ABA Analysis

The Economic Growth, Regulatory Relief and Consumer Protection Act
(S. 2155)¹

Except for new provisions added as part of the Manager’s Amendment adopted by the Committee, the section-by-section descriptions are provided by the staff of the Senate Banking Committee. Each description is followed by ABA staff analysis in bold-faced font.

Title I Improving Consumer Access to Mortgage Credit

This section provides that certain mortgage loans that are originated and retained in portfolio by an insured depository institution or an insured credit union with less than $10 billion in total consolidated assets will be deemed qualified mortgages under the Truth in Lending Act (TILA) while maintaining consumer protections.

Incorporating aspects of provisions in play in the House, the bill would allow banks with less than $10 billion in assets to receive Qualified Mortgage (QM) designation for loans held in portfolio. A provision adopted as part of the Manager’s Amendment provided that this would also apply when a mortgage is transferred to a wholly-owned subsidiary where the mortgage loan is considered an asset of the bank for regulatory accounting purposes. ABA has expressed strong support for House legislation providing for QM designation for all loans held in portfolio without an arbitrary asset size threshold.

Section 102. Safeguarding Access to Habitat for Humanity Homes.
This section provides that appraisal services donated voluntarily by a fee appraiser to an organization eligible to receive tax-deductible charitable contributions will be considered “customary and reasonable” under TILA.

ABA has not taken a position on this provision.

Section 103. Access to Affordable Mortgages.
This section provides a tailored exemption from appraisal requirements under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 for certain mortgage loans with a balance of less than $400,000 if the originator is unable to find a State certified or State licensed appraiser to perform an appraisal after a good faith effort to do so.

¹ As reported 16-7 by the Senate Banking Committee on December 5, 2017.
ABA has supported similar legislation in the House (H.R. 3221 by Rep. Kustoff), which has been marked up and reported by the House Financial Services Committee. While the Kustoff bill would apply the exception to mortgages under $250,000, this section would apply a higher threshold of $400K. It also would require a lender to document that a qualified appraiser was not available within a reasonable time period.

Section 104. Home Mortgage Disclosure Act Adjustment and Study.
This section provides regulatory relief to small depository institutions that have originated less than 500 closed-end mortgage loans or less than 500 open-end lines of credit in each of the two preceding calendar years by exempting them from certain disclosure requirements under the Home Mortgage Disclosure Act. It also directs the Comptroller General to conduct a study examining the impact on the amount of data available.

This section is similar to Senate legislation supported by the ABA (S. 1310, introduced by Senators Rounds and Heitkamp). Except a GAO study is added.

Section 105. Credit Union Residential Loans.
This section provides that a 1-to-4-family dwelling that is not the primary residence of a member will not be considered a member business loan under the Federal Credit Union Act.

ABA strongly opposes this provision, as increased business lending would allow tax-exempt credit unions to allocate resources to multi-million-dollar business loans, funding condo developments instead of the people of modest means emphasized in their charter.

Under current law, if a property is not owner-occupied, a credit union loan to purchase a one-to four-unit (multifamily) building is considered a business loan that counts against the statutory business loan cap. This makes sense: necessarily, these are speculative investment properties designed to collect income if they are not owner occupied. They are loans to operate a business, plain and simple. This section would allow these loans to be characterized as residential loans that do not count against the cap. A significant portion of credit union business loans are for small apartment buildings or other rental properties. By exempting these loans from the cap entirely, coupled with NCUA’s regulatory changes that provide a way to manage/evade the cap, credit unions will have much greater room to navigate around the effect of the cap. As a practical matter, this provision layers on the NCUA regulatory change to make the business lending cap irrelevant in all but a very narrow subset of cases.

Section 106. Eliminating Barriers to Jobs for Loan Originators.
This section provides that an individual will be deemed to have temporary authority to act as a loan originator for 120 days under the S.A.F.E. Mortgage Licensing Act of 2008 if such person is (1) a registered loan originator who becomes employed by a state-licensed mortgage company or (2) a state-licensed loan originator who becomes employed by a state-licensed mortgage company in a different state.
ABA has not taken a position on this provision.

**Section 107. Protecting Access to Manufactured Homes.**
This section amends TILA to exclude from the definition of “mortgage originator” an employee of a retailer of manufactured or modular homes who does not receive compensation or gain for taking residential mortgage loan applications while maintaining consumer protections.

ABA has not taken a position on this provision.

**Section 108. Real Property Retrofit Loans.**
This section applies consumer protections to real property retrofit loans.

ABA has supported similar legislation (S. 838, introduced by Senator Cotton). While this provision differs from S. 838 it still achieves the goal of requiring that Property Assessed Clean Energy (PACE) loans meet ability to repay standards.

**Section 109. Escrow Requirements Relating to Certain Consumer Credit Transactions.**
This section provides an exemption from escrow requirements under TILA for certain loans made by an insured depository institution or an insured credit union.

This section would only apply to insured institutions with $10 billion or less in assets, and that have originated 1000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year. However, ABA supports this provision as it would reduce cost and regulatory burden for banks and their customers. Many smaller banks lack the resources to meet the Dodd-Frank Act escrow requirements.

**Section 110. No Wait for Lower Mortgage Rates.**
This section (1) removes the three-day wait period required for the combined TILA/RESPA mortgage disclosure if a creditor extends to a consumer a second offer of credit with a lower annual percentage rate, and (2) expresses the sense of Congress that the CFPB should endeavor to provide clearer, authoritative guidance with respect to certain issues.

ABA supports this provision as it would relieve unnecessary regulatory delays when a borrower receives a lower rate. The provision also directs the Bureau to provide clear and authoritative guidance on various unclear TILA RESPA Integrated Disclosures (TRID) matters.

**Title II Regulatory Relief and Protecting Consumers Access to Credit**

**Section 201. Capital Simplification for Qualifying Community Banks.**
This section requires that the Federal banking agencies establish a community bank leverage ratio of tangible equity to average consolidated assets of not less than eight percent and not more than 10 percent. Banks with less than $10 billion in total consolidated assets who maintain
tangible equity in an amount that exceeds the community bank leverage ratio will be deemed to be in compliance with capital and leverage requirements.

Initial estimates indicate that as much as 90% of banks under $10 billion could be eligible for relief if the agencies were to set the leverage ratio threshold at 8%. ABA strongly supports simplification of capital rules for community banks but also believes that capping relief at $10 billion is arbitrary and unnecessary.

Section 202. Limited Exception for Reciprocal Deposits.
This section provides that certain reciprocal deposits will not be considered to be funds obtained, directly or indirectly, by or through a deposit broker under the Federal Deposit Insurance Act.

Section 29 of the Federal Deposit Insurance Act, as implemented by the FDIC’s regulations, places restrictions on the acceptance by insured depository institutions of deposits obtained through deposit brokers, which are deemed to be “brokered deposits.” This section updates Section 29 on a targeted basis by excluding reciprocal deposits from the definition of “brokered” and permitting banks that have dropped from well-capitalized to adequately-capitalized to maintain their current level of reciprocal deposits without obtaining a waiver from the FDIC. This will help smaller banks raise stable funding.

ABA supports section 202 as it is an important step forward in updating Section 29. However, we also believe that section 29 needs a broader update since it does not fully update the definition of brokered deposits. Since section 29 was enacted over 25 years ago, both technology and the structure of banking organizations have changed significantly. However, regulatory interpretations of Section 29 still rely on outdated concepts. As a result, the classification of a deposit as brokered has expanded significantly to include deposits that lay outside what was originally intended. This outdated definition of brokered deposits has an adverse impact on banks causing implications for other regulatory requirements such as the cost of deposit insurance and liquidity standards. ABA will continue to work to update and improve section 29.

Section 203. Community Bank Relief.
This section provides that banking entities will be exempt from Section 13 of the Bank Holding Company Act if they have (1) less than $10 billion in total consolidated assets, and (2) total trading assets and trading liabilities that are not more than five percent of total consolidated assets.

Although asset-based thresholds should not be used to demarcate permissible activities, ABA has supported relief from unnecessary Volcker rule restrictions. This section would provide an important first step in providing relief from the Volcker Rule's prohibitions on those banks whose trading and investment activities do not pose the financial risks that the Volcker Rule legislation originally was intended to address.
Section 204. Removing Naming Restrictions.
This section permits certain funds to share the same name or variation of the same name as their bank-affiliated investment adviser.

The current Volcker Rule restriction on name-sharing places asset managers and funds affiliated with banks at a competitive disadvantage. This section would allow a hedge fund or private equity fund to share the same name as an investment adviser that is a banking entity, which would allow a bank's investment advisory affiliate to share the same name as certain funds for marketing purposes. ABA supports this provision as part of the Volcker Rule reform efforts.

Section 205. Short Form Call Reports.
This section requires the Federal banking agencies to reduce reporting requirements for depository institutions with less than $5 billion in total consolidated assets that satisfy other criteria the Federal banking agencies deem appropriate.

ABA has strongly supported legislative and regulatory efforts to provide relief from unnecessary Call Report provisions. The agencies have been engaged in a multi-pronged effort to relieve burdens for community banks, defined as institutions with less than $1 billion in assets. This provision would direct the agencies to expand that effort to more banks.

Section 206. Option for Federal Savings Associations to Operate as Covered Savings Associations.
This section permits Federal savings associations with less than $15 billion in total consolidated assets to elect to operate with the same powers and duties as national banks without being required to convert their charters.

ABA has long championed greater flexibility for HOLA chartered institutions to adapt their business models to changing demographics and changing needs in their communities. Federal saving associations have a long, proud history of being responsive to their communities’ needs, and this legislation will help them to enhance and continue that record.

Section 207. Small Bank Holding Company Policy Statement.
This section raises the consolidated asset threshold of the Federal Reserve’s Small Bank Holding Company Policy Statement from $1 billion to $3 billion.

This section directs the Federal Reserve to raise the threshold for the Small Bank Holding Company Policy Statement from $1 billion to $3 billion. The $3 billion cap is an arbitrary number, but ABA has been supportive of raising this threshold in House and Senate legislation. For example, S. 1284 by Senators Hatch, King and Nelson would raise the exception to $5 billion in assets.
Section 208. Application of the Expedited Funds Availability Act.
This section applies the Expedited Funds Availability Act, which governs bank deposit holds, to American Samoa and the Commonwealth of the Northern Mariana Islands.

ABA has not taken a position on this provision.

Section 209. Small Public Housing Agencies.
This section streamlines certain requirements for small public housing authorities operating in rural areas.

ABA has not taken a position.

Section 210. Examination Cycle.
This section raises the consolidated asset threshold from $1 billion to $3 billion for well managed and well capitalized banks to qualify for an 18-month examination cycle.

ABA continues to be concerned that regulatory relief continues to be defined by a bank’s asset size but supports raising the current $1 billion threshold. It also supports a change made by the Manager’s amendment that expands the agencies' discretionary authority to apply this provision to a wider range of institutions than allowed under current law that have received either a “good” or an “outstanding” composite rating.

This section would amend Section 18 of the Securities Act of 1933 to apply the exemption from State regulation of securities offerings to securities listed or authorized for listing on “a national securities exchange” rather than naming specific securities exchanges.

ABA has not taken a position on this provision.

*Section 212. International Insurance Capital Standards Accountability.*
This section was added by the Manager’s Amendment and is intended to ensure transparency and accountability in international insurance standards discussions by the Federal Reserve and U.S. Treasury Department. It establishes an Insurance Policy Advisory Committee on International Capital Standards and Other Insurance Issues at the Fed composed of not more than 21 members representing the various sectors of the insurance industry. The Fed and Treasury Department are required to submit various reports to Congress on insurance regulatory or standard-setting discussions at international standards-setting bodies, including descriptions of any position taken by the Fed and Treasury during these discussions. The Fed and Treasury and the new Federal Insurance Office are also required to consult with the NAIC and report to Congress on the impact

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*Donates a section added by the Committee as part of the Manager’s Amendment adopted during the December 5 markup.*
on consumers and markets in the U.S. before supporting or adopting any key elements in any international insurance proposal.

ABA supports increased transparency and coordination between the NAIC and the regulatory bodies to encourage harmonization and a robust insurance market.

*Section 213. Budget Transparency for the NCUA.*
This section was added by the Manager’s Amendment and would require the National Credit Union Administration (NCUA) to publish a detailed business-type budget and hold a public hearing to receive comments from the public on its budget on an annual basis.

ABA has not taken a position on this provision.

*Section 214. Making Online Banking Initiation Legal and Easy.*
This section was added by the Manager’s Amendment and provides that when an individual initiates a request through an online service to open an account with, or obtain a product or service from, a financial institution, the financial institution is authorized to record personal information from a scan of the person’s driver’s license or other identification, and store that information to: (1) verify the authenticity of the driver’s license or personal information card; (2) verify the identity of the individual; and (3) comply with a legal requirement to record, retain, or transmit personal information in connection with opening an account or obtaining a financial product or service. This provision preempts any conflicting state law.

ABA supports this needed update to facilitate opening online accounts and making online transactions. When an individual makes an online request this section would allow financial institutions to record personal information from the swipe of a driver’s license or personal identification card and retain it for the purposes of opening an account with a financial institution or obtaining a related banking product or service. ABA supports legislation to help consumers access financial services products in a safe and efficient manner, and this section is mutually beneficial to our members and their customers, as it will help expand access to crucial banking services for underbanked populations by offering similar retail services through mobile technology.

Title III Protections for Veterans, Consumers, and Homeowners

Section 301. Protecting Consumers’ Credit.
This section provides for free placement and removal of security freezes.

ABA strongly supports protecting consumers from fraud and legislation that would require all entities holding and using sensitive consumer personal and financial to protect that data. However, ABA is analyzing this particular provision for any unintended consequences. In particular, the Manager’s Amendment modified the original provision to provide for unlimited free freezes instead of one year. It also would apply to prescreening
which consumers might not understand. Also, the consumer disclosure language explaining the freeze is unclear. Overall, we are concerned that consumers will not understand that freezes may delay credit applications and approvals and that consumers may not receive beneficial offers.

Section 302. Protecting Veterans’ Credit.
This section amends the Fair Credit Reporting Act to exclude from consumer report information: (1) certain medical debt incurred by a veteran if the hospital care or medical services relating to the debt predates the credit report by less than one year; and (2) a fully paid or settled veteran's medical debt that had been characterized as delinquent, charged off, or in collection. It also establishes a dispute process for consumer reporting agencies with respect to such veterans’ medical debt.

ABA strongly supports efforts to protect the finances of veterans. However, ABA also has longstanding concerns about any legislation that attempts to dictate criteria for determining creditworthiness and that eliminates accurate information in credit reports that may be predictive of whether a borrower will repay a loan. Decreasing the predictability and accuracy of credit reports increases credit costs and potentially would reduce access to credit over the long term.

The Manager’s Amendment attempts to address ABA’s and others’ concerns. For example, originally, “medical debt” was defined broadly to include any debt that might be related to “health care,” including general expenses (e.g. travel, hotel, health club expenses). The definition has been narrowed” to include only debt owed to a “health care provider” that was submitted to the VA. In addition, the original provision required credit bureaus to identify consumers as veterans, though no such usable database is available. As reported, this section now requires the VA to create a database to allow credit bureaus to verify whether a debt is a veteran’s medical debt.

Finally, the legislation is unnecessary as the marketplace has already addressed concerns related to a clear definition of “medical” debt. Debt identified as “medical” (based on a clear definition and coded as such) is not reported for six months (180 days) and new scoring models ignore all paid debt identified as medical.

Section 303. Aiding Senior Protection.
This section extends protections to certain individuals who, in good faith and with reasonable care, disclose the suspected exploitation of a senior citizen to a regulatory or law-enforcement agency.

ABA supports the concept of protecting seniors but has identified changes that must be made before it can support this provision. In particular: a clear definition of who can report possible elder abuse under the safe harbor; clear definition of what is meant by “exploitation;” reconciliation which customers are covered with existing banking
regulation; a safe harbor without requiring demonstration of good faith and reasonable care; resolution of the conflict between SAR confidentiality requirements and reporting to adult protective services; and, clarification of the standards for training that qualifies an individual to report suspected elder abuse.

This section permanently restores the Protecting Tenants at Foreclosure Act, which was repealed as a result of a sunset provision that took effect on December 31, 2014.

This provision would re-instate a requirement for a new owner of foreclosed property to give tenants 90 days’ notice to allow them time to move. Without the provision, state law applies and each state imposes different requirements on the notice required to be given to tenants in properties about to be foreclosed. ABA has not taken a position on this provision.

Section 305. Remediating Lead and Asbestos Hazards.
This section authorizes the Department of Treasury to use loan guarantees and credit enhancements as part of the Hardest Hit Fund to remediate lead and asbestos hazards in residential properties.

ABA has not taken a position on this provision.

*Section 306. Family Self-Sufficiency Program.
This section was added by the Manager’s Amendment and is intended to cut costs at the Department of Housing and Urban Development (HUD) by eliminating redundant programs and expanding the educational opportunities offered to FFS enrollees.

ABA has not taken a position on this section.

*Section 307. Rehabilitation of Qualified Education Loans.
This section was added by the Manager’s Amendment and would allow a seriously delinquent private student loan borrower to make a one-time request to a financial institution to remove negative reporting from their credit report after making a series of on-time payments.

As noted with respect to Section 302 above, ABA has longstanding concerns about any legislation that attempts to dictate criteria for determining creditworthiness and that eliminates accurate information in credit reports that may be predictive of whether a borrower will repay a loan. Decreasing the predictability and accuracy of credit reports increases credit costs and potentially would reduce access to credit over the long term. ABA is studying the impact of this section and potential unintended consequences.
Title IV  Tailoring Regulations for Certain Bank Holding Companies

Section 401. Enhanced Prudential Standards for Certain Bank Holding Companies.
This section raises the threshold for applying enhanced prudential standards from $50 billion to $250 billion. Bank holding companies with total consolidated assets between $50 billion and $100 billion will be exempt from enhanced prudential standards immediately, and bank holding companies with total consolidated assets between $100 billion and $250 billion will be exempt 18 months after the date of enactment (“effective date”). For bank holding companies with total consolidated assets between $100 billion and $250 billion, the Federal Reserve will (1) have the authority to apply enhanced prudential standards after the effective date, (2) be required to conduct a periodic supervisory stress test after the effective date, and (3) have the authority to exempt firms from enhanced prudential standards prior to the effective date.

It is unfortunate that this section includes arbitrary asset thresholds rather than risk-based legislation such as the Systemic Risk Designation Improvement Act (S. 1893 by Senators Heitkamp and Perdue) and the Tailor Act (S. 366 by Senator Rounds) supported by the ABA. However, in raising the threshold for designation as a systemically important financial institution (SIFI) from $50 billion to $250 billion in assets, and ending company run stress tests from banks under $250 billion in assets, it provides the first meaningful relief to many of our members since the passage of the Dodd-Frank Act and can serve as a stepping stone to additional changes in the future.

This section is rather complicated and its full ramifications are still being analyzed by ABA staff. However some provisions to note:

- Although DFA Section 165 thresholds are raised from $50 billion to $250 billion, the Fed retains the right to apply by order or rule enhanced standards to bank holding companies with $100 billion or more in assets to promote or mitigate financial stability and safety and soundness.

- In addition to the above, there are “Rule of Construction” provisions that preserve the Fed’s authority under DFA section 165 and “any other law” to tailor or differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including subsidiaries), size, and any other risk-related factors it deems appropriate. Arguably, this would leave room for the Fed to impose higher regulatory standards on any bank holding company or group of bank holding companies below $250 billion in assets.

- These changes are effective upon enactment with respect to bank holding companies with less than $100 billion in assets, but for those with $100 billion or more in assets the effective date is 18 months after enactment. However, the Fed may exempt any
BHC with less than $250 million in assets from enhanced standards before that date.

- Supervisory stress tests would still be conducted on a “periodic basis” for bank holding companies with total consolidated assets of $100 billion to $250 billion.
- The trigger for requiring banks to establish risk committees is raised from $10 billion to $50 billion in assets.
- The $50 billion restriction on acquiring voting shares of certain banking companies having assets of $10 billion or more would be raised to $250 billion in assets rather than $50 billion.
- Any BHC, regardless of size, that has been identified as a global systemically important BHC (GSIB) under section 217.402 of title 12 of the Code of Federal Regulations would still be subject to the enhanced prudential standards of the DFA.

Section 402. Supplementary Leverage Ratio for Custodial Banks.
This section requires the Federal banking agencies to amend the supplementary leverage ratio final rule (SLR) to specify that funds of a custodial bank that are deposited with a central bank will not be taken into account when calculating the SLR, subject to limitations.

This section is similar to ABA-supported legislation in the House (H.R. 2121 by Rep. Rothfus). It would allow custody banks to exclude central bank deposits from the denominator of the supplementary leverage ratio. Custody banks, and banks that provide custody services, occupy a critically important space in our financial system. While the relief is limited to custody banks, ABA believes this would be a first step in providing relief for all banks who engage in custody activities. It recognizes that the rulemakings implemented post-financial crisis and post-Dodd Frank Act are a poor fit for custody activities resulting in hundreds of millions of dollars of unproductive spending with little impact on financial stability and this provision would provide some clarity in the rules. We note that this provision goes further than the House version by containing a "rule of construction" clause that emphasizes that the agencies are not limited in their authority "to tailor or adjust the supplementary leverage ratio, or any other leverage ratio for any company that is not a custodial bank." While this clause is important on the regulatory front, ABA will continue to work with Members of the Committee to improve this provision.

Section 403. Treatment of Certain Municipal Obligations.
This section directs the FDIC, the Federal Reserve, and the OCC to classify qualifying investment-grade, liquid and readily-marketable municipal securities as level 2B liquid assets under the agencies’ Liquidity Coverage Ratio final rule.
While the Fed has issued a rule allowing certain municipal securities to be counted as High Quality Liquid Assets (HQLAs) – a step ABA has long advocated – this section would improve the situation by applying this to all banking agencies. Due to the role banks play as investors in municipal markets, expansion of the HQLA definition is expected to be beneficial for all banks – not just those covered by the Liquidity Coverage Ratio.

Title V Studies

This section requires the Treasury Department to submit a report to Congress on the risks of cyber threats to financial institutions and the U.S. capital markets.

Financial institutions of all sizes are under constant attack by hackers, criminals and even nation states and literally spend millions of dollar a year protecting our systems and our customers. Banks support efforts by the government to work with the private sector to improve overall cybersecurity and are supportive of a study and report by the Treasury Department.

Section 502. SEC Study on Algorithmic Trading.
This section requires the SEC to report to Congress on the risks and benefits of algorithmic trading in the U.S. capital markets.

ABA has not taken a position on this provision.

*Section 503. GAO Report on Consumer Reporting Agencies.
This section was added by the Manager’s Amendment and would require the GAO to submit to Congress a report on the supervisory and regulatory scheme of consumer reporting agencies no later than one-year after enactment. This includes a review of “any gaps” in the rulemaking, supervisory and enforcement authority of Federal and State agencies under the GLBA and any other relevant laws.

ABA is supportive of this study.