

Legislative Highlights

Financial Services Reform Reaches Critical Stage on Hill

The House Financial Services Committee continues its markup of legislation to give the federal government the power to take over large at-risk financial firms and place them into receivership. The panel began its work on the bill on Nov. 5. It is the most contentious part of the package to revamp the nation's financial regulatory system in the aftermath of last year's banking crisis.

Members are expected to offer amendments to ensure that the proposed powers don't lead to another government bailout similar to what has occurred with Citigroup, Bank of America and AIG. A GOP alternative (H.R. 3310) would use the Bankruptcy Code to resolve large financially-troubled nonbank institutions.

Financial Services Chairman Barney Frank (D-Mass.) has promised language that would establish a prepaid fund, with fees assessed on firms with assets of more than \$10 billion, to cover the costs of a takeover. The credit union industry is already ramping up efforts to exclude its institutions from paying into the rescue fund. Capital Markets Subcommittee Chairman Paul Kanjorski (D-Pa.) is crafting an amendment that could give regulators pre-emptive authority to break up big banks and other large firms that they fear could collapse from risky investments. The federal government does not have resolution authority for large financial firms whose failing could threaten markets, which is why it was forced to commit more than \$180 billion to keep AIG afloat.

Rep. Brad Miller (D-N.C.) is weighing an amendment that would restrict a firm's proprietary trading actions—transactions conducted for an institution's own benefit—from its retail services. The bill also creates a council of regulators that would monitor the nation's markets in an attempt to prevent financial collapse.

The panel is expected to approve legislation that would create a new Federal Office of Insurance, the final part of the overhaul. Frank hopes to have the package on the House floor for a vote in December.

The committee also might consider legislation that would place major restrictions on the overdraft fees charged by banks. The bill, sponsored by Rep. Carolyn Maloney (D-N.Y.), would require all banks to receive permission from customers before enrolling them in overdraft protection plans, where the average charge is about \$35 for every purchase made when the account balance is in the red. In November, the Federal Reserve issued a rule that would go into effect in July requiring such opt-in plans for ATM and debit card transactions, but not for checks. Maloney argues that her bill does more to protect consumers. It would prohibit charging more than one fee per month and no more than six per year, and require that such assessments be "reasonable and proportional" to the processing cost.

The Senate Banking Committee is considering a similar overdraft protection as part of its parallel revamp the nation's financial regulatory system. Committee Chairman Christopher Dodd (D-Conn.) wants to move his bill to the Senate calendar before the year's end, although he will do it without Republican support. Banking ranking member Richard Shelby (R-Ala.) has protested that Dodd is moving too fast because of White House pressure.

Dodd's overhaul proposal would create a new agency for financial stability that would be tasked with identifying and removing systemic risks to the economy. It also would consolidate bank supervision into a single regulator—the Financial Institutions Regulatory Administration—and create a new Consumer Financial Protection Agency to oversee the products, such as mortgages and credit cards, that are made available to consumers. The systemic-risk agency would have wide authority to collect and use information to mitigate potential risks to the economy. It could require both domestic and foreign-owned financial firms that are deemed systemic risks to face enhanced supervision and standards that would be "increasing in stringency with the size

and complexity of the specified financial company." Other provisions in the legislation effectively would consolidate regulation of all banks at the national level, though the new Financial Institution Regulatory Administration would include a state-bank advisory board and a division of community-bank supervision. The measure also includes provisions expanding proxy access for shareholders and would put key payment and clearing operations under the authority of the Federal Reserve.

Meanwhile, the Senate Agriculture Committee is holding hearings on the derivatives aspect of financial services reform. The House Financial Services Committee had earlier overwhelmingly approved (67-1) legislation to require managers of hedge funds and private-equity funds to register with and open their books to the Securities and Exchange Commission (SEC). The legislation would require fund managers to keep additional records and make new disclosures about their transactions to both the SEC and a proposed systemic risk regulator. The SEC would disclose additional information about trading to investors, creditors and other counterparties.

The systemic-risk regulator would receive the greatest amount of proprietary trading information so it can evaluate whether the volume or type of trades in a particular product poses problems to the markets. Many managers, particularly of smaller funds, will need to set up formal compliance programs and hire chief compliance officers, all of which is required by the legislation. Hedge-fund and private-equity managers would be given a one-year transitional period before being required to register with the SEC, according to an amendment by Rep. Suzanne Kosmas (D-Fla.) that was added to the legislation. She said that a one-year transition period for registration is necessary because both the SEC and fund managers will need time to prepare. ■

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