

Summary: Restoring American Financial Stability – Discussion Draft

Create a Sound Economic Foundation to Grow Jobs, Protect Consumers, Rein in Wall Street, End Too Big to Fail, Prevent Another Financial Crisis

Over the past year, Americans have faced the worst financial crisis since the Great Depression. Millions have lost their jobs, businesses have failed, housing prices have dropped, and savings were wiped out.

The failures that led to this crisis require bold action. We must restore responsibility and accountability in our financial system to give Americans confidence that there is a system in place that works for and protects them. We must create a sound foundation to grow the economy and create jobs.

HIGHLIGHTS OF THE DISCUSSION DRAFT

Consumer Financial Protection Agency: Creates an independent watchdog to ensure American consumers get the clear, accurate information they need to shop for mortgages, credit cards, and other financial products, while prohibiting hidden fees, abusive terms, and deceptive practices.

Ends Too Big to Fail: Prevents excessively large or complex financial companies from bringing down the economy by: creating a safe way to shut them down if they fail; imposing tough new capital and leverage requirements and requiring they write their own “funeral plans”; requiring industry to provide their own capital injections; updating the Fed’s lender of last resort authority to allow system-wide support but not prop up individual institutions; and establishing rigorous standards and supervision to protect the economy and American consumers, investors and businesses.

Protects Against Systemic Risks: Creates an independent agency with a board of regulators to identify and address systemic risks posed by large, complex companies, products, and activities before they threaten the stability of the financial system. The agency could require companies that threaten the economy to divest some of their holdings.

Single Federal Bank Regulator: Eliminates the convoluted system of multiple federal bank regulators to increase accountability and end unnecessary overlap, conflicting regulation, and “charter shopping;” keeps in place the healthy dual banking system that governs community banks.

Executive Compensation and Corporate Governance: Provides shareholders with a say on pay and corporate affairs with a non-binding vote on executive compensation and director nominations.

Closes Loopholes in Regulation: Eliminates loopholes that allow risky and abusive practices to go on unnoticed and unregulated - including loopholes for over-the-counter derivatives, asset-backed securities, hedge funds, mortgage brokers and payday lenders.

Protects Investors: Provides tough new rules for transparency and accountability from investment advisors, financial brokers and 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.

INDEPENDENT CONSUMER FINANCIAL PROTECTION AGENCY

The Consumer Financial Protection Agency will have the sole job of protecting American consumers from fraud and abuse 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.

American consumers already have protections against faulty appliances, contaminated food, and dangerous toys. With the creation of the Consumer Financial Protection Agency, they'll finally have a watchdog to oversee financial products, giving Americans confidence that there is a system in place that works for them – not just big banks on Wall Street.

Why Change Is Needed: The economic crisis was driven by an across-the-board failure to protect consumers. When consumer protections are handled by regulators whose primary responsibility is to safeguard the profitability of the companies they regulate, consumer protections don't get the attention they need. The result has been unfair, deceptive, and abusive practices being allowed to spread unchallenged, nearly bringing down the entire financial system.

The Federal Reserve is the primary consumer protection rule-writer, but it has repeatedly failed to act despite repeated demands from Congress. The Federal Trade Commission is responsible for consumer protections for non-bank finance companies, but lacks the authority and capacity to examine them.

The Consumer Financial Protection Agency

- **Consumer Protections in One Place:** Consolidates consumer protection responsibilities currently handled by the Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, the Federal Reserve, the National Credit Union Administration, and the Federal Trade Commission.
- **Independent:** Led by a 5 member board with an independent director. The Chairman of the Financial Institutions Regulatory Administration will have a seat on the board.
- **A Watchdog with Real Teeth:** Unites rule-writing, supervision, and enforcement for consumer protection in a single, stand-alone agency with broad authority to investigate and react to abuses as they develop.
- **Able to Act Fast:** With this agency 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.
- **Regulates Shadow Banking Industry:** Levels the playing field for insured banks by regulating the shadow banking industry, such as mortgage brokers and payday lenders, for the 1st time and ensures that companies offering customers the same products receive the same regulatory treatment.
- **Accountability:** Makes one agency 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.
- **Tougher State Laws:** Allows states to pass tougher consumer protections that apply to all lenders, preventing federal regulations from preempting stronger state laws.
- **Works with Bank Regulators:** Coordinates with other regulators when examining banks to prevent undue regulatory burden.
- **Bases Supervision on Risk:** Focuses resources on companies that pose the biggest risk to consumers - mortgage bankers, brokers, finance companies and the largest institutions.

ADDRESSING SYSTEMIC RISKS: THE AGENCY FOR FINANCIAL STABILITY

One financial institution should never be capable of bringing down the entire American economy. The newly created Agency for Financial Stability is an independent agency responsible for identifying, monitoring and addressing systemic risks posed by large, complex companies as well as products and activities that can spread risk across firms. It will discourage companies from getting too large by imposing burdens on them as they grow and give regulators the authority to break up large, complex companies if they pose a threat to the financial stability of the United States.

Why Change is Needed: The economic crisis introduced a new term to our national vocabulary – systemic risk.

In July, [Federal Reserve Governor Daniel Tarullo](#), testified that “Financial institutions are systemically important if the failure of the firm to meet its obligations to creditors and customers would have significant adverse consequences for the financial system and the broader economy.”

In short, in an interconnected global economy, it’s easy for some people’s problems to become everybody’s problems. The failures that brought down giant financial institutions last year also devastated the economic security of millions of Americans who did nothing wrong – their jobs, homes, retirement security, gone overnight because of Wall Street greed and regulatory failures.

The Agency for Financial Stability

- **Strong and Independent:** Governed by an independent chairman, appointed by the President and confirmed by the Senate, to provide insulation from political manipulation. The board will have 9 members including the federal financial regulators and two independent members. The board members' diverse areas of expertise will strengthen the board’s ability to identify and respond to emerging risks throughout the financial system.
- **Tough to Get Too Big:** Writes increasingly strict rules for capital, leverage, liquidity, risk management and other requirements as companies grow in size and complexity, imposing significant costs on companies that pose risks to the financial system.
- **Break Up Large, Complex Companies:** Gives the regulators the authority to break up large, complex companies if they pose a threat to the financial stability of the United States.
- **Close Gaps in Regulation:** Identifies unregulated financial companies that pose systemic risk and assigns them to a federal regulator for supervision.
- **Lean and Mean:** Expected to be staffed with a highly sophisticated staff of economists, accountants, lawyers, former supervisors, and other specialists. With just rule writing authority and no direct supervision, the agency can remain small but effective.
- **Make Risks Transparent:** Collects and analyzes data to identify and monitor emerging risks to the economy and make this information public in periodic reports and testimony to Congress twice a year.
- **Oversight of Important Market Utilities:** The Agency for Financial Stability will identify systemically important clearing, payments, and settlements systems to be regulated by the Federal Reserve.

ENDING TOO BIG TO FAIL

Preventing another crisis where American taxpayers are forced to bail out financial firms requires strengthening big companies to better withstand stress, putting a price on excessive growth that matches the risks they pose to the financial system, and creating a way to shutdown big companies that fail without threatening the economy.

Why Change is Needed: As long as giant firms (and their creditors) believe the government will prop them up if they get into trouble, they only have incentive to get larger and take bigger risks, believing they will reap any rewards and leave taxpayers to foot the bill if things go wrong.

Since the crisis began, a number of institutions previously considered “too big to fail” have only grown bigger by acquiring failing companies, leaving our country with the same vulnerabilities that led to last year’s bailouts.

Limiting Large, Complex Companies and Preventing Future Bailouts

- **Discourage Excessive Growth:** Imposes increasingly strict standards for companies as they grow larger, more complex, or more interconnected, including heightened capital, leverage, and liquidity requirements, that ensure these companies have greater resources to deal with financial shocks.
- **Require Companies Provide Their Own Capital Injections:** Requires institutions to issue long-term hybrid debt securities that will provide them with capital during a systemic crisis so failing institutions can provide their own life support.
- **Funeral 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 subject to restrictions on growth and activity as well as required 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 a mechanism for the FDIC to unwind failing systemically significant financial companies through receivership, but not open assistance. Costs of unwinding these companies will ultimately be charged to financial firms with assets of over \$10 billion, not to the taxpayers.
- **Limit 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 during a major destabilizing event, but not to prop up individual institutions.

CREATING A SINGLE FEDERAL BANK REGULATOR: THE FINANCIAL INSTITUTIONS REGULATORY ADMINISTRATION

The Financial Institutions Regulatory Administration will eliminate the alphabet soup of multiple bank regulators that has led to weak, confusing regulation where it's easy for problems to fall through the cracks and difficult to know who is responsible.

Why Change is Needed: Today, we have a convoluted system of bank regulators created by historical accident. There are 4 federal banking agencies that oversee national and state banks and federal and state thrifts. The result has been charter shopping, where firms look around for the regulator that will go easiest on them and fee-funded regulators go easy on those they regulate in order to keep their business, as well as a mess of overlaps, redundancies, and blurred lines of responsibility.

Experts agree that no one would have designed a system that looked like this. For over 60 years, administrations of both parties, members of Congress across the political spectrum, commissions and scholars have proposed streamlining this irrational system. The Financial Institutions Regulatory Administration will finally achieve that goal.

The Financial Institutions Regulatory Administration

- **Independent:** Headed by an independent chairman appointed by the President and confirmed by the Senate, a Vice Chairman experienced in state banking regulation, and a board including the chairmen of the FDIC and the Federal Reserve and two other independent members. It will be funded primarily by assessments on the industry.
- **Single Focused Agency:** Combines the functions of the Office of the Comptroller of the Currency and the Office of Thrift Savings, the state bank supervisory functions of the Federal Deposit Insurance Corporation and the Federal Reserve, and the bank holding company supervision authority from the Federal Reserve.
- **Dual Banking System:** Preserves the dual banking system, leaving in place the state banking system that governs most of our nation's community banks.
- **Separate Community Bank Division:** Establishes a separate division within the new regulator to regulate community banks given the different supervisory issues they pose.
- **Eliminates Charter Shopping:** Stops financial institutions from choosing the easiest regulator, and stops fee-funded regulators from going easy on those they regulate to keep their business.
- **Increases Accountability:** Having a single regulator will mean an identifiable agency is held responsible for shortcomings in the banking system.
- **Speeds Action, Increases Efficiency:** Ends slow, cumbersome, coordinated rulemaking that creates extra red tape and inconsistent enforcement of the same rules by agencies. Overlaps impose unnecessary costs on regulated institutions and their customers.
- **Focuses the FDIC and the Federal Reserve:** The FDIC will focus on its jobs as deposit insurer and resolver of failed institutions, retaining backup examination authority over troubled banks and gaining additional authority to accompany the new agency on examinations of healthy banks and holding companies to ensure it has sufficient information to perform its insurance functions. The Federal Reserve will focus on monetary policy without being distracted by responsibilities for bank oversight and consumer protections. The Federal Reserve will continue to play a key role in assessing financial stability and have guaranteed access to financial institutions and any needed information.

ADDRESSING SYSTEMIC RISKS POSED BY DERIVATIVES

Common sense safeguards will protect taxpayers against the need for future bailouts and buffer the financial system from excessive risk-taking. 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 and capital requirements, and all trades will be reported so that regulators can monitor risks in this large, complex market.

Why Change is Needed: The over-the-counter derivatives market has exploded in the last decade – from \$91 trillion in 1998 to \$592 trillion in 2008. During last year’s financial crisis, concerns about the ability of companies to make good on these contracts and the lack of transparency about what risks existed caused credit markets to freeze. Investors were afraid to trade as Bear Stearns, AIG, and Lehman Brothers failed because any new transaction could expose them to more risk.

Over-the-counter derivatives are supposed to be contracts that protect businesses from risks, but they became a way for companies to make enormous bets with no regulatory oversight or rules and therefore exacerbated risks. Because the derivatives market was considered too big and too interconnected to fail, taxpayers had to foot the bill for Wall Street’s bad bets. Those bad bets linked thousands of traders, creating a web in which one default threatened to produce a chain of corporate and economic failures worldwide. These interconnected trades, coupled with the lack of transparency about who held what, made unwinding the “too big to fail” institutions more costly to taxpayers.

Bringing 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 Agency for Financial Stability stepping in if the two agencies can’t agree.
- **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 traders post margin and capital on 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.
- **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 worth 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.

Why Change is Needed: Hedge funds are responsible for huge transfers of capital and risk, but generally 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.

As a result, no regulator is currently able to collect information on the size and nature of these firms or calculate the risks they pose to the broader economy. The SEC is currently unable to examine private funds' books and records or take sufficient action when it suspects fraud.

Raising Standards and Regulating Hedge Funds

- **Fills Regulatory Gaps:** Ends the "shadow" financial system in which hedge funds and other private pools of capital 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.
- **Independent Custody of Client Assets:** Requires investment advisers to use independent custodians for client assets to prevent Madoff-type frauds.
- **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.

Why Change is Needed: Rating agencies market themselves as providers of independent research and in-depth credit analysis. But in this crisis, instead of helping people better understand risk, they failed to warn people about risks hidden throughout layers of complex structures.

Flawed methodology, weak oversight by regulators, conflicts of interest, and a total lack of transparency contributed to a system in which AAA ratings were awarded to complex, unsafe asset-backed securities - adding to the housing bubble and magnifying the financial shock caused when the bubble burst. When investors no longer trusted these ratings during the credit crunch, they pulled back from lending money to municipalities and other borrowers.

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.
- **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 investigate 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.
- **Education:** Requires ratings analysts to pass qualifying exams and have continuing education.

EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE

Strengthening Shareholder Rights

Giving shareholders a say on pay and proxy access, ensuring the independence of compensation committees, and requiring public companies to set clawback 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.

Why Change Is Needed: In this country, you are supposed to be rewarded for hard work.

But Wall Street has developed an out of control system of out of this world bonuses that rewards short term profits over the long term health and security of their firms. Incentives for short-term gains likewise created incentives for executives to take big risks with excess leverage, threatening the stability of their companies and the economy as a whole.

Giving Shareholders a Say on Pay and Creating Greater Accountability

- **Vote on Executive Pay and Golden Parachutes:** Gives shareholders a say on pay with the right to a non-binding vote on executive pay and golden parachutes linked to corporate takeovers. 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.
- **Nominating Directors:** Gives shareholders proxy access to nominate directors. Providing shareholders a greater role in choosing directors 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.
- **Clawbacks for Executives at Public Companies:** 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.

SEC AND IMPROVING INVESTOR PROTECTIONS

Every investor – from a hardworking American contributing to a union pension to a day trader to a retiree living off of their 401(k) – deserves better protections for their investments. Investors in securities will be better protected by improving the competence of the SEC, creating uniform standards for those providing customers investment advice, and giving investors the right to sue those who commit securities fraud.

Why Change Is Needed: The Madoff scandal demonstrated just how desperately the SEC is in need of reform. The SEC has failed to perform aggressive oversight and is unable to understand the very companies it is supposed to regulate. And investors have been used and abused by the very people who are supposed to be providing them with financial advice.

SEC and Beefed Up Investor Protections

- **SEC Reforms:** Mandates an annual assessment of the SEC's internal supervisory controls and a biannual GAO study of SEC management.
- **Uniform Standards for Advisors:** Mandates uniform standards for anyone providing customers investment advice, eliminating different standards for broker-dealers and investment advisers. Small investors should have uniform protections regardless of the title of the financial professional advising them has.
- **Best Interest of the Client:** Brokers who give investment advice will be held to the same fiduciary standard as investment advisers – they will be required to act in their clients' best interest.
- **Aiding and Abetting:** Investors will be able to sue persons who help commit securities fraud.
- **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 FINRA and provide them assistance.
- **Funding:** The self-funded SEC will no longer be subject to the annual appropriations process.

SECURITIZATION

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.

Why Change Is Needed: Companies made risky investments, such as selling mortgages to people they knew could not afford to pay them, and then packaged those investments together, called asset-backed securities, and sold them to investors who didn't understand the risk they were taking. For the company that made, packaged and sold the loan, it wasn't important if the loans were never repaid as long as they were able to sell the loan at a profit before problems started. This led to the subprime mortgage mess that helped to bring down the economy.

Reducing Risks Posed by Securities

- **Skin in the Game:** Requires companies that sell products like mortgage-backed securities to retain at least 10% of the credit risk. That way if the investment doesn't pan out, the company that made, packaged and sold the investment would lose out right along with the people they sold it to.
- **Better Disclosure:** Requires issuers 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.

Why Change is Needed: Financial advisers to municipal securities issuers have been involved in “pay-to-play” scandals and have recommended unsuitable derivatives for small municipalities, among other inappropriate actions, and are not currently regulated.

Better Oversight of Municipal Securities

- **Registers Advisors and Brokers:** Requires SEC registration for financial advisers, swap advisers, and investment brokers – unregulated intermediaries who play key roles in the municipal bond market.
- **Regulates Advisors and Brokers:** 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.

CREATING A 21st CENTURY WORKFORCE FOR 21st CENTURY REGULATORS

This bill will take a look at a key hurdle for creating competent regulatory agencies: competent staff.

Why Change is Needed: The new proposals will create three new agencies – the Financial Institutions Regulatory Administration, the Agency for Financial Stability and the Consumer Financial Protection Agency – each posing staffing challenges that will determine the regulators’ success or failure.

A Better Work Environment to Attract Better Staff: The bill will set up a panel to look at the staffing needs of the three new agencies based on the successful panel that helped the IRS to improve their hiring practices. The advisory panel will last only three years to see that these agencies are able to attract, cultivate, and retain competent staff qualified to regulate complex, 21st century financial institutions.