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House Passes Banking Bill Providing Dodd-Frank Relief

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The U.S. House of Representatives on Tuesday passed S.2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act), by a vote of 258 to 159. Having passed the U.S. Senate on March 14 by a vote of 67 to 31, the Act now goes to President Donald J. Trump, who is expected to sign it into law. Although the Act does not make the sweeping changes to the Dodd-Frank Act contemplated by other proposals, it nevertheless provides welcome regulatory relief to both smaller and larger financial institutions.

The Act makes a number of changes to provisions of Dodd-Frank and other federal laws regarding consumer mortgages, credit reporting, and loans to veterans and students. It also reduces the regulatory burdens on financial institutions—particularly financial institutions with total assets of less than $10 billion. Bank holding companies with up to $3 billion in total assets would be permitted to comply with less-restrictive debt-to-equity limitations instead of consolidated capital requirements. This change should promote growth by smaller bank holding companies, organically or by acquisition. Larger institutions should benefit from the higher asset thresholds that would apply to systemically important banks subject to enhanced prudential standards. The higher thresholds may lead to increased merger activity between and among regional and super regional banks.

The following is a summary of some of the Act's key provisions applicable to financial institutions:

Improving Consumer Access to Mortgage Credit

New Category of Qualified Mortgage Loan. The Act creates a new qualified mortgage (QM) category for insured depository institutions and insured credit unions that have, together with their affiliates, less than $10 billion in total consolidated assets. A loan that satisfies the applicable requirements is deemed to comply with the ability to repay requirements of the Truth In Lending Act (TILA). To comply, the loan cannot have an interest-only or negative-amortization feature and would need to comport with prepayment penalty limitations under the TILA ability-to-repay requirements; the institution must consider and document the consumer's debt, income, and financial resources but does not have to follow Appendix Q of the ability-to-repay rule; and the institution must retain the loan in portfolio, subject to limited exceptions that include transferring the loan to another qualifying institution.

Appraisal Donations. The Act amends TILA appraisal provisions to provide that if an appraiser voluntarily donates appraisal services to an organization that is eligible to receive tax-deductible charitable contributions, the voluntary donation is considered to be customary and reasonable. The Act effectively permits appraisers to donate appraisal services to charitable organizations, such as Habitat for Humanity.

Appraisal Exemptions for Loans in Rural Areas. The Act amends the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) to exclude a loan made by a bank or credit union from the FIRREA requirement to obtain an appraisal if certain conditions are met. The conditions are that the property is located in a rural area; the transaction value is less than $400,000; the institution retains the loan in portfolio, subject to exceptions, and; not later than three days after the Closing Disclosure is given to the consumer, the mortgage originator or its agent has contacted not fewer than three state-licensed or state-certified appraisers, as applicable, and documented that no such appraiser, as applicable, was available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments, as documented by the mortgage originator or its agent.

HMDA Exemptions. For insured depository institutions and insured credit unions, the Act amends the Home Mortgage Disclosure Act (HMDA) to exempt those institutions from the new reporting categories added by Dodd-Frank and the HMDA rule adopted by the Consumer Financial Protection Bureau (CFPB) respecting closed-end mortgage loans if the institution or credit union originated fewer than 500 such loans in each of the preceding two calendar years, and home equity lines of credit (HELOCs) if the institution or credit union originated fewer than 500 HELOCs in each of the preceding two calendar years. The HELOC change will not initially affect reporting because, for 2018 and 2019, the threshold to report HELOCs is 500 transactions in each of the preceding two calendar years under a temporary CFPB rule.

The Act's exemption from reporting the new HMDA data does not apply if the institution received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent Community Reinvestment Act (CRA) examinations, or "substantial noncompliance in meeting community credit needs" on its most recent CRA examination. The U.S. Treasury recently made recommendations for changing CRA regulations.

Job Opportunities for Mortgage Originators. The Act amends the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) to provide a 120-day transitional license to a mortgage loan originator moving from a depository institution to a non-depository institution, or a state-licensed lender in one state to the same or another state-licensed lender in another state. A mortgage originator must meet certain conditions to obtain a transitional license, including that the originator:

- has not had an application for a loan originator license denied
- has not had a loan originator license revoked or suspended
- has not been subject to, or served with, a cease-and-desist order in any governmental jurisdiction or under the SAFE Act
- has not been convicted of a misdemeanor or felony that would preclude licensure under the law of the applicable state, and
- has submitted a license application in the applicable state.

Exemption From Escrow Requirements. The Act excludes a mortgage loan made by an insured depository institution or insured credit union with assets of $10 billion or less from TILA's mandatory escrow account requirements, subject to the conditions that: during the preceding calendar year the institution or credit union and its affiliates originated not more than 1,000 first lien loans secured by a principal dwelling; the institution made a loan in a rural or underserved area within a certain timeframe; and subject to exceptions, the institution does not otherwise maintain mortgage loan escrow accounts.

Mortgage Disclosures. The Act presumably seeks to eliminate the need under the TILA/RESPA Integrated Disclosure (TRID) rule for a second, three-business-day waiting period before the parties can close a consumer mortgage loan when the annual percentage rate decreases by more than the applicable tolerance after the initial Closing Disclosure is issued. However, the TRID rule's applicable waiting period requirements are set forth in Regulation Z and not TILA. Instead of amending TILA to change the TRID rule waiting period, the Act amends the waiting period requirements under TILA for high-cost mortgage loans. Further, the Act states that it is the sense of Congress that the CFPB should endeavor to provide clearer, authoritative guidance on: the applicability of the TRID rule to mortgage loan assumptions and construction-to-permanent loans, and the conditions under which the latter can be properly originated, and the extent to which "lenders can rely on model disclosures published by the CFPB without liability if recent changes to regulations are not reflected in the sample TRID Rule forms published by the CFPB."

Regulatory Relief and Protecting Consumer Access to Credit

Capital Simplifications for Qualifying Community Banks. The Act requires the federal banking agencies to establish a "Community Bank Leverage Ratio" of not less than 8 percent or more than 10 percent for "Qualifying Community Banks." The Community Bank Leverage Ratio is equal to the tangible equity capital to the average total consolidated assets. A Qualifying Community Bank is any insured depository institution or depository institution holding company with total consolidated assets of less than $10 billion that was not determined ineligible by its primary federal regulator due to its risk profile. Factors considered in evaluating a bank's risk profile include off-balance sheet exposures, trading assets and liabilities, derivative exposures, and other factors.

A Qualifying Community Bank that met the new Community Bank Leverage Ratio is also considered to have met generally applicable leverage capital requirements, generally applicable risk-based capital requirements, and any other capital or leverage requirements to which such insured depository institution and insured depository institution holding company is subject. A Qualifying Community Bank that was an insured depository institution is also deemed to be well capitalized under Section 38 of the Federal Deposit Insurance Act (FDIA) and related regulations. This designation insulates a large number of community banks from the complexities of the Basel III capital framework.

Limited Exception for Reciprocal Deposits. Under the Act, reciprocal deposits from an agent institution are not considered to be funds obtained, directly or indirectly, by or through a deposit broker to the extent such reciprocal deposits do not exceed the lesser of $5 billion and 20 percent of the agent institution's total liabilities. This provision would benefit less than well-capitalized financial institutions that would otherwise have to request a difficult to obtain waiver or would be ineligible to receive an FDIC waiver from the restrictions in Section 29 of the FDIA on the acceptance of brokered deposits.

Community Bank Relief. The Act provides an exemption for banks with less than $10 billion in assets from the prohibitions on proprietary trading and certain relationships with hedge funds and private equity funds in Section 13 of the Bank Holding Company Act of 1956, known as the "Volcker Rule." A bank is exempt so long as the total trading assets and trading liabilities of the bank and any company that controls the bank are less than 5 percent of total consolidated assets.

Short Form Call Reports. The Act requires federal regulators to prescribe regulations to simplify call reports in the first and third calendar quarters for their supervised insured depository institutions that have less than $5 billion in total consolidated assets, and satisfy other criteria that the federal regulator establishes.

Option for Federal Savings Associations to Operate as National Banks. For federal savings associations with total consolidated assets equal to or less than $15 billion, the Act allows a savings association, upon the submission of notice to the Office of the Comptroller of the Currency, to exercise the same rights and privileges as a national bank. Federal savings associations that make an election continue to maintain such rights and privileges after the election, even if the total consolidated assets of the federal savings association subsequently exceed $15 billion.

Small Bank Holding Company Policy Statement. The Act requires the Federal Reserve System's Board of Governors to revise the "Small Bank Holding Company and Savings and Loan Holding Company Policy Statement" to increase the consolidated asset threshold thereunder from $1 billion to $3 billion, leaving the other requirements of such bank holding companies and savings and loan companies the same. This change will allow bank holding companies with less than $3 billion in assets to avoid consolidated capital requirements and allow them to comply instead with less restrictive debt-to-equity limitations.

Expedited Funds Availability Act. The Act amends the Expedited Funds Availability Act's definition of "State" to include American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. "State" was previously defined to include any U.S. state, the District of Columbia, Puerto Rico, and the Virgin Islands.

Examination Cycle. The Act raises the threshold in Section 10(d)(4)(A) of the FDIA for small institutions eligible for 18-month examinations from $1 billion to $3 billion of total consolidated assets.

Budget Transparency for NCUA. The Act amends the Federal Credit Union Act to require the National Credit Union Administration to publish a budget and hold a hearing and accept public comment on its budget.

Online Banking Rules. The Act permits a bank to use a scanned image of a driver's license to open a customer's bank account or receive a product or service. The Act provides that a financial institution that makes a copy or receives an image of a driver's license must permanently delete the copy or image after it has used the copy or image to: verify the authenticity of the license; verify the identity of the individual; or comply with legal requirements related to opening an account or obtaining a financial product or service.

Acquisition, Development, or Construction Loans. The Act clarifies that federal bank regulators may only assign a heightened risk weight to a high volatility commercial real estate loan that is an "HVRCE ADC Loan." Such a loan is defined as a credit facility secured by land or improved real property that: finances or refinances the acquisition, development or construction of the property; has the purpose of providing financing to acquire, develop, or improve such real property into income producing real property; and is dependent for repayment upon future income, sale proceeds, or refinancing of the facility. The Act exempts from the definition of HVCRE ADC Loans, loans that finance the acquisition, development of construction of: one-to-four family residential properties; community-development projects; and agricultural land. Loans to acquire or improve income producing properties and commercial real estate projects that meet certain loan-to-value ratios are also exempted under certain circumstances.

Reducing Identity Fraud. The Act requires the Commissioner of the Social Security Administration to take steps to reduce the prevalence of synthetic identity fraud (which disproportionately affects minors and recent immigrants) by allowing financial institutions and other permitted entities to validate fraud protection data through a database maintained by the Commissioner.

Report on the Risk of Cyber Threats. The Act requires the U.S. Treasury to submit a report on the risk of cyber threats to financial institutions and capital markets.

Protections for Veterans, Consumers, and Homeowners

Credit Freeze. The Act amends the Fair Credit Reporting Act (FCRA) to permit a consumer to place or remove a freeze on the consumer's credit report at no cost. The protections do not extend to other types of consumer reports, such as insurance reports and employee background checks. Furthermore, the provision only applies to the "Big Three" credit bureaus (Equifax, Experian, and TransUnion) and preempts the credit freeze laws that have already been enacted in all 50 states.

Protecting Veterans' Credit. The Act extends additional protections to veterans relating to the inclusion of negative information on a veteran’s credit report due to delays in the reimbursement of medical expenses incurred in a non-Department of Veterans Affairs (DVA) facility that were submitted to the DVA for repayment. The Act establishes a new process by which a veteran can dispute negative credit report information by submitting notice along with proof of the DVA's liability for payment of the debt or documentation that the DVA is in the process of making payment for authorized medical services.

Immunity From Suit for Disclosure of Financial Exploitation of Senior Citizens. The Act shields financial institutions and their employees who have received requisite training from any civil or administrative proceeding for disclosing the suspected exploitation of a senior citizen.

PACE Financing. The Act subjects Property Assessed Clean Energy (PACE) financing to TILA ability-to-repay requirements under rules to be adopted by the CFPB. The Act defines such financing as financing to cover the costs of home improvements that result in a tax assessment on the consumer's real property. The Act would provide that, in connection with adopting regulations, the CFPB could collect such information and data that it determines is necessary and must consult with state and local governments and bond-issuing authorities.

Protecting Veterans From Predatory Lending. The Act provides that unless a lender refinancing a mortgage loan to a veteran provides the veteran with a net tangible benefit test and satisfies certain other conditions, the loan is not eligible for a VA guaranty or insurance. The requirements do not apply to cash-out refinancings.

Credit Scores. The Act establishes a validation and approval process for the use of credit scoring models by Fannie Mae and Freddie Mac.

Tailoring Regulation for Certain Bank Holding Companies

Enhanced Supervision and Prudential Standards for Certain Bank Holding Companies. The Act raises the assets threshold for systemically important banks subject to enhanced prudential standards from $50 billion to $250 billion. This amendment takes effect upon enactment for institutions with less than $100 billion in total consolidated assets, and 18 months after enactment for all other institutions. The increased threshold will reduce the number of institutions subject to enhanced standards.

The Act decreases—from three to two—the number of scenarios that must be included in both Federal Reserve-conducted and company-conducted stress tests. The Act also changes the frequency for company-conducted tests for all non-bank financial companies supervised by the Federal Reserve and bank holding companies with more than $250 billion in total assets, from annual to periodic, and for all federally regulated financial companies with more than $10 billion in total assets from annual to periodic. The Act requires the Federal Reserve's Board of Governors to, on a periodic basis, conduct supervisory stress tests of bank holding companies with total consolidated assets equal to or greater than $100 billion and total consolidated assets of less than $250 billion.

Treatment of Certain Municipal Obligations. The Act requires the federal banking agencies to treat liquid, readily-marketable, and investment grade municipal obligations as high-quality level 2B liquid assets for purposes of the final rule, titled "Liquidity Coverage Ratio: Treatment of U.S. Municipal Securities as High-Quality Liquid Assets."

Protections for Student Borrowers

Automatic default prohibition. The Act amends TILA to prohibit a creditor from declaring a default on or accelerating a private student loan solely based on the death or bankruptcy of a cosigner, and requires a holder of a private student loan to release a cosigner when notified of the student obligor's death. The term "cosigner" is defined to mean any individual who is liable for someone else's obligation without compensation regardless of how such individual is designated in the contract for that obligation (but does not include an individual who is liable for a private student loan made to consolidate pre-existing student loans), and any person whose signature is requested as a condition of granting credit or forbearing on collection. The spouse of an individual who is deemed a cosigner because he or she is liable for someone else's obligation without compensation is not deemed a cosigner if the spouse's signature "is needed to perfect the security interest in a loan." The TILA amendments will apply to private student loan agreements entered into on or after 180 days after the date on which President Trump signs the Act.

Reporting of student loans. The Act amends the FCRA to allow a consumer to request a financial institution to remove from a consumer report a default that has been reported on a private student loan if the financial institution offered a loan-rehabilitation program that includes a requirement for the consumer to make consecutive on-time monthly payments in a number that demonstrates, in the financial institution's assessment, a renewed ability and willingness to repay the loan, and the borrower satisfied the program requirements. A financial institution that is supervised by a federal banking agency must seek written approval of the rehabilitation program's terms and conditions from its supervisory agency. A consumer can avail himself or herself of the benefits available under this provision only one time per loan.

Teaching financial literacy. The Financial Literacy and Education Improvement Act (part of the Fair and Accurate Credit Transactions Act of 2003), is amended to require the Federal Education and Literacy Commission to establish best practices for methods to be used by higher education institutions to teach financial literacy skills and provide "useful and necessary information" to assist students when making student loan decisions.