The Rulemakings Process Has Begun: The Dodd-Frank Act Requires More Than 180 Rulemakings

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This advisory provides a preliminary overview of some of the more notable agency rulemakings that are either required or permitted by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), which was signed into law on July 21, 2010. The Act requires the federal financial regulators to promulgate more than 180 new rules. The Act also permits the promulgation of more than 75 additional rules. Arnold & Porter LLP has prepared a detailed **chart of the rulemakings** in the Act. Arnold & Porter has also prepared an **overview** of the Act itself. We also have a **compendium** of advisories on a variety of topics. Readers can also access a current copy of the financial reform legislation, as well as other information on recent government programs, on our regularly updated **Financial Regulatory Chart**.

We believe the ultimate impact of the Act on the financial industry will be shaped largely by the outcome of these rulemakings. Because the rules will be issued over a period of time, the actual effect of the Act therefore will be known only in the coming months and years. In addition, entities affected by the Act will have an opportunity to comment on the new regulations as they are drafted and finalized by the regulators, making participation in the process critical. Arnold & Porter attorneys are available to assist you with assessing the impact of the legislation on your business and participating in the comment process.

Title I. Financial Stability

Title I, which became generally effective upon enactment of the Act, creates a Financial Stability Oversight Council (FSOC) to address systemic risk in the financial system and an Office of Financial Research (OFR) to support the FSOC in carrying out its duties. Title I sets forth the following required and permissive rulemakings, which, unless specified otherwise, either have no specific timeframe or must be issued within 18 months of the Transfer Date:[1]

1 The Transfer Date refers to the date that is one year after enactment of the Act, extendable to 18 months after enactment (i.e., July 21, 2011 extendable to January 21, 2012). On the Transfer Date, pursuant to Title III of the Act, the Board of Governors of the Federal Reserve System assumes responsibility for supervision of savings and loan holding companies and their nonbank subsidiaries, while federal savings associations and state savings associations become the responsibility of the Office of the Comptroller

- The FSOC must adopt rules necessary for the FSOC's conduct of business, including rules of organization, procedure, or practice.
- The FSOC may recommend to the federal banking agencies that they apply new or heightened standards and safeguards for a financial activity or practice, and it must provide notice to the public and an opportunity to comment on any such recommendation. In turn, the federal banking agencies must impose the recommendations or explain in writing why they will not. No timeframe is specified either for the FSOC to recommend or for the federal banking agencies to impose the recommendations, but if the federal banking agencies choose to reject the recommendations they must do so within 90 days.
- The Board of Governors of the Federal Reserve System (Federal Reserve) must issue, no later than 18 months after the Transfer Date, rules establishing prudential standards applicable to nonbank financial companies supervised by the Federal Reserve and bank holding companies with total consolidated assets equal to or greater than $50 billion in order to prevent or mitigate risks to financial stability.
- The Federal Reserve must promulgate, no later than 18 months after the Transfer Date, rules regarding resolution plans and credit exposure reports, leverage limitations, early remediation of financial distress, the establishment of intermediate holding companies, and exemptions from its supervision.
- The Federal Reserve must prescribe limits on credit exposures of nonbank financial companies supervised by the Federal Reserve or a bank holding company with total consolidated assets of $50 billion or more. This rulemaking must occur no later than 18 months after the Transfer Date, but the regulations may not take effect until three years after the Transfer Date, which restriction is extendable an additional two years by the Federal Reserve.
- The Federal Reserve must promulgate rules regarding the establishment of risk committees no later than one year after the Transfer Date, to take effect no later than three months after that.
- The Federal Reserve may issue, no later than 18 months after the Transfer Date, regulations regarding contingent capital, periodic public disclosures, short-term debt limits, and transactions between an intermediate holding company or a nonbank financial company supervised by the Federal Reserve and its affiliates.
- The federal banking agencies must promulgate regulations regarding stress tests and establishing leverage and risk-based capital requirements for certain financial institutions. No timeframe is specified for this rulemaking.
- The OFR, in consultation with the Chairperson of the FSOC (the Treasury Secretary), must issue rules, regulations, and orders to the extent necessary to collect and provide data to the FSOC and member agencies, standardize the types and formats of data reported and collected, and assist member agencies in determining the types and formats of data authorized by the Act to be collected by member agencies.

Title II. Orderly Liquidation Authority

Title II mandates a number of rulemakings that impact financial companies and brokers or dealers who are considered to be in default or in danger of default. Title II allows the Federal Deposit Insurance Corporation (FDIC) to place such companies into receivership if, among other criteria, their failure would have "serious adverse effects" on the financial stability of the United States. Any appointment of the FDIC as receiver for a covered financial company would terminate after a baseline period of three years (subject to extension), but the FDIC may issue specific regulations governing the termination of receiverships. The provisions of Title II became effective on July 22, 2010.

The FDIC, in consultation with the FSOC, is required to issue regulations that govern the rights of creditors and counterparties of a company placed into receivership. The FDIC is also required to enact rules that:

of the Currency and the Federal Deposit Insurance Corporation, respectively.

- Prohibit the sale of assets in liquidation to individuals who have defaulted on obligations to covered financial companies;
- Regulate compensation paid to and activities undertaken by senior executives and directors of a company placed into receivership;
- Establish interest rates for payments of post-insolvency interest to creditors of a covered financial company;
- Govern record retention by covered financial companies; and
- Charge risk-based assessments on large financial companies to recover costs incurred in connection with the liquidation of a financial company.

With few exceptions, no deadlines for the rulemakings required under this title have been specified.

Title III. Transfer of Powers to the OCC, FDIC, and Federal Reserve

Title III transfers the rulemaking authority of the Office of Thrift Supervision (OTS) to the Office of the Comptroller of the Currency (OCC) and the Federal Reserve, effective on the Transfer Date. The OCC, FDIC, and Federal Reserve must identify existing OTS regulations that will remain in effect following the transfer of power, and publish a list of the identified regulations in the Federal Register. The FDIC, however, inherits no rulemaking authority under this title and can only identify existing policies that will remain applicable to state savings associations.

Title III splits the rulemaking authority of the abolished OTS prospectively between the Federal Reserve and the OCC. The Federal Reserve is required under this title to issue regulations applicable to savings and loan holding companies and their nonbank subsidiaries, including regulations governing transactions between savings and loan holding companies and their affiliates, as well as regulations supervising tying arrangements and credit extensions to executives, directors, and principal shareholders under the Home Owners' Loan Act. The OCC is required under this title to issue regulations applicable to savings associations, and must also amend the term "assessment base" with respect to insured depository institutions under the Federal Deposit Insurance Act. No deadlines for the rulemakings required under this title have been specified.

Title IV. Regulation of Advisers to Hedge Funds and Others

Title IV amends the Investment Advisers Act of 1940 (the Advisers Act) to impose Securities and Exchange Commission (SEC) registration, reporting, and record-keeping obligations on investment advisers to "private funds" that have assets under management in the United States of $150 million or more, subject to limited exceptions. Except as otherwise provided in Title IV, the effective date of the provisions in this title is one year after enactment (but an investment adviser to a private fund is permitted to register under the Advisers Act during the one-year transition period, subject to SEC rules). Title IV sets forth the following required and permissive rulemakings, for which there are no deadlines except as indicated below:

- The SEC must issue rules requiring investment advisers to private funds to file reports with the SEC. The SEC may also require these advisers to maintain records regarding such private funds, including information that the SEC determines is necessary for assessment of systemic risk;
- The SEC must create an exemption from registration for investment advisers that act solely as an investment adviser to private funds and that have assets under management in the United States of less than $150 million. The SEC must require such advisers to maintain records and provide the SEC with annual or other reports;
- The SEC must define the term "venture capital fund" for purposes of a registration exemption by no later than July 21, 2011, and to specify records to be provided to the SEC and reports to be maintained by such advisers (with no rulemaking deadline specified);
- The SEC must define the term "family office" for purposes of excluding "family offices" from the definition of an investment adviser;

- The SEC may issue rules prescribing steps that registered investment advisers must take to safeguard client assets over which they have custody;
- The SEC and the Commodity Futures Trading Commission (CFTC) must jointly issue rules, no later than July 21, 2011, to establish the form and content of reports required to be filed by private fund advisers registered under both the Advisers Act and the Commodity Exchange Act;
- The SEC must adjust the net-worth standard required to qualify as an "accredited investor" so that the individual net worth of any natural person (or joint net worth with spouse) is more than $1 million, excluding the value of the primary residence, except that during the four-year period that begins July 21, 2010, any net worth standard must be $1 million, excluding the value of the primary residence;
- The SEC may undertake an initial review of the definition of an "accredited investor" as it applies to natural persons, and adjust the definition following notice and comment rulemaking, except as to the net worth standard described above;
- The SEC must, no earlier than July 21, 2014 and at least once every four years thereafter, undertake a review of the "accredited investor" definition in its entirety for purposes of Rule 215 of the Securities Act of 1933 as the term applies to natural persons, and the SEC may make adjustments as it deems appropriate after notice and comment rulemaking; and
- The SEC must make inflation adjustments to the "qualified client" standard in any SEC rule under Section 205(e) of the Advisers Act not later than July 21, 2011, and every five years thereafter.

Title V. Insurance

Title V establishes a Federal Insurance Office (FIO), and gives the Treasury Secretary the authority to issue orders, regulations, policies, and procedures to carry out the functions of the FIO, to facilitate the collection of information from insurers and affiliates, and to preempt certain state insurance measures. Title V also provides that the states adopt nationwide uniform requirements regarding the payment and allocation of premium taxes. We note that, generally, many of the provisions in Title V became effective on July 22, 2010, while some of the Title V provisions will become effective July 22, 2011.

Title V authorizes the states to enter into compacts or establish procedures to facilitate the payment and allocation of premium taxes for nonadmitted insurance paid to an insured's home state. If such nationwide uniform requirements are not adopted by a state, then that state is prohibited from imposing eligibility requirements for nonadmitted insurers domiciled in the United States, except in conformance with the Non-Admitted Insurance Model Act. Lastly, a state is prohibited from collecting fees relating to the licensing of an individual or entity as a surplus lines broker in the state, unless the state enacts laws or regulations that provide for participation in the national insurance producer database of the National Association of Insurance Commissioners (or an equivalent database). The rulemakings under Title V have no specific timeframe, but the rulemakings may not be effective any earlier than the Transfer Date.

Title VI. Improvements to Regulation of Bank and Savings Association Holding Companies and Depository Institutions

Title VI establishes a number of rulemakings that impact insured depository institutions, bank holding companies, savings and loan holding companies, supervised securities holding companies, nonbank financial companies supervised by the Federal Reserve, and intermediate holding companies. We note that some of the provisions in Title VI became effective on July 22, 2010, while many of the provisions in Title VI will become effective on the Transfer Date or within one year or 18 months after the Transfer Date. With regard to the so-called "Volcker Rule" under Title VI, the provisions of the Volcker Rule will become effective no earlier than August 2011 and no later than July 21, 2012.

Title VI sets forth, for example, the following required rulemakings:

- The appropriate federal banking agencies may establish capital regulations applicable to bank holding companies, savings and loan holding companies, and insured depository institutions (there is no specific timeframe for this rulemaking, but the rulemaking may not be effective any earlier than the Transfer Date);
- The Federal Reserve must prescribe capital adequacy and other risk management standards applicable to supervised securities holding companies and nonbank financial companies supervised by the Federal Reserve (there is no specific timeframe for this rulemaking);
- The Federal Reserve must enact other rules regulating supervised securities holding companies, which may include substantive areas such as registration requirements, recordkeeping and reporting requirements, and compliance with applicable provisions of law (there is no specific timeframe for this rulemaking);
- The Federal Reserve must issue rules implementing the conformance period for divestiture and for transition for illiquid funds (this rulemaking must be issued no later than January 21, 2011), and concentration limits on large financial firms (this rulemaking must be issued no later than October 21, 2011), as well as establish criteria for determining whether to require a grandfathered unitary savings and loan holding company to establish an intermediate holding company (there is no specific timeframe for this rulemaking);
- The appropriate federal banking agencies must jointly issue rules that require a bank holding company or a savings and loan holding company to serve as a source of financial strength for any subsidiary that is a depository institution (additionally, if the insured depository institution is not a subsidiary of a bank holding company or a savings and loan company, then the jointly issued rules must require that any company that directly or indirectly controls the insured depository institution serve as the source of financial strength) (this rulemaking must be issued between the Transfer Date and one year after the Transfer Date);
- The appropriate federal banking agencies, along with the SEC and the CFTC, must issue rules implementing the Volcker Rule and coordinate to ensure comparable regulations to the extent possible (this rulemaking must be issued no later than October 21, 2011; however, depending on when issued, the final rule will become effective no earlier than August 2011 and no later than July 21, 2012);
- The appropriate federal banking agencies, along with the SEC and the CFTC, must issue regulations regarding internal controls and recordkeeping in order to ensure compliance with the Volcker Rule (this rulemaking must be published for notice and comment no later than October 21, 2011; however, depending on when issued, the final rule will become effective no earlier than August 2011 and no later than July 21, 2012); and
- The SEC must issue rules prohibiting, for a designated period of time, an underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security from engaging in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity (exceptions to this prohibition would include, however, certain risk-mitigating hedging activities, and purchases or sales consistent with commitments to provide liquidity for the asset-backed security or *bona fide* market-making in the asset-backed security) (this rulemaking must be issued no later than April 17, 2011).

In addition, Title VI sets forth, for example, the following permissive rulemakings:

- The Federal Reserve may issue regulations or interpretations concerning the manner in which a netting agreement between a member bank or a subsidiary and an affiliate may be taken into account in determining the amount of an inter-affiliate “covered transaction” under Section 23A of the Federal Reserve Act, including the extent to which a netting agreement may be taken into account in determining whether a covered transaction is fully secured under Section 23A (there is no specific timeframe for this rulemaking, but the rulemaking may not be effective any earlier than one year after the Transfer Date);

- The Federal Reserve may also issue rules prohibiting an insured depository institution from purchasing or selling assets to insiders, unless certain conditions have been met (i.e., the transaction is on market terms and, if it represents more than 10 percent of the capital stock and surplus of the insured depository institution, it has been approved in advance by a majority of disinterested directors) (there is no specific timeframe for this rulemaking, but the rulemaking may not be effective any earlier than the Transfer Date); and
- The Federal Reserve may issue regulations that establish restrictions or limitations on transactions between an intermediate holding company or a parent of such company (there is no specific timeframe for this rulemaking).

Title VII. Wall Street Transparency and Accountability (Over-the-Counter Derivatives)

Title VII provides for sweeping regulation of the over-the-counter derivatives markets including the regulation of swaps. Under this title, the CFTC and the SEC are required to promulgate rules related to swaps and security-based swaps, respectively. The Act requires the CFTC to promulgate regulations governing swaps, swap dealers, major swap participants, swap data repositories, swap execution facilities, and the activities of derivatives clearing organizations with regards to swaps. The SEC is required to institute regulations governing security-based swaps, dealers, participants, repositories, execution facilities, and derivatives clearing organizations. Unless otherwise provided within a section of Title VII, generally the provisions of Title VII take effect on the later of 360 days after the date of enactment of Title VII or, to the extent a provision requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision. Moreover, as a general matter, the CFTC and the SEC, individually, and not jointly, are required to pass regulations within 360 days of the enactment date of the Act and may use emergency and expedited procedures if necessary. Title VII sets forth the following required and permissible rulemakings:

- The CFTC, SEC, and Federal Reserve are required to engage in joint rulemaking to adopt rules governing the books and records of entities regulated under this title.
- The SEC and CFTC are required to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to swaps and security-based swaps. The CFTC may require a foreign board of trade to register with the CFTC.
- The CFTC and SEC, in consultation with the Federal Reserve, are required to adopt rules to define a number of terms under the Act including "swap" and "security-based swap," and other terms they determine necessary to define.
- The CFTC and SEC are required to adopt rules necessary to improve governance, mitigate systemic risk, promote competition, or mitigate conflicts of interest.
- The CFTC is authorized to issue rules and regulations to implement commodity whistleblower incentives and protections provisions.
- The federal banking regulators (referred to as Prudential Regulators in the Act) are required to prescribe minimum standards to permit swaps entities to conduct their activities in a safe and sound manner and to mitigate systemic risk.
- The CFTC and SEC are required to adopt rules in connection with the Act's requirement that derivative clearing organization's (DCO) submit for agency review any swaps or security-based swaps that the DCO seeks to accept for clearing. The agencies must also provide for permissible exemptions as well as prescribe rules necessary to prevent evasions of the clearing requirements and abuses of exemptions to the clearing requirements.
- The CFTC is required to prescribe rules governing swap execution facilities; the SEC must do the same for security-based swap execution facilities.
- The CFTC and SEC are required to adopt rules imposing

capital and margin requirements for swaps dealers and security-based swap dealers, as well as major swap participants and major security-based swap participants. The federal banking regulators, in consultation with the SEC and CFTC, are required to impose such capital and margin requirements on both swap dealers and security-based swap dealers, as well as major swap participants that are depository institutions.

- The CFTC is required to establish position limits, other than *bona fide* hedge positions, that may be held by any one person with respect to futures or options traded on or subject to the rules of a dedicated contract market and may also establish limits on the aggregate number of positions in contracts based on the same underlying commodity; the SEC is required to do the same for security-based swaps. The CFTC and SEC may make whatever exemptions to such limitations as each agency deems appropriate.

Soon after the Act went into law, the CFTC issued a notice detailing 30 areas of derivatives law where rules will be necessary as required by Title VII of the Act. As of the date of this advisory, the CFTC is accepting input and comments from market participants on this rule-writing process.

Title VIII. Payment, Clearing, and Settlement Supervision

Title VIII requires the Federal Reserve, in consultation with the FSOC and the federal agencies that have primary jurisdiction over financial market utilities (the Supervisory Agencies), to prescribe standards for the management of risks taken by systemically important financial market utilities and for the conduct of systemically important payment, clearing, and settlement activities carried out by other financial institutions. The CFTC and the SEC may also prescribe regulations, in consultation with the FSOC and the Federal Reserve Bank, containing risk management standards governing the operations related to payment, clearing, and settlement activities of designated clearing entities.

The Federal Reserve is authorized to prescribe rules that:

- Authorize a Federal Reserve Bank to establish an account for and provide assistance (including discount and borrowing privileges) to a designated institution similar to the assistance provided to depository institutions under the Federal Reserve Act; and
- Impose recordkeeping requirements, upon majority vote by the FSOC, on systemically important clearing entities or on financial institutions engaged in designated activities that are subject to risk management standards prescribed by the Federal Reserve pursuant to this title.

General rulemaking authority is granted to the Federal Reserve, the FSOC, and the Supervisory Agencies to carry out their respective duties under this title. No timeframe for the rulemakings required under this title has been specified, although the title itself became effective upon enactment.

Title IX. Investor Protections and Improvements to the Regulation of Securities

Rulemakings required or authorized under Title IX, which generally became effective on July 22, 2010, include various measures centered around securitizations and the protection of retail investors. New regulations issued pursuant to this title would:

- Require securitizers of mortgage-backed and other asset-backed securities to retain credit risk in such securities. The federal banking agencies must jointly prescribe these regulations by April 17, 2011.
- Create new disclosure obligations, including new requirements relating to pre-sale disclosures and disclosures relating to short sales. Broker-dealers and investment advisors could also face new rules designed to address gaps or overlaps in regulations that apply to their relationships with retail customers. Such regulations could include a new “best interests” fiduciary standard. Rules that address relationships with retail customers would be proposed after an SEC study and report to Congress, due in January 2011.
- Substantially rewrite regulations that apply to credit rating agencies, also known as nationally registered statistical rating organizations (NRSROs), enhancing

public disclosure of their procedures and methodologies. The SEC would even be authorized, after a study, to establish a system for the assignment of NRSROs to perform initial credit ratings of asset-backed securities such that issuers, sponsors, or underwriters would not be able to select the rating agency. The majority of the rulemakings relating to NRSROs would be required by July 21, 2011.

In addition, with regard to proxy disclosure, executive compensation, and corporate governance rulemaking, Title IX:

- Requires public companies to give shareholders a non-binding advisory vote on golden parachute compensation in connection with certain business combinations for meetings occurring on or after January 21, 2011. No deadline is specified for SEC rulemaking.
- Grants the SEC authority to issue rules permitting a shareholder access to a company's proxy solicitation materials for the purpose of nominating directors. No deadline is specified for SEC rulemaking.
- Requires the SEC to issue rules (with no deadline specified) requiring a company to disclose:
  - — Whether any employee or board member may purchase financial instruments designed to hedge or offset any decrease in the market value of equity securities;
  - — The relationship between executive compensation paid and the company's financial performance; and
  - — The ratio of median non-CEO employee compensation to CEO compensation.
- Requires the SEC to issue rules, not later than January 17, 2011, requiring a company to disclose in its annual proxy statements the reasons why it chose either the same person or different individuals to be the chairman of the board and CEO.
- Requires the SEC, by rule, to direct national securities exchanges to prohibit the listing of any security of an issuer that does not develop and implement a policy to "clawback" compensation from executive officers who received incentive-based compensation during the three-year period preceding the date of an accounting restatement in excess of what would have been paid under the accounting restatement. No deadline is specified for SEC rulemaking.
- Requires the SEC, by rule issued no later than July 16, 2011, to direct national securities exchanges to prohibit the listing of any security of an issuer that does not comply with requirements relating to compensation committee independence; the independence of compensation consultants and other advisers to the compensation committee; and other requirements relating to compensation committee consultants, legal counsel, and other advisers.
- Requires national securities exchanges to adopt rules prohibiting broker discretionary voting in connection with elections of directors, executive compensation, and any other significant matter, as determined by SEC rule. No deadline is specified for SEC rulemaking.
- Requires the appropriate federal regulators to jointly issue rules, no later than April 21, 2011, (1) prohibiting covered financial institutions with $1 billion or more in assets from rewarding their executive officers, employees, directors and principal shareholders with any incentive-based compensation arrangement that encourages "inappropriate risks," and (2) requiring each covered financial institution to report all incentive-based compensation arrangements to the appropriate federal regulator.

Title X. Bureau of Consumer Financial Protection

Title X establishes the Bureau of Consumer Financial Protection (CFPB) within the Federal Reserve. The CFPB will regulate consumer financial products and services to ensure compliance with federal consumer financial laws and has the authority to prescribe rules to this effect, including rules supervising market participants and mandating certain disclosures to consumers. No timeframe is specified for rules issued pursuant to this general rulemaking authority. However, by September

19, 2010, the Treasury Secretary, in consultation with a number of other agencies, must determine a "Designated Transfer Date" for the transfer of specified functions and powers from the agencies to the CFPB. The Designated Transfer Date may be no earlier than January 17, 2011 nor later than July 21, 2011 (although this may be extended up to January 21, 2012).

Under this title, the CFPB must prescribe rules allowing for the supervision of persons who:

- Offer or provide origination, brokerage, or servicing of loans secured by real estate for consumers; or
- Offer loan modification or foreclosure relief services in connection with such loans.

The CFPB may prescribe rules to insure that these entities are legitimate and able to perform their obligations to consumers. The CFPB may also require reports and other information from persons and organizations operating in the market for consumer financial products or services.

However, the CFPB will *not* be able to exercise any rulemaking authority under this title over the following:

- Licensed real estate brokers;
- Persons involved in the retail of manufactured homes;
- Certified public accountants;
- Motor vehicle dealers (except for motor vehicle dealers who provide mortgages, or who extend retail credit directly to consumers without assigning that credit to a third party);
- Attorneys engaged in the practice of law;
- Products or services that relate to any specified employee benefit and compensation plans or arrangements; and
- Contributions to tax-exempt organizations.

Title X also amends several existing acts to reflect the CFPB's ability to prescribe rules within the existing statutory framework, including:

- The Equal Credit Opportunity Act;
- The Electronic Fund Transfer Act;
- The Fair Credit Reporting Act;
- The Fair Debt Collection Practices Act;
- The Gramm-Leach-Bliley Act;
- The Omnibus Appropriations Act 2009;
- The S.A.F.E. Mortgage Licensing Act of 2008;
- The Truth in Lending Act; and
- The Telemarketing and the Consumer Fraud and Abuse Prevention Act.

While the Act does not specify when the CFPB may issue rules pursuant to these amendments, such rules may not become effective before the amendments themselves become effective on the Designated Transfer Date.

Title X also creates new standards related to payment cards and their interchange transaction fees. The Federal Reserve must prescribe regulations requiring the amount of any interchange transaction fee with respect to a debit card transaction to be "reasonable and proportional" to the cost incurred by the issuer with respect to the transaction. The Federal Reserve must also issue regulations relating to network exclusivity.

Title XI. Federal Reserve System Provisions (Emergency Lending Authority and Debt Guarantee Programs)

Title XI, which became effective on July 22, 2010, gives additional rulemaking powers to the Federal Reserve and the FDIC. The title requires the Federal Reserve to establish policies and procedures governing emergency lending, including those that prohibit borrowing by insolvent borrowers. It also requires the FDIC to establish policies and procedures governing the issuance of guarantees for obligations of solvent insured depository institutions or solvent depository institution holding companies during times of severe economic distress. All rules required by this title are to be implemented "as soon as is practicable."

Title XII. Improving Access to Mainstream Financial Institutions

Title XII is designed to provide access to mainstream financial institutions to Americans who are normally excluded from such access. The Treasury Secretary is authorized to implement regulations that will promote this objective, including authorizing grant programs and determining participant eligibility. Grant programs must focus on low-cost alternatives to small dollar loans, loan-loss reserve funds, and financial literacy. No timeframe is specified for the rulemakings required under this section.

Title XIV. Mortgage Reform and Anti-Predatory Lending Act

Title XIV implements reforms affecting the American mortgage lending industry by setting standards for mortgage origination, outlawing unfair, deceptive, and predatory practices (as to be defined by the Federal Reserve) related to mortgage lending, and imposing stringent restrictions on certain "high-cost" mortgages. Regulations issued under this title must be issued within 18 months of the Designated Transfer Date and must take effect within 12 months of their issuance. By statute, sections of this title will become effective only when their implementing regulations, if any, become effective or otherwise 18 months after the Designated Transfer Date.

The Federal Reserve is required to issue regulations that, among other things:

- Prevent originators from steering borrowers into loans that they will be unable to repay;
- Require creditors to make a good faith determination that borrowers will be able to repay loans;
- Prohibit originators from mischaracterizing borrowers' credit history or the appraised value of property; and
- Set forth a standardized form for making detailed monthly disclosures to mortgagors.

In addition, the Federal Reserve may prohibit lenders from extending "high-cost mortgages" to borrowers without a certification from the Secretary of the US Department of Housing and Urban Development or a state housing agency that the borrower has received counseling on the advisability of the mortgage. We believe most of the mortgage-related regulations that the Federal Reserve is required to issue under this title will be issued through the CFPB.

A number of agencies—the Federal Reserve, the OCC, the FDIC, the National Credit Union Administration, the Federal Housing Finance Agency, and the CFPB—are required to issue rules relating to appraisal. For example, they must promulgate joint regulations that implement certain property appraisal standards. In addition, they may issue rules that establish minimum qualifications to be applied by a state in the registration of appraisal management companies and that specify practices which violate appraisal independence standards.

Finally, Title XIV establishes an Office of Housing Counseling and requires it to issue rules to carry out various counseling and housing assistance programs.

Arnold & Porter is available to respond to questions raised by the Act or the forthcoming rulemakings issued pursuant to the Act, or to help guide your business towards legislative and regulatory solutions. We can assist in determining how pending bills and regulations may affect your business and industry. For further information, please contact your Arnold & Porter attorney or:

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