



PRESS RELEASE

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Media Contact:
Andrew Gray
(202) 898-7192
angray@fdic.gov

FDIC Board Approves Proposed Rule to Set Claims Process Under the Dodd-Frank Act's Orderly Liquidation Authority Provisions

The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) today approved a Notice of Proposed Rulemaking (NPR) to further clarify application of the orderly liquidation authority contained in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, "Orderly Liquidation Authority" (OLA). The NPR builds on the interim rule approved by the FDIC on January 18, 2011, which clarified certain discrete issues under the OLA. The NPR approved today establishes a comprehensive framework for the priority payment of creditors and for the procedures for filing a claim with the receiver and, if dissatisfied, pursuing the claim in court. The NPR also clarifies additional issues important to the implementation of the OLA, including how compensation will be recouped from senior executives and directors who are substantially responsible for the failure of the firm. The NPR, along with the interim final rule, is intended to provide clarity and certainty about how key components of OLA will be implemented and to ensure that the liquidation process under Title II reflects the Dodd-Frank Act's mandate of transparency in the liquidation of covered financial companies.

"Today's action is another significant step toward leveling the competitive playing field and enforcing market discipline on all financial institutions, no matter their size. Under Dodd-Frank, the shareholders and creditors will bear the cost of any failure, not taxpayers," said FDIC Chairman Sheila C. Bair. "This NPR provides clarity to the process by letting creditors know clearly how they can file a claim and how they will be paid for their claims. This is an important step in providing certainty for the market in this new process."

In addition to the priority of claims and the procedures for filing and pursuing claims, the NPR defines the ability of the receiver to recoup compensation from persons who are



Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. It promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars — insured financial institutions fund its operations.

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substantially responsible for the financial condition of the company under Section 210(s) of the Dodd-Frank Act. Before seeking to recoup compensation, the receiver will consider whether the senior executive performed his or her responsibilities with the requisite degree of skill and care, and whether the individual caused a loss that materially contributed to the failure of the financial company. However, for the most senior executives, including those performing the duties of CEO, COO, CFO, as well as the Chairman of the Board, there will be a presumption that they are substantially responsible and thus subject to recoupment of up to two years of compensation. An exception is created for executives recently hired by the financial company specifically for improving its condition.

The NPR also ensures that the preferential and fraudulent transfer provisions of the Dodd-Frank Act are implemented consistently with the corresponding provisions of the Bankruptcy Code. The proposed rule conforms to the interpretation provided by the FDIC General Counsel in December 2010.

Finally, the NPR clarifies the meaning of "financial company" under OLA. Under the proposal, a financial company will be defined as "predominantly engaged" in financial activities if their organization derived at least 85 percent of its total consolidated revenue from financial activities over the two most recent fiscal years. This rule will enhance certainty about which financial companies could be subject to resolution under OLA.

The proposed rule will be out for comment 60 days after publication in the Federal Register.

Attachment:

[Proposed Rule On Priority Claims Under The Orderly Liquidation Authority of Dodd-Frank Act - PDF \(PDF Help\)](#)