President Trump Signs Dodd-Frank Reform Into Law Providing Regulatory Relief to Community Banks

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By: Brett J. Ashton

President Trump signed Senate Bill 2155, the "Economic Growth, Regulatory Relief, and Consumer Protection Act," (the "Reform Act" or the "Act") into law on May 24, 2018. The Act represents the first meaningful rollback of certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). This Alert provides a brief outline of key provisions of the Reform Act of interest to depository institutions.

TITLE I - IMPROVING CONSUMER ACCESS TO MORTGAGE CREDIT

Minimum Standards for Residential Mortgage Loans

The Reform Act adds new language to the Truth in Lending Act ("TILA") to expand the definition of a Qualified Mortgage ("QM") to now also include any residential mortgage kept in a portfolio originated by a bank or credit union with less than $10B in total consolidated assets (defined as a "covered institution") that satisfies the following standards:

- Complies with the limitations on prepayment penalties for a QM – limited to 3% in the first year, 2% in the second year and 1% in the third year, with an option available to the borrower to accept a loan without a prepayment penalty;
- Total points and fees do not exceed 3% of the loan amount;
- No negative amortization or interest only loan features; and
- The financial institution considers and documents the debt, income and financial resources of the consumer based on a fully amortizing payment schedule taking into account all taxes, insurance and assessments.

This safe harbor does not apply to a residential mortgage loan that is sold, assigned, or transferred unless the transfer is as a result of the bankruptcy of the covered institution, made to another covered institution, or pursuant to a merger.

Home Mortgage Disclosure Act Adjustment and Study

The Reform Act amends the Home Mortgage Disclosure Act by providing an exemption from providing itemized loan data for depository institutions or credit unions that originate fewer than five-hundred closed-end mortgage loans or five- hundred open-end lines of credit in each of the two preceding calendar years. The Act also provides for a study to be conducted of the effects of this change two years after its enactment.

Expansion of the Member Business Loan Exemption for Credit Unions

The Reform Act expands the existing exemption available to credit unions from limitations on member business loans for 1-4 family dwellings that are a member's primary residence to now exclude any 1-4 family dwelling.

Streamlined Loan Originator Approvals for Loan Originators Under the SAFE Act

The Reform Act amends the SAFE Mortgage Licensing Act of 2008 to permit a federally registered loan originator that moves employment from a depository institution to a non-depository institution to originate loans on a temporary basis pending approval by the appropriate state regulatory authority, provided the loan originator is still in good standing.

Escrow Requirements Relating to Certain Consumer Credit Transactions

The Reform Act provides a limited exemption from the TILA requirement that an escrow account be provided for residential mortgage loans held by a depository institution or credit union secured by a first lien if the following requirements are met:

- The institution or credit union has $10B or less in consolidated assets;
- The institution or credit union originated 1,000 or fewer loans secured by a first lien on a principal dwelling in the previous calendar year; and
- If the loan is a higher priced mortgage loan it satisfies certain additional requirements.[1]

TITLE II - REGULATORY RELIEF AND PROTECTING CONSUMER ACCESS TO CREDIT

Capital Simplification for Qualifying Community Banks

The Reform Act simplifies capital requirements for qualifying community banks with less than $10B in consolidated assets by directing the federal banking agencies to create a new benchmark for acceptable capital called the Community Bank Leverage Ratio (the "CBLR"). The Act defines the CBLR as the ratio of tangible equity capital to the average total consolidated assets, and requires the federal banking agencies to require a ratio of between 8% and 10%. The federal banking agencies are also required to establish procedures for qualifying community banks with a CBLR that falls below these requirements. Community banks that exceed this ratio will be considered in compliance with all capital and leverage requirements.

Volker Rule Exemptions - Community Bank Relief and Removing Naming Restrictions

The Reform Act provides exemptions from the Volcker Rule imposed under the Dodd-Frank Act for banks with (a) $10 billion or less in total consolidated assets; and (b) total trading assets and liabilities comprising not more than 5% of total consolidated assets. Additionally, the Act also reduces Volcker Rule restrictions on banking entity names being used for hedge funds or private-equity funds. The Reform Act provides that the following can have the same name as the banking entity that is an investment advisor to a hedge fund or private equity fund if the investment advisor is not:

- An insured depository institution;
- A company that controls an insured depository institution; or
- A company that is treated as a bank holding company.

Short Form Call Reports

The Reform Act requires the federal banking agencies to issue regulations allowing for streamlined first- and third-quarter call reports for banks with consolidated assets of up to $5B.

Option for Federal Savings Associations to Operate as Covered Savings Associations

The Reform Act amends the Home Owners Loan Act to permit a federal savings association with $20B or less in consolidated assets to elect to operate under the rules for national banks without a charter conversion.

Small Bank Holding Company Policy Statement

The Reform Act significantly expands the scope of the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement by raising its permitted consolidated asset threshold from $1B to $3B.

Examination Cycle

The Reform Act amends the Federal Deposit Insurance Act to increase the eligibility for the 18-month exam cycle from banks with consolidated assets up to $1B to banks with consolidated assets up to $3B. Online Banking Know Your Customer The Reform Act provides amendments to the federal bank secrecy laws to allow a financial institution to record personal information from a scan, copy, or image of an individual's photo ID and to store this information online when an individual initiates an online account.

High Volatility Commercial Real Estate Loans

The Reform Act creates a narrower definition applicable to acquisition, development, and construction ("ADC") loans characterized as High Volatility Commercial Real Estate ("HVCRE") exposures under regulatory capital rules. Under existing rules ADC loans considered HVCRE exposures must be risk weighted at 150%, as opposed to the

100% for other commercial loans. The Reform Act provides that for an HVCRE ADC loan to trigger higher capital requirements, it must meet both the definition of an HVCRE exposure and an HVCRE ADC loan. An HVCRE exposure is defined as "a credit facility that, prior to conversion to permanent financing, finances, or has financed the acquisition, development, or construction of real property." The Reform Act defines an HVCRE ADC loan as a real estate secured credit that:

- Primarily finances, has financed, or refinanced the ADC of real property;
- Has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and
- Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facilities.

TITLE III - PROTECTIONS FOR VETERANS, CONSUMERS, AND HOMEOWNERS

Security Freezes and Credit Reporting

The Reform Act amends the Fair Credit Reporting Act (the "FCRA") to increase the required period for a fraud alert to remain on a credit report from ninety days to one year, and to provide for a national security freeze. The Act also amends the FCRA by requiring credit reporting agencies to exclude certain medical debts incurred by veterans.

Immunity From Suit For Disclosure of Financial Exploitation of Senior Citizens

The Reform Act extends immunity to employees of financial institutions in any civil or administrative proceeding if the employee discloses a suspected exploitation of a senior citizen, and the individual made the disclosure in good faith and with reasonable care.

TITLE IV - TAILORING REGULATIONS FOR CERTAIN BANK HOLDING COMPANIES

Enhanced Supervision and Prudential Standards for Certain Bank Holding Companies

The Reform Act amends multiple sections of the Financial Stability Act of 2010 as applied to non-bank financial companies and certain bank holding companies:

- Enhanced Prudential Standards – The Act increases the consolidated asset threshold with respect to nonbank financial companies and certain bank holding companies from $50B to $250B for certain enhanced prudent standards. The Federal Reserve retains authority to impose additional prudential standards by order or regulation to any bank holding company or companies with total consolidated assets of more than $100B if they find such added standards are appropriate to mitigate risk and promote safety and soundness.
- These standards include risk-based capital requirements and leverage limits, liquidity requirements, resolution planning and exposure reporting requirements, capital public disclosures, and short term debt limits.
- Risk Committees – The Act increases the consolidated asset threshold for bank holding companies required to have mandatory risk committees from $10B to $50B.

- Company-Run Stress Tests – The Act increases the consolidated asset threshold for company-run stress tests from $10B to $250B. Additionally, these tests are now "periodic" versus semi-annual.

Supplementary Leverage Ratio for Custodial Banks

When calculating leverage ratios for custodial banks, the Reform Act requires a federal banking agency to exclude funds of a custodial bank that are deposited with a central bank. A custodial bank is "any depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, including any insured depository institution subsidiary of such a holding company."

Treatment of Certain Municipal Obligations

The Reform Act amends the Federal Deposit Insurance Act to treat certain municipal obligations as level 2B liquid assets if the obligations are liquid, readily marketable, and investment grade. Currently, level 2B liquid assets include corporate debt securities and publicly traded common-equity shares and are considered high-quality assets.

The Krieg DeVault Financial Services team is closely monitoring the rulemaking process associated with the Reform Act, and can provide further guidance on how the Act will impact your institution.

1 The other requirements are found in 12 CFR §1026.35 (b)(2)(iii)(A) and (D) (exemptions of escrow accounts that meet specified requirements) and 12 CFR §1026.35 (b)(2)(v) (requirements for an escrow account for first lien higher-priced mortgage loans).