

## **Summary of Differences between Senate passed bill (Restoring American Financial Stability Act) and Conference Base Text**

### **Title I**

#### Subtitle A

Summary of House provisions added to Subtitle A:

- Requires the Council to consider in its determination under section 113 the importance of a company as a source of credit for certain communities.
- Authorizes the Council to issues recommendations under section 120 if the Council determines that a financial activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among certain communities.

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Provides in section 112 that the Council, acting through the Office of Financial Research, consult with foreign regulators as appropriate to mitigate reporting burdens on foreign financial companies.
- Clarifies that any additional factors the Council could consider in making its determination under section 113 must be risk-related.
- Requires the Council in section 113(f) to consult with the appropriate home country supervisor, if any, of a foreign nonbank financial company in making the Council's determination.
- Requires the Council in section 113(i) to consult with appropriate foreign regulatory authorities, to the extent appropriate, in exercising its duties with respect to foreign financial companies and cross-border activities and markets.
- Requires the Council in making its recommendations under section 115 and the Federal Reserve in prescribing any regulations under section 121 to take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.
- Clarifies the length of time that the Council has to notify a nonbank financial company of its decision on the company's appeal under section 117.
- Require a 2/3 vote of Council members in section 119 to decide a jurisdictional dispute among member agencies.
- Authorizes the GAO in section 122 to audit the Council.

#### Subtitle B

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Clarifies that OFR subpoena power in section 153(f) is limited to financial companies.
- Clarifies in section 155 that, after two years, all costs of the OFR must be paid by assessments on large financial companies.

## Subtitle C

Summary of House provisions added to Subtitle C:

- Provides that the credit concentration limits required under section 165(e) shall not apply to the Federal Home Loan Banks.

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Clarifies that section 163 does not create an exemption from antitrust laws.
- Requires the Federal Reserve, in applying new prudential standards to foreign financial companies under section 165, to take into account the extent to which the company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.
- Directs the Federal Reserve to require financial companies subject to stress test under section 165(h) to update their living wills as appropriate based on the results of the stress test.
- Clarifies in section 167(b) that the Federal Reserve may require all or a portion of the financial activities of a nonbank financial company supervised by the Federal Reserve to be housed in an intermediate holding company.

## **Title II**

Summary of House provisions added to Title II:

- Provides that the written recommendation under section 203(a) will include a description of the effect of the default of the company on certain communities
- Provides that the orderly liquidation plan under section 210(n)(9) will take into account actions to avoid or mitigate potential adverse effects on certain communities (modified from a House provision)

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- language in section 205 and 210(a)(1)(O) related to the liquidation of covered brokers and dealers
- language in section 210(c)(8)(G) to clarify the intent of the provision related to obligations to clearing organizations
- language in section 210(h)(16)(C)(ii) concerning the hearing requirement on bridge financial company access to credit
- language in section 210(o)(4) to add as a factor for risk-based assessments the extent to which assets are managed rather than owned and the extent to which the ownership is diffuse

Other Changes:

- Technical and conforming changes such as fixing cross-references and reordering definitions in alphabetical order.

### **Title III**

Summary of House provisions added to Title III:

- Preserves the federal thrift charter
- Requires the Comptroller of the Currency to name a Deputy Comptroller responsible for the supervision and examination of Federal savings associations
- Gives OCC employees the ability to engage in collective bargaining regarding pay in addition to the bargaining rights that employees currently possess
- Clarifies that a savings association that becomes a bank may establish additional branches in any location within any State where the savings association operated a branch before it became a bank
- Requires the federal financial agencies to establish an Office of Women and Minority Inclusion to promote a diverse workforce

Other changes:

- Adds technical and conforming changes, including conforming amendments deleting all references to the Office of Thrift Supervision

### **Title IV**

Summary of House changes to Title IV:

- Adds two items to the list of issues for the Commission to consider under the Section 415 study and report on short selling

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Changes to effective dates
- Change to the definition of "foreign private adviser"

### **Title V**

Summary of House provision added to Title V:

- Authorizes the Office of National Insurance to monitor the extent to which certain consumers have access to affordable insurance products

Change that was shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Clarifies the definition of insurer for purpose of data collection (Tester amendment #3750)

### **Title VI**

Summary of House provisions added to Title VI:

- Modifies the date for the moratorium on FDIC approval of applications for deposit insurance for an industrial bank, credit card bank, or trust bank owned by a commercial firm to applications received after "November 23, 2009."

- Excludes companies that control a limited purpose trust company from the definition of “savings and loan holding company” in the Home Owners Loan Act
- Expands the prohibition on interstate mergers to any insured depository institution (including a savings association or ILC) where the depository would control 10% of the total amount of deposits in insured depository institutions in the U.S.
- Adds penalties on thrifts for violating the QTL (qualified thrift lender) test
- Addresses the treatment of dividend waivers by certain mutual holding companies

Other changes:

Clarifies that section 604 does not create an exemption from antitrust laws

- Clarifies that an insured bank (other than a credit card bank, trust bank or ILC) or savings association cannot be a “securities holding company”
- Adds technical and conforming changes

## **Title VII**

Changes that were shared with Senator Shelby’s staff during Senate consideration of S.3217 for inclusion in a managers’ package:

- Technical amendments generated by Senate Banking and Agriculture, agreed to by House Financial Services and Agriculture.

## **Title IX**

### Subtitle A

Changes that were shared with Senator Shelby’s staff during Senate consideration of S.3217 for inclusion in a managers’ package:

- Adds a rulemaking requirement to Section 915, Streamlining of Filing Procedures for SROs
- Refines the exception to the standard by which the Commission is deemed to have received a proposed rule under Section 915, Streamlining of Filing Procedures for SROs
- Changes effective dates
- Directs the Investors Advocate to consult with the SEC Chairman

### Subtitle B

Summary of House provisions added to Subtitle B:

- Adds Section 929D, Lost and Stolen Securities
- Adds Section 929E, Nationwide Service of Subpoenas
- Adds Section 929F, Formerly Associated Persons
- Adds Section 929G, Streamlined Hiring Authority for Market Specialists
- Adds Section 929H, SIPC Reforms
- Adds Section 929I, Protecting of Confidentiality of Materials Submitted to the Commission
- Adds Section 929J, Expansion of Audit Information to be Produced and Exchanged

- Adds Section 929K, Sharing Privileged Information with other Authorities
- Adds Section 929L, Enhanced Application of Antifraud Provisions
- Adds Section 929M, Aiding and Abetting Authority under the Securities Act and the Investment Company Act
- Authority to Impose Penalties for Aiding and Abetting Violations of the Investment Advisers Act

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Modify the funding mechanism of the Investor Protection Fund that funds the whistleblower program
- Adds a condition under which an employer may not retaliate against a whistleblower
- Changes the statute of limitations for whistleblower suits
- Entitles whistleblower parties to a jury trial
- Adds a whistleblower study

#### Subtitle C

Summary of House provisions added to Subtitle C:

- Adds a requirement for NRSROs to state the 5 assumptions that have the greatest impact on a rating (based on Senator Burris amendment)
- Changes Report date deadlines

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Gives the Commission the authority to bar individuals from being associated with an NRSRO

#### Subtitle D

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Adds securitization exemptions for certain government issued or guaranteed assets

#### Subtitle E

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Adds exceptions to the independent compensation committee requirement

Other Changes:

- Makes changes to compensation provisions for bank holding companies

#### Subtitle H

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Adds stipulations as to how the MSRB can assess fees
- Directs the MSRB to meet with the SEC and a registered securities association at least once every two years
- Directs the MSRB how to allocate fines
- Deletes the definition of "municipal derivative"
- Deletes (i), Savings Clause
- Changes study deadlines

#### Subtitle I

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- Changes dates for the purposes of Material Loss Reviews

Other Changes:

- Adds Section 989F, GAO Study of Person to Person Lending

#### Title X

Summary of House provisions added:

- Clarify that financial advisory services relating to securities provided by persons regulated by State securities regulators are not covered.
- Clarify that consumer reporting agencies that provide information solely in making a decision regarding non-consumer financial products and services such as employment are not covered.
- Require the Offices within the CFPB to be established not later than 1 year after designated transfer date.
- Expand the membership of the Consumer Advisory Board.
- Allow for supervision of nondepositories that are engaging in a pattern of conduct that poses risks to consumers, based on complaints or other information, subject to notice and response by the nondepository.
- Require the Secretary to designate the date for the transfer of functions to the CFPB no earlier than 180 days and not later than 12 months, with the authority to extend the latter to 18 months. This is 6 months sooner than the Senate bill.
- Report on private education loans and private educational lenders.
- Study and report on differences, if any, in credit scores sold to consumers and creditors, and whether such differences disadvantage consumers.
- Exclude fair housing from the jurisdiction of the CFPB.
- Require the CFPB to update Congress on its workforce and contracting diversity efforts as part of its biannual reporting.
- Include a number of provisions that would clarify the fairness, nondiscrimination and access authorities of the CFPB.
- Allow representatives from other agencies involved in joint investigations to be present during oral testimony.

- Include women-owned and other businesses in small business loan data collection.
- Modify the effective dates of two regulations required of the Federal Reserve Board regarding remittance transfers.
- Allow the Federal Reserve Board to set certain standards for consumer remittance transfers.
- Extend the statute of limitations for the Equal Credit Opportunity Act from two years to five years.

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- A definition of "electronic conduit services" that replaces and clarifies language to ensure that mere conduits of financial information or products are not covered;
- Further clarifies that title insurance is not covered by the CFPB;
- Clarify that CFPB employees have the right to organize, consistent with other employees of financial regulators;
- Clarify that establishing or maintaining 529 plans are not covered;
- Narrow the scope of the enforcement provisions in section 1036;
- Add items to the study on appraisals involving the Home Valuation Code of Conduct.
- Modify a number of provisions regarding remittance transfers to address concerns raised by money service businesses and depository institutions, including eliminating mandatory storefront disclosures, clarifying that disclosures will be subject to rules prescribed by the Federal Reserve Board, providing additional authority to the Board to develop rules for reasonable estimates for non-fixed on send remittances and liability, study on the feasibility and impediments of use of remittance history in calculation of credit score.
- Conforming amendments to the enumerated consumer laws to align the enforcement authorities of the Federal regulators to the jurisdiction of those regulators, as amended in Title III and in sections 1024, 1025, and 1026 of the CFP Act and to preserve the enforcement authority of the Federal Trade Commission.

Other Changes:

- Moves Section 1074, 1074, and 1075 to Title XIV.
- Clarify that the CFPB may exercise its authority with regards to realtors only when the latter are engaged in providing a consumer financial product or service.

## **Title XI**

Changes that were shared with Senator Shelby's staff during Senate consideration of S.3217 for inclusion in a managers' package:

- p. 1555, line 14, insert "losses" after "from"
- p. 1555, line 16, strike "losses"
- p. 1557, line 11, strike "providing" and insert "the Board authorizes"
- p. 1559, line 15, strike "and" and insert "or"

Other changes:

- p. 1559, line 1, insert "required to be" after "information"
- p. 1560, line 8, insert "unsecured" before "claims"

- p. 1560, line 9, strike “the third undesignated paragraph” and insert “13(3)”
- p. 1560, insert between lines 11 and 12 “(c) References.—On and after the date of enactment of this Act, any reference in any provision of Federal law to the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) shall be deemed to be a reference to section 13(3) of the Federal Reserve Act, as so designated by this section.”
- p. 1561, strike everything from “(e), including” in line 2 through the end of line 10 and insert “(e).”
- p. 1562, line 1, insert “security and” before “collateral”
- p. 1585, line 14, insert “or a Federal reserve bank” after “Governors”
- p.1585, line 24, strike “the third undesignated paragraph of section 13” and insert “section 13(3)”
- p. 1585, line 25, insert “(as so designated by this title)” after “Act”
- p.1586, line 7, insert “security and” before “collateral”

#### **Title XIV – New Title: Mortgage Reform and Anti-Predatory Lending Act**

Title XIV is largely the language included in the House-passed bill (H.R. 4173) with some changes to reflect the Senate-passed bill where the latter dealt with the same matters.

##### Subtitle A – Residential Mortgage Loan Origination Standards

- Includes Sections 1073 (prohibition on steering payments to mortgage originators), 1074 (establishing ability to repay standards), and 1075 (prohibition or limitation on prepayment penalties) from the Senate-passed bill with some changes and additions.
- Requires mortgage originators to be licensed or registered, as applicable, under State or Federal law (including under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008), and include any unique identifier of the mortgage originator in loan documents. Prohibits originators for mischaracterizing the appraised value of a property or discouraging a borrower from seeking a better loan from another originator.
- Establishes a net tangible benefit test for refinance mortgages. Establishes a safe harbor for determining net tangible benefit, based on the same standards established for ability to repay and included in the Senate bill (fully documented income; no negative amortization loans; no interest only loans, for example).
- Requires a study of shared appreciation mortgages.

##### Subtitle B – Minimum Standards for Mortgages

In addition to the provisions from the Senate bill setting out standards for a presumption of ability to repay, the subtitle:

- Allows the Board, in consultation with the Secretary of HUD, the Secretary of Veterans Affairs, and the Secretary of Agriculture to define the safe harbor for the loans underwritten by those organizations.
- Creates a defense to foreclosure for homeowners where originators violated the steering or ability to repay standards in a material way.
- Prohibits single-premium credit insurance and mandatory arbitration on consumer mortgage loans.

- Imposes a 3-year statute of limitation for violations of the standards.
- Negative amortization loans to first-time borrowers are prohibited unless certain disclosures are made to the consumer and the consumer receives homeownership counseling.
- Removes civil liability if the borrower has been convicted of fraud in obtaining the loan.
- Requires additional disclosures.

#### Subtitle C – High-Cost Mortgages

This title expands the scope of and enhances consumer protections for “high-cost mortgages” under HOEPA by, among other provisions:

- Revising the definition of “high-cost mortgage” to mean first liens with APRs 6.5% (8.5% for subordinate liens) higher than a benchmark rate.
- Lowering the points-and-fees trigger from 8% to 5% of the total transaction amount for transactions of \$20,000 or more.
- Revising the definition of points and fees to include all direct and indirect compensation paid to a mortgage originator from any source, certain insurance premiums, and certain prepayment penalty charges; to establish a calculation method for points and fees; and to allow for the exclusion of certain bona fide discount points from that calculation.
- Prohibiting excessive fees for loan modifications, payment deferrals, late payments, or payoff statements.
- Prohibiting practices that increase the risk of foreclosure, such as balloon payments, encouraging a borrower to default, structuring mortgages to evade HOEPA protections, and flipping.
- Requiring the creditor to obtain proof that the recipient of a high-cost mortgage has received pre-loan counseling from a HUD-approved counselor.

#### Subtitle D – Office of Housing Counseling

- Establishes an Office of Housing Counseling at HUD that will carry out and coordinate all HUD homeownership and rental housing counseling programs, including: establishing and administering regulations, requirements, standards, procedures, and performance measures under the programs; certifying counseling service providers; monitoring all HUD counseling procedures; establishing standards for and certifying computer software programs for consumers to evaluate mortgage loan proposals;
- Authorizes the issuance of homeownership and rental housing counseling grants to HUD-certified state, local and nonprofit counseling organizations;
- Requires HUD to update the Mortgage Information Booklet to provide consumers with a greater understanding of the terms of the home buying process; and to prepare at least once every 5 years a booklet to help consumers applying for federal mortgage loans to understand the nature and cost of real estate settlement services;
- Requires HUD to submit to Congress not later than 12 months after enactment a report on the root causes of default and foreclosure of home loans and role of escrow accounts in helping to avoid defaults and foreclosures. A final report and recommendations must be submitted not later than 24 months after enactment.

### Subtitle E – Mortgage Servicing

- Requires borrowers with higher-cost, subprime and other specified loans to have escrow accounts established in conjunction with their mortgages to cover payment of and provide protection against tax liens and the forced placement of hazard insurance, among other things. Such accounts generally must remain in existence for a minimum of 5 years.
- Establishes rules for the administration of mandatory escrow or impound accounts.
- Updates the Real Estate Settlement Procedures Act to create new safeguards for borrowers, including detailing when the servicer can impose force-placed hazard insurance, mandating swifter responses to consumer written inquiries, increasing penalties for abuses, and requiring the prompt crediting of payments.
- Requires prompt refund of escrow accounts at loan payoff.

### Subtitle F – Appraisal Activities

- Establishes stronger, enforceable Federal appraisal independence standards with tough penalties, which will allow appraisers to avoid conflicts of interest and act as independent referees to verify the value of the property for the buyer, the seller, the lender, and the investor, among others.
- Establishes a Federal unfair and deceptive practices standard for appraisals.
- Provides the Appraisal Subcommittee of the interagency Federal Financial Institutions Examination Council (FFIEC) with a consumer protection mandate and enhances its ability to monitor the performance of State appraisal oversight agencies.
- Creates a state-by-state system for registration and supervision of appraisal management companies (AMCs), with oversight by the FFIEC Appraisal Subcommittee. Establishes a parallel Federal system of oversight for AMC subsidiaries of insured depository institutions.
- Requires establishment of a national appraisal complaint hotline which will receive complaints (through toll-free hotline and e-mail) and refer to the appropriate State or Federal regulators or other legal authorities.
- Strengthens appraiser licensing and education standards, and establishes a Federal grant program to assist States in their appraisal regulatory activities.
- Requires GAO to conduct a study within 18 months of enactment on possible improvements to the appraisal process generally and state programs specifically, as well as a review of the quality of appraisals produced through different mechanisms and distribution channels, an analysis of enforcement actions over the last decade, and an examination of the need for a central repository for appraisal data.

### Additional Items

- Sense of Congress Regarding the Importance of Government Sponsored Enterprises Reform.
- Require the Secretary of HUD to develop a program to protect tenants and at-risk multifamily properties, where feasible.
- Study of effect of drywall presence on foreclosures.
- Modifications to the Home Affordable Modification Program.
- Revisions to the Making Home Affordable Program.

### **Title XV**

#### Other Changes:

- Sec. 1501 –Technical changes to expand annual reporting requirements, apply instruction requirement to the Secretary of the Treasury, and clarify countries to which the provision would apply.