- Inconsistent with state law governing covered institutions, creating conflicting fiduciary obligations – Under state law the director's primary fiduciary duty is to the shareholders and corporation but under the proposal the board would have to consider the interests of all its stakeholders, including customers, regulators, and the public. This will create confusion, presenting major questions of public policy and contradicting obligations for boards.
- The majority of bank board must be "independent" and serving on parent board disqualifies "independence" – New and novel requirement, as entirely overlapping board memberships are common practice; would be in stark contrast to independence rules established by the OCC, Federal Reserve, SEC, and stock exchanges.
- Creates unrealistic expectations and subjects boards to liability by requiring them to "ensure" and "confirm" compliance with laws, rules and regulations (and most all bank actions) – The overuse of the word "ensure" could effectively impose a strict liability standard that is inconsistent with the responsibilities of the board under long-standing corporate governance standards and creates personal liability for directors (e.g., the board must "confirm" that the covered institution operates in a safe and sound manner and in compliance with all laws and regulations; "ensure" the bank's strategic plan is consistent with policies the board has approved; "ensure" management corrects any deficiencies that auditors or examiners identify in a timely manner, etc.).
- Conflates the role of board and management – Language in the proposal suggest that a bank's board could be required to review and approve every operational policy of the bank (contrary to existing regulatory guidance and practices, and effectively impossible in practice, given there could of which there could be hundreds of policies comprising tens of thousands of pages)