

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

The following is a summary prepared for Solari, Inc. of the provisions of legislation adopted in the House of Representatives that is over 1,700 pages long and covers a wide selection of subjects and laws related to financial legislation. This summary does not constitute legal advice and does not purport to be complete. We have included all titles and subtitles for reference purposes, but it includes section headings and summaries only where we found matters of interest to Solari. There may be important provisions we have missed. We do not claim to be experts on all matters covered and, therefore, may not have noted important changes that could substantially affect other businesses. The full bill can be found at the website of the House Committee on Financial Services at http://financialservices.house.gov/Key_Issues/Financial_Regulatory_Reform/Financial_Regulatory_Reform.html.

TITLE I FINANCIAL STABILITY IMPROVEMENT ACT OF 2009

1000A Restrictions on Federal Reserve Board Pending Audit Report

Comptroller General to conduct audit of actions of Board of Governors of FRB and Federal Reserve Banks in connection with current economic crisis, to be completed within two years of adoption of legislation, report to Congress, etc.

Subtitle A — The Financial Services Oversight Council

1001 Financial Services Oversight Council established

Voting Members: Chmn of Fed, Secy of Treasury, Comptroller of Currency, Director of OTS (until it is dissolved), Chmn of SEC, Chmn of FDIC, Chmn CFTC, Chmn NCUA, Director of FHFA, head of Consumer Financial Protection Agency; there's also a non-voting advisory committee

Purpose: monitor the marketplace to identify potential threats to the stability of the financial system; subject financial companies and activities that pose a threat to financial stability to increased standards, including increased capital requirements, limits on leverage and limits on concentration of risk

1002 Resolution of Disputes among Federal Financial Regulatory Agencies

Decisions binding on agencies

1003 Technical and professional advisory committees

Authority to establish

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

1004 Financial Services Oversight Council meetings and council governance

Meetings at least quarterly; vote by majority

1005 Council staff and funding

Funding by member agencies; Treasury shall detail staff and other agencies may

1006 Reports to the Congress

Semiannual reports to Committees on Agriculture, Financial Services, Ways and Means of House and Agriculture, Banking, Housing and Urban Affairs and Finance of Senate; to describe significant financial and regulatory dypmts and report effect of changes in accounting and other regulatory standards on stability of system; describe size, scope, concentration, etc. of 50 largest financial institutions; describe actions taken to address threats to financial system; describe dispute resolutions and actions taken under the title; evaluate CFPB and CFPB must take evaluation in to consideration in issuing regs

1007 Applicability of certain Federal laws

Federal Advisory Committee Act doesn't apply to Council; Council not an "agency" of Fed. govt

1008 Oversight by GAO

Enhances authority of GAO to examine Board of Governors of Fed and Federal Reserve Banks; GAO may audit Council and anyone acting for it; GAO has access to Council records, info provided by members, identities of holding companies subject to stricter standards; Comptroller to review and evaluate activities of Council;

Subtitle B—Prudential Regulation of Companies and Activities for Financial Stability Purposes

1100 Federal Reserve Board authority that of agent acting on behalf of Council

Federal Reserve serves as agent of the Council in regulating systemically risky companies on a consolidated basis

1101 Council and Board authority to obtain information

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Council may require periodic reports from any financial company solely for purpose of determining extent of threat to financial stability; may coordinate with foreign financial regulators if company is a foreign financial parent; regular consultation with foreign financial regulatory authorities; giving info to Council not a waiver of privilege in data and agency/company may not be compelled to waive privilege; FOIA exemption

1102 Council prudential regulation recommendations to Federal financial regulatory agencies; agency authority

Authority of Council to issue regulation recommendations; regulatory agency may impose stricter in response to Council recommendation require reports, examination, stricter prudential standards and safeguards to mitigate systemic risk of institution it regulates; consideration of home country regulation in connection with foreign financial parents/branches; agency has to report back to Council on recommendation as to action taken or reason for no action;

1103 Subjecting financial companies to stricter prudential standards for financial stability purposes

1104 Stricter prudential standards for certain financial holding companies for financial stability purposes

Council in consultation of FRB or other primary regulator subject financial company to stricter prudential standards if material financial distress of the company or nature, scope, size, scale, concentration, interconnectedness or mix of company's activities would pose a threat to financial stability or the economy.

Council must consider leverage, off-balance-sheet exposure, relationships and transactions with other financial companies, importance as a source of credit and liquidity; ownership of assets under management; nature, scope and risk of company activities, amount and nature of assets and liabilities and reliance on short-term lending, company regulation.

Financial institution subject to stricter prudential standards has right of appeal and judicial review.

Any company subject to stricter standards must maintain debt to equity ratio no higher than 15:1.

1105 Mitigation of systemic risk

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Stricter prudential standards to be imposed on financial holding companies by FRB include:

- Risk-based capital requirements and leverage limits
- Liquidity requirements
- Concentration requirements
- Prompt corrective action requirements
- Resolution plan requirements
- Overall risk management requirements

Short-term debt limits and other appropriate limits may be imposed

1106 Subjecting activities or practices to stricter prudential standards for financial stability purposes

1107 Stricter regulation of activities and practices for financial stability purposes

1108 Effect of rescission of identification

1109 Emergency financial stabilization

If Council determines (on a 2/3rds vote), that a liquidity event exists that could destabilize the financial system and with written consent of the Treasury Secretary (after certification of emergency by the President), the Corporation [presumably, FDIC] may create a widely-available program designed to avoid or mitigate adverse effects on systemic economic conditions or financial stability by *guaranteeing obligations of solvent insured depository institutions or solvent depository institution holding companies (and affiliates)* if necessary to prevent systemic financial instability during times of severe economic distress.

1110 Additional related amendments

1111 Corporation may receive warrants when paying or risking taxpayer funds

In exchange for extensions of credit or guarantees or other similar commitments by FDIC, FDIC may take warrants for non-voting common or preferred shares of equity (or voting shares if FDIC agrees not to exercise voting power) of depository institutions providing that if the institution's equity ceases to be listed on an exchange it may be converted into senior debt. The exercise price of the warrants is to be set by FDIC in the interest of taxpayers. FDIC may accept senior debt providing for equivalent value if the company doesn't have sufficient authorized shares of nonvoting stock and cannot get stockholder approval for issuance of

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

additional shares. If the company is legally prohibited from issuing securities and debt instruments, FDIC may establish exceptions and alternatives to these requirements.

The warrants/senior debt shall provide for reasonable participation by FDIC on behalf of taxpayers in equity appreciation in the case of warrants (or reasonable interest in the case of senior debt) and additional protection for taxpayers against losses.

1112 Examinations and enforcement actions for insurance and resolutions purposes

1113 Study of the effects of size and complexity of financial institutions on capital market efficiency and economic growth

Subtitle C – Improvements to Supervision and Regulation of Federal Depository Institutions

1201 OTS abolished

OTS becomes a division within the OCC (Division of Thrift Supervision), which is under the Department of Treasury, and employees transferred over.

Subtitle D – Further Improvements to the Regulation of Bank Holding Companies and Depository Institutions

1316 Authorizes mutual national banks and federal mutual bank holding companies

Provides for registration and regulation of new mutual national banks subject to examination and regulation by the OCC. Subjects these entities to regulations now in effect by the OTS (which itself is being dissolved and folded into the OCC) with regard to organization, corporate governance and conversion of mutual institutions. Director of the OCC to determine by regulation manner in which requirements re: capital stock and limitations imposed on national banks will apply to mutual national banks.

Any mutual depository may convert to a mutual national bank and a mutual national bank may reorganize to become a Federal mutual bank holding company, subject to federal regulatory approval. Any national mutual bank may convert to a state bank charter.

Prescribes rights of mutual national bank members, who are deemed to be primarily

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

depositors and secondarily mutual members, and proxy rules.

1317 Nationwide deposit cap for interstate acquisitions

Amends Federal Deposit Insurance Act to place limits on interstate bank merger transactions if resulting insured depository institution, including affiliates, would control >10% of total deposits of insured depository institutions in the US.

1318 De novo branching into states

Permits interstate branching of national bank where the law of the state where a branch is to be located would permit the branch if the national bank were a state bank chartered by the state.

Subtitle E – Improvements to the Federal Deposit Insurance Fund

- 1401 Accounting for actual risk to the Deposit Insurance Fund**
- 1402 Creating a risk-focused assessment base**
- 1403 Elimination of procyclical assessments**
- 1404 Enhanced access to information for deposit insurance purposes**
- 1405 Transition reserve ratio requirements to reflect new assessment base**

Subtitle F – Improvements to the Asset-Backed Securitization Process

1502 Credit risk retention

Section 29 of the 1933 Act amended to require that with 180 days of enactment, the appropriate agencies must prescribe regulations to require any creditor that makes a loan to retain an economic interest in a material portion of the credit risk of the loan that the creditor transfers to a third party, including for the purpose of including the loan in a pool backing an asset-backed security. Credit securitizers must also have risk retention requirements [generally 5%, but may be increased or decreased]. Regulations and standards must prohibit a creditor or securitizer from directly or indirectly hedging the credit risk it is required to retain.

1503 Reporting under 1934 Act for ABS

Requires the SEC to adopt regulations re: disclosure re: ABSs, including info as to assets securing each tranche and prescribing a form that facilitates comparison of such data across securities in similar types of asset classes. Requires asset-level or loan-level data necessary for an investor to perform its own independent due

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

diligence, including unique identifiers to ID brokers and originators, compensation of brokers/originators and amount of risk retention by originator or securitizer.

1504 Reps and warranties for ABS

Requires credit agency ratings reports to include info about reps and warranties and enforcement mechanisms available to investors and to describe differences from those of similar issuances.

Requires reporting across all trusts aggregated by a single originator as to asset repurchase requests so as to allow investors to ID originators with clear deficiencies in underwriting.

1505 Exempted transactions under 1933 Act

The mortgage-backed securities exemption from registration requirements (Section 4 (5)) is eliminated.

1506 Study on the Macroeconomic Effects of Risk Retention Requirements

To be conducted by the Chmn of Financial Services Oversight Council, with emphasis on potential beneficial effects re: stabilizing real estate markets.

Subtitle G – Enhanced Dissolution Authority

1601 Dissolution Authority for Large, Interconnected Financial Companies Act of 2009 [180 pages long]

Purpose to provide for orderly resolution of large, interconnected financial companies whose failure could create or increase risk of significant liquidity, credit or other financial problems spreading among financial institutions or markets and thereby threaten stability of overall US financial system. Presumption that resolution under US bankruptcy law will remain primary resolution method and authorities in this title will only be used in most exigent circumstances.

1603 Systemic risk determination

1604 Dissolution; stabilization

1605 Judicial review

1606 Directors not liable for acquiescing in appointment of receiver

1607 Termination and exclusion of other actions

1608 Rulemaking

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

1609 Powers and duties of Corporation [FDIC]

FDIC authorized to create Systemic Resolution Fund

1610 Clarification of prohibition regarding concealment of assets from receiver or liquidating agent

1611 Office of Dissolution

Created within FDIC Inspector General's Office

1613 Amendment to Federal Deposit Insurance Act

Creates Systemic Dissolution Authority and Fund

1614 Application of executive compensation limitations

If the FDIC has borrowed from Treasury to resolve a covered financial company, it shall apply the executive compensation limits imposed under the 2008 Emergency Economic Stabilization Act.

1615 Study on the effect of safe harbor provisions in insolvency cases

1616 Treasury study

1617 Priority of claims in Federal Deposit Insurance Act

Subtitle H – Additional Improvements for Financial Crisis Management

Subtitle I – Miscellaneous

Subtitle J – International Policy Coordination

Subtitle K – International Financial Provisions

Subtitle L – Securities Holding Companies

1951 Access to US financial market by foreign institutions

Authorizes termination of foreign bank offices in the US in order to mitigate systemic risk to the US if bank's home country is not adopting or making progress toward adopting appropriate system of financial regulation to mitigate the risk.

1952 Reducing TARP funds to offset costs

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

1961 Securities holding companies

Securities holding company is owner of one or more broker-dealers. A securities holding company that isn't a financial holding company or otherwise regulated as required by a foreign law to be subject to comprehensive regulation may register with the Federal Reserve Board and be supervised under this Subtitle.

**TITLE II CORPORATE AND FINANCIAL INSTITUTION COMPENSATION
FAIRNESS ACT**

2000s Shareholder voting on compensation

Amends 1934 Act to require public companies to put executive compensation to a vote of shareholders and to disclose findings/reports of the compensation committee, but the shareholder vote is not binding on the issuer or its board of directors. Any proxy solicitation for merger, acquisition, etc. must disclose terms of golden parachutes and include a vote of shareholders on such arrangements, but the shareholder vote is not binding on the issuer or its BOD and does not create in them a fiduciary duty.

Requires an independent compensation committee be formed by public corporations, but SEC is authorized to exempt some companies from requirements (apparently intended for small companies). Includes standards for compensation consultants that may be appointed by committee. Compensation committee has authority to consult independent counsel and other advisors.

SEC study and report to Congress.

Mandates regulations for enhanced disclosure of incentive payment structure to federal financial regulators.

Requires financial regulators jointly to issue regulations prohibiting any incentive payment arrangements that 1) could threaten the safety and soundness of covered financial institutions; or could have serious adverse effects on economic conditions or financial stability. This applies only to financial institutions with assets > \$1B. Recovery of past payments not permitted. GAO study mandated.

**TITLE III -- DERIVATIVES= MARKETS TRANSPARENCY AND ACCOUNTABILITY
ACT**

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

3000s Derivative Markets Transparency and Accountability Act

Requires CFTC to consult with SEC and Prudential Regulators before issuing swap regulations. SEC likewise must consult with CFTC and Prudential regulators before issuing regs re: securities-based swaps. If either doesn't like the regs issued by the other, it can petition the US Federal Appeals Ct for DC to issue an order setting them aside, on an expedited basis.

Coordination with foreign regulators for consistent international standards; authorizes information sharing.

No provision of this title shall be construed to authorize Federal assistance to support clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act or a clearing agency described in the Securities Exchange Act of 1934, except where explicitly authorized by an Act of Congress.

CFTC to conduct studies on effects of position limits imposed in this title on the market; reports to Congress. Study of desirability and feasibility of establishing single regulator for all transactions involving financial derivatives; report to Congress. SEC, CFTC and Prudential Regulators to make recommendations as to amendments to insolvency laws to enhance legal certainty as to rights of swap participants.

3007 Abusive swaps

SEC and CFTC may make a report on abusive swap arrangements.

3008 Authority to prohibit participation in swap activities

SEC in consultation w/ Treasury may prohibit US swap activities with entities domiciled in a foreign country if the foreign country has regs that undermine stability of US.

3009 Memorandum

SEC and CFTC to enter into MOU re: jurisdiction and prevention of duplicative regulation of swap activities; CFTC and FERC to enter into MOU re: sharing of information requested by SEC in connection with investigation of fraudulent activities, manipulation of market power, etc.

Subtitle A (3100s) Regulation of Swap Markets

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Subtitle B (3200s) Regulation of Security-based Swap Markets
**Subtitle C (3300s) Improved Financial and Commodity Markets Oversight and
Accountability**

[Note: the following summary is not broken down by subtitle or section]

Divides regulation of swaps between SEC (for CDS and other securities-based swaps) and CFTC (currency and interest rate swaps and other non-securities-based swaps)

Requires that swaps that are sufficiently standardized and between dealers and major swap participants be cleared through a swap clearing house – central counterparty (CCP). Clearing orgs must be approved by SEC or CFTC; execution of trade where both parties are swap dealers or major swap participants must be executed on a board of trade, a national securities exchange or a “swap execution facility (but this doesn’t apply if none of these facilities lists the swaps).

Swap dealers and major swap participants must register with SEC or CFTC, as the case may be, and report swap trades to SEC or swap repository if not accepted for clearing by a derivatives clearing org. There must be capital requirements for swaps, which must be higher for non-cleared transactions than for cleared transactions. Regulators must establish margin levels for non-cleared transactions – Prudential Regulators for banks and CFTC/SEC for non-banks (the latter of which standards must be at least as strict as those set by former). Where one party is an end-user, there must be non-cash collateral permitted.

Derivatives are defined to include swaps and commodities contracts for future delivery. SEC determines whether swaps must be cleared. Each clearinghouse must submit to SEC what swaps it will clear. SEC may stay the clearing requirement on its own or on counterparty petition pending completion of review of the arrangement.

TITLE IV CONSUMER FINANCIAL PROTECTION AGENCY ACT

Subtitle A – Establishment of Agency

4101 Establishment of the Consumer Financial Protection Agency

Independent agency to regulate provision of consumer financial products or services, initially led by Director/Acting director but later by a commission

4102 Director

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Director nominated by President, appointed by and with advice and consent of Senate. Term until Conversion Date (conversion to commission), although Director may be removed for cause.

4103 Establishment and Composition of Commission

Composed of 5 members appointed by President by and with advice and consent of Senate. Five year staggered terms with initial appointments of 1-5 years. President may remove for cause. No member of Commission may engage in any other business, vocation or employment. Not more than 3 members appointed by President may be members of any one political party. Former Director serves as initial Chair for 3 years. Subsequent Chairs appointed by President from among Commission members.

4104 Consumer Financial Protection Oversight Board

Advise Director on consistency of proposed regulation with prudential, market or systemic objectives administered by agencies on Board, overall strategies and policies, and actions Director can take to enhance and ensure that consumers are subject to robust financial protection. Board may not exercise executive authority or delegate to Board any functions, powers, duties of the director.

Comprised of:

- FRB Chairman,
- head of agency responsible for chartering and regulating banks,
- Chairman of FDIC,
- Chairman of NCUA,
- Chairman of FTC,
- Secretary of HUD,
- Chairman of liaison committee of representatives of State agencies to Financial Institutions Examination Council,
- 5 additional members appointed with advice and consent of Senate from among experts in fields of consumer protection, fair lending, civil rights, representatives of depository institutions that primarily serve underserved communities or reps of communities that have been significantly impacted by higher-priced mortgage loans

Board to meet at least every 3 months; any member may require special meeting; Members may not receive additional pay, allowances or benefits by reason of their

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

service on the Board.

4105 Executive and administrative powers

4106 Administration

Director to appoint a secretary, general counsel, inspector general and ombudsman.
Compensation to be comparable to that of FRB for similar functions.

Specific functional units: Research, Community Affairs, Consumer Complaints (and there will be centralized database to track consumer complaints), Consumer Financial Education (including Office of Financial Literacy, with many functions including one-on-one consumer education), Office of Financial Protection for Older Americans, Office of Fair Lending and Equal Opportunity (with reports to Congress on efforts to fulfill fair lending mandate).

Coordination with FTC and other federal agencies, regulatory agencies, enforcement authorities. Data sharing by and with Federal banking agencies, FTC, other Federal agencies and State regulators required, subject to confidentiality requirements of law.

Consumer complaint website to be established, interoperable with above database.
Central 800 number for complaints, some of which may be referred to state agencies.

4107 Consumer Advisory Board

Appointed by Director, to consult with and advise Director. NO more than one more than ½ may be of any one political party. Prohibition of membership by indicted businesses and other “bad boys” expressly including ACORN.

To meet at least 2X per year.

4108 Coordination

Coordination with other federal agencies (SEC, CFTC, Treasury, FTC) and state regulators as well as members of Financial Literacy and Education Commission

4109 Reports to Congress

At beginning of each session of Congress; appearance annually after submission of report before House Committee on Financial Services and House Committee on Energy and Commerce.

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

4110 GAO small business studies

Comptroller General to carry out study every 3 years to examine effect of Agency regulations on small businesses and then prepare report to Congress.

4111 Funding; fees and assessments; penalties and fines

Subtitle B (4200s) -- General Powers of the Director and Agency

Subtitle C (4300s) – Specific Authorities

4315 Regulation of person-to-person lending

Section 3(a) of the 1933 Act is amended to provide for person-to-person lending. Primary regulatory authority over person-to-person lending and person-to-person lending platforms (internet websites that provide for matching of natural persons who wish to make and receive consumer loans but not including the making or sale of multiple loans in a single transaction) is vested in the Consumer Financial Protection Agency. Effective date is date of enactment. Regulations to be issued.

4316 Treatment of reverse mortgages

Regulations to be issued to address unfair, deceptive or abusive practices.

Subtitle D (4400s) -- Preservation of State Law

4401 Relation to state law

Preserves state laws to the extent they provide more protection to consumers and are not inconsistent with the provisions of this law.

4402 Preservation of enforcement powers to states

Permits any state attorney general to enforce the provisions of this law.

Subtitle E (4500s) -- Enforcement Powers

Subtitle F (4600s) – Transfer of Functions and Personnel; Transitional Provisions

Subtitle G (4700s) – Regulatory Improvements

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

4701 Collection of deposit account data

Requires for each branch or teller machine accepting deposits for a financial institution records be maintained of the number and dollar amounts of deposit accounts of customers. Customers' addresses must be geo-coded so that the data is collected regarding the census tracts of the residence or business location of the customers. The institution also shall record whether the customer is a residential or commercial customer.

Subtitle H – Conforming Amendments

4812 Amendment to Right to Financial Privacy Act

Clarification that nothing in Right to Financial Privacy Act prevents Consumer Financial Protection Agency from examining financial institution records; expansion of definition of “financial institution” to include credit card companies and consumer finance institutions.

4813 Amendments to Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [“S.A.F.E.”]

S.A.F.E., enacted in July, 2008, requires licensing of loan originators not employed by federally-regulated financial institutions.

Provides for registration of employees of depository institutions/subsidiaries regulated by Federal banking agencies or Farm Credit Administration as registered loan originators with a new Nationwide Mortgage Licensing System. Consumer Financial Protection Agency to establish and maintain the System by 7/30/10, which may levy fees for costs of maintaining and providing access to the system (not to charge consumers for access).

Consumer Financial Protection Agency authorized to issue regulations setting minimum net worth or surety bond requirements for residential loan originators and minimum requirements for recovery of funds paid to loan originators. Regs to take into account need to provide originators with adequate incentives to originate affordable and sustainable mortgage loans and to ensure a competitive origination market that provides access by consumers to affordable and sustainable mortgage loans.

Generally changes regulator to Consumer Financial Protection Agency from HUD. Relieves administrator of system. Director of CFPB and state agencies and officials

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

of liability for monetary damages for good faith actions and omissions within scope of employment in connection with collection, furnishing or dissemination of information re: registered loan originators or applicants for registration.

4814 Amendments to Truth in Savings Act of 1991 [regulating disclosure of interest rates]

Replaces “Board” with “Agency” [i.e., Consumer Financial Protection Agency]

4815 Amendments to the Telemarketing and Consumer Fraud Abuse and Protection Act

Establishes Consumer Financial Protection Agency as the enforcer under this Act for entities subject to its jurisdiction and makes violation of the act by any such entity a violation of the Consumer Financial Protection Act.

4818 Amendments to Truth in Lending Act [regarding student loans]

Before a creditor may issue funds pursuant to an extension of credit [for an educational loan] it must receive a certification from an institution of higher education as to the enrollment status of the borrower, costs of borrower’s attendance, difference between borrower’s cost of attendance and borrower’s estimated financial assistance received under the Higher Education Act and that the borrower has been informed (i) about the availability of such financial assistance, (ii) of the borrower’s ability to select a private educational lender of choice and (iii) of the impact of a proposed private education loan on borrower’s eligibility for other financial assistance; (iv) of borrower’s right to accept or reject educational loan w/in 30-day period following approval of loan application and of borrower’s 3-day right to cancel. Lender must determine whether borrower has applied for and exhausted Federal financial assistance under Higher Education Act and informed borrower and has counseled borrower on borrower’s financial aid options.

Creditor must inform relevant educational institution in writing the amount of the extension of credit and the student on whose behalf the credit is extended on or before disbursing funds.

Regulations to be issued within one year of enactment, to be effective within 6 months of issuance.

Study and report on private education loans and private educational lenders within two years after enactment by Secretary of Education in consultation with

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Commissioners of FTC and AG, submitted to committees of House and Senate.

Subtitle I – Improvements to the Federal Trade Commission Act

4901 Amendments to the Federal Trade Commission Act

Makes it illegal to provide substantial assistance to anyone in violations of the Act or any other act enforceable by the FTC relating to unfair and deceptive acts or practices described in Section 5(a)(1) of the Act (which prohibits unfair methods of competition and unfair or deceptive acts affecting or in commerce.

Subtitle J – Miscellaneous

4951 Requirements for state-licensed loan originators

Permits state loan originator supervisory authority to provide for review of applicants and granting exceptions to minimum standards for licensing under this act but only to the extent that exceptions otherwise comply with purpose of this title.

TITLE V CAPITAL MARKETS

Subtiitle A -- Private Fund Investment Advisers Regulation Act

New defined terms:

“Private fund” – an issuer that would be an investment company except for Section 3(c)(1) [≤ 100 -investor exemption] or 3(c)(7) [qualified purchaser exemption] – what we generally call a “private equity fund.”

“Foreign private fund adviser” – one who has no place of business in the US, has <15 clients over the past 12 months; has US client assets under mgt of < \$25MM; doesn’t hold self out to public as an investment adviser; and doesn’t act as investment adviser to any registered investment company or 1940 Act business development company

5003 Elimination of private adviser exemption; limited exemption for foreign private fund advisers; limited intrastate exemption

Adds an exemption from registration requirements for private fund investment advisers

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Adds an exemption for investment advisers that solely advise licensed small business investment companies and entities in the process of becoming SBICs

Eliminates the intrastate exemption for private fund advisers

Eliminates the exemption from registration for advisers to fewer than 15 clients (which is the exemption private equity fund/ hedge fund advisers often used)

5004 Collection of systemic risk data

Authorizes the SEC to require records and reports for private funds where necessary or appropriate in the public interest and for protection of investors or for the assessment of systemic risk as the SEC determines in consultation with the FRB (Governors)

Required information as to private funds:

- Assets under management
- Use of leverage (incl. off-balance sheet leverage)
- Counterparty credit risk exposure
- Trading and investment positions
- Trading practices
- Other information SEC, FRB determines to be necessary or appropriate in public interest and for protection of investors or for assessment of systemic risk
- Optional information -- SEC may as it deems necessary, taking into account public interest and potential to contribute to systemic risk information, set different reporting requirements for different classes of advisers based on types or sizes of funds advised

Private fund records must be made available for examination by SEC or its representatives and SEC may make records available to FRB and any other entity SEC identifies as having systemic risk responsibility; information collected to be confidential as provided in paragraph (which provides only an exceptions for reporting to Congress or other federal agency or SRO with jurisdiction or to comply with court order)

Registered private fund adviser shall provide reports and records to investors, prospective investors, counterparties and creditors of private funds advised by it as sec requires as in public interest, etc.

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

5005 Elimination of disclosure provision

Eliminates Section 210(c) of the Investment Advisers Act, which says that the SEC is not authorized to force an investment adviser to disclose the identity, investments, or affairs of any client, except in connection with an enforcement proceeding or investigation.

5006 Exemption of and reporting by venture capital fund advisers

The SEC is to define the term “venture capital fund.” Advisers to venture capital funds are exempt from registration under the Investment Advisers Act but the SEC must require annual or other reports it determines to be necessary or appropriate in the public interest or for the protection of investors.

5007 Exemption of and reporting by certain private fund advisers

Provides a private fund adviser exemption if each fund the adviser advises has assets under management in the US of < \$150MM, but the SEC must require exempted advisers to maintain records and provide annual or other reports to the SEC as it determines to be necessary or appropriate in the public interest or for the protection of investors.

In determining requirements for advisers of mid-sized private funds, SEC must take into account size, governance and investment strategy to determine whether they pose systemic risk and provide for registration and examination procedures so as to reflect the level of systemic risk posed.

Subtitle B -- Accountability and Transparency in Rating Agencies Act

6002 Enhanced regulation of nationally recognized statistical rating organizations [“NRSRO”]

Registration with SEC. Doesn’t apply if credit rating agency does not provide credit ratings to issuers for a fee and issues credit ratings only in a bona fide newspaper, news magazine or business or financial publication of general and regular circulation. SEC may exempt others.

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Existing requirements that refer to “furnishing” documents to the SEC are changed to reflect “filing” with the SEC.

The SEC is to examine credit ratings issued by and policies, procedures and methodologies employed by NRSROs to determine whether

- NRSRO has established and documented system of internal controls, due diligence and implementation of methodologies for determining ratings taking into considerations factors the SEC may prescribe by rule
- NRSRO adheres to the system
- Public disclosures of NRSRO required about its credit ratings, methodologies and procedures are consistent with the system

NRSROs must make available records for SEC to make these determinations.

SEC rules and regs required by this section for structured securities must:

- Specify information required to be disclosed by sponsors, issuers and underwriters on the underlying collateral
- Establish and implement procedures to collect and disclose information about processes used by underwriters, sponsors and issuers to assess accuracy and integrity of their data and fraud detection
- Require NRSRO to establish and maintain a central database on a publicly accessible Internet cite to disclose historical default rates of all classes of financial products rated by the NRSRO

Generally, ratings agencies must make information about their methodologies, performance, symbols, etc. readily available to investors on a publicly accessible website. SEC rules must require disclosures that are comparable among NRSROs so that investors can compare performance across rating agencies over a period of years. Each NRSRO must include an attestation with any rating affirming that no part of the rating is influenced by any other business activities, that it is based solely on merits of instruments being rating, that the rating is an independent evaluation of risk and merits of the instrument.

Requires consistency in applying quantitative and qualitative methodologies and inputs in accordance with their established procedures and that major changes to procedures and methodologies and quantitative inputs are applied consistently to all credit ratings to which they apply. Reasons for change must be publicly disclosed. NRSROs must notify persons with access to ratings, whether or not they are for a fee, of the procedure or methodology used for the particular rating, of any changes

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

and of any errors. Requires transparency in assumptions and methodologies used and data relied on to accompany ratings.

SEC to prescribe user-friendly format for registration. NRSRO must certify information on form to be accurate.

SEC may require rating agencies to use symbols that distinguish ratings for structured products from others.

SEC must require rating agencies:

- in ratings of money market instruments to assess risk that investors may not receive payment in accordance with their terms
- to define clearly any symbol used
- to apply symbol in a consistent manner for all types of securities and money market instruments

SEC rules must require NRSROs to disclose historical default rates of all classes of financial products rated by the NRSRO.

Each NRSRO must have a board and at least 2 or 1/3 of members must be independent. Compensation of independent directors may not be linked to business performance of the NRSRO. Independent members may not serve more than 5 years. Responsibilities of the board are mandated.

NRSRO must have written conflict of interest policies and SEC rules must prohibit or require disclosure of conflicts of interest relating to issuance of ratings. Issues to be addressed include how NRSRO is compensated by issuer, business relationships and ownership interests and affiliations of board members and obligors, any other financial or personal interests between NRSRO or associated person and obligor or any of its affiliates and affiliations with underwriters. NRSRO must put on website consolidated report at the end of each fiscal year showing % of income from activities other than rating services and relative standing of each person who paid for credit rating in terms of how much paid to the NRSRO. NRSRO must have system for payment for credit ratings that requires that payments be structured so as to insure that NRSRO conducts accurate and reliable surveillance of credit ratings over time.

With each rating issued, NRSRO must disclose type and number of ratings it has provided to person being rated and its affiliates, fees billed and net revenue earned during the preceding 2 FYs attributed to the person and its affiliates. If NRSRO

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

employs someone who worked for an entity being rated within one year of rating, it must conduct a review of conflict of interest and take action to change rating if appropriate.

SEC to review code of ethics and conflict of interest policy of each NRSRO at least annually and whenever policies are materially amended. NRSRO is required to report to SEC if it knows that someone previous employed by it becomes employed within 5 years by obligor, issuer, sponsor or underwriter of obligation it had rated during the previous 12 months if the employee served in certain designated capacities.

Each NRSRO must designate a compliance officer.

Subtitle C – Investor Protection Act

Part 1 -- Disclosure

7102 Clarification of Commission Authority to engage in consumer testing

7103 Establishment of fiduciary duty for brokers, dealers, investment advisers, and harmonization of regulation

1934 Act amended to provide that SEC to promulgate rules to provide that broker dealer when providing personalized investment advice about securities to a retail customer, standard of conduct shall be the same as applicable to an investment adviser under the IAA of 1940. This does not require a broker or dealer or registered rep to have a continuing duty of care or loyalty after providing the personalized investment advice. Where broker or dealer sells only proprietary or a limited range of products, SEC must by rule require it to provide notice to each retail customer and obtain consent or acknowledgment.

7107 Study on enhancing investment adviser exams

7108 GAO study of financial planning

Part 2 -- Enforcement

7208 Penalties for aiding and abetting violations of Investment Advisers Act of 1940

Makes it a violation of the IAA to knowingly or recklessly aid, abet, counsel, command, induce or procure any violation of any provision of IAA to the same extent as if the investment adviser committed the violation.

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

7213 Sharing privileged information with other authorities

7214 Expanded access to grand jury information

Purports to expand SEC jurisdiction over offshore trades that would involve anti-fraud violations if conduct within US constitutes significant steps in furtherance of the violation or for conduct outside US that has a foreseeable substantial effect within the US. Also includes suits in equity and actions at law.

7215 Fidelity bonding

Authorizes the SEC to require an investment company to maintain fidelity bond against loss as to any officer or employee who has access to securities or funds, directly or indirectly

7218 Enhanced SEC authority to conduct surveillance and risk assessment

Exchange Act, Advisers Act and Investment Company Act sections on authority of SEC to examine records are amended to provide SEC with authority to conduct reasonable periodic, special or other information and document requests as SEC deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the SEC or otherwise in furtherance of the purposes of the title. [Note: it doesn't appear that the examinations have to be in connection with any suspected illegal activity of the entity being examined]

7218 Investment company examinations

Subjects investment companies and underwriters, brokers, dealers or investment advisers that are majority-owned subsidiaries, to reasonable periodic, special or other examinations by SEC as it deems necessary or appropriate in the public interest or for protection of investors.

7220 Control person liability under 1934 Act

Subjects control persons to investigation by the SEC in an action brought under 21 (d)(1) or (3) (which allows the SEC to assess monetary penalties or bring an injunction against anyone it believes is violating SEC rules, clearing agency rules, exchange rules, PCAOB rules or MSRB rules and to turn over evidence it gathers to the SEC for criminal action).

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

7221 Enhanced anti-fraud coverage

Expands anti-fraud coverage for price manipulation (section 9), violation of stop-loss and short sale rules (section 10(a)(1)) and broker-dealer execution of trade in a deceptive or manipulative manner (section 15(c)(1)(A)) to include all securities that are not government securities instead of just securities registered on a national securities exchange and deletes requirement that the violation must involve use of a national securities exchange. It also subjects all broker dealers to liability under 15 (c)(1)(A) liability, not just those that are members of a national securities exchange.

7222 SEC authority to issue rules on proxy access

SEC has rulemaking authority to prescribe rules regarding nominees by shareholders

Part 3 – Commission Funding and Organization

7301 Authorization of appropriations

Increases SEC appropriations annually from 2010 to 2015, up to \$1.15B for 2010 and \$2.25B in 2015.

7302 Investment adviser regulation funding

Authorizes SEC to make annual assessment of fees by SEC-registered investment advisers to help recover cost of examinations and inspections.

7304 Commission organizational study and reform

7305 Capital Markets Safety Board

Established within the SEC to conduct investigations of failed institutions registered with the SEC.

7306 Report on implementation of “post-Madoff reforms”

Report to Congress, to be published on the internet, within 6 months of enactment.

Part 4 – Additional Commission Reforms

7401 Regulation of securities lending

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

7405 Clarification that Section 205 of Investment Advisers Act does not apply to state-regulated advisers

Clarifies that the section of the IAA that prohibits investment adviser compensation on the basis of a share of capital gains does not apply to state-registered investment advisers.

7407 Promoting transparency in financial reporting

PCAOB and SEC shall report to Congress annually on progress to reduce complexity of financial reporting requirements to provide more accurate and clear financial information to investors.

7409 Protecting confidentiality of materials submitted to the Commission

Section 17(i) of the 1934 Act is amended to provide that the SEC shall not be compelled to disclose any information, documents, records, or reports that relate to an examination, surveillance, or risk assessment of a person subject to or described in this section, or the financial or operational condition of such persons, or any information supplied to the Commission by any domestic or foreign regulatory agency or self-regulatory organization that relates to the financial or operational condition of such persons, of any associated person of such persons, or any affiliate of an investment bank holding company.

This provision doesn't authorize the SEC to withhold information from Congress, a self-regulatory association or the PCAOB or to refuse to provide information under court order.

Similar changes are made to the Investment Company Act and Investment Advisers Act.

7411 Municipal Securities Rulemaking Board

Requires investor/independent representation on the MSRB. Institutes fair procedures for nominations and elections of members of the Board to effect fair representation. Number of public representatives always to exceed number of BD and bank representatives. Qualifications for public representatives.

7412 Interested Persons

ICA is amended to expand the definition of "interested persons" to include "any

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

natural person who is a member of a class of persons who the Commission, by rule or regulation, determines are unlikely to exercise an appropriate degree of independence as a result of— “(I) a material business or professional relationship with such company or any affiliated person of such company; or “(II) a close familial relationship with any natural person who is an affiliated person of such company.”

7413 Rulemaking authority to protect redeeming investors

Investment Company Act amended to allow the SEC to limit the extent to which a mutual fund may own illiquid securities or other illiquid property

7418 Investment advisers subject to state authorities

Provides for state registration of investment advisers with assets between some amount and \$100MM. These are mid-sized investment advisers now required to register with the SEC. If they are domiciled in a state that doesn't have state registration of investment advisers, they have to register with the SEC.

7419 Custody requirements

Prohibits SEC-registered investment advisers from having custody of more than \$10MM of a client's funds and securities unless the funds/securities are held with a qualified custodian in separate accounts in the clients' names or in the names of the adviser as trustee for the clients. The qualified custodian cannot directly or indirectly provide investment advice with respect to the funds/securities. The SEC may grant exemptions from this rule but if it does the client must receive at least once a year a verification from an independent entity with a fiduciary duty to the client that the funds/securities are there.

7420 SEC Ombudsman

Within 180 days of enactment, SEC shall appoint an ombudsman that reports directly to the SEC Commissioner. Ombudsman to act as liaison between SEC and anyone having problem with SEC relative to its regulation and to made recommendations re: policies and procedures to encourage people to present questions to the SEC re: federal securities regulation and take action to maintain confidentiality of those who do report. Annual report of ombudsman to SEC evaluating effectiveness of ombudsman during previous year.

7422 Short sale reforms

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Every institutional investment manager that effects short sale in an equity security must file a daily report with the SEC, including information about the identity of the institution, manager and security and details of the trade. Information in the report is subject to the same non-disclosure and confidentiality protection provided under section 204(b)(8) of the Investment Advisers Act of 1940. The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.

Section 9 of the 1934 Act amended to include new short sale prohibition: “It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security.”

Section 15 of the 1934 Act amended to provide that broker-dealers must notify customers they may elect not to allow their fully paid securities to be used in short sales. If broker dealer uses customer securities in short sale, it must notify customer that it may receive compensation for lending customers’ securities.

Part 5 – Securities Investor Protection Act [“SIPC”] Amendments

Part 6 – Sarbanes Oxley Act (“SOX”) Amendments

7601 Public Company Accounting Oversight Board (“PCAOB”) oversight of auditors and brokers and dealers

PCAOB may inspect registered public accounting firms that audit brokers and dealers. Any PCAOB rules re: inspection are subject to prior approval of SEC. A public accounting firm not required to be registered if exempt from inspection requirements.

References to “issuers” are changed to “issuers, brokers and dealers.”

Brokers and dealers are assessed an “accounting support fee” to pay for expenses of the PCAOB.

7602 Foreign regulatory information sharing

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Information gathered by the PCAOB in its inspection of auditing firms may be made available to foreign oversight authorities that have jurisdiction over the firm, provided the foreign oversight authorities provide assurances of confidentiality.

7603 Expansion of audit information to be produced and shared with foreign counterparts

If a registered public accounting firm audit materially relies on work of a foreign public accounting firm for an interim report or audit, the foreign accounting firm must make its work papers and other documents related to the audit or interim report available for inspection by the SEC. Such foreign public accounting firms are under the jurisdiction of US courts for enforcement of this requirement. As a condition of being permitted to rely on the foreign firm's work, the registered public accounting firm must secure an agreement with the foreign firm to produce its work papers to the SEC upon request. The registered firm must also produce the work papers and other documents upon which it relies to the SEC upon request. The registered firm must also obtain from the foreign firm an irrevocable consent to service of process appointing the registered firm the agent for service upon the foreign firm.

7606 Exemption for non-accelerated filers

Section 404 of SOX is amended to exempt audit reports prepared for an issuer that is a non-accelerated filer [under \$75MM] from 404(b) (which requires an auditor's report of the accounting controls of the company). SEC to conduct a study to determine how SOX compliance can be less burdensome on issuers with assets of \$75MM - \$250MM.

7607 Whistleblower protection against retaliation by a subsidiary of an issuer

7609 Creation of ombudsman for the PCAOB

PCAOB appointment, reporting directly to the Chairman. Ombudsman to act as liaison between registered public accounting firms (and issuers in connection with audit issues) and the PCAOB.

7610 Auditing Oversight Board

PCAOB changed to Auditing Oversight Board

Part 7 -- Senior Investment Protection

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

7703 Grants to states for enhanced protection of seniors from being misled by false designations

SEC to establish grant program (to be funded through states) to investigate and prosecute misleading and fraudulent marketing practices or develop educational and training materials to teach same. Size limit of each grant is \$1MM.

Recipient states must:

- adopt securities designation rules that meet or exceed minimum requirements of NASAA Model Rules for Senior-Specific Certifications and Professional Designations
- adopt standard rules on suitability requirements that to the extent practicable will conform to minimum requirements for suitability imposed by self-regulatory org rules under the securities laws
- adopt rules that govern the suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the National Assn of Insurance Commissioners Suitability in Annuity Transactions Model Regulation then in effect

7706 Appropriations

Authorizes appropriation of \$16MM / year for FY 2011 – 2015

Part 8 – Registration of Municipal Financial Advisors

7800 Regulation of municipal financial advisors

Creates new Section 15G under the 1934 Act to require registration of municipal financial advisers that use interstate commerce. SEC may create exemptions for any class of municipal advisers.

SEC to establish standards for training, experience and competence.

Every registered municipal financial adviser shall establish written policies and procedures designed to prevent misuse of material nonpublic information.

Municipal financial adviser is deemed to have a fiduciary duty to any municipal securities issuer it advises and shall not engage in any act, practice or course of business inconsistent with its fiduciary duty.

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Municipal securities adviser is one who provides advice to a municipal issuer about:

- issuance or re-marketing of securities
- investment of proceeds of sale of municipal securities
- hedging of risks, including use of swaps
- preparation of disclosure documents, including official statements
- selecting or negotiation of GICs or other investment products
- private offering of municipal securities

Municipal securities adviser does not include an attorney, broker-dealer acting as an underwriter, accountant or rating agency.

Effective date 30 days after enactment; initial implementing regulations to be issued within 120 days of enactment.

TITLE VI – FEDERAL INSURANCE OFFICE [Federal Insurance Office Act]

8002 Federal Insurance Office established

Established as an office within Treasury, headed by a Director appointed by the Secretary of Treasury (career reserved position in SES).

Purpose of office is to:

- monitor insurance industry
- identify gaps in regulation that could contribute to systemic crisis in insurance industry or US financial system
- monitor access by traditionally underserved communities and consumers, minorities and low- and moderate income persons have access to affordable insurance products (other than health insurance)
- recommend to Financial Services Oversight Counsel that it designate an insurer as subject to stricter standards
- assist Secretary in administering Terrorism Risk Insurance Program established under the Terrorism Risk Insurance Act of 2002
- coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters
- determine whether State insurance measures are preempted by covered agreements
- consult with States regarding insurance matters of national importance and prudential insurance matters of international importance

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Authority to collect information from insurers as necessary to carry out functions. This requirement doesn't apply to insurers that meet minimum size requirements. Submission of nonpublic information no waiver of any privilege under state or federal law. Sharing of information with states authorized.

State laws are preempted if Director determines state law (i) directly results in less favorable treatment of a non-US insurer domiciled in a foreign jurisdiction that is subject to a covered agreement [i.e., an agreement between US and foreign govt/ regulatory authority that provides a level of protection of insurance consumers that is substantially equivalent to that provided by the state) than a US insurer domiciled in that state or (ii) is inconsistent with covered agreement entered into after the date of enactment.

Authorizes US Trade Representative to enter into covered agreements, subject to requirements to consult with House and Senate committees

8003 Report on global reinsurance market

8004 Study on modernization and improvement of insurance regulation in the US

8004 Sense of Congress regarding simplified mortgage contract summaries

Mortgage lenders should provide mortgage loan applicants with simplified summary of their loan contracts

TITLE VII -- MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

Subtitle A – Residential Mortgage Loan Origination Standards

Nationwide Mortgage Licensing System and Registry is as provided in Secure and Fair Enforcement for Mortgage Licensing Act of 2008

9002 Residential Mortgage Loan Origination

TILA amended to establish duty of care standard for mortgage loan originators –

- to be qualified, registered and licensed under applicable state and federal law
- for each consumer seeking residential mortgage loan, diligently work to present consumer with range of loan products that consumer likely would qualify for
- make full, complete and timely disclosure in writing of comparative costs and

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

benefits of each product offered, discussed or referred to, nature of originator's relationship with consumer and cost of services provided by originator and statement the originator is not acting as agent for consumer, relevant conflicts of interest

- certify to creditor that mortgage originator has fulfilled all requirements under this section
- include in loan documents any unique identifier of mortgage originator provided by Nationwide Mortgage Licensing System and Registry

9003 Prohibition of steering incentives

9004 Liability

Maximum liability of mortgage originator for violation of this section not to exceed 3X total amount of direct or indirect compensation or gain to the originator from the mortgage loan involved In the transaction, plus consumer's cost of the action (including attorney's fee).

9005 Regulations

TILA amended to provide that the federal banking agencies, by jointly-issued regulations, may prohibit or condition terms, acts or practices relating to residential mortgage loans that agencies find to be unfair abusive, deceptive, predatory, inconsistent with reasonable underwriting standards as necessary or proper to assure that responsible affordable mortgage credit remains available to consumers.

Regulations to be issued in final form within 12 months of enactment and to take effect 18 months after enactment.

9006 Study of shared appreciation mortgages

Conducted by HUD Secretary in consultation with Secretary of Treasury and other relevant agencies

Subtitle B – Minimum Standards for Mortgages

9105 Defense of foreclosure

Truth in Lending Act ("TILA") right of rescission available against the originator of a loan or its assignee is available against the holder of a mortgage loan in judicial or non-judicial foreclosure. If the foreclosure is begun after the time period for

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

rescission has elapsed and the consumer would otherwise have a right to bring an action for rescission under TILA, the consumer may sue for actual damages for violation of TILA and may collect court costs and attorney's fees.

9106 Additional standards and requirements

TILA is amended to ban the certain prepayment penalties on qualified mortgages (not including adjustable rate mortgages).

9108 Effect on state laws

Certain provisions of TILA supersede any less comprehensive state law

9110 Amendments to civil liability provisions

Increases amount of civil money penalties for certain violations and extends statute of limitations.

9111 Lender rights in the context of borrower deception

Exempts lenders from liability and rescission under TILA in case of borrower fraud or deception. Subject to materiality standard.

9112 Reset of hybrid ARMs

6 months before reset, creditor or servicer must provide separate written advice to borrower re:

- index or formula for making interest rate adjustments
- explanation of how new interest rate and payment is determined
- good faith estimate of new payment amount
- list of alternatives borrower may pursue, including refinancing, renegotiating, payment forbearances and pre-foreclosure sales
- names, addresses, internet addresses of available HUD-certified counseling agencies or programs and state housing finance authority for borrower's state

9115 Legal assistance for foreclosure related issues

HUD Secretary to establish grant program for legal assistance for individual residents in foreclosure or in danger of foreclosure. \$35MM to be spent in each of next two years. Recipients are local legal agencies but no funding for organizations or

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

individuals associated with organizations convicted of violation of federal law relating to election for public office. Recipients must start to spend funds within 90 days of receipt. No funds can be used for class action lawsuits.

9118 State Attorney General enforcement authority

State AG has expanded rights to enforce Truth in Lending Act (Section 129A, B and C).

Subtitle C – High-Cost Mortgages

9201 Definitions relating to high-cost mortgages

High cost mortgage: consumer credit transaction secured by consumer's principal dwelling other than a reverse mortgage transaction if --

- (i) the interest rate exceeds 6.5% over prime (8.5% for manufactured homes with mortgages < \$50K) for a first mortgage and 8.5% for a second mortgage;
- (ii) total points and fees exceed 5% in case of a transaction > \$20K or the lesser of 8% or \$1,000 for transaction < \$20K
- (iii) documents allow creditor to charge prepayment penalty more than 36 months after closing or the prepayment penalties exceed in the aggregate 2% of the amount prepaid.

9202 Amendments to existing requirements for certain mortgages

Section 129(c)(2) of TILA is repealed

9203 Additional requirements for certain [high cost] mortgages

Creditors prohibited from recommending default on existing loan or other debt before or in connection with closing of high-cost mortgage that refinances an existing debt

No late fee on high-cost mortgage > 4% of past due payment, unless documents authorize fee, before 15-day grace period or more than once for a single past due payment.

No late fee on late fee if borrower pays the full payment without adding on late fee.

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

No high cost mortgage may allow a creditor to accelerate payment except in the case of a default in payment or due-on-sale provision or pursuant to material violation of loan documents unrelated to payment schedule

No high-cost mortgage creditor may finance (i) prepayment fee or penalty in a refinancing transaction (if creditor is noteholder) or (ii) points or fees.

High-cost mortgage creditor may not structure a loan as an open-end credit plan or other form of loan or divide loan into multiple transactions in order to avoid provisions of this title.

High-cost mortgage creditor may not charge a consumer any fee to modify, renew, extend or amend a high-cost mortgage or defer any payment due unless it results in a lower APR on the mortgage and then only if the fee is comparable to fees charged on similar transactions that are not high-cost mortgages.

Third party may not charge a consumer a fee to negotiate with a creditor of a high-cost mortgage, amend a high-cost mortgage, negotiate deferral of payment on a high-cost mortgage unless it results in significantly lower APR or significant reduction in the o/s principal and then only if the fee is comparable to similar fee for non-high-cost mortgage.

Creditor may not charge a fee for a payoff statement for a high-cost mortgage (other than reasonable transmission fee).

Creditor may not extend credit to a consumer under a high-cost mortgage unless it first receives certification from a HUD-approved counselor (or, if HUD Secretary approves, one approved by a state HFA) that the consumer received counseling on the advisability of the mortgage.

No creditor may knowingly or intentionally engage in unfair act/practice in connection with high-cost mortgage flipping

9204 Regulations

FRB to publish regulations implementing this subtitle and amendments made by this subtitle.

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Subtitle D -- Office of Housing Counseling

Within HUD, director appointed by Secretary, career-reserved position in SES

Homeownership and rental counseling procedures mandated in connection with any HUD program

9304 Grants for housing counseling assistance

9305 Requirements to use HUD-certified counselors under HUD programs

Applies to any organization receiving assistance for counseling activities

9306 Study of defaults and foreclosures

HUD Secretary to conduct extensive study of root causes and submit to Congress w/ in 24 months of enactment

9307 Default and foreclosure database

On a census tract basis, to be established and maintained on a website by HUD.

9309 Accountability and transparency for grant recipients

9311 Home Inspection Counseling

9313 Warnings to homeowners of foreclosure rescue scams

Subtitle E – Mortgage Servicing

9401 Escrow and impound accounts relating to certain consumer credit transactions [first mortgages on principal dwellings]

Covers requirements for escrow and impound accounts for taxes and insurance on first mortgages (other than reverse mortgages and HELs) – prohibits except when required by law, loan is made/guaranteed by government or insuring agency or transaction is secured by first mortgage and has an original principal amount higher than as set forth in FHLB rules [20%?]

Duration – minimum 5 years until enough equity in dwelling so as to no longer be required to maintain private mortgage insurance

Escrow/impound accounts must be held at federally-insured depository institution and consumer must receive interest as required by state or federal law.

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

9403 RESPA amendments

Deals with force-placed hazard insurance, failure to respond to borrower request to correct mis-allocation of payments, failure to respond to borrower request to provide info about owner-assignee of loan, failure to comply with any other obligation HUD Secretary finds appropriate.

Increases penalties for violations

Requires prompt repayment of escrows upon prepayment

9404 Truth in Lending Act amendments

Requires prompt crediting of home loan payments (day of receipt) and prompt information in response to request for payoff amounts (7 business days after written request)

Subtitle F -- Appraisal Activities

9501 Property appraisal requirements

- Creditor must get appraisal for sub-prime mortgage
- Physical property visit
- Second appraisal with analysis under certain circumstances (to finance purchase within 180 days of purchase at a lower price), with no additional cost to loan applicant
- Qualified appraiser requirements: certified or licensed by state and performs appraisals in conformity with Uniform Standards of Professional Appraisal Practice and title XI of FIRREA
- Free copy of appraisal to applicant 3 days prior to closing date for sub-prime mortgages

\$2K penalty for willful failure to obtain appraisal, payable applicant or borrower

9502 Unfair and deceptive practice and acts relating to certain consumer credit transactions [first mortgages on principal dwellings]

Amends TILA to add new section re:

- deceptive appraisal practices

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

- appraisal independence
- prohibitions on appraiser conflicts of interest
- mandatory reporting by mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company or employee thereof or any other person involved in a first residential real estate mortgage transaction of suspected appraiser failure to comply with Uniform Standards, etc. to state certifying agency
- prohibition on extending credit for home purchase if creditor has knowledge of violation of appraisal independence standards unless creditor has acted w/ reasonable diligence to determine appraisal does not materially misstate or misrepresent value of dwelling

Penalties: first violation, up to \$10,000 for each day of violation; \$20,000 for subsequent violations

9503 Amendments relating to appraisal subcommittee of FIEC, appraiser independence monitoring, approved appraiser education, appraisal management companies, appraiser complaint hotline, automated valuation models and broker price opinions

Many amendments, many pages

Subtitle G – Sense of congress regarding the Importance of GSE Reform

9601 Sense of Congress re: the importance of Government-sponsored enterprises reform to enhance the protection, limitation and regulation of the terms of residential mortgage credit

Subtitle H – Reports and Data Collection

9702 Report of mortgage data by state

Subtitle I – Multifamily mortgage resolution program

9801 Multifamily mortgage resolution program

Subtitle J – Study of Effect of Drywall Presence on Foreclosures

Subtitle K – Home Affordable Modification Program [HAMP]

9911 HAMP guidelines

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Treasury Secretary to revise guidelines for HAMP to require each mortgage servicer to provide homeowner it denies under HAMP with all borrower-related and mortgage-related input data used in any NPV analyses.

Web-based site for NPV calculation and application to be established by Secretary for mortgagors to use to use to enter info about their mortgages. Site must disclose that servicers may use different method for calculating NPV. Secretary to provide to public on the website the Secretary's methodology and computer model, including all formulae used in calculating NPV and all variables used in the NPV analysis.

Subtitle L – Making Home Affordable Program

9921 Public availability of information

Treasury Secretary to revise guidelines for this program to provide that data collected by the Secretary from each mortgage servicer and lender is made public on the Secretary's website and to Congress within 14 days of the deadline for submission. The following will be in the report for each servicer/lender:

- # requests for mortgage modification received
- # requests processed
- # requests approved
- # requests denied

Within 60 days of the deadline, info shall be available in table form at the individual record level. Secretary to establish procedures for disclosure to public and deletions to protect privacy interest of applicant, including deletion of applicant's name and ID #.

TITLE VIII -- FORECLOSURE AVOIDANCE AND AFFORDABLE HOUSING

10001 Emergency mortgage relief

Secretary to transfer \$3B to the Secretary of HUD for credit to Emergency Homeowners' Relief Fund, which the Secretary is to establish for emergency mortgage assistance. Funds to be used for grants or insured loans to homeowners at interest rates consistent with market rates.

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Secretary to allow funds to be administered by state that has an existing program determined to provide substantially similar assistance. Each state receiving funds must establish preferences for development of affordable housing for properties assisted with these funds.

Prohibition of distribution to organization convicted of violating federal law relating to election for Federal office.

10002 Additional assistance for neighborhood stabilization program

Secretary to transfer \$1B to the Secretary of HUD for use for assistance to states and local governments for redevelopment of abandoned and foreclosed homes.

TITLE IX -- NONADMITTED AND REINSURANCE REFORM ACT

Subtitle A – Nonadmitted Insurance [insurance for unusual risks, usually used in the commercial context, provided by a company that is not “admitted” in the insured’s home state and not covered by state insurance funds]

10101 Reporting, payment and allocation of premium taxes

Only an insured’s state can levy premium taxes for nonadmitted insurance. States may enter into a compact whereby premium taxes paid to insured’s home state are allocated among the states. Congress intends that each state adopt nationwide uniform requirements, forms and procedures (like an interstate compact) that provides for reporting, payment, collection and allocation of premium taxes for nonadmitted insurance consistent with this section. To facilitate the payment of premium taxes among states, insured’s home state may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured’s home state detailing the portion of premiums attributable to properties, risks and exposures located in each state.

10102 Regulation of non-admitted insurance by insured’s home state

No state other than insured’s home state may require licensure of surplus lines broker in order to sell insurance to insured.

Preemption of state law that purport to regulate nonadmitted insurance for insured whose home state is another state.

10103 Participation in National Producer Database

**Solari Report - Notes on
Wall Street Reform and Consumer Protection Act
of 2009 (HR 4173)**

Two years after enactment, state may not collect licensing fees for surplus lines broker unless it has laws or regulations in effect that provide for participation by the state in national insurance producer database of the NAIC.

10104 Uniform standards for surplus lines eligibility

State may not regulate standards for nonadmitted insurance except in conformance with the Non-Admitted Insurance Model Act unless the state has adopted national uniform requirements, forms and procedures in accordance with this act.

10105 Streamlined application for commercial purchases

10106 GAO study of nonadmitted insurance market

Subtitle B – Reinsurance

10201 Regulation of credit for reinsurance and reinsurance agreements

10202 Regulation of reinsurer solvency

If the state of domicile of a ceding insurer is an NAIC-accredited state or has solvency requirements substantially similar to those required for NAIC accreditation, that state is solely responsible for regulating the solvency of the insurer. No other state may require the insurer to provide additional financial information.

TITLE X – INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED

11001 Interest-bearing transaction accounts authorized

Amends Federal Reserve Act to repeal the section that bans payment of interest on demand deposits.