



A.S. Pratt

RE: *The Law and Regulation of Financial Institutions* 2011 Update No. 2

Dear Customer,

July 21, 2011, marked the date many parts of the Dodd-Frank Wall Street Reform and Consumer Protection Act became effective and was the “transfer date” for the reorganization of the federal banking regulatory agencies to reallocate the powers and responsibilities of the former Office of Thrift Supervision to the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Federal Reserve Board. It also was the birthday of the new Consumer Financial Protection Bureau. This update addresses the changes made by the Dodd-Frank Act and also integrates the explanation of these changes in this book’s analysis and discussion of the regulation of financial institutions. Some of the highlights of this update are:

- A new chapter on The Enforcement of Federal Consumer Financial Protection Law covers the changes the Dodd-Frank Act made to the enforcement of federal consumer regulations, the powers of the new Consumer Financial Protection Bureau, and the authorities transferred to the Bureau from other federal agencies. Chapter 7A.
- Questions have been raised about the scope of the powers of the new Consumer Financial Protection Bureau during the period when it does not have a director. This issue is analyzed in this update. Chapter 7A.
- When the Consumer Financial Protection Bureau adopts new regulations, it must observe special procedures that apply to only a few federal agencies. These special rules are explained. ¶ 7A.03.
- The Dodd-Frank Act gives the FDIC authority under certain conditions to become the receiver of a systemically important covered financial institution in order to provide for its orderly liquidation in a manner that minimizes disruption to US financial markets. The FDIC has adopted a regulation to implement these orderly liquidation provisions of the act. The regulation is discussed in this update. ¶ 12.07.
- Under the FDIC’s orderly liquidation authority, the FDIC has the power to claw back compensation paid to senior executives under certain conditions.

This power is explained, as is the extent to which the FDIC will recognize application of the business judgment rule in such situations. ¶ 12.07[5].

- The FDIC orderly liquidation regulations establish an administrative claims process, with priority categories, for determining what claims against a covered financial institution in liquidation the FDIC will pay. The claims process and the priorities for claims are explained. ¶ 12.07[3].
- The Dodd-Frank Act abolished the Office of Thrift Supervision and shifted the responsibilities of the OTS to the OCC, FDIC, and Federal Reserve Board. These changes and the scope of the transferred powers are described in Chapter 2.
- The Dodd-Frank Act created two new bodies that will play important roles in the regulation of financial institutions: the Financial Stability Oversight Council and a Consumer Financial Protection Bureau. These new bodies and their powers are explained. ¶¶ 2.03[1][g], 2.03[1][h]. Chapter 7A.
- Exercise of emergency lending and debt guarantee powers by the Federal Reserve Board and the FDIC during the 2008 financial crisis was controversial. The Dodd-Frank Act revises and limits the emergency powers available to these agencies to take similar action in the future. These changes in the law are explained in this update. ¶¶ 3.04[4][a], 3.04[4][b], 11.03[4].
- The Dodd-Frank Act made changes to the federal deposit insurance system. It set the standard maximum deposit insurance amount at \$250,000. It also temporarily authorized unlimited insurance coverage for non-interest bearing transaction accounts. These changes and their implications for various types of deposit accounts are explained in this update. ¶ 11.02.
- The Dodd-Frank Act changed the law on the payment of interest on demand deposit accounts. This change is described at ¶ 18.01[2].

We hope that you find *The Law and Regulation of Financial Institutions* to be a useful resource. If you have any suggestions or comments, please feel free to call us at 1-800-456-2340 or visit us online at www.aspratt.com.

Sincerely,
Catherine Dillon
Editor