CALIFORNIA BANKERS ASSOCIATION
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Regulatory Compliance Bulletin

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

Highlights of the New Law

The Economic Growth, Regulatory Relief and Consumer Protection Act ("the Act"), (S.2155), was signed into law on May 24, 2018[1], and was widely welcomed by banks of all sizes as providing relief from many of the more restrictive provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was enacted in 2010.[2]

While many of the Act's provisions became effective immediately upon enactment, portions of the Act will require further regulatory implementation. This Bulletin will highlight some of the more consequential provisions of the Act, and also identify those provisions pursuant to which regulatory rulemaking has taken place, or is in the process of taking place.

Stress Tests and Enhanced Prudential Standards

Section 401 of the Act amends Section 165 of the Financial Stability Act of 2010[3] to raise the threshold for the automatic designation of a domestic bank holding company or foreign bank operating in the U.S. as a "systemically important financial institution" (SIFI) by increasing the asset threshold to which the Federal Reserve Board applies enhanced prudential standards, from $50 billion to $250 billion. The Act also allows the FRB to tailor requirements for banks with between $100 billion and $250 billion in assets. Further, the Act increases the asset threshold from $10 to $250 billion for which company-run stress tests are required.

Finally, the Act increases the asset threshold for mandatory risk committees from $10 billion to $50 billion.

Qualified Mortgage Safe Harbor

Section 101 of the Act amends Section 129C(b)(2) of the Truth in Lending Act (TILA)[4] such that, for banks with less than $10 billion in assets, certain ability-to-pay requirements of the Qualified Mortgage Rule are waived so long as: (i) the loan is originated and retained by the institution, (ii) the loan complies with existing requirements involving prepayment

[1] Public Law No. 115-174
[2] Public Law No. 111-203
[3] 12 U.S.C. §5365
[4] 15 U.S.C. §1639c(b)(2).

penalties and points and fees, and (iii) the loan does not have negative amortization or interest-only terms. For the ability-to-pay requirements to be waived, the institution must still consider and verify the debt, income and financial resources of the consumer.

HMDA Disclosure Relief

Section 104 of the Act amends the Home Mortgage Disclosure Act of 1975[5] to exempt small volume originators (fewer than 500 mortgages/500 open-end lines of credit for each of the two preceding years) from certain HMDA disclosure requirements (i.e., borrower's credit scores, race, ethnicity and gender, underwriting processes and loan pricing information), so long as they have not received "needs to improve" Community Reinvestment Act (CRA) ratings during each of the two most recent exams or a "substantial non-compliance" rating on its most recent CRA exam. In addition, section 108 of the Act amends section 129D of TILA to exempt from escrow requirements of that section certain banks with less than $10 billion in assets that originate 1,000 or fewer loans secured by a first lien on a principal residence.

On July 5, 2018 the Federal Reserve, the OCC and the FDIC each issued statements acknowledging the partial exemptions from HMDA data reporting requirements.

On August 31, 2018, the CFPB issued an interpretive ruling clarifying certain aspects of these exemptions, which became effective on September 7, 2018.[6]

Rural Appraisal Relief

Section 103 of the Act amends Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA).[7] Title XI which requires banks to use state certified or licensed appraisers to perform appraisals in federally related transactions.

The Act states that relief from FIRREA's appraisal requirements are available for federally-related rural real estate transactions under $400,000 if no appraisers are available within five days beyond a customary and reasonable time frame.

Revised Treatment of Reciprocal Deposits

Section 202 of the Act amends Section 29 of the Federal Deposit Insurance Act (FDIA)[8] to clarify that, subject to some conditions, reciprocal deposits of another institution obtained through the use of a deposit broker with a deposit placement program designed to obtain maximum FDIC deposit insurance wouldn't be considered brokered deposits subject to the FDIC brokered-deposit restrictions if the deposits don't exceed the lesser of $5 billion or 20 percent of the depository institution's total liabilities.

[5] 12 U.S.C. §2803.

[6] 83 Fed. Reg. 45325

[7] 12 U.S.C. §3331 *et.seq.*

[8] Section 29 of the FDIA is codified at 12 U.S.C. §1831f.

The FDIC has issued a proposed rule[9] regarding the circumstances under which certain reciprocal deposits would not be considered brokered deposits. **Comments on the proposed rule are due on or before October 26, 2018.**

High Volatility Commercial Real Estate Loans: Capital Treatment

Section 214 of the Act amends the FDIA to add a new Section 59, defining an High Volatility Commercial Real Estate Acquisition, Development and/or Construction loan (HVCRE ADC loan) as a loan secured by land or improved real property so long as (1) the loan primarily finances or refinances the acquisition, development, or construction of real property; (2) the purpose of the loan is to provide financing to acquire, develop or improve the real property into income-producing property; and (3) repayment of the loan depends upon future income or sales proceeds from, or refinancing of, the real property.

Section 214 prevents federal banking regulators from requiring banks to assign an increased risk weight (150% under the Basel III capital rules) to HVCRE exposure unless the exposure is an HVCRE ADC loan. This change in law reduces the amount of capital banks must hold for HVCRE loans that are performing and don't otherwise create a risk to the institution.

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (collectively, the "agencies") have issued proposed amendments to the regulatory capital rule that adopt the Act's definition of an HVCRE ADC loan and make other conforming changes.[10] **Comments on the agencies' proposed rules are due November 27, 2018.**

Eligibility for Longer Examination Schedule

Section 210 of the Act amends Section 10(d) of the FDIA[11] to increase the eligibility for an 18-month exam schedule (instead of a 12-month schedule) for banks with total assets of less than $3 billion provided the bank is well-managed and well-capitalized. The prior law provided for an extended exam cycle for banks with consolidated assets of no more than $1 billion.

Election by Certain Federal Savings Associations to Operate Similarly to National Banks

The Act adds new Section 5A to the Homeowners Loan Act (HOLA).[12] Section 5A allows a federal savings association (FSA) with total consolidated assets of $20 billion or less as of December 31, 2017 to elect to operate as a "covered savings association" (CSA). A CSA has the same rights and privileges as a national bank that has its main office situated in the same location as the home office of the CSA. A CSA is subject to the same duties, restrictions, penalties, liabilities, conditions and limitations that would

[9] See 83 Fed. Reg. 48562

[10] See 83 Fed. Reg. 49160

[11] 12 U.S.C. §1820(d)

[12] 12 U.S.C. §1461 *et seq.*

apply to a national bank; however, the CSA retains its FSA charter and continues to be treated as an FSA for purposes of governance.

The OCC is inviting comment on a proposed rule implementing new section 5A of HOLA.[13] **Comments are due on or before November 19, 2018.**

Small Bank Holding Company Policy Statement: Increased Eligibility

Section 207 of the Act raises the asset threshold for application of the Federal Reserve Board's Small Bank Holding Company Policy statement for qualified bank holding companies from $1 billion to $3 billion. Bank holding companies that qualify for treatment under the Federal Reserve Board's Small Bank Policy Statement, (i) can use greater debt for acquisitions; (ii) qualify for expedited and waived application and notice filings; and, (iii) are exempt from the current leverage and risk-based capital requirements set forth in Section 171 of the Dodd-Frank Act.

Eligibility to Use Short Form Call Reports

The Act amends Section 7(a) of the Federal Deposit Insurance Act[14] to allow banks with less than $5 billion in assets to use short form call reports. The previous eligibility threshold was $1 billion.

Treatment of Certain Municipal Obligations as High-Quality Liquid Assets

The Act amends Section 18 of the Federal Deposit Insurance Act[15] to require that certain municipal obligations be treated as level 2B liquid assets (i.e., high quality assets) if they are liquid, readily marketable, and investment grade.

Under prior law, corporate debt securities and publicly traded common-equity shares, but not municipal obligations, could be treated as level 2B liquid assets.

The OCC, the Federal Reserve, and the FDIC issued their interim final rule implementing these provisions on August 31, 2018.[16]

Exceptions to TILA Escrow Requirements

The Act amends Section 129D of the Truth in Lending Act (TILA)[17] to exempt residential mortgage loans by financial institutions that have assets of $10 billion or less, originated 1,000 or fewer mortgages in the preceding year, and meet other specified requirements.[18]

Volker Rule Exemption

Section 203 of the Act amends section 619 of the Dodd-Frank Act (i.e., the Volker Rule) by exempting banks with $10 billion or less in consolidated assets that have no more than 5 percent of their total

[13] See 83 Fed. Reg. 47101
[14] 12 U.S.C. §1817(a)
[15] 12 U.S.C. §1828
[16] 83 Fed. Reg. 44451
[17] 15 U.S.C. §1639d
[18] See 12 CFR §1026.35(b)(2)(iii)(A),(D) and 12 CFR §1026.35(b)(2)(v)

consolidated assets in trading assets and liabilities from restrictions on proprietary trading as well as ownership of and affiliation with hedge funds and private equity funds.