

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

The Senate passed the Economic Growth, Regulatory Relief and Consumer Protection Act (S. 2155) by a strong, bipartisan 67-31 vote on March 14. Although several dozen amendments were filed, the only amendment adopted was a Substitute amendment offered by Chairman Crapo that added a few new provisions, modified several others and made a number of technical and clarifying changes to the bill reported by the Committee.<sup>[1]</sup>

The following is a summary of key provisions of interest to ABA member banks.

### **Title I. Improving Consumer Access to Mortgage Credit**

**QM Safe Harbor.** Designate mortgages held in portfolio as Qualified Mortgages (QM) for banks with less than \$10 billion in assets subject to some documentation and product limitations. 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.

**Rural Appraisal Relief.** Relief from appraisal requirements for some real estate transactions (those under \$400,000) in rural areas is provided, but to qualify lenders must show that three appraisers were not available within 5 days beyond a reasonable time frame (determined by the bank) for an appraisal.

**HMDA Disclosure Relief.** Small volume originators (less than 500 mortgages/500 open-end lines of credit for each of the two preceding years) are exempt from new HMDA disclosures added by the Dodd-Frank Act (DFA). However, banks that have received a “needs to improve” CRA rating during each of the last 2 most recent exams or a “substantial non-compliance” rating on the one most recent exam must still comply with the additional HMDA disclosures.

**TILA Escrow.** Provides an exception to TILA escrow requirements for banks with less than \$10 billion in assets, and that have originated 1000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year.

**TILA Waiting Period.** Removes 3-day waiting period requirement in TILA/RESPA mortgage disclosures if the consumer receives a second offer of credit from the same lender with a lower rate.

**Credit Union Residential Loans.** A 1-to-4 family dwelling that is not the primary residence of a member of a credit union will not be considered a member business loan under the Federal Credit Union Act. ABA strongly opposed this provision.

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<sup>[1]</sup> S. 2155 was reported 16-7 by the Senate Banking Committee on December 5.

## **Title II. Regulatory Relief and Protecting Consumer Access to Credit**

**Community Bank Capital Simplification.** Simplify capital calculations for community banks with less than \$10 billion in assets. Federal banking agencies are required to establish a community bank leverage ratio of tangible equity to average consolidated assets of not less than 8 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 well capitalized and in compliance with risk based capital and leverage requirements.

**Reciprocal Deposits.** Help smaller banks raise stable funding by providing an exception for reciprocal deposits from FDIC restrictions on acceptance of brokered deposits.

**Volcker Exemption.** Exempt banks with less than \$10 billion in assets from Volcker Rule requirements, and eliminate the Volcker naming rights restrictions for all asset managers and funds affiliated with banks.

**Short Form Call Reports.** Raise eligibility for Short Form Call Reports from \$1 billion to banks with \$5 billion in assets.

**Mutual Flexibility.** The threshold for federal savings associations to choose to operate and be regulated like national banks without changing their charter is raised to \$20 billion in total assets.

**Fed Small Bank Holding Company Policy.** Raise eligibility for use of the Fed's Small Bank Holding Company Policy Statement from \$1 billion to banks with \$3 billion in assets.

**Exam Cycle.** Raise eligibility for the 18-month exam cycle from \$1 billion to banks with \$3 billion in assets.

**Insurance Regulatory Policy.** Increase transparency and coordination between the NAIC and the regulatory bodies to encourage harmonization and a robust insurance market.

**Opening Accounts Online.** Make opening new accounts and engaging in transactions online easier – e.g., by authorizing the use of scanned driver's licenses to meet identity verification requirements.

**HVCRE Loan Capital Treatment.** Definitions pertaining to high volatility commercial real estate (HVCRE) loans, which require larger capital allocations, are clarified so that only those acquisition, development, or construction loans with increased risk are subject to a higher risk weight.

**Combat Synthetic Fraud.** To combat "synthetic identity fraud", the Social Security Administration (SSA) is directed to create a new database containing people's names, dates of birth, and social security numbers, for use in responding to identity-verification requests.

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**Cybersecurity Study.** The Treasury Department is required to submit a report to Congress on the risks of cyber threats to financial institutions and the U.S. capital markets.

### **Title III. Protections for Veterans, Consumers and Homeowners**

**Credit “Freeze”.** Consumers are provided free placement and removal of security “freezes”.

**Credit Monitoring.** Active duty service members are provided free and ongoing credit monitoring and the FTC is required to prescribe implementing rules.

**Predatory Lending Protection.** VA lenders are required to demonstrate a material benefit to consumers when a mortgage is refinanced.

**Foreclosure Relief for Veterans.** Makes permanent foreclosure relief for service members under the Servicemember Civil Relief Act. This includes a stay of proceedings and period of adjustment of obligations relating to real or personal property and a period of relief from sale, foreclosure or seizure of that property.

**Reinstatement of the Protecting Tenants at Foreclosure Act.** The Protecting Tenants at Foreclosure Act, which expired on Dec. 31, 2014, is reinstated prospectively. The Act provides tenants in foreclosed properties with protections against eviction.

**Real Property Retrofit Loans.** This section requires CFPB to apply Ability to Re-Pay consumer protections to real property (PACE) retrofit loans.

**Credit Scoring Models.** Fannie Mae and Freddie Mac are required to develop processes for updating the credit-scoring models used in determining whether to purchase a residential mortgage.

### **Title IV. Tailoring Regulations for Certain Bank Holding Companies**

**SIFI Threshold.** Raise the threshold for designation as a systemically important financial institution from \$50 billion to \$250 billion in assets.

**Stress Tests.** End company run stress tests entirely for banks with under \$250 billion in assets and change the frequency of supervisory stress tests to “periodic” for banks from \$100 to \$250 billion in assets.

**Foreign Bank Regulation.** A rule of construction was added to clarify that the changes to the Dodd-Frank enhanced prudential standards do not limit Federal Reserve authorities under Dodd-Frank regarding foreign banks with \$100 billion or more in total assets.

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**Custodial Bank Deposits.** Require the banking agencies to specify that funds of a custodial bank that are deposited with a central bank will not be taken into account when calculating the supplementary leverage ratio.

**Liquidity Coverage Ratio.** Direct the FDIC, Fed and OCC to classify investment-grade municipal securities as level 2B liquid assets under the Liquidity Coverage Ratio (LCR).

### **Title V. Encouraging Capital Formation**

**Disclosure Relief.** Relieve some disclosure burdens for issuers that offer securities to employees through compensation plans.

**Access to Capital.** Make it easier for certain smaller public reporting companies, potentially including banks or bank holding companies, to take advantage of exemptions from registration under the Securities Act of 1933 for certain smaller securities issuances.

### **Title VI. Protections for Student Borrowers**

**Cosigner Protection.** Require private lenders to release cosigners from obligations upon the death of the student borrower and prohibit them from declaring a default or accelerating a debt against a student borrower solely on the basis of the death or bankruptcy of a cosigner.

**Rehabilitation of Private Loans.** Allow a seriously delinquent private student loan borrower to make a one-time request to a financial institution to remove negative reporting from his or her credit report after making a series of on-time payments.