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Dodd Frank

A Simple Guide



CMC

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Objective of Dodd Frank

- Create a sound Economic Foundation to grow jobs
- Protect Consumers
- Rein in Wall Street and Big bonuses
- End 'Bailouts' and 'Too big to fail'
- Prevent another financial crisis

Highlights

- **Consumer protections with Authority and Independence:**
 - Creates a new independent watchdog, housed at the Federal Reserve, with the authority to ensure American consumers get the clear, accurate information they need to shop for mortgage, credit card and other financial products and protect them from hidden fees, abusive terms and deceptive practices
- **Ends too Big to Fail Bailouts:**
 - Ends the possibility that taxpayers will be asked to write a check to bail out financial firms that threaten the economy by:
 - creating a safe way to liquidate failed financial firms;
 - imposing tough new capital and leverage requirements that make it undesirable to get too big;
 - updating the Fed's authority to allow system-wide support but no longer prop up individual firms; and establishing rigorous standards and supervision to protect the economy and American consumers, investors and businesses.
- **Advance Warning System:**
 - Creates a council to identify and address systemic risks posed by large, complex companies, products, and activities before they threaten the stability of the economy.

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- **Transparency & Accountability for Exotic Instruments:**
 - Eliminates loopholes that allow risky and abusive practices to go on unnoticed and unregulated, such as over-the-counter derivatives, asset backed securities.
- **Federal Bank Supervision:**
 - Streamlines bank supervision to create clarity and accountability.
- **Executive Compensation and Corporate Governance:**
 - Provides shareholders with a say on pay and corporate affairs with a non-binding vote on executive compensation.
- **Protects Investors:**
 - Provides tough new rules for transparency and accountability for credit rating agencies to protect investors and businesses.
- **Enforces Regulations on the Books:**
 - Strengthens oversight and empowers regulators to aggressively pursue financial fraud, conflicts of interest and manipulation of the system that benefit special interests at the expense of American families and businesses.

Consumer Financial Protection Bureau - Roles

The new independent Financial Protection Bureau will have the sole job of protecting American consumers from unfair, deceptive and abusive financial products and practices and will ensure people get the clear information they need on loans and other financial products from credit card companies, mortgage brokers, banks and others.

- Independent Head:
 - Led by an independent director appointed by the President and confirmed by the Senate.
- Independent Budget:
 - Dedicated budget paid by the Federal Reserve Board.
- Independent Rule Writing:
 - Able to autonomously write rules for consumer protections governing all entities – banks and non-banks – offering consumer financial services or products.

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- Examination and Enforcement:
 - Authority to examine and enforce regulations for banks and credit unions with assets of over \$10 billion and all mortgage-related businesses (lenders, servicers, mortgage brokers, and foreclosure scam operators) and large non-bank financial companies, such as large payday lenders, debt collectors, and consumer reporting agencies. Banks with assets of \$10 billion or less will be examined by the appropriate bank regulator.
- Consumer Protections:
 - Consolidates and strengthens consumer protection responsibilities currently handled by the Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Federal Reserve, National Credit Union Administration, and Federal Trade Commission.
- Able to Act Fast:
 - With this bureau on the lookout for bad deals and schemes, consumers won't have to wait for Congress to pass a law to be protected from bad business practices.
- Educates:
 - Creates a new Office of Financial Literacy.

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- **Consumer Hotline:**
 - Creates a national consumer complaint hotline so consumers will have, for the first time, a single toll-free number to report problems with financial products and services.
- **Accountability:**
 - Makes one office accountable for consumer protections. With many agencies sharing responsibility, it's hard to know who is responsible for what, and easy for emerging problems that haven't historically fallen under anyone's purview, to fall through the cracks.
- **Works with Bank Regulators:**
 - Coordinates with other regulators when examining banks to prevent undue regulatory burden. Consults with regulators before a proposal is issued and regulators could appeal regulations if they believe would put the safety and soundness of the banking system or the stability of the financial system at risk.

Financial Stability Oversight Council - Roles

The newly created Financial Stability Oversight Council will focus on identifying, monitoring and addressing systemic risks posed by large, complex financial firms as well as products and activities that spread risk across firms.

- Expert Members:
 - A 9 member council of federal financial regulators and an independent member will be Chaired by the Treasury Secretary and made up of regulators. The council will have the sole job to identify and respond to emerging risks throughout the financial system.
- Tough to Get Too Big:
 - Makes recommendations to the Federal Reserve for increasingly strict rules for capital, leverage, liquidity, risk management and other requirements as companies grow in size and complexity, with significant requirements on companies that pose risks to the financial system.
- Regulates Nonbank Financial Companies:
 - Authorized to require, with a 2/3 vote, nonbank financial companies that would pose a risk to the financial stability of the US if they failed be regulated by the Federal Reserve. With this provision the next AIG would be regulated by the Federal Reserve.

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- Break Up Large, Complex Companies:
 - Able to approve, with a 2/3 vote, a Federal Reserve decision to require a large, complex company, to divest some of its holdings if it poses a grave threat to the financial stability of the United States – but only as a last resort.
- Technical Expertise:
 - Creates a new Office of Financial Research within Treasury to be staffed with a highly sophisticated staff of economists, accountants, lawyers, former supervisors, and other specialists to support the council's work by collecting financial data and conducting economic analysis.
- Make Risks Transparent:
 - Through the Office of Financial Research and member agencies the council will collect and analyze data to identify and monitor emerging risks to the economy and make this information public in periodic reports and testimony to Congress every year.
- Oversight of Important Market Utilities:
 - Identifies systemically important clearing, payments, and settlements systems to be regulated by the Federal Reserve.

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- No Evasion:
 - Large bank holding companies that have received TARP funds will not be able to avoid Federal Reserve supervision by simply dropping their banks. (the Hotel California Provision)

Future Bailouts – Preventions

- Discourage Excessive Growth & Complexity:
 - The Financial Stability Oversight Council will monitor systemic risk and make recommendations to the Federal Reserve for increasingly strict rules for capital, leverage, liquidity, risk management and other requirements as companies grow in size and complexity, with significant requirements on companies that pose risks to the financial system.
- Volcker Rule:
 - Requires regulators to implement regulations for banks, their affiliates and bank holding companies, to prohibit proprietary trading, investment in and sponsorship of hedge funds and private equity funds, and to limit relationships with hedge funds and private equity funds. Nonbank financial institutions supervised by the Federal Reserve will also have restrictions on their proprietary trading and hedge fund and private equity investments. Regulations will be developed after a study by the Financial Stability Oversight Council and based on their recommendations.
- Extends Regulation:
 - The Council will have the ability to require nonbank financial companies that pose a risk to the financial stability of the United States to submit to supervision by the Federal Reserve.

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- Shutdown plans:
 - Requires large, complex companies to periodically submit plans for their rapid and orderly shutdown should the company go under. Companies will be hit with higher capital requirements and restrictions on growth and activity, as well as divestment, if they fail to submit acceptable plans. Plans will help regulators understand the structure of the companies they oversee and serve as a roadmap for shutting them down if the company fails. Significant costs for failing to produce a credible plan create incentives for firms to rationalize structures or operations that cannot be unwound easily.
- Orderly Shutdown:
 - Creates an orderly liquidation mechanism for the FDIC to unwind failing systemically significant financial companies. Shareholders and unsecured creditors will bear losses and management will be removed.
- Liquidation Procedure:
 - Requires Treasury, FDIC and the Federal Reserve all agree to put a company into the orderly liquidation process. A panel of 3 bankruptcy judges must convene and agree - within 24 hours - that a company is insolvent.

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- **Costs to Financial Firms, Not Taxpayers:**

- Charges the largest financial firms \$50 billion for an upfront fund, built up over time, that will be used if needed for any liquidation. Industry, not the taxpayers, will take a hit for liquidating large, interconnected financial companies. Allows FDIC to borrow from the Treasury only for working capital that it expects to be repaid from the assets of the company being liquidated. The government will be first in line for repayment.

- **Limits & Disclosure for Federal Reserve Lending:**

- Updates the Federal Reserve's 13(3) lender of last resort authority to allow system-wide support for healthy institutions or systemically important market utilities with sufficient collateral to protect taxpayers from loss during a major destabilizing event, but not to prop up individual institutions. The Board must begin reporting within 7 days of extending loans, periodically thereafter, and disclose borrowers, collateral, amounts borrowed unless doing so would defeat the purpose of the support. Disclosure may be delayed 12 months if it would compromise the program or financial stability.

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- Bankruptcy:
 - Most large financial companies are expected to be resolved through the normal bankruptcy process.
- Limits on Debt Guarantees:
 - To provide protection against bank runs, the FDIC can guarantee debt of solvent insured banks and thrifts and their holding companies only if they meet a series of serious checks: the Board and the Council determine that there is a threat to financial stability; the Treasury Secretary approves terms and conditions and determines a cap on overall guarantee amounts; the President must activate an expedited process for Congressional review of the amount and use of the guarantees; and fees are set to cover all expected costs and losses are recouped from users of the program.

Improving Bank Regulations

The bill will streamline bank supervision with clear lines of responsibility, reducing arbitrage, and improve consistency and accountability.

- Clear Lines of Responsibility: Replaces confusing regulation riddled with dangerous loopholes, with clear lines of responsibility.
 - FDIC: will regulate state banks and thrifts of all sizes and bank holding companies of state banks with assets below \$50 billion.
 - OCC: will regulate national banks and federal thrifts of all sizes and the holding companies of national banks and federal thrifts with assets below \$50 billion. The Office of Thrift Supervision is eliminated, existing thrifts will be grandfathered in, but no new charters for federal thrifts.

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- Federal Reserve: will regulate bank and thrift holding companies with assets of over \$50 billion, where the Fed's capital market experience will enhance its supervision. As a consolidated supervisor, the Federal Reserve can see risks whether they lie in the bank holding company or its subsidiaries. They will be responsible for finding risk throughout the system. The Vice Chair of the Federal Reserve will be responsible for supervision and will report semi-annually to Congress.
- Dual Banking System:
 - Preserves the dual banking system, leaving in place the state banking system that governs most of our nation's community banks.

Derivatives Market

Over-the-counter derivatives will be regulated by the SEC and the CFTC, more will be cleared through centralized clearing houses and traded on exchanges, un-cleared swaps will be subject to margin requirements and swap dealers and major swap participants will be subject to capital requirements, and all trades will be reported so that regulators can monitor risks in this large, complex market. The main aim is to bring in transparency and accountability to the Derivatives Market:

- Closes Regulatory Gaps:
 - Provides the SEC and CFTC with authority to regulate over-the-counter derivatives so that irresponsible practices and excessive risk-taking can no longer escape regulatory oversight. Uses the Administration's outline for a joint rulemaking process with the Financial Stability Oversight Council stepping in if the two agencies can't agree.

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- Central Clearing and Exchange Trading:
 - Requires central clearing and exchange trading for derivatives that can be cleared and provides a role for both regulators and clearing houses to determine which contracts should be cleared. Requires the SEC and the CFTC to pre-approve contracts before clearing houses can clear them.
- Safeguards for Un-Cleared Trades:
 - Requires margin for un-cleared trades in order to offset the greater risk they pose to the financial system and encourage more trading to take place in transparent, regulated markets. Swap dealers and major swap participants will be subject to capital requirements.
- Market Transparency:
 - Requires data collection and publication through clearing houses or swap repositories to improve market transparency and provide regulators important tools for monitoring and responding to risks.

Hedge Funds

Hedge funds are responsible for huge transfers of capital and risk, but some operate outside the framework of the financial regulatory system, even as they have become increasingly interwoven with the rest of the country's financial markets. Hedge funds that manage over \$100 million will be required to register with the SEC as investment advisers and to disclose financial data needed to monitor systemic risk and protect investors. It becomes essential to raise standards and regulate Hedge Funds.

- Fills Regulatory Gaps:
 - Ends the “shadow” financial system in which hedge funds operate by requiring that they provide regulators with critical information.
- Register with the SEC:
 - Requires hedge funds to register with the SEC as investment advisers and provide information about their trades and portfolios necessary to assess systemic risk. This data will be shared with the systemic risk regulator and the SEC will report to Congress annually on how it uses this data to protect investors and market integrity.

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- **Greater State Supervision:**
 - Raises the assets threshold for federal regulation of investment advisers from \$25 million to \$100 million, a move expected to increase the number of advisors under state supervision by 28%. States have proven to be strong regulators in this area and subjecting more entities to state supervision will allow the SEC to focus its resources on newly registered hedge funds.

Insurance

Office of National Insurance: Creates a new office within the Treasury Department to monitor the insurance industry, coordinate international insurance issues, and requires a study on ways to modernize insurance regulation and provide Congress with recommendations.

- Streamlines :
 - the regulation of surplus lines insurance and reinsurance through state-based reforms.

Credit Rating Agencies

Establishes a new Office of Credit Rating Agencies at the Securities and Exchange Commission to strengthen regulation of credit rating agencies. New rules for internal controls, independence, transparency and penalties for poor performance will address shortcomings and restore investor confidence in these ratings.

New Requirements and Oversight of Credit Rating Agencies :

- New Office, New Focus at SEC:
 - Creates an Office of Credit Ratings at the SEC with its own compliance staff and the authority to fine agencies. The SEC is required to examine Nationally Recognized Statistical Ratings Organizations at least once a year and make key findings public.
- Disclosure:
 - Requires Nationally Recognized Statistical Ratings Organizations to disclose their methodologies, their use of third parties for due diligence efforts, and their ratings track record.

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- Independent Information:
 - Requires agencies to consider information in their ratings that comes to their attention from a source other than the organizations being rated if they find it credible.
- Conflicts of Interest:
 - Prohibits compliance officers from working on ratings, methodologies, or sales.
- Liability:
 - Investors could bring private rights of action against ratings agencies for a knowing or reckless failure to conduct a reasonable investigation of the facts or to obtain analysis from an independent source.
- Right to Deregister:
 - Gives the SEC the authority to deregister an agency for providing bad ratings over time.

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- Education:
 - Requires ratings analysts to pass qualifying exams and have continuing education.
- Reduce Reliance on Ratings:
 - Requires the GAO study and requires regulators to remove unnecessary references to NRSRO ratings in regulations

Shareholder Rights

Giving shareholders a say on pay and proxy access, ensuring the independence of compensation committees, and requiring public companies to set policies to take back executive compensation based on inaccurate financial statements are important steps in reining in excessive executive pay and can help shift management's focus from short-term profits to long-term growth and stability.

Giving Shareholders a Say on Pay and Creating Greater Accountability

- **Vote on Executive Pay:**
 - Gives shareholders a say on pay with the right to a non-binding vote on executive pay. This gives shareholders a powerful opportunity to hold accountable executives of the companies they own, and a chance to disapprove where they see the kind of misguided incentive schemes that threatened individual companies and in turn the broader economy.

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- **Nominating Directors:**
 - Gives the SEC authority to grant shareholders proxy access to nominate directors. Also required directors to win by a majority vote in uncontested elections. These can help shift management's focus from short-term profits to long-term growth and stability.
- **Independent Compensation Committees:**
 - Standards for listing on an exchange will require that compensation committees include only independent directors and have authority to hire compensation consultants in order to strengthen their independence from the executives they are rewarding or punishing.
- **No Compensation for Lies:**
 - Requires that public companies set policies to take back executive compensation if it was based on inaccurate financial statements that don't comply with accounting standards.
- **SEC Review:**
 - Directs the SEC to clarify disclosures relating to compensation, including requiring companies to provide charts that compare their executive compensation with stock performance over a five-year period.

Investor Protections

Every investor deserves better protections for their investments. Investors in securities will be better protected by improving the competence of the SEC.

SEC and Beefed Up Investor Protections

- Encouraging Whistleblowers:
 - Creates a program within the SEC to encourage people to report securities violations, creating rewards of up to 30% of funds recovered for information provided.
- SEC Management Reform:
 - Mandates an annual assessment of the SEC's internal supervisory controls and a GAO study of SEC management.
- Investment Advice:
 - Requires a study on whether brokers who give investment advice should be held to the same fiduciary standard as investment advisers – should be required to act in their clients' best interest.

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- New Advocates for Investors:
 - Creates the Investment Advisory Committee, a committee of investors to advise the SEC on its regulatory priorities and practices as well as the Office of Investor Advocate in the SEC, to identify areas where investors have significant problems dealing with the SEC and provide them assistance.
- Funding:
 - The self-funded SEC will no longer be subject to the annual appropriations process.

Securitizations

Companies that sell products like mortgage-backed securities are required to retain a portion of the risk to ensure they won't sell garbage to investors, because they have to keep some of it for themselves.

Reducing Risks Posed by Securities

- Skin in the Game:
 - Requires companies that sell products like mortgage-backed securities to retain at least 5% of the credit risk, unless the underlying loans meet standards that reduce riskiness. That way if the investment doesn't pan out, the company that packaged and sold the investment would lose out right along with the people they sold it to.
- Better Disclosure:
 - Requires issuers to disclose more information about the underlying assets and to analyze the quality of the underlying assets.

Municipal Securities

Municipal securities will have better oversight through the registration of municipal advisers and increased investor representation on the Municipal Securities Rulemaking Board.

Better Oversight of Municipal Securities

- Registers Advisors and Brokers:
 - Requires SEC registration for municipal financial advisers, swap advisers, and investment brokers – unregulated intermediaries who play key roles in the municipal bond market. Subjects financial advisers, swap advisers, and investment brokers to rules issued by the Municipal Securities Rulemaking Board and enforced by the SEC or a designee.
- Puts Investors First on the MSRB Board:
 - Gives investor and public representatives a majority on the MSRB to better protect investors in the municipal securities market where there has been less transparency than in corporate debt markets.

Federal Reserve

The Federal Reserve will oversee the larger, more complex holding companies with assets over \$50 billion and other systemically significant financial firms, where their expertise in capital markets will come into play.

Strengthening the Federal Reserve

- Transparency:
 - GAO will have authority to audit any emergency lending facility set up by the Federal Reserve under section 13(3) of the Federal Reserve Act.
- Financial Stability Function:
 - The Board of Governors of the Federal Reserve will now have a formal responsibility to identify, measure, monitor, and mitigate risks to U.S. financial stability.

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- **Oversight Accountability:**
 - Creates a Vice Chairman for Supervision, a member of the Board of Governors of the Federal Reserve designated by the President, who will develop policy recommendations regarding supervision and regulation for the Board, and will report to Congress semi-annually on Board supervision and regulation efforts.
- **Eliminates Conflicts of Interest in Reserve Bank Governance:**
 - No company, subsidiary or affiliate of a company that is supervised by the Federal Reserve Board will be allowed to vote for directors of Federal Reserve Banks; and their past or present officers, directors and employees cannot serve as directors. Currently the member banks elect directors, who choose the Federal Reserve Board president. Federal Reserve supervisory functions are carried out through the Federal Reserve Banks.
- **Increases Accountability at the New York Federal Reserve Bank:**
 - The president of the New York Federal Reserve Bank will be appointed by the President of the United States, with the advice and consent of the Senate. The New York Federal Reserve president is a permanent member of the Federal Open Market Committee, the Bank executes open market operations and is an important source of information on capital markets, and the Bank supervises many important bank holding companies.

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