The Financial CHOICE Act

Executive Summary

The Financial CHOICE Act (H.R. 10, the "FCA") was passed by the House by a nearly party-line vote 233-186[1] on June 8, 2017. The House adopted a Substitute Amendment to H.R. 10 and six other amendments that made several changes to the bill as reported by the House Financial Services Committee on May 4 by a party-line 34-26 vote.

The FCA includes several important measures strongly supported by the ABA, which would eliminate unnecessary compliance problems and costs for financial institutions. The bill makes several changes to the Dodd-Frank Act ("DFA"), including significant changes to the structure and powers of the Consumer Financial Protection Bureau, and repeals the Volcker Rule. The following is a summary of key provisions of the bill.

Election to Maintain High Levels of Capital

Financial institutions that attain and maintain a supplemental leverage ratio of at least 10 percent may elect to be exempted from a number of regulatory requirements, including the Basel III capital and liquidity standards and the "heightened prudential standards" applicable to larger institutions under section 165 of the Dodd-Frank Act (DFA). An institution that qualifies for, and makes this election, would be called a "qualifying banking organization" or QBO.

The FCA divides the industry into two groups with respect to how the leverage ratio is calculated: traditional banks and non-traditional banks. As explained in detail in ABA's analysis of the bill the standards for each are slightly different but the impact of these provisions is unclear and there is a concern that many banks that deserve regulatory relief would likely choose not to opt to be a QBO.

Changes to Stress Testing

A bank that qualifies and elects to be a QBO would not be subject to stress testing. For other banks the Comprehensive Capital Analysis and Review (CCAR) cycle would be extended to every two years, and the mid-year company run stress tests would be eliminated.

Regulatory Relief.

The FCA includes regulatory relief and other provisions supported by the ABA. None of these provisions are tied to the 10% supplemental capital election.

[1] One Republican voted against the bill.

- "Tailor Act". Financial regulators would be required to "tailor" regulations to fit an institution's business model and risk profile.
- "Exam Bill". An Office of Independent Examination Review would be established to permit appeals of examination decisions without fear of reprisals.
- A safe harbor from the QM rules would be provided for mortgages held in portfolio.
- Relief would be provided from overly broad "points and fees" requirements for purposes of complying with the Ability-to-Repay/QM rule.
- Section 1071 of the DFA that requires the CFPB to collect and report data on small business lending would be repealed.
- Changes to the definition to what constitutes a "high-cost mortgage" would make it possible for more lenders to better meet the borrowing demands for relatively low dollar loans.
- The Fed's Small Bank Holding Company threshold would be raised to cover institutions with less than $10 billion in consolidated assets.
- A safe harbor would be created from the mortgage escrow requirements for smaller financial institutions.
- Federal savings institutions would be provided with greater flexibility to exercise national bank powers without changing their charters.
- Highly rated and well-capitalized banks would be authorized to file short form call reports in the first and third quarters of every year.
- Smaller depository institutions would be exempt from HMDA reporting and record-keeping requirements.
- "Choke Point". The regulatory agencies would be prohibited from forcing a bank to terminate customer accounts unless there is a material reason to do so.
- Mutual Holding Company Dividends. MHCs would be placed on a more level playing field with stock holding companies through a new provision added on the House floor that would reinstate the pre-DFA regulatory treatment of Mutual Holding Companies (MHCs) with respect to minority shareholders by allowing them to pay market rate dividends.

DFA Reforms

The FCA also contains several important reforms to the DFA supported by the ABA.

- The "Volcker Rule" would be repealed.
- The CFPB would be renamed the Consumer Law Enforcement Agency (CLEA); made subject to the appropriations process; and, although it would still be governed by a single Director, that person would be removable at the will of the President.
- The agency would not have supervisory authority. The CFPB's open-ended enforcement authority would be limited to enforcing only the enumerated consumer laws and it would not have any UDAP authority at all. Beginning two years after enactment, courts would

no longer have to defer to the agency's interpretation of the DFA when they conflict with the interpretations of other agencies.
- The CFPB and SEC would not be able to prohibit arbitration.

Other Major Changes

There are several other major changes to banking law and regulation in the FCA. In some cases, the impacts of these provisions are unclear and may raise questions and concerns.

End TBTF: Several provisions are intended "to end Too Big to Fail" (TBTF), including repeal of DFA's alternative orderly liquidation provisions. This would be replaced by a special chapter in the Bankruptcy Code for failing financial institutions.

Agencies Subject to Appropriations: The FDIC, FHFA, NCUA, OCC and the non-monetary policy related functions of the Fed would be subject to the Congressional appropriations process.

Require Congressional Approval for Major Rules/Cost-Benefit Analysis: Congressional approval would be required for major rules by the financial regulators to go into effect and a cost-benefit analysis would be required for most rulemaking.

End Chevron Deference: Effective two years after enactment, the "Chevron" deference doctrine would not apply to actions by financial services regulatory agencies.

Impose Enhanced Penalties: Enhanced penalties would be applied in cases of fraud and deception. Among other things, this includes raising statutory caps for serious securities law violations, tripling the SEC fines where penalties are tied to illegal profits, increasing fines for insider trading and increasing maximum fines for violations of FIRREA involving financial institutions.

Conclusion

The Financial CHOICE Act represents a good step forward in addressing many of the key issues facing our members. In particular, the emphasis on regulatory relief and major reforms of highly problematic provisions of the Dodd-Frank Act are very helpful. However, as set forth in ABA's analysis, there are several issues that require further thought and discussion and perhaps modifications as the process moves forward.