress prepares to restart deliberations on financial reform, there is much guesswork by experts as well as the popular media over how much of the president's reform plan will make it to the president for signing.

White Paper

In conjunction with the announcement of its proposal, the Obama administration published a white paper outlining the elements of its plan. The paper set out five key objectives of the restructuring proposal:

- promoting robust supervision and regulation of financial firms;
- establishing comprehensive supervision and regulation of financial markets;
- protecting consumers and investors from financial abuse;
- improving the ability to manage financial crises; and
- enhancing international regulatory standards and cooperation.

The proposal would address these objectives in part by:

- creating a Consumer Financial Protection Agency to protect consumers, funded by assessments on the institutions it regulates;
- imposing higher capital standards, calling for a "fundamental reassessment" of regulatory capital requirements for banks and bank holding companies (BHCs);
- granting new regulatory authority to the Fed, including the supervisory responsibility for all systemically significant firms, regardless of whether they are owned by BHCs;
- building a way to wind up nonbank financial institutions the failure of which threatens the stability of the system;
- establishing a single supervisor for all national banks, the National Bank Supervisor, an agency with separate status within the Treasury; and
- creating a Financial Services Oversight Council intended to prevent regulatory gaps, coordinate regulation and identify risks in the activities of financial firms and markets.

Other Key Elements

The white paper also addressed the regulation of financial firms and markets, targeting the weaknesses that led to the crisis. The paper included coverage of:

- Office of National Insurance;
- securitization markets;
- hedge funds;
- derivative markets;
- financial crisis management; and
- international supervision.

It was from the framework outlined in this paper that the individual pieces of draft legislation proposed by the administration stemmed.

Reactions to Proposal

In response to concerns voiced by the banking industry as well as some lawmakers over the Fed's expanded authority in the proposal, Treasury Secretary Timothy Geithner defended the Obama Administration's proposal to grant new regulatory authority to the Fed, arguing that countries that had chosen to limit their central bank's authority over financial stability found themselves with less capacity to act as the financial crisis unfolded.

"I think they found themselves in a substantially worse position than we did as a country," Geithner said in a June 18 hearing before the Senate Banking Committee.

Geithner described the administration's proposals for giving the Fed additional authority as "quite modest," noting that they build on existing authority, while at the same time take some authority away. He told committee members that the Fed is best positioned to be the first responder in a financial emergency as it already supervises and regulates bank holding companies, including all major U.S. commercial and investment banks.

The Secretary pointed out that the Fed would be aided in its role by a new Financial Services Oversight Council composed of the heads of all of the major federal financial regulatory agencies, including the Securities and Exchange Commission and Commodity Futures Trading Commission. While the proposed Council would fill gaps in the regulatory structure, Geithner noted that it would not be in a position to respond like the Fed. “You don't convene a committee to put out a fire,” Geithner said.

Critics

Senate Banking Committee Ranking Member Sen. Richard Shelby, R-Ala., told the committee that claims the Fed has the most experience to regulate the financial system, including insurance companies, hedge funds and mutual funds, gave a “grossly exaggerated” view of the Fed's expertise. Geithner responded by saying that the Administration does not envision such a sweeping scope of authority for the Fed. At this stage, he said, the proposed authority would largely entail the major banks and investment firms.

Sen. Charles Schumer, D-N.Y., questioned why the administration had not done more to consolidate bank supervision, noting that the new proposals would still result in four bodies responsible for bank oversight. He also wondered why, with the Fed gaining new powers, it should have responsibility over state banks.

“We thought a lot about that,” Geithner said, adding that the basic principle guiding the administration's proposals was to focus on those problems that were central to the crisis. Geithner said the Administration decided “it was not essential to take on the more complicated challenge of fundamentally transforming the rest of the system where there's a balance now between state and federal supervision of state chartered banks.”

Bernanke Addresses Critics

Appearing before the House Financial Services Committee on July 21, 2009, Fed chairman Ben S. Bernanke dismissed suggestions that the central bank is set to become a super-regulator with “untrammeled powers” under the administration's plan. Rather, the plan would result in a “modest reorientation” of the current Fed role, Bernanke assured lawmakers.

Bernanke noted that the Fed already is the umbrella supervisor of essentially all of the institutions that would be identified as Tier 1 firms under the administration's proposal. “The main differences would be that we would have some additional authorities to add capital and liquidity requirements, based on the systemic relevance of those firms,” Bernanke said, in addition to an enhanced ability to look at non-bank firms.

The biggest challenge for the Fed would be to take a more macro-prudential approach, according to Bernanke, rather than looking at each firm individually. “It would be a challenging thing for us to do, but it does not radically reorient our set of powers,” the Fed chair said.

MBA Statement

In a statement made after the proposal was unveiled, the Mortgage Bankers Association called the plan “a good launching point” for the debate on regulatory reform.

“The plan the President unveiled today is a comprehensive proposal that provides a good launching point for the coming debate,” MBA Chairman David G. Kittle, CMB, said. “We agree with the administration that a better regulatory structure is needed for the mortgage industry, which is why earlier this year we asked Congress to consider the Mortgage Improvement and Regulation Act (MIRA) that would, among other things, create a new regulator for non-depository independent mortgage banks and mortgage brokers, funded by the mortgage industry itself.”

John A. Courson, MBA President and CEO said, “We welcome the coming debate over the future regulation of the financial services industry. As the past several years have shown, oversight of financial firms can and should be improved in order to better protect consumers and make sure the troubles in the financial sector are not repeated.”

Courson added that “As the discussion around regulatory modernization moves forward, we will work with Congress and the administration to ensure that the new regulatory structure does not create conflicting and contradictory regulatory regimes that further confuse both lenders and borrowers. We want to ensure that the new structure does not stifle innovation or increase costs for consumers. And we will continue to argue for one preemptive set of mortgage regulations throughout the country to replace the current patchwork of state and local laws.”

NASAA

The North American Securities Administrators Association (NASAA) joined several other public interest organizations in expressing strong support for the proposal in the Obama Administration's plan to subject all those who provide investment advice to a fiduciary duty to act in their clients' best interests. NASAA joined the Certified Financial Planner Board of Standards, the Consumer Federation of America, the Financial Planning Association, Fund Democracy, the Investment Adviser Association, and the National Association of Personal Financial Advisors in submitting comments on the proposal in a July 14, 2009, letter to the leadership of the House Financial Services Committee.

Although noting that they represent diverse interests and constituencies, the organizations stated that a fiduciary duty should apply to all who give financial advice to clients. Accordingly, the organizations believe that the White Paper's call for the imposition of a universal fiduciary duty on both broker-dealers and investment advisers proposes an appropriate solution to the problem of brokers who have been allowed to offer extensive advisory services without having to comply with the Investment Advisers Act of 1940.

The organizations fear that Section 913 of the Treasury Department's proposed legislation, however, may fall short of that goal. Section 913 authorizes, but does not require, the Securities and Exchange Commission to issue rules that would that “in substance” provide that the “standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice about securities to retail customers or clients...shall be to act solely in the interest of the customer or client without regard to the financial or other interest of the broker, dealer or investment adviser providing the advice.”

Although applauding the provision's intent, the organizations stated that they believe revisions will be needed. Specifically, the organizations said that the legislation should be revised to “unambiguously provide for the extension of the overarching fiduciary duty that investment advisers owe their clients under the Advisers Act to brokers and others who provide investment advice, that this fiduciary duty is explicitly recognized in law, and that the legislation does not in any way undermine the fiduciary duty that already exists under the Advisers Act.”

Consumer Financial Protection Agency Plan

The administration sent its first piece of reform legislation to Congress on June 30, 2009. The legislation would create the Consumer Financial Protection Agency (CFPA), one of the key elements of the plan outlined by the administration in its white paper. The bill would also would establish the powers and responsibilities of the CFPA and provide for the transfer of personnel from existing regulatory agencies. The administration said that the agency would be “dedicated to looking out for American families when they take out loans or use other financial products or services—with a mission to promote access and protect consumers from unscrupulous practices across the market.”

The CFPA would be governed by a five-member board, comprising four members appointed by the President from the public and a fifth who was the head of the to-be-created National Bank Supervisor. One of the appointed members would be the CFPA Director.

CFPA Authority

The new agency would become the primary regulator for federal financial consumer protection laws. To carry out this responsibility, it would have broad authority to gather information, require reports and perform examinations. This authority would extend to anyone who provides financial products or services, or who provides material services to such a person, not just to traditional banking institutions. It would empower the CFPA to require reports of the financial condition of a person not regulated by any other federal or state agency to the extent needed to ensure that person's ability to carry out obligations to consumers.

In addition, the CFPA:

- would have the exclusive authority to adopt regulations under a number of federal consumer protection laws, such as the Truth in Lending Act;
- would have the primary, but not exclusive, authority for the enforcement of those laws;
- would not have the authority to set a federal usury limit, but would have the authority to restrict or prohibit the use of mandatory pre-dispute arbitration clauses; and
- would have authority to act against unfair, deceptive or abusive acts or practices.

State Enforcement

The bill would explicitly disclaim any intent to shield financial product or service providers from state consumer protection laws unless those state laws were inconsistent with federal laws. State laws that offered consumers greater protection than federal laws would not be considered to be inconsistent.

State attorneys general would have the authority to enforce both federal and state laws and regulations under a regime that would require prior notice to the CFPA and that would allow the agency to intervene, move the case to federal court and participate as a party. The bill provides explicitly that national banks and thrifts would be subject to state consumer financial protection laws as long as those laws did not discriminate against national banks and did not conflict with federal law.

House Bill

House Financial Services Committee Chairman Barney Frank, D-Mass., introduced on July 8, 2009, a bill that would establish the CFPA. H.R. 3126 does have some differences from the draft bill the administration forwarded to Congress. Unlike the administration's proposal, Frank's bill would leave enforcement of the Community Reinvestment Act in the hands of the existing federal regulators. Also, the bill does not presume the creation of the National Bank Supervisor, so all references in the administration's proposal to that agency have been changed to either the Office of the Comptroller of the Currency or Office of Thrift Supervision.

When introducing the bill, Frank said that “I am confident that we will produce a bill that will provide greater consumer protections while in no way burdening the legitimate activities.”

Barr Testimony on CFPA

The proposed CFPA will lead to a reduction in regulatory costs by eliminating areas where current authorities overlap or conflict, Treasury Assistant Secretary for Financial Institutions Michael Barr told Congress on July 14, 2009. At a hearing of the Senate Banking Committee, Barr argued that due to the breadth and diversity of authorities proposed for the CFPA it will be able to tailor its solution to the underlying problem with the least cost to consumers and institutions. Barr also addressed a host of concerns about the proposed new agency, a central pillar of the administration's financial overhaul plan, stating that it will preserve rather than stifle innovation, ensure consumer choice in the financial marketplace and increase national regulatory uniformity.

Criticism of CFPA Proposal

Critics of the CFPA, including Banking Committee Ranking Member Sen. Richard Shelby, R-Ala., said it would be “irresponsible” if consumers were led to believe that the CFPA would shield them from risk, noting that risk cannot be eliminated from the system. “I'm greatly concerned over many aspects of the president's plan, not to mention its underlying premise,” Shelby said.

Sen. Charles Schumer, D-N.Y., said failure to create the CFPA would leave a “gaping hole” in plans to overhaul financial regulation, citing a “sorry history” of regulating financial consumer products in the past. Barr also pointed to a “massive failure” of the regulatory system until now, due to a system of banking agencies having mixed missions.

Hedge Fund Registration Bill

The Obama administration delivered the next piece of proposed legislation to Congress on July 10, 2009. The legislation is intended to strengthen the Securities and Exchange Commission's authority to protect investors. The legislation outlines the steps that the administration believes are necessary to establish consistent standards for those who provide investment advice about securities, improve the timing and the quality of disclosures and require accountability from securities professionals.

The legislation also would establish a permanent Investor Advisory Committee “to keep the voice of investors present at the SEC,” the Treasury Department said.

Key Elements

To address its goal of investor protection, the legislation would:

- establish consistent standards for broker-dealers and investment advisors;

- provide the SEC with authority to restrict or limit mandatory arbitration;
- provide the SEC with authority to require disclosure prior to the purchase of a fund;
- clarify the SEC's authority to consumer testing of disclosures and rules;
- expand protections for whistleblowers; and
- require accountability of securities professionals throughout the financial services industry.

Executive Compensation Legislation

A third piece of draft legislation was sent to Congress on July 16, 2009. The bill targeted compensation committees and say-on-pay provisions.

Compensation Committees

Members of a company's compensation committee should meet exacting new standards for independence, just as the Sarbanes-Oxley Act required of members of audit committees, according to the administration. When directors have financial relationships with the company or its executives, executive pay packages might not be in the best interests of the shareholders. Currently, directors who have such conflicts of interest are not prohibited from serving on executive compensation committees. The administration noted that restrictions imposed by stock exchanges may not be adequate.

The legislation would give compensation committees the authority and funding to hire independent compensation consultants, outside counsel and other advisers who can help ensure that the committee bargains for pay packages in the best interests of shareholders. Committees would have independent legal counsel. In addition, if the compensation committee decides not to use an independent compensation consultant, it must explain that decision to the shareholders. Any compensation or legal counsel hired by a compensation committee would have to be independent of company management.

Say on Pay

The proposed shareholder say-on-pay provisions would require all public corporations to disclose executive compensation packages in their annual meeting proxy solicitations and put the packages to a non-binding shareholder vote. The disclosures would include salary, bonuses, stock and option awards and total compensation for senior executive officers, as well as golden parachute payments and pension compensation.

In the case of a merger or acquisition, a clear and simple disclosure of the exact amounts senior executive officers would receive would be required. There also would be a separate vote on such golden parachutes.

House Bill

The House passed a bill on July 31, 2009, that addressed executive compensation. The measure would grant shareholders an advisory vote on executive pay levels and golden parachute severance packages and require that only independent directors sit on corporate compensation committees. The bill, the Corporate and Financial Institution Compensation Fairness Act of 2009 (H.R. 3269), also would ban pay structures that encourage financial institutions to take “inappropriate risks” and require all public companies to disclose compensation structures that include any incentive based elements. Other provisions of the bill would ensure that compensation committees would have the authority and resources to hire their own consultants and attorneys. The bill was passed by a vote of 237-185.

Although the bill applies to public companies generally, one section would apply specifically to financial institutions with at least $1 billion in assets. Federal bank, thrift and credit union regulators, as well as the Securities and Exchange Commission and the Federal Housing Finance Agency, would be instructed to jointly adopt regulations requiring institutions to disclose incentive-based compensation structures for all officers and employees.

Incentive-based compensation arrangements that did not comply with the regulations would be prohibited.

Credit Rating Reform Legislation

The next piece of reform legislation was sent to Congress on July 21, 2009. The bill, the Investor Protection Act of 2009, would greatly enhance Securities and Exchange Commission supervision of credit rating agencies and impose significant investor protection requirements.

The proposal would replace the current voluntary registration system with mandatory SEC registration for all credit rating agencies. A dedicated office within the SEC would be created to supervise and examine rating agencies.

Existing regulatory efforts of the SEC would be written into law. These include requirements that nationally recognized statistical rating organizations disclose ratings information for all of their issuer-paid credit ratings and that investment issuers make it easier for investors to obtain independent ratings by providing the same information to all rating agencies.

Conflicts of Interest

The bill included provisions that are intended to prevent rating agency conflicts of interest. The measure would:

- ban firms from consulting with companies that they also rate;
- prohibit or require the management and disclosure of conflicts arising from the way a rating agency is paid, its business relationships, affiliations or other conflicts;
- require that each rating report disclose the fees paid by the issuer for a particular rating, as well as the total amount of fees paid by the issuer to the rating agency in the previous two years;
- require that if a rating agency employee is hired by an issuer and if the employee had worked on ratings for that issuer in the preceding year, the rating agency must conduct a review of ratings for that issuer to determine if any conflicts of interest influenced the rating and adjust the rating as appropriate ("look back" provision);
- require each rating agency to designate a compliance officer with direct responsibility over compliance with internal controls and processes.

Disclosure

The draft legislation included three investor-protection aspects. First, in an effort to reveal possible rating shopping by investment issuers, the proposal would require issuers that have obtained more than one rating for a product to disclose all of the preliminary ratings. Second, rating agencies would be required to use different symbols when rating structured products so that investors would be more aware of the fundamentally different risks those products pose. Finally, the proposal would attempt to provide investors with a more complete understanding of the risks of an investment by requiring qualitative and quantitative disclosures of those risks and of possible variances in performance. Each rating would have to include assessments of the reliability of the data, the probability of default, the likely severity of the loss if there were a default and the sensitivity of the rating to changes in assumptions.

Reliance on Ratings

Because the administration believes that investors may rely too heavily on ratings rather than performing their own due diligence, the proposal called for an interagency group that would review the current federal regulations to determine which references to ratings can be removed. The Government Accountability Office would study both federal and state regulations. Additionally, the Treasury and the SEC would look for ways to reduce reliance on ratings in the money market mutual fund industry.

Systemic Risk Regulation Bill

The Obama administration delivered its next piece of draft reform legislation to Congress on July 22, 2009. The proposal called for strong and consolidated supervision and regulation for financial firms. The legislation was designed to put into place a "regulatory regime" that would monitor, mitigate and respond to risks in the financial system.

Key Provisions

The proposal included a number of key provisions. The draft legislation would:

- create a Financial Services Oversight Council that would facilitate the coordination of financial regulatory policy and resolution of disputes and identify emerging risks in financial markets;
- subject financial firms that are found to pose a threat to U.S., designated as Tier 1 financial holding companies (FHCs), to "strong, consolidated supervision and regulation" by the Fed, regardless of whether they own insured depository institutions;
- require Tier 1 FHCs to be well-capitalized and well-managed and on a consolidated basis in order to significantly raise capital standards;
- close loopholes in the Bank Holding Company Act;
- require federal bank regulators and the SEC to issue regulations providing that the securitizer of an asset-backed security must retain 5 percent of the credit risk of the underlying assets;
- give the Fed strong statutory authority to oversee systemically important payment, clearing and settlement activities and systems; and
- require prior written approval of the Treasury Secretary for lending by the Fed under its emergency lending authority.

National Bank Supervisor and Resolution Authority Legislation

A draft bill that would combine the Office of Thrift Supervision and Office of the Comptroller of the Currency into a new National Bank Supervisor (NBS) was the next piece of draft legislation by the Obama administration. The proposal was sent to Congress on July 23, 2009. The merger of the two agencies would result in the elimination of the federal thrift charter and the thrift holding company structure, a move that the administration says would eliminate a major source of regulatory arbitrage.

National Bank Supervisor

The NBS would be a bureau of the Treasury Department, and it would take on most of the functions of the OCC. It would take on most functions of the OTS as well, except that the responsibility for the supervision and regulation of state chartered thrifts would pass to the Federal Deposit Insurance Corp. Any consumer financial protection functions of either the OCC or OTS would be transferred to the proposed Consumer Financial Protection Agency.

The NBS would fund its examination and other activities through the assessment of fees on the institutions it regulates. In order to further reduce the incentive for regulatory arbitrage, the NBS, FDIC and Federal Reserve Board would be directed to adopt joint rules on regulatory fees. Banks with more than $10 billion in assets would be charged fees based on their size, complexity and financial condition. The proposal seeks to reduce the fee burden on smaller community banks by capping their fees at an amount no more than the average charged by states to banks of comparable size.

Elimination of Federal Thrift Charter

Federally chartered savings associations would be permitted to choose among four types of charters: national bank, mutual national bank, state bank or state savings association. Any thrift that failed to make a choice, or that chose a state charter but failed to qualify, would automatically become a national bank one year after the enactment of the law.

Enhanced Resolution Authority

The proposal would create the authority to support or, if necessary, take over and resolve a bank holding company (BHC). If a BHC were in default or in danger of being in default, its failure or resolution under other laws would threaten the financial stability or economic condition of the country, and assistance or resolution would avoid or mitigate that risk, the Treasury Secretary could authorize the FDIC to take appropriate actions. A finding that a BHC was in such a condition would require the agreement of all appropriate regulatory agencies and consultation with the president.

Bair Response to Council Proposal

Federal Deposit Insurance Corp. Chair Sheila Bair told Congress on July 23, 2009, that the Financial Services Oversight Council currently envisioned by the Obama administration lacks sufficient authority to effectively address systemic risk.

Bair favors endowing a council, rather than the Fed, with broad authority over systemic risk in the financial system. A “council with real teeth and rulemaking authority...would be highly effective, more so in monitoring for systemic risk and taking action to address it,” Bair told the Senate Banking, Housing and Urban Affairs Committee.

Bair noted that bringing multiple regulatory perspectives together would strengthen the oversight council, not weaken it. “You are talking about tremendous regulatory power being invested in whatever this entity is going to be and I think in terms of checks and balances it's also helpful to have multiple views being expressed and coming to a consensus,” Bair told members.

To ensure the independence and authority of the council Bair suggested that the chairman be a presidential appointee, subject to Senate confirmation. The FDIC chair also called for the new council to have the authority to obtain any information requested from systemically important institutions. Meanwhile, Bair reiterated her call for a robust resolution mechanism for very large financial institutions, in combination with any new supervisory entity.

OTC Derivatives Regulation

The last piece of the Obama administration's financial services regulatory reform plan was filled in when the Treasury Department on August 11, 2009, sent to Congress legislative language intended to restructure the regulation of over-the-counter (OTC) derivatives such as credit default swaps. According to the Treasury, the build up of “enormous risks” in these currently mostly unregulated markets “contributed to the collapse of major financial firms in the past year and severe stress throughout the financial system.”

The proposed bill would subject the OTC derivatives markets to comprehensive regulation. It would seek to provide regulation and transparency for all transactions, strong prudential and business conduct regulation of dealers and other major market participants, and improved regulatory and enforcement tools. Goals of the regulation would include preventing the OTC derivatives markets from posing excessive risk to the financial system and preventing OTC derivatives from being marketed to unsophisticated investors.

Market Regulation

Regulation of the OTC derivatives markets would include, among other things:

- creating a standardized OTC derivative;
- requiring standardized OTC derivatives to be centrally cleared by a derivatives clearing organization regulated by the Commodity Futures Trading Commission or a securities clearing agency regulated by the Securities and Exchange Commission;

- requiring standardized OTC derivatives to be traded on a CFTC- or SEC-regulated exchange or a CFTC- or SEC-regulated alternative swap execution facility;
- encouraging substantially greater use of standardized derivatives and facilitating substantial migration of OTC derivatives onto central clearinghouses and exchanges;
- giving all federal financial regulatory agencies confidential access to the OTC derivative transactions and related open positions of individual market participants; and
- giving the public access to aggregated data on open positions and trading volumes.

Dealer and Market Participants

Regulation of dealers and market participants would include:

- establishing federal supervision and regulation of any firm that deals in OTC derivatives and any other firm that takes large positions in OTC derivatives;
- regulating dealers and major market participants by the federal banking regulatory agencies, SEC or CFTC, as appropriate;
- imposing comprehensive prudential supervision, including capital and margin requirements, for all dealers and major market participants; and
- establishing business conduct, reporting and recordkeeping duties.

Conclusion

As Congress prepares to start its deliberations over the pieces of draft legislation proposed by the Obama administration, there are questions over how much of the original proposal will be retained. The popular media is reporting that while financial reform had seemed inevitable given the administration’s strong push for change, it has been hindered by industry lobbying, feuding lawmakers and a more stable banking system.

Certain aspects of the plan, most notably the creation of what some are calling a “super regulator,” and the broadening of the Fed’s role as systemic risk regulator, have come under fire, raising doubt that some of the more powerful pieces of the proposal will make it through Congress. However, House Financial Services Committee chairman Barney Frank said that that reports that regulatory overhaul efforts are dead for the year are "inaccurate."

"This is going to be a very time-consuming committee for the month of October and on into early November," Frank said at the start of a committee hearing on Sept. 23, 2009. He noted that the Senate Banking, Housing and Urban Affairs Committee also expects to be acting on reform this year.

Already, Frank has circulated draft legislation for the creation of a Consumer Financial Protection Agency. The Consumer Financial Protection Agency Act (H.R. 3126) would establish the independent Consumer Financial Protection Agency, with a Director appointed by the President and subject to Senate confirmation. The Act also would create a Consumer Financial Protection Oversight Board composed of federal financial regulators to advise the Director on overall strategy and the consistency of regulation. The intent of the new CFPA is to give consumer protection an independent seat at the table in the federal financial regulatory system.

Frank's draft legislation calls for a single regulatory agency with the authority and accountability to ensure that consumer protection regulations are written fairly and enforced vigorously. The CFPA is intended to: reduce gaps in federal supervision and enforcement; improve coordination with the states; set higher standards for financial intermediaries; and promote consistent regulation of similar products.

White House Response

On Sept. 29, 2009, White House Press Secretary Robert Gibbs said the Obama administration is concerned that Frank's draft legislation was weakening a key aspect of the administration's proposal and suggested that the president might veto the legislation.

"The president would not sign any bill that he thought was too weak," Gibbs said. "I think we have seen what happens whether it is credit card companies, mortgage companies, we now see it more in stories covering the charges for bank overdrafts and the amount of money that costs the American people each year. The American people deserve an advocate on their behalf dealing with these entities. The president believes that strongly and believes that at the end of the day we will have a strong Consumer Finance Protection Agency working on behalf of the American people."

The legislation proposed by Frank would not cover telecommunications companies or real estate brokerages. Also, it would not require financial institutions to offer "plain vanilla" products and services which critics of the proposal say would leave consumers too exposed to predatory practices in both industries.❒

About the Author

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