

## SYSTEMIC RISK REGULATION – House Title I, subtitles A and B; Senate Title I

### Broad similarities

Both bills create a council of regulators to monitor risks to overall system, task Fed with applying stricter standards to BHCs and nonbank financial companies that pose systemic risks, allow Council to require stricter regulation of activities and practices that pose systemic risks, and allow regulators to require particular companies to stop activities or divest operations if necessary to address a “grave threat” to system

### Differences

Companies that can be subjected to stricter standards and method for covering them.

- House bill would allow Council to reach a broader range of companies than would Senate bill
- House bill is clear that size is not determinative of coverage; Senate has a gap in “systemic” coverage for <\$50B BHCs
- House bill requires majority of Council to bring a BHC or nonbank financial company within coverage; Senate requires 2/3 of Council including Chair for nonbanks and lets Fed decide which BHCs >\$50B are covered
- House requires Council to consider a company’s importance to minority/low-income/underserved communities; Senate does not

Regulatory consequences. House clearly requires stricter standards for companies subjected to systemic regulation and gives Fed flexibility to tailor standards appropriately to company’s business model (e.g., insurance and asset management); Senate requires stricter standards but is unclear as to when they would be applied

International considerations. Senate omits the following authorities from the House bill—

- Imposition of systemic standards at foreign parent level, taking home-country supervision into account (similar to existing authority over foreign BHCs)
- Denial of U.S. access to BHCs or securities firms with inadequate home-country regimes
- Termination authority for U.S. ops of foreign companies to protect system
- Council, Fed/Treasury, and President are required to coordinate with foreign counterparts

Differences in Council. Both have Treasury Secretary (Chair) and heads of Fed, FDIC, OCC, SEC, CFTC, Consumer Agency, and FHFA, with the following differences—

- House has NCUA as voting and FIO, state insurance rep, state banking rep, and state securities rep as nonvoting
- Senate has insurance expert (presidential appointee) as voting and director of Office of Financial Research as nonvoting but omits NCUA, the three nonvoting state reps, and FIO
- Senate envisions ongoing Council role in recommending specific content of stricter standards

Office of Financial Research. Senate has an independent OFR to gather and analyze information for Council but House does not; unclear whether OFR’s authority to standardize data formats would supersede existing authority for regulators to require data in their preferred format

Offices of Minority and Women Inclusion. (Treasury, FDIC, FHFA, Federal reserve banks, the Board, NCUA, OCC, SEC, CFPB, and FIO). Senate does not have House’s provision.

## DISSOLUTION AUTHORITY AND FUNDING – House Title I, subtitle G; Senate Title II

### Broad similarities

- Bankruptcy is default insolvency regime and government dissolution authorized only in extreme circumstances upon concurrence of multiple regulators
- Dissolution/receivership is only option (no conservatorship)
- Shareholders and unsecured creditors bear losses and culpable managers are replaced
- FDIC has “special” powers (e.g., stabilization funding, flexibility in payment of claims, special treatment of qualified financial contracts, and authority to organize a bridge company)

### Differences

Potential coverage. Senate would allow systemic dissolution of a nonbank financial company that is not regulated by the Fed only if it met an 85% financial revenue test; Senate brings broker-dealers that are SIPC members within coverage but House excludes them; House excludes credit unions but Senate does not

Judicial/bankruptcy process. Senate pre-receivership judicial process is required only if company doesn't consent, with review to ensure no arbitrary/capricious action and automatic authority for FDIC receivership to proceed if court misses 24-hour deadline; House has no pre-receivership judicial process but allows later conversion to bankruptcy

Protection of minority/low-income/underserved populations. Senate omits House language that requires Treasury Secretary and other relevant regulators to take actions to mitigate impact in minority, low-income, and underserved communities in connection with a systemic liquidation

### Fund/assessment issues.

- Fund structure. House has \$150B ex ante fund from risk-based assessments, with borrowing authority available to get up to \$150B in a crisis (and \$50B more with Congressional approval if needed); Senate has Treasury borrowing (capped at a % of company's assets), and if amounts from liquidation are insufficient to repay then preferential payments first get clawed back, and >\$50B financial companies are assessed to make up any remaining shortfall
- TARP repayment. House authorizes FDIC to impose assessments to repay TARP; Senate does not

Insurance company issues. House provides that the relevant state insurance commissioner is involved in process for invoking systemic dissolution regime for an insurance company but Senate does not; neither bill explicitly exempts amounts paid into other insolvency regimes from assessment base

Secured creditor haircut. Senate omits House authority for FDIC to impose up to 10% haircut on secured creditors under certain conditions.

**PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION – House has no provision; Senate Title VIII**

Our financial system involves trading in many types of financial instruments. The payment, clearing, and settlement (PCS) system provides the “plumbing” through which financial institutions settle and pay for those transactions. The PCS system also provides the framework for getting critical payments, such as salary and government payments, to consumers.

The PCS system has two important aspects—

- Financial market utilities (FMUs), such as Fed-run and private systems for settling government securities, wholesale and retail payments, derivatives, and foreign exchange transactions; and
- PCS activities conducted by financial institutions, such as clearing bank activities that support the government securities repo market.

Although some aspects of the PCS system are subject to federal regulation, there is not a specific statutory framework that comprehensively and uniformly coordinates risk-management across various FMUs and PCS activities.

**The Senate bill provides a uniform, comprehensive framework for PCS regulation in which—**

- Council identifies systemically important FMUs and PCS activities
- Fed, in consultation with Council and primary regulators, would establish risk-management standards for such entities and activities
- Fed would determine which major rule and operational changes at FMUs would require prior notice to regulators
- Primary regulators (banking regulators and, for nonbank entities, market regulators) would have primary exam and enforcement authority for PCS-related matters, with Fed back-up role
- Fed would be authorized to give Fed account and discount window access to systemically important FMUs under title VIII, although sec. 716 of the Senate bill (the “swap push-out” provision) as a practical matter would preclude most, if not all, FMUs from exercising Fed borrowing authority

## **Transfer of Bank Regulatory Powers (Title III of Senate Bill; Title I, Subtitle C of House Bill)**

**Broad Similarities**- Title III of the Senate bill and corresponding provisions of the House bill would restructure bank supervisory powers among the banking agencies and are in broad agreement. Both would merge the OTS into the OCC, which becomes federal thrift regulator; both would leave state-member banks with the Fed, and state-nonmember banks with the FDIC; both bills would leave bank holding companies at the Fed and transfer thrift holding companies to the Fed.

### **Differences between House and Senate Bills**

**Thrift Charter**: Senate bill eliminates the thrift charter going forward; House bill retains

## **Further Improvements to Depository Institution and Holding Company Regulation (Title VI of Senate Bill; Title I, Subtitle D of House Bill)**

**Broad Similarities** – Most provisions of this title are identical or similar, including further restrictions on transactions with affiliates, permitting de novo interstate branching, and establishing a Fed-regulated security holding company regime to replace the SEC's canceled consolidated supervised entity program.

### **Major differences**

#### **Volcker Rule**

- Senate bill implements Volcker Rule ban on proprietary trading and investment in private equity funds by depository institutions and their affiliates
- House bill, through the Perlmutter/Miller amendment, gives regulators authority to ban/prohibit prop trading at systemic firms. Moreover, through the Kanjorski amendment (and similar authority in Senate bill), regulators have authority to require particular companies to stop activities or divest operations if necessary to address a “grave threat” to system
- Senate bill also places size limit on firms by prohibiting further acquisitions once a firm has 10% or more of the aggregate liabilities of all depository institutions, depository holding companies, and systemic financial firms.

#### **Capital/Leverage**

- Senate (Collins amendment) codifies current bank capital rules for all holding companies, thus would not allow trust preferred securities to be included in Tier 1/core capital.
- House requires 15-1 leverage for systemic firms, and requires systemic firms to hold higher capital than non-systemic firms

**Lending limits**: Senate bill imposes national bank lending limits on state banks; House bill does not

## Title XI – Federal Reserve and Emergency Stability

### FDIC Emergency Guaranties

- Senate bill allows for TLGP-like guaranties after explicit Congressional approval;
- House bill allows for guaranties upon 2/3 approval of FSOC, with concurrence of Treasury and President, and provides for Congressional approval for amounts above \$500 billion cap.

### 13(3)

Both House and Senate limit to widely available programs and do not allow lending authority designed for one firm.

- Senate Requires Fed and SecTreas approval for programs
- House bill requires approval from 2/3 majority of the Council, with concurrence of Treasury and President
- Senate Requires Fed and Treasury to issue regulations (i) ensuring that emergency lending is to provide liquidity to the financial system and not to aid failing firms, and (ii) sufficiency of collateral.
- House has similar liquidity concept, but provides statutory requirement of 99% certainty on collateral
- Senate Requires Fed to report to Congress within 7 days, various information about its action,
- House requires similar report and also provides expedited procedures for Congressional disapproval
- House limit's 13(3) lending authority to \$4 trillion, but no limit in Senate bill

## Derivatives Regulation (Title VII of Senate bill; Title III of House bill)

**Broad similarities** – The structure of the Senate bill is broadly similar to the House bill, both in terms of where the line between a “swap” and “securities-based swap” is drawn and division of authority between SEC and CFTC, as well as required clearing and exchange trading. Both bills have comprehensive structures that will capture the entire swaps market.

### Differences:

#### Push-out rule (sec 716).

- Senate provision would prohibit swap activities by any swap dealer, major swap participant, or clearing organization that is eligible to receive any form of financial assistance, including deposit insurance, discount window, or other federal funding or insurance. Effectively prohibits hedging, accommodation trades, and market making by any depository institution.
- No similar House provision.

#### Fiduciary Duty.

- Senate imposes fiduciary duty on swap dealers who either advise or are principals in swap transactions with governmental entities or pension funds.
- House bill contains no similar provision.

#### Coverage of clearing and margin requirements.

- Senate excludes “commercial end users” from clearing and margin requirements, but all governmental issuers and financial institutions are subject to both clearing and margin requirements, regardless of size or nature of their activities, i.e. hedge own risk.
- House clearing requirements apply only to swap dealers and major swap participants, effectively excluding smaller financial institutions and state and local governmental issuers. House provides regulators authority to impose margin requirements on any counterparty.

#### Captive finance organization carve-out.

- Captive finance organizations, such as Ford or Caterpillar, that are only hedging their parents risk are carved out of the definition of “major swap participant.”
- House has no similar exemption.

#### Banking agency prudential and enforcement authority.

- Senate provisions limit bank regulatory agency authority over transactions conducted in affiliates of a depository institution.
- House bill preserves banking agency authority.

### Expedited procedures.

- Senate gives regulators explicit authority to write rules in an expeditious manner, exempting them from Administrative Procedure Act notice and comment requirements.
- House bill preserves use of APA-compliant rulemaking to provide greater transparency of process and development of the regulatory framework.

### Clearing house ownership and control limits.

- Senate requires the CFTC/SEC to determine whether to adopt rules limiting BHC control over clearing agencies, swap execution facilities, or national exchanges.
- House bill imposed limits on ownership and board compositions of swap execution facilities, exchanges, and clearing agencies, by “restricted owners” including dealers and participants that are financial holding companies.

TITLE V – CAPITAL MARKETS  
SUBTITLE C – INVESTOR PROTECTION ACT

The House and Senate bills both offer important new protections for investors in the securities markets. They strengthen oversight of industry participants and enhance the enforcement tools available to the SEC. In a few important areas, there are significant differences.

FIDUCIARY DUTY FOR BROKER-DEALERS

- HOUSE – Requires the SEC to impose a fiduciary duty on broker-dealers providing personalized investment advice to retail customers. Requires that the fiduciary duty be the same as the duty already applicable to investment advisers under the Investment Advisers Act. Gives the SEC authority to apply the fiduciary duty to non-retail customers.
- SENATE – Requires only that the SEC conduct a study to evaluate the standards of care applicable to broker-dealers and investment advisers. Does not provide the SEC with authority to impose the fiduciary duty.

SEC INVESTIGATIVE AND ENFORCEMENT AUTHORITY

- HOUSE – Contains 36 provisions that strengthen standards of conduct and enhance the SEC's investigative and enforcement authority.
- SENATE – Includes only a third of the House provisions. Enhancements missing from the Senate bill include (1) expanded aiding and abetting liability in SEC enforcement actions, (2) imposition of civil penalties in cease and desist proceedings, and (3) nationwide service of process in federal court actions.

MUNICIPAL FINANCIAL ADVISERS

- HOUSE – Establishes a separate framework for the regulation of municipal financial advisers, implemented by the SEC. Requires registration, prohibits fraud, and imposes a fiduciary duty on advisors for the benefit of issuers receiving advice.
- SENATE – Also requires registration of municipal advisors, but incorporates them into the existing regulatory framework, which is overseen by a self-regulatory organization (the "MSRB"). Does not impose a fiduciary duty on municipal advisors.

REG D AND NET WORTH TEST FOR ACCREDITED INVESTORS

- HOUSE – Does not address Reg D offerings, which are small or private offerings exempt from securities registration requirements. Also does not address the net worth test for accredited investors, who are investors deemed to require less protection under the securities laws by virtue of their net worth or income.

- SENATE – Sen. Bond’s amendment requires the SEC to issue rules (1) disqualifying persons with criminal convictions and other disciplinary history from using the Reg D/Rule 506 registration exemption, and (2) adjusting the net worth test for accredited investors at least every four years, with an immediate exclusion for primary residences.

#### STUDY OF SEC

- HOUSE – Requires the SEC to hire a consultant to study the SEC’s operations, structure, and function, including its reliance on self-regulatory organizations such as FINRA. Consultant must issue its report within 150 days and must include legislative and rulemaking recommendations. For two years, the SEC must report to House Financial Services and Senate Banking on its progress in implementing the Consultant’s recommendations.
- SENATE – Does not address.

#### SEC FUNDING

- HOUSE – Authorizes the appropriation of increased amounts for the SEC through fiscal year 2015 (to \$2.25 billion).
- SENATE – Establishes a self-funding mechanism, under which the SEC submits a budget to Congress each year, Treasury pays that amount, and the SEC reimburses Treasury from fees and assessments it collects under the securities acts.

## Private Funds

**Broad similarities:** Both the House and Senate initiate a new regulatory regime of registration, reporting and recordkeeping for the advisors of private pools of capital. Both bills exempt venture capital and Small Business Investment Companies (SBICs) from registration.

### **Bill Differences:**

- House exempts all private funds under \$150mm in assets under management from registration; recordkeeping and annual reports must be provided to the SEC
- Senate has additional exemptions and exclusions:
  - Venture capital: in addition to the exemption from registration, venture capital is not required to report
  - Private equity funds are exempt from registration. They will be required to report and keep records
  - Single Family Offices are exempt from regulation

### **Custody of client assets**

- House - Requires SEC to adopt a rule prohibiting an investment adviser from having custody of over \$10,000,000 in client funds or securities, unless they are maintained with a qualified custodian and the custodian does not provide advice as to the funds or securities. SEC may grant an exception whereby an exempted client receives once a year an asset verification report from a fiduciary.
- Senate - SEC is to write rules to mandate that IAs who have custody over client assets must verify assets with an independent public accountant

## Credit rating agencies

**Broad similarities:** Both bills strengthen the oversight regime for credit rating agencies and heighten the transparency for the process of determining ratings.

### Differences:

#### **Mandatory registration:**

- House requires SEC registration of credit rating agencies as NRSROs
- Senate has no provision for mandatory registration

#### **Liability**

- House treatment of liability includes:
  - lowers the pleading standard to 'gross negligence' thus making it easier for cases against the rating agencies to reach discovery.
  - damages to investors if the process of determining the ratings are proven to be grossly negligent.
  - removal of rating agencies from Rule 436(g) exemption which results in attaching expert liability to the rating agencies for a rating published in a prospectus or offering circular.
- Senate liability is 'knowingly and recklessly.'

The House and Senate remove restrictions to private rights of action and state that rating agency predictive comments are not deemed forward looking statements.

#### **Conflict of interest**

- House bill:
  - Prohibits a rating agency from providing consulting services and providing ratings to the same issuer, underwriter or placement agent;
  - Establishes procedures to re-evaluate the rating of an issuer of securities should the credit rating analyst switch jobs to the issuer, and
  - Requires public notification of a job change by a credit rating analyst.
- Senate conflict of interest provisions are limited to a separation of ratings marketing and sales from analytics with exceptions for 'small' credit rating agencies

#### **Removal of the reliance on ratings in federal and state laws and regulations**

- House removes the relevant language in statute that requires an agency to rely on ratings in determining creditworthiness of, for example, counterparties and investments. House bill covers statute of banking regulators and others agencies under the jurisdiction of the House Financial Services Committee. Additionally, the House provides for (1) a review of the reliance on ratings in the rules and regulations of the covered agencies and a mandate to modify their rules and regulations within one year and (2) a GAO study of other Federal agency's reliance on ratings and recommendations to reduce the use of ratings in rule and regulation.
- Senate is limited to the House language removing references to ratings in statute for the banking regulators and other agencies under the jurisdiction of the House Financial Services Committee.

#### **Reg FD**

- House removes the credit rating agency exemption from Reg FD (disclosure of material non-public information) when working with issuers of securities.
- Senate does not have this provision

#### **SRO for initial ratings of structured products**

- Senate creates a self-regulatory organization, the Credit Rating Agency Board, which will designate a new class of rating agencies called "Qualified NRSROs" to perform initial ratings for structured products. The SRO will be responsible for activities including: (1) determining the best method of assignment (e.g. lottery or rotation), (2) matching up QNRSROs with a structured product and (3) gauging the track record of the ratings to determine which QNRSRO qualifies.
- House does not have this provision but commissions a study to analyze a government body designating rating agencies on a rotational basis.

## Consumer Financial Protection Agency/Bureau

### Title IV of House Bill and Title X of Senate Bill

Similarities. Both bills are substantially similar in the creation of a consumer protection agency. While there are many technical differences, the substance of the two bills remain the same.

Differences.

Structure.

- House bill: Independent agency run by single Director, appointed by the President and confirmed by the Senate, for two years and changes to a 5-member Commission
- Senate bill: Bureau of the Federal Reserve (Fed has no authority to influence the Bureau's activities) run by single Director, appointed by the President and confirmed by the Senate
- Funding. The House bill provides funding from Federal Reserve based on Fed operating expenses of previous year, assessments on large banks (>\$10 billion) and nonbank financial institutions, and appropriations. The Senate bill has funding only from the Fed.
- Regulatory Flexibility Act. Senate bill requires consumer regulator to assess effects its regulations have on small businesses that other banking agencies do not have to do. This requires agency, before proposing a regulation, to consult an independent panel, which includes representatives of SBA and OMB, to analyze the effect of the rule on small businesses. This process will prolong the rulemaking process of the agency. House bill has no such provision.
- Examination and Enforcement for Small Banks/CUs.
  - House bill: Prudential regulator retains examination and enforcement authority, but consumer regulator can "ride along" on examinations and can bring enforcement actions identified in consumer complaint process and as a "back-up" if prudential fails to act.
  - Senate bill: Complete exclusion from examination and enforcement.
- Nonbank Financial Institutions.
  - House bill: Subjects all nonbank financial institutions to examination and enforcement
  - Senate bill: Subjects to examination and enforcement only—
    - Mortgage providers, including brokers, lenders, servicers and loan mod providers
    - "Larger participants" identified by consumer regulator by regulation
- Merchants. Both House and Senate bills exempt merchants and retailers for issuing credit on the products and services they sell, unless they sell the loans.
  - Senate bill: Has a broad exemption for merchants and retailers that are "not engaged significantly" in offering consumer financial products (consumer regulator determines what this means). *House bill does not have this provision*
- Auto Dealers.

- House bill: Has blanket exclusion from consumer regulator's rulemaking, examination and enforcement.
- Senate bill: Has no exclusion, but motion to instruct endorses a Sen. Brownback amendment that carves out auto dealers.
- Student Lending
  - Both bills authorize consumer regulator to issue regulations on student lending
  - House bill gives consumer regulator broader discretion to supervise private schools
- Advisory board
  - House bill: Has an advisory board and an oversight board that includes members with community development, fair lending, civil rights and consumer protection experience.
  - Senate bill: Does not have an oversight board, just an advisory board; and civil rights experience is not required on the advisory board.

### Preemption (Title IV, Subtitle D of House Bill; Title X, Subtitle D of Senate Bill)

- OCC Preemption Authority. Both bills revise authority of OCC to preempt state laws to prohibit OCC from applying preemption to subsidiaries of national banks, directs courts not to defer to OCC preemption decisions, requires OCC to make case-by-case preemption determinations using substantial evidence and on the record, and requires OCC to review existing preemption determinations periodically.
- Standard of preemption;
  - House bill: OCC must find—
    - That state law prevents, significantly interferes with or materially impairs national banks from engaging in business of banking; and
    - National banks are subject to a substantive standard that regulates the conduct or activity of a state law before it is preempted. Senate bill has no such requirement.
  - Senate bill: OCC must follow the standard articulated in the Supreme Court's 1996 *Barnett Bank v. Nelson* case.
- AG/state supervisor enforcement authority. Both bill allow state attorneys general and state bank supervisors to enforce rules of consumer regulator and nonpreempted state laws consistent with the Supreme Court's *Cuomo v. Clearinghouse* case. The Senate bill provides that AGs cannot use general UDAP enforcement authority against national banks.

### Interchange (Section 1079 of Senate Bill)

- Senate bill requires Fed to issue rules establishing standards for interchange fees that are reasonable and proportional to actual cost incurred. House bill does not have such provision.

### Risk Retention (Title I, Subtitle F of House Bill; Title IX, Subtitle D of Senate Bill)

- Both bills apply credit risk retention requirements to all types of assets that are securitized, including mortgage loans, credit card debt and commercial loans.
- Both bills direct regulators to set risk retention requirements at 5% for loans and allow regulators to set lower risk retention requirements, including providing an exemption, for loans with lower risk characteristics
- Senate bill directs agencies to exempt "qualified mortgages," as defined by regulator; House bill does not have this provision
- Senate bill provides that risk retention requirement is met in a commercial mortgage backed securities transaction if certain investors in the securities do adequate up-front due diligence.
- House bill excludes from requirement VA, SBA, and Ag, and Farm Credit Administration loans; Senate bill only excludes Farm Credit Administration
- House bill directs FHFA, HUD, and RHS to set requirements for loans they issue and guarantee; Senate bill has no such provision

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### Interchange (Section 1079 of Senate Bill)

- Senate bill requires Fed to issue rules establishing standards for interchange fees in debit card transactions that are reasonable and proportional to actual cost incurred. House bill does not have such provision.

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## EXECUTIVE COMPENSATION (Senate Title XI, Subtitle E)

Both House and Senate – The following provisions appear in both bills:

- **'Say on Pay'** – annual, non-binding, shareholder vote on executive compensation.
- **Independence of Compensation Committee Members** – bills differ slightly on how independence standards are applied to consultants, legal counsel and other advisors retained by Compensation Committee.

Unique to House – The following provisions appear only in the House bill:

- **Shareholder Vote on Golden Parachutes**
- **Disclosure of institutional investor voting in compensation related voting** (Ms. Kilroy, Section 2002 of House bill, p. 545, ln. 3).
- **Enhanced Compensation Oversight for Financial Industry** – Requires Federal financial regulators to issue and enforce joint compensation rules specifically applicable to financial institutions with a Federal regulator.
  - Senate bill does require FRB consult with the FDIC & OCC to set safety and soundness standards for BHCs prohibiting excessive compensation plans.

Unique to Senate – The following provisions appear only in the Senate bill:

- **Clawback** – Enables clawback of incentive-based compensation from current or former executives following a restatement based on material noncompliance with any financial reporting requirements during the three-year period preceding restatement.
  - House provisions providing Enhanced Compensation Oversight for Financial Industry permit clawbacks.
- **Hedging Disclosure for Employees and Directors** – Requires disclosure of whether employees and directors are allowed to hedge equity securities.
- **Pay and Performance Disclosure** – Requires public companies to disclose relationship between a company's executive compensation actually paid and financial performance.
- **Internal Pay Equity Disclosure** – Requires public companies to disclose: (1) median annual total compensation of all employees, except the CEO; (2) the annual total compensation of the CEO; and (3) the ratio of the median employee annual total.
- **Broker Discretionary Vote Prohibition** – Prohibits broker discretionary voting in connection with shareholder vote on election of directors, executive compensation or any other significant matter, as determined by the SEC.

## CORPORATE GOVERNANCE

Both House and Senate – House bill largely does not address general matters of corporate governance. However, the following provision appears in both bills:

- **Proxy Access** – House and Senate have substantially similar provisions under which the SEC “may” issue rules permitting shareholders to use issuer proxy solicitation materials to nominate director candidates.

Unique to Senate – The following provisions appear only in the Senate bill:

- **Majority Voting for Directors** – Requires a majority shareholder vote for directors in uncontested elections. If a director receives less than the required vote, the Board of Directors must either: (1) accept the director’s resignation, or (2) explain publicly why it declined to do so.
- **Chairman and CEO Structure Disclosure** – Requires public companies to disclose in the proxy statement why the same or different persons serve as chairman and CEO.

## Federal Reserve Audit and Governance Provisions

### Fed Audit

- House bill requires GAO audit, including review of monetary policy decisions
- Senate Requires GAO audit of 13(3) facilities and public release of participants, as well as study of Reserve Bank governance

### Federal Reserve Governance

The following provisions of the Senate bill have no similar House provision (House limited delegation of new authorities to Reserve Banks)

- President of FRBNY would be appointed by President with advice and consent of Senate
- No company supervised by Fed may vote for Federal Reserve Bank directors and no current or former employees of such companies may be elected as Fed Bank directors

## INSURANCE

In addition to provisions relating to creation of a new insurance office at Treasury, the Systemic Risk Regulation and Liquidation Authority titles of both the House and the Senate bills apply to and impact the insurance industry. Staff summaries of the Systemic Risk Regulation and Liquidation Authority titles address these issues in greater detail, however, the main, insurance-related topics from the Systemic Risk Regulation and Liquidation Authority titles are:

- **Insurance Representation on Financial Services Oversight Council** - Senate has insurance expert (presidential appointee) as voting member of Council and director of Office of Financial Research as nonvoting member of Council. House has Federal Insurance Office director and State Insurance Commissioner as non-voting Council members.
- **Treatment of Insurance Assets for Resolution Assessment Purposes** – House requires the FDIC to consult with FSOC in setting resolution fund assessment metrics and to take into consideration a companies contributions or liabilities to alternate resolution assessments (like State Insurance Guarantee Funds). Senate treatment somewhat unclear, but appears to address by only allowing assessments on non-systemically significant, non-banks as a last resort after all other potential classes of institutions have been assessed.

### OFFICE OF NATIONAL INSURANCE (Senate Title V)

**ONI/FIO & OFR subpoena power** – In Senate bill both the ONI (called FIO in House bill) and the new Office of Financial Research (OFR) have subpoena power over insurers. ONI/FIO has no subpoena power in House bill.

**ONI/FIO information gathering** – In House bill ONI/FIO must collect info from State regulators or other 3rd parties, whenever reasonably available. Senate bill requires ONI/FIO coordination with State regulators, but gives ONI/FIO ability to subpoena directly from industry without showing of having exhausted other available sources.

**ONI/FIO, generally** – Senate and House also differ on the following:

- At the request of the Ways & Means Committee, House bill includes USTR in negotiation of international insurance agreements, Senate bill does not.
- In House bill ONI/FIO must consider extent to which minority & low/middle income individuals have access to insurance products. Senate bill has no analogous provision.
- Crop insurance is excluded from ONI/FIO in Senate bill and not excluded in House bill.