



Summary of Obama's Comprehensive Plan for Regulatory Reform

The Obama Administration introduced its sweeping and comprehensive plan for regulatory reform and reorganization of the financial system on June 17, 2009. The Treasury Department issued an outline with links to 5 fact sheets specifying details of the plan's core principles in press release [tg-175](#). The proposal's rationale is laid out in an administration "[white paper](#)."

The proposal focuses on two principal themes: strengthening consumer protection and providing strong supervision to safeguard against unnecessary risk, both systemically and within individual entities. These goals would be met by, in both cases, creating an atmosphere of "strong supervision and appropriate regulation of all financial firms," which includes establishing new regulatory agencies, increasing the powers of others, and de-emphasizing or eliminating still others.

Strengthening Consumer Protection

A new federal agency would be created, the Consumer Financial Protection Agency (CFPA). This agency would have rulemaking, examination, and enforcement authority over any financial entity that offers financial products, including all banks, thrifts, and credit unions. The new agency would be funded by assessments against entities as well as transactions.

- *Regulatory Authority Change.* The authority and responsibility for existing consumer protection rules and regulations would be moved to the CFPA from the bank regulators. This would cover statutes and regulations such as Truth in Lending (Reg. Z), RESPA, Truth in Savings (Reg. DD), Electronic Funds Transfers (Reg. E), and the like. ECOA (Reg. B), fair lending laws, and the Community Reinvestment Act (CRA) would also be included. Investor products falling under the SEC's jurisdiction would not be covered, however.
- *State Law Preemption.* Unlike aspects of the current regulatory system (particularly for national banks), any state law providing more protection to a consumer would override the CFPA's rules. The proposal explicitly provides states with concurrent enforcement authority, and the challenge of coordinating 50 different sets of regulation with that of the CFPA is noted as a significant challenge. Supervision of non-bank entities is left to the states, although federal supervision is left to the discretion of the CFPA.

- *Imposition of CFPB Minimum Requirements.* The CFPB would have the power to define minimum, “plain vanilla” products that have simple pricing structures and require all institutions to prominently offer them along with the institution’s other products. Similar to existing regulations, the CFPB would be able to mandate specific disclosures, as well as uphold a standard that all disclosures and other customer communications be reasonable (according to its definition).
- *UDAP Authority.* The CFPB would also have unfair and deceptive acts and practices (UDAP) authority, which currently resides within the regulatory agencies and FTC. This would provide the CFPB with the power to impose “duties of care” to an institution’s customers, which could include the ability to mandate affordability standards for borrowers and pricing for deposit products.

Strong Supervision.

Risk reduction is accomplished by several aspects of the proposal.

- *Fed Powers Expanded.* The Fed would become the primary regulator of any institution considered a “Tier 1 financial holding company,” which would be defined as entities of sufficient size and interconnectedness could pose a threat to the overall stability of the financial system.

The Fed would examine these firms and any subsidiaries (along with the entity’s existing regulator) and could impose stronger standards over them, such as increased capital levels, greater liquidity, increased disclosure of business activities, stronger risk management, and require the entity to have plans for resolution in cases of severe distress. Tier 1 Financial Holding Companies also would be subject to the restrictions of the Bank Holding Company Act, whether or not the entity owned a bank.

- *The Idea of Too Big to Fail.* A “resolution regime” would be created to resolve all Bank Holding Companies (including Tier 1 Financial Holding Companies) posing a threat to the financial system. The Treasury Department would have primary decision-making authority on what to do regarding a failing entity in consultation with the President, Fed, and FDIC (or the SEC if a broker-dealer is the firm’s largest subsidiary). If a conservator or receiver is required, the FDIC or SEC, as appropriate, should be appointed. Costs would be paid for by Treasury loans, which would be repaid by assessments on Bank Holding Companies.
- *Creation of a Financial Services Oversight Council.* This new council would be comprised of the heads of Treasury (who would chair), a new National Bank Supervisor (in place of the OCC and OTS), the Federal Reserve Board, FDIC, CFPB, SEC, CFTC, and the Federal Housing Finance Agency (FHFA). Although the Council would have no rulemaking or enforcement authority, it would be charged with collecting information from financial entities and determining any systemic risks and bringing issues to the attention of the entity’s appropriate regulator.

Other Proposal Pieces

- *Thrift Charter and OTS Elimination.* The OCC and OTS would be merged to form the National Bank Supervisor. All federally chartered thrifts would become national banks and be regulated by (along with existing national banks) the NBS. It is not entirely clear which, if any, aspects of the current thrift charter would survive this conversion, aside from the possibility that the current qualified thrift lender test would be eliminated. The roles of the Fed, FDIC, and NCUA would remain the same.
- *Issuing of General Compensation Standards.* Guidelines to align executive compensation practices with long-term shareholder value would be issued by the regulatory agencies. It is possible that shareholders could end up possessing a non-binding say on pay.
- *Monitoring of the Insurance Industry.* Although a federal insurance charter would not necessarily be created, an Office of National Insurance could be created within Treasury that would be responsible for monitoring the insurance industry. This office would have no rulemaking or enforcement authority, however.