



### **Title III — Transfer of Powers to the Comptroller of the Currency, the Corporation and the Federal Reserve Board**

- **Elimination of the OTS.** The OTS is abolished effective one year after enactment of the Act, unless the timeline is extended, and the authority of the OTS with respect to savings associations, their holding companies and their affiliates is transferred to the OCC, the FDIC and the Federal Reserve Board.
- **Changes to FDIC Insurance Assessment Base.** The assessment base on which deposit insurance premiums are calculated will shift from deposits to average consolidated total assets minus average tangible equity.
- **Increases to the DIF Reserve Ratio.** The reserve ratio of the Deposit Insurance Fund will be increased from 1.15 % 1.35 % by September 30, 2020. The cost of this increase will be borne by insured depository institutions with assets of \$10 billion or more.
- **Changes to FDIC Insurance Coverage.** Federal deposit insurance limits are increased from \$100,000 to \$250,000, and for a period of two years from December 31, 2010, deposits in non-interest bearing demand deposit accounts will continue to be insured.
- **Shift in Regulatory Focus.** Other provisions further the themes of shifting the economic burden of regulation to the largest institutions and increasing regulatory focus on fairness and nondiscriminatory treatment.

### **Subtitle A and Subtitle B – Transfer of Powers and Duties; Transitional Provisions**

- *Transfer of the Office of Thrift Supervision (“OTS”) Powers and Duties.* Transfers of powers and duties of the OTS to the FDIC, OCC and Federal Reserve Board will be effected as follows:
  - The OCC will have all rulemaking authority of the OTS relating to State and Federal savings associations, except as noted below and will supervise all Federal savings associations.
  - The FDIC will supervise all State savings associations.
  - The Federal Reserve Board will regulate all savings and loan holding companies and all nonbank subsidiaries of savings and loan holding companies. The Federal Reserve Board also will succeed to all rulemaking authority of the OTS relating to savings and loan holding companies and to savings association transactions with affiliates, insider loans by savings associations and tying arrangements involving savings associations.

- *Timing of Abolishment of OTS.* Transfer of OTS powers and duties must be accomplished within one year after enactment, with ability to extend for an additional six months if certain procedural requirements are met. The OTS and the position of Director of the OTS will be abolished 90 days after transfer of the OTS' powers and duties.
- *Continuation of OTS Obligations, Documents.* The Act provides for the continuation of lawsuits, existing OTS orders, resolutions, determinations, agreements and regulations, interpretive rules, procedures and other advisory materials (including pending regulations).
- *OCC Independence.* The Act limits the oversight of the OCC by the Treasury Secretary by prohibiting the Treasury Secretary from intervening in any OCC matter or proceeding unless the law expressly provides for such intervention.
- *Shift of Regulatory Focus.* Although the Federal banking agencies have always attempted to balance safety and soundness and consumer protection in their oversight of depository institutions, the Act now expressly tasks the OCC with “assuring the safety and soundness of, and compliance with the laws and regulations, fair access to financial services and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.”
- *Fees for Large Institutions and Companies.* In another of the many financial burdens that the Act places on large financial institutions, the Act *requires* the Federal Reserve Board to collect assessments, fees and other charges from all bank holding companies and savings and loan holding companies with total consolidated assets of \$50 billion or more and all nonbank financial companies supervised by the Federal Reserve Board in an amount equal to the expenses the Federal Reserve Board estimates is necessary or appropriate to carry out its responsibilities with respect to the institution or company. The OCC is also granted broad, permissive authority to assess fees to institutions subject to its jurisdiction “as necessary or appropriate to carry out [its] responsibilities.”

### **Subtitle C – Federal Deposit Insurance Corporation**

- *Membership of FDIC Board.* The Director of the Consumer Financial Protection Bureau will replace the Director of the OTS on the FDIC Board, giving an additional voice for consumer advocacy to that organization.
- *Deposit Insurance Assessments.* The “assessment base” upon which deposit insurance premiums are calculated will be changed to equal the average total consolidated assets of an insured depository institution minus the sum of the average tangible equity of the insured depository institution during the assessment period. Additional amounts will be subtracted from average total consolidated assets for custodial banks and banker’s banks. Contrary to the original concept of paying for insurance on the basis of the insured obligation, this change should shift some of the costs of deposit insurance to insured depository institutions that are proportionately *less* reliant on deposit funding (generally larger institutions). In addition, in a provision entitled “Elimination of Procyclical Assessments,” the Act actually does nothing to ease assessments in times of financial stress, but does grant the FDIC greater authority to build up excess reserves when the Bank Insurance Fund has otherwise met its targets.
- *Increase in DIF Reserve Ratio.* The Act includes provisions to increase by September 30, 2020, the reserve ratio of the Deposit Insurance Fund from 1.15 % to 1.35 % of estimated insured deposits or the comparable percentage of the assessment base. Insured depository institutions with assets of \$10 billion or more will pay the increased assessments necessary to satisfy the higher reserve ratio.
- *Permanent Increase in Federal Deposit and Share Insurance Limits.* The Act makes permanent the increase in standard maximum Federal deposit and share insurance limits from \$100,000 to \$250,000. (See also the two-year retention of unlimited FDIC insurance for certain transaction accounts in Subtitle D below.)

## Subtitle D – Other Matters

- *Branching.* The Act permits any savings association that becomes a bank to continue to operate any branch or agency that it operated immediately before becoming a bank, and to continue establishing, acquiring and operating branches and agencies in the States in which such branches and agencies are located if a bank chartered by such State would be permitted to establish a “branch.” (Some ambiguity is created by the Act’s express comparison only to an in-State bank’s branching authority and not to its authority to establish an agency office.)
- *Two-Year Extension of Unlimited Deposit Insurance.* As another concession to smaller institutions, the Act extends the unlimited Federal insurance of the net amount of “noninterest-bearing transaction accounts” through December 31, 2013. While this provision has widely been reported as an extension of the FDIC’s “Transaction Account Guarantee” program, the Act actually narrows the current definition of “noninterest-bearing transaction account” by excluding from the definition accounts that earn *de minimis* interest and accounts on which institutions reserve a right to required advance notice of withdrawals (*e.g.*, NOW accounts). The changes from the current law take effect on December 31, 2010.
- *Office of Minority and Women Inclusion.* The Act requires each agency to create an Office of Minority and Women Inclusion that will be responsible for all matters of the agency relating to diversity in management, employment and business activities. The director of each such office is charged with developing and implementing certain standards for the agency, including increasing women- and minority-owned business in the programs and contracts of the agency.
- *Anti-Tying Exceptions.* The Federal Reserve Board must consult with the OCC and FDIC prior to permitting any exceptions to anti-tying restrictions.

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