Financial Regulatory Improvement and Taxpayer Protection Act
Summary of Republican Substitute Bill
April 26, 2010

Title I – Orderly Liquidation Authority

Overview

Title I of the Republican alternative will establish a resolution mechanism for the orderly winding-down and liquidation of financial companies. The resolution mechanism will provide a process for winding-down financial companies with minimal impact on the financial system while ensuring that failed firms are liquidated and creditors and shareholders bear all the losses of the failed firm and the costs of its resolution.

Triggering Process

There will be a three-part process for triggering the resolution authority. First, the Board of Governors of the Federal Reserve ("Board") and the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") must make a recommendation on whether the FDIC should be appointed receiver for the financial company, which must include, among other things, an evaluation of the effect default by the financial company would have on financial stability in the United States. If the financial company is a broker-dealer, the Securities and Exchange Commission would make the recommendation in place of the Board. The recommendation would require the 2/3 vote of each board. Second, the Treasury Secretary, in consultation with the President, must determine, among other things, that resolving the financial company under this title would prevent or mitigate the adverse effects that default by the financial company would have on financial stability in the United States. Third, upon making such determinations, the Treasury Secretary would file a petition in the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the FDIC as receiver for the financial company. The court would issue the order within 24 hours, unless the court finds that the Secretary's determinations were arbitrary and capricious.

Mandatory Liquidation

If the Treasury Secretary obtains the necessary court order and appoints the FDIC as receiver, the FDIC would have to choose to resolve the financial company by either (1) liquidating and winding down the company, or (2) transferring the assets and liabilities of the financial company to a bridge bank, selling such bridge bank, and liquidating any remaining assets. The FDIC is mandated to resolve the financial company within 1 year of its appointment as receiver, but the Treasury Secretary could approve two 6-month extensions. To ensure accountability and

oversight of the resolution process, any additional extensions beyond 2 years would require Congressional approval.

Emergency Powers without Creditor or Shareholder Bailouts

The FDIC will have authority to operate and liquidate the financial company in a manner that prevents the failure of the company from sparking or worsening a financial crisis. Most importantly, the FDIC will be authorized, with the consent of the Treasury Secretary to ensure accountability, to take emergency actions to stabilize the financial company. These actions include issuing guarantees, purchasing assets, and advancing funds to creditors on their claims. In particular, allowing the FDIC to advance funds to creditors *on their claims* will significantly help prevent the resolution of the financial company from adversely affecting financial stability, because creditors will not have to wait months or even years to be paid on their claims, as can occur presently under the Bankruptcy Code. The illiquidity of creditor claims can cause the failure of one financial company to trigger cascading failures of its counterparties.

Although the FDIC could advance funds to creditors, once the FDIC completed the claims valuation process **the FDIC would have to recoup from creditors any amounts that a creditor had received in excess of what it would have received in bankruptcy**. This gives the FDIC the flexibility to advance funds to creditors to prevent or mitigate a systemic crisis, **but then ensures that the FDIC is not bailing out creditors**. Thus, the resolution authority will allow for orderly resolution of financial companies, but will not allow the FDIC to pay creditors more than they would receive in bankruptcy. Because the resolution authority will not bail out creditors, there is no need for a resolution fund.

The FDIC will be prohibited from making any equity investments in any company without Congressional approval. In addition, the resolution authority cannot be used to resolve non-financial companies.

Ensuring Accountability

To ensure accountability on the part of the government, the FDIC and Treasury Secretary will be required to comply with extensive reporting requirements. The Treasury Secretary will have the authority to remove the FDIC as the receiver of a financial company for cause. In addition, the GAO and the Council of Financial Regulators will be required to examine the reasons for the failure of the financial company, including evaluating the performance of the company's regulators. Title I also will end the revolving-door that allows former regulators to be employed by the companies that they supervised.

To ensure accountability on the part of the creditors, shareholders, and management of the failed financial company, all costs of the resolution, including all of the FDIC's costs, will be paid for

by the creditors and shareholders of the company. Taxpayers will not cover any costs of the resolution of the company. Claims for executive compensation will have the same rank as equity, meaning that all other creditors of a company (including those of employees and the FDIC) will have to be paid in full before executives would be paid anything on their claims. In addition, the FDIC will have the ability to claw-back compensation received by executives responsible for the failure of the company during the prior two years. Finally, management of the resolved firm will be banned from future employment at the financial institution.

Title II – Federal Reserve System Provisions

Tighten Section 13(3) of the Federal Reserve Act

Title II restricts the Federal Reserve's emergency lending authority under Section 13(3) of the Federal Reserve Act. This authority was used during the recent crisis by the Federal Reserve ("Fed") to use taxpayer resources to bail out failing companies, putting taxpayers at risk of losses arising from private-sector risks that they did not undertake. This authority allows the Fed to engage in unfair bailouts of large financial companies, including companies over which the Fed does not have any oversight.

Allow Flexibility for Fed to Act as Lender of Last Resort

Title II significantly modifies Section 13(3) of the Federal Reserve Act. That Section is replaced with authority for the Fed to be able to provide liquidity to solvent and viable companies during short-term liquidity crises, with a requirement that the Secretary of the Treasury and a majority of the Board of Governors of the Federal Reserve System approve, and with provisions of strict accountability to the public and to Congress and strict audit criteria. The Fed is allowed the flexibility to act as a lender of last resort, but only to to solvent firms, against good collateral, and at penalty rates.

Strict Solvency Conditions on Fed Lending

Prior to making emergency loans, the Fed is required by Title II to obtain evidence that participants in any emergency lending facility are solvent and viable and are unable to secure adequate credit accommodations from other banking institutions. The Fed will no longer make emergency loans through one of its Federal Reserve Banks, like the New York Fed, based merely on collateral that the Fed finds "to the satisfaction of the Federal Reserve bank," as is currently the case under Section 13(3) emergency lending powers for the Fed and remains the case in Chairman Dodd's bill (S.3317).

Strict Collateral Requirements on Fed Lending

Title II sets forth detailed guidelines regarding the quality of assets that can be accepted by the Fed in making emergency loans backed by sounds collateral.

Enhanced Fed Accountability

Title II enhances accountability of the Fed to the public and to Congress by calling for extensive reviews of any emergency lending facilities of the Fed. There are stringent requirements that the

Federal Reserve and Treasury report to the public and to Congress on any emergency lending, including reports of loan recipients and collateral against which loans were made.

Requirement that Emergency Short-Term Liquidity Facilities be Approved by the Fed *and* Secretary of the Treasury

Title II requires that, in a financial crisis in which the Fed would like to act in its "lender of last resort" capacity, the Fed must obtain an affirmative vote of not fewer than 5 members of the Board of Governors of the Federal Reserve System *and* written consent of the Secretary of the Treasury. Because lender of last resort actions have the capacity of exposing taxpayers to risks and losses that arise from private-sector risk taking, it is necessary for Treasury to have a voice in emergency Fed actions and for there to be an avenue available to shift failing assets from the Fed's relatively non-transparent balance sheet onto the transparent general budget of the U.S. government.

Establish a Fed/Treasury "Accord" on Emergency Lending

Title II mandates an "Accord" between the Federal Reserve Board and the Secretary of the Treasury to arrive at rules governing emergency Fed lending. In 1951, the Fed and Treasury came to an Accord, agreeing to restore Fed independence from pegging interest rates to support post-war borrowing by the Treasury. Similarly, today, an Accord is necessary to preserve independence of the Fed's monetary policy and its "lender of last resort" function from undue influence of the Treasury and politics. Title II requires the Fed and Treasury to jointly publish regulations and guidelines to govern emergency Fed lending.

The principles for the regulations are as follows:

- Fed lending only be made to solvent and viable participants of broad credit programs;
- Solvency and viability shall be certified;
- The Fed may not lend to bail out an individual company or an individual company's creditors;
- Fed lending shall not be made to any company in bankruptcy, resolution, receivership, or any Federal or State insolvency proceedings;
- Fed lending shall not be made to channel credit to specific companies or sectors of the financial market that the Fed and Treasury wish to favor; and
- Fed lending that leads to the Fed holding assets on its balance sheet for a maximum period of time shall be moved on-budget and counted as new budget authority, outlays, receipts, or deficits or surpluses for purposes of the budget of the U.S. government.

Greater Fed Transparency and Market Certainty About Fed Actions in a Crisis

In calling for the Fed and Treasury to establish clear rules governing how they will lend and respond to liquidity crises, the Accord in Title II will provide clarity necessary for financial market participants to form expectations about what the government will do in a crisis. Treasury will no longer push bailouts onto a non-transparent Fed balance sheet, nor will the Fed pick and choose which companies or financial sectors to prop up over the long term. If what first appears to be a liquidity event requiring emergency Fed and Treasury lending but becomes a long-term insolvency problem, the long-term consequent risks of loss will be born transparently by Treasury, not a non-transparent Fed balance sheet. Markets will know what to expect from Treasury and the Fed as they will no longer react in *ad hoc* fashion to an evolving crisis.

End Credit Channeling by the Fed

Title II requires the Fed and Treasury to arrive at policies to delineate where and when emergency actions would constitute credit channeling, which is most appropriately executed by fiscal authorities, or not, in which case lender of last resort policy actions may be appropriate. This is to address concerns growing out of the recent financial crisis that the Fed chose winners and losers through the choices it made regarding the allocation of credit. For instance, during the recent crisis the Fed directed its support to: money market funds; the commercial paper market; primary dealers; the market for student loans; credit card loans; small business loans; the commercial real estate market; and to the housing sector and Fannie and Freddie, which many characterized as credit allocation. The Fed and Treasury themselves issued a statement on March 23, 2009 stating "The Federal Reserve to avoid credit risk and credit allocation" and the "government decisions to influence the allocation of credit are the province of fiscal authorities."

Stop Treasury from Pushing Fiscal Policy Bailout Actions onto the Fed's Balance Sheet

The Accord in Title II calls for the Fed and Treasury to establish provisions for transfer from the Federal Reserve's balance sheet any assets acquired using emergency lending actions that are most properly regarded as fiscal policy actions. Federal Reserve Chairman Bernanke has indicated that: "We would favor a legislative provision allowing the Federal Reserve to transfer to the Treasury obligations that, while acquired in the course of Federal Reserve action as the lender of last resort, become fiscal obligations more appropriately managed by the Treasury Department."

Recoupment of Any Losses on Fed Lending from Industry

Title II gives the Fed senior claims on the estates of any company that receives Fed assistance and subsequently files for bankruptcy or is put into resolution. Any Fed losses not covered by those senior claims are recouped by the Fed from assessments levied by the resolution authority.

Increase Accountability of the President of the Federal Reserve Bank of New York

Title II calls for the President of the Federal Reserve Bank of New York to be appointed by the President, by and with advice and consent of the Senate. No longer will the New York Fed President be appointed by the New York Fed's board of directors and large Wall Street interests.

Enhanced Role of Director of Supervision and Regulation at the Fed

Given the failings of regulation and oversight by the Federal Reserve in the recent crisis and the silo separation within the Federal Reserve System between monetary policymakers and regulators, Title II establishes a Director of the Division of Supervision and Regulation at the Fed, who is appointed by the President, by and with advice and consent of the Senate. The Director is required to testify annually and report to Congress and the public concerning Fed supervision and regulation of the financial system, large financial institutions, systemic stability, and the evolution of any systemic risks.

Title III – Council for Consumer Financial Protection

Overview

Title III creates an independent Council for Consumer Financial Protection ("Council") that will have the authority to promulgate rules for all of the enumerated consumer protection statutes. The Council will be composed of three independent consumer protection experts, the Chairperson of the FDIC, the Comptroller of the Currency, and the Chairman of the Board of Governors for the Federal Reserve. The composition of the Council will ensure that all rules, regulations and orders promulgated by the Council appropriately consider the safety and soundness considerations of financial institutions while ensuring that adequate consumer safeguards are in place.

Authority

The Council will have primary supervision and enforcement authority over our nation's largest financial institutions, large non-bank mortgage originators, and other financial services providers who have violated the consumer protection statutes. In addition, the Council will have backup enforcement authority over regional banks and credit unions. Supervision and enforcement for small community banks and thrifts will remain with their primary prudential regulator. This scheme for supervision and enforcement will establish clear lines of accountability to ensure that consumers are protected, while also safeguarding small banks and credit unions from overly burdensome regulation.

State Law Preemption

This title ensures the continuation of more than a century of precedent on preemption with respect to national banks. Presently, state laws that conflict with the National Bank Act are pre-empted because Congress has long sought to create a national financial market and ensure efficient regulation of national banks.

Title IV – Financial Stability and Regulatory Structure

Subtitle A – The Council of Financial Regulators

The Council of Financial Regulators ("CFR" or "Council") will be established to improve the financial stability of the U.S. financial system. The CFR will formally bring together all federal financial regulators to improve regulation, maintain and monitor financial stability, and coordinate the response of the federal government to any future financial crises.

Membership

The CFR will be led by the Treasury Secretary, who will serve as Chairperson. The heads of the Fed, Office of the Comptroller of the Currency ("OCC"), FDIC, FHFA, SEC, Commodity Futures Trading Commission ("CFTC"), and the Council for Consumer Financial Protection will serve as members of the CFR. The CFR will function by majority vote, but in instances where the Chairman of the Fed or the Treasury Secretary dissent, a supermajority will be required. The Council will be staffed by the Treasury, and Council member agencies can detail staff and other resources to support the work of the Council. The Chairman of the Fed will have an enhanced role on the Council, in particular as it relates to conducting financial market stability research and developing stress tests for various aspects of the U.S. financial system.

Mission and Duties

The CFR will have a four part mission, (1) to improve prudential, consumer protection, and investor protection regulation; (2) to oversee United States financial system stability; (3) to mitigate risks to United States financial system stability; and (4) to coordinate the response of the United States Federal Government to financial crises.

The CFR will be required to carry out the following duties:

- The CFR will undertake stress tests of various aspects of the financial system to determine material weaknesses and deficiencies. Any firms that fail stress tests will be directed to undertake remedial action immediately. Data collected from stress tests will be used to make system wide enhancements. Stress test failures must be addressed by the CFR and its member agencies.

- The CFR will monitor the ever-changing financial marketplace and work to keep regulators from falling behind such changes.

- The CFR will review and approve or reject all new capital, liquidity and leverage regulations. Through this responsibility the CFR will rationalize capital, liquidity, and leverage requirements so regulatory arbitrage opportunities are eliminated.
- The CFR will gather and aggregate information relating to the financial markets and will use it to update and improve financial regulation.
- The CFR will consult with various nonmember financial regulatory bodies at the Federal, State and international levels to make certain it has full line of sight on risks to the U.S. financial system.
- The CFR will serve as a forum for jurisdiction dispute among Council member agencies.
- The CFR will monitor transactional activity of large hedge funds to guard against risks to U.S. financial system stability.
- The CFR will better prepare the government for financial crisis response, enhancing cooperation among Council members regarding crisis management and emergency preparedness exercises.
- The CFR will identify payment, clearing or settlement activities whose failure would pose a risk to U.S. financial system stability and make recommendations to Congress on how to minimize such risks.
- At least annually, the Council will submit, and the Treasury Secretary will be required to testify on, a financial stability report to the House and Senate banking committees. Each report under this section shall include a description of all significant financial market and regulatory developments that may impact United States financial system stability and other significant CFR activities.
- The CFR is required study the use of contingent capital and living wills and provide those studies to the Federal Reserve so that they can be used to develop new rules.

Subtitle B - Improvements to Regulation of Bank and Savings and Loan Holding Companies and Depository Institutions

This subtitle makes several improvements to the regulation of bank and savings and-loan holding companies by the Federal Reserve. This subtitle requires the Federal Reserve to implement a new contingent capital regime for both bank and thrift holding companies. It also ensures that there is clear accountability by explicitly stating that the Federal Reserve is the consolidated functional regulator of all bank and thrift holding companies. It requires the OCC as well as other functional regulators to notify the Federal Reserve if the functional regulators see problems within other holding company subsidiaries, and it allows the functional regulators backup

authority if the Federal Reserve fails to act. It requires the Federal Reserve to consider the risk to financial stability in addition to safety and soundness when approving a merger or acquisition of financial institutions. This title also strengthens the Federal Reserve's ability to police transactions with affiliates in several important ways. It increases capital standards by requiring bank and thrift holding companies to remain well capitalized at the holding company level.

This subtitle also requires holding companies to act as a source of strength for the depository institution subsidiary. It does away with the disastrous Consolidated Supervised Entities program created by the Securities and Exchange Commission ("SEC") and creates a new holding company regime for securities holding companies. This subtitle also restricts depository institutions from engaging in proprietary trading activities and restricts other entities from engaging in such activities if the holding company is not well capitalized or the Federal Reserve determines that those activities pose safety and soundness or financial stability concerns. This subtitle imposes concentration limits on large financial institutions.

Subtitle C – Registration of Large Pooled Investment Vehicles

The Republican alternative will require large pooled investment vehicles, such as hedge funds, to register with and make reports to the Council of Financial Regulators. Since hedge fund registration is ultimately driven by concerns about threats to financial system stability, the Republican alternative will charge the Council, whose core mission includes maintaining and monitoring financial stability, to monitor the largest hedge funds. The Council's responsibilities will be limited strictly to financial stability issues, such as looking at leverage (including off-balance sheet leverage) to ensure that the Council is completely focused on monitoring hedge funds with the purpose of detecting emerging problems throughout the entire financial system, rather than being distracted by individual concerns of a small number of wealthy investors who are knowingly investing in unregistered private offerings that do not have the same level of regulatory scrutiny.

Subtitle D – Transfer of Powers to the Comptroller of the Currency, the Corporation, and the Board of Governors

Title IV also will terminate the Office of Thrift Supervision by transferring its regulatory responsibilities to the Federal Reserve, the OCC, and the FDIC. The Federal Reserve will regulate savings and loan holding companies, the OCC will regulate Federal savings institutions, and the FDIC will regulate state thrifts.

Title V – Over-the-Counter Derivatives Market

Overview

Republicans share a desire to correct what current law lacks relative to regulating swaps. Some may not realize that current law specifically prevents the CFTC and the SEC from regulating swaps. The Republican alternative would provide significant new regulatory authorities for the CFTC and the SEC.

Regulatory Transparency

ALL swap transactions will be made known to the appropriate regulators, giving them the much needed tools to police these markets for fraud and manipulation. An important lesson from the financial crisis was that prudential and market regulators do not have detailed and comprehensive information about transactions or positions in the over-the-counter swaps markets. The lack of transparency about counterparty exposures and the lack of adequate regulatory tools made it difficult for regulators to respond to the crisis effectively and in a timely manner. AIG and Lehman Brothers are two prime examples of this problem.

Clearing Requirement

The Federal Reserve Board of Governors, the CFTC and the SEC will establish criteria for determining the characteristics of swap transactions that should result in a clearing requirement. The CFTC or the SEC (depending on the type of swap) will then use the criteria and the data made available through the new transparency requirements to identify which swaps are subject to the new mandated clearing requirement. The identification process will be subject to notice-and-comment rulemaking.

Public Transparency

There will be public dissemination of prices and volumes of completed swap transactions to assist investors and other market participants in marking existing swap positions to market, making informed decisions before executing future transactions, and assessing the quality of transactions that they have executed. Some may confuse exchange trading with clearing, or assume that exchange trading is the only way to provide transparency to market participants. Trades that are not executed on an exchange still can be cleared, and we can achieve the goals of increasing transparency of positions and price without mandating exchange trading and potentially triggering serious unintended consequences. An exchange trading mandate on swap dealers will encourage them to continue to hold risks on their books rather than entering into hedge transactions to offset those risks; to hedge their risks overseas, beyond the reach of our

regulators; and to increase the prices that they charge Main Street businesses to compensate for their increased difficulty in laying off the risk.

Regulation of Swap Participants

Entities holding the bulk majority of all swap transactions will be required to register with the appropriate regulator, comply with business conduct standards, and clear any trades identified by the regulators as being subject to the clearing mandate. This category of swap dealers, large hedge funds, Federal Home Loan Banks, Freddie Mac, Fannie Mae and AIG-type entities will be known as "swap participants." In this way, we are seeking to ensure that entities that are most likely to contribute to a failure of the U.S. financial system are closely monitored, conducting their dealings in a responsible manner, and transferring significant risk off of their books and into a well-regulated clearinghouse.

Treatment of End Users

End user entities who are not contributing to potential system failure but rather utilize swaps to reduce or offset risk inherent to their business will not be required to clear their transactions, thereby avoiding the additional costs of clearing. Bilaterally executed derivatives contracts provide key benefits to certain end users and should be permitted, subject to appropriate risk management and prudential standards. End users will be required to report a hedging transaction as a "bona-fide hedging swap transaction," which is based on the CFTC's existing definition of what constitutes a bona-fide hedge.

To qualify as an end user, no more than 5% of an entity's swap positions may fall outside the definition of a "bona-fide hedging swap transaction." Commercial end users who execute swaps in connection with their commercial transactions as an accommodation for their customers will be allowed some additional non-conforming transactions, so they will be subject to a slightly higher 7 percent *de minimis* cap.

Margin

As appropriate to their defined responsibilities, the prudential regulators, the CFTC, or the SEC will have the ability to apply margin requirements to uncleared transactions entered into by "swap participants," but not those transactions that involve "end users." Prudentially regulated swap participants will also be subject to capital requirements, as determined by their prudential regulators. To protect the financial integrity of the clearinghouses and to protect the financial stability of the United States from a clearinghouse failure, the regulators also will ensure that clearinghouses impose appropriate margin requirements. To protect counterparty collateral,

initial margin for both cleared and uncleared swap transactions will be subject to new segregation requirements.

Title VI – Underwriting Standards and Credit Agencies

Subtitle A – Regulation of Credit Risk Retention and Improvements to Underwriting

Subtitle A of Title VI establishes a credit risk retention regime and minimum underwriting standards for residential mortgage loans. Anyone who securitizes a residential mortgage loan that does not meet new statutory minimum underwriting rules promulgated by federal prudential banking regulators will be required to retain at least a 5 percent economic interest in the trust. Regulators will make the determination about the requirements for a securitizer that securitizes residential mortgages that do not meet the minimum underwriting standards established by this subtitle. The statutory minimum underwriting requirements for all residential mortgage loans will compel a mortgage loan underwriter to require the borrower to fully document their ability to repay the loan and make a meaningful down payment.

Subtitle B – Improvement to Asset-Backed Securitization

Subtitle B requires more public transparency in the asset-backed securities market by increasing market disclosure about loan level data, the amount and nature of risk retained by the securitizer, and the use of FINRA's TRACE system. With these three disclosure improvements, investors will have access to information about what loans are in the securitization, how much "skin in the game" the securitizers have, and at what prices similar securitizations are trading. In addition, this subtitle will require greater disclosure with respect to representation and warrants of certain types of asset classes. Lastly, within this subtitle there are a number of studies required to inform Congress on steps necessary to further enhance securitization.

Subtitle C – Credit Rating Agencies

The Republican alternative builds upon the objectives and rationale of the 2006 Credit Rating Agency Reform Act by improving ~~disclosures and through~~ better management of conflicts of interest, particularly in the asset-backed securities arena. The Republican bill makes changes that are intended to achieve these ends without duplicating existing requirements. In addition, the bill directs the agencies to undertake a multi-year process to remove ratings requirements from statutes and regulations.

Title VII – Government Sponsored Enterprises

Subtitle A - Special Inspector General for the Conservatorship of Regulated Entities

The Republican alternative will establish a Special Inspector General within the Department of the Treasury with responsibility for investigating and reporting to Congress on decisions made regarding the conservatorships of Fannie Mae and Freddie Mac. The President will be required to nominate an individual for this post within 30 days of the date of enactment, who then must be confirmed by the Senate.

The Special Inspector General will provide quarterly reports to Congress, the first to be 60 days after confirmation. Those reports will focus on areas including: purchased mortgage assets; modified mortgages; risk analysis used for modifications; impact of continuing affordable housing goals through conservatorship; assessment of the proper treatment of the GSEs as it relates to the Federal budget; impact of accepted Federal funds; and structural changes made by FHFA, acting as conservator.

Subtitle B – Limited Further Bailouts of Fannie Mae and Freddie Mac

The Republican alternative will reestablish the Federal funding limits and mandatory portfolio reductions that were in place prior to the Administrations changes announced December 24, 2009. Under the current agreement, Treasury can provide unlimited funds to Fannie Mae and Freddie Mac, and the GSE's portfolio reduction requirements were reduced. This subtitle will reimpose the $200 billion per institution cap that previously had been in place and require Fannie Mae and Freddie Mac to reduce their portfolio holdings by 10 percent of the prior year's holdings.

The subtitle also will establish an approval process for any further agreements that put taxpayer money at risk. In order to ensure timely response, an agreement could be entered into on an interim basis if the Director of FHFA, acting as conservator, deems it necessary. However, within 120 days, the agreement must be approved by Congress or it will be terminated.

Subtitle C – Report on Reform

The President will be required to submit a plan to reform the GSEs to Congress no later than six months after the enactment of the Act.

Title VIII – Securities Reform

Subtitle A – Commission Reorganization

The SEC's threefold mission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. However, the SEC's current organizational structure does not reflect these missions. The Bernie Madoff scandal highlighted, among other things, how the lack of coordination within and between units of the SEC can have devastating consequences.

The Republican alternative will improve the SEC's organization by creating divisions that are dedicated to each part of the SEC's mission. The new Division of Retail Investor Protection and Retail Financial Services will be dedicated to protecting and educating individual investors, without regard to whether they trust their hard-earned savings to brokers, investment advisers, or mutual funds. The new Division of Trading will focus on issues related to large sophisticated market participants, such as investment banks and exchanges. The new Division of Corporate Disclosure will be dedicated to issues related to financial statement disclosures, as well as accounting and auditing matters.

The Republican alternative will include two additional divisions. A Division of Enforcement will be charged with enforcing all SEC rules, as well as providing international enforcement assistance. Finally, a Division of Economic Analysis will be headed by a PhD-level Chief Economist, who will be charged with conducting economic analyses, including cost-benefit analyses, related to Commission rulemaking. The Division of Economic Analysis will include a subdivision with responsibility for functions-related risk analysis and financial innovation.

[Subtitle B – Reserved]

Subtitle C – Municipal Securities

The Republican alternative requires SEC registration and oversight of municipal advisers and increases investor representation on the Municipal Securities Rulemaking Board ("MSRB"). It requires a review of the disclosure required to be made by municipal issuers and a study of Government Accounting Standards Board ("GASB") funding.

The Republican alternative does not contain a provision that would require the SEC to share fines collected for municipal securities violations with the MSRB. The Republican alternative will require a study of the secondary municipal securities market directed by the SEC Chief Economist. Because SEC economists have the most experience studying the introduction of post-trade transparency in the secondary municipal securities market, they are the best-positioned to conduct this new study.

Subtitle D - Sarbanes-Oxley Act Exemption for Smaller Issuers

Section 404 of the Sarbanes-Oxley Act has imposed a disproportionately larger cost burden on smaller public companies with no corresponding benefit. The Republican alternative provides relief to these important job creators by exempting public companies with less than $150 million in public float from complying with Section 404 of Sarbanes-Oxley. A recent SEC study reported costs of complying with Section 404(b) broken down by smaller companies (between $50 and $150 million in public float), medium companies (between $150 and $700 million in public float), and larger companies (greater than $700 million in public float) companies. The study showed that smaller- and medium-sized companies consistently incurred higher compliance costs than larger companies, even after more than four years of compliance experience. Unfortunately, the SEC study does not provide a more granular breakdown of compliance costs between the $150 and $700 million. As a result, the Republican alternative will immediately exempt companies with less than $150 million in public float and will direct the SEC to conduct a study to determine whether the appropriate threshold should be higher.

Subtitle E - Shareholder Registration Threshold

The Republican alternative contains a provision that updates the thresholds that trigger mandatory SEC registration by public companies. The asset threshold will be increased for all companies to reflect changes in economy-wide price levels over time. The shareholder of record threshold will be increased for banks and bank holding companies to reflect the fact that shareholders of neighborhood banks are likely to live in the community and hold the shares directly rather than in street name, prompting small banks to hit the threshold more quickly than similarly-sized companies in other industries.

The alternative directs the SEC to conduct a study to determine whether to: increase the asset threshold; index the asset threshold to a measure of inflation; increase the shareholder threshold; change the shareholder threshold to be based on the number of beneficial owners; or create new thresholds based on other criteria.

[Title IX – Reserved]

Title X - Insurance

Overview

Title X establishes the Office of National Insurance at the Treasury Department to monitor the insurance industry, coordinate international insurance regulation and study and report on insurance regulatory reform topics. In addition, Title X streamlines the regulation of surplus lines and reinsurance.