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Regulatory Alert

Financial Services Regulatory Insight Center

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Senate passes regulatory reform bill

Senate Bill 2155 passed the Senate on March 14, 2018 but must still be considered for a vote in the House of Representatives before being reconciled, voted upon again in both the House and Senate, and signed into law by the President. As such, aspects of the following may change and should not be executed as final until such legislative action is complete.

Key points

— The Senate has passed a bipartisan regulatory relief bill, S.2155, which includes provisions that would tailor regulations for certain large BHCs, ease regulatory requirements for community banks, and add new consumer protections.

— For large BHCs, the bill would raise the SIFI asset threshold for application of Enhanced Prudential Standards from $50 billion to $250 billion and also raise the asset threshold for the company-run stress-testing requirement to $250 billion.

— The bill has been forwarded to the House of Representatives for consideration; House leaders have indicated a desire to add provisions to the bill though Senate leaders have indicated additions could derail their bipartisan support.

— S.2155 will likely serve as the foundation of a final bill with any changes expected to be additive rather than retractive and to have bipartisan support.

Summary

On March 14, 2018, the U.S. Senate passed S.2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, by a vote of 67-31. Key provisions of the bill are directed toward amending the 2010 Dodd-Frank Act and address regulatory tailoring for certain bank holding companies (BHCs), regulatory easing for small banks and credit unions (collectively, community banks), and new consumer protections.

The bill has now been forwarded to the House of Representatives for consideration. Representative Jeb Hensarling, Chairman of the House Committee on Financial Services, has said he would seek to combine the Senate-passed bill with other financial services bills that have passed the House with bipartisan support. News reports suggest as many as 30 bipartisan measures have been identified.

Highlights of the Senate-passed S.2155 follow.

Regulatory tailoring for certain BHCs

The Senate bill's most notable provisions would tailor certain regulatory requirements applicable to BHCs depending on size:

— **Raise the SIFI threshold:** Section 401(a) would raise the systemically important financial institutions (SIFIs) asset threshold for applying enhanced prudential standards (EPS) to BHCs from $50 billion to $250 billion in total consolidated assets effective 18 months after enactment. The Federal Reserve, however, would have discretion to apply any of the EPS to BHCs with at least $100 billion in total consolidated assets to address financial stability or safety and soundness risks. Immediately upon enactment, BHCs with less than $100 billion in total consolidated assets would no longer be required to comply with EPS.

— **Clarify EPS and FBOs:** Section 401(g) clarifies that the EPS rule effectively applies to foreign banking organizations (FBOs) with total consolidated assets of $100 billion or more, and maintains the Federal Reserve's authority to require FBOs to establish an intermediate holding company, implement EPS, or tailor the regulation of FBOs with total consolidated assets of $100 billion or more.

— **Modify stress tests:** Provisions under Section 401 would raise the company-run stress testing asset threshold to $250 billion and require BHCs to submit such tests only periodically. BHCs with total consolidated assets between $100 billion and $250 billion would be subject to periodic supervisory testing by the Federal Reserve.

— **Change supplementary leverage ratio:** Section 402 would no longer require custodial banks to include funds deposited at a central bank in the calculation of their supplementary leverage ratio.

Regulatory easing for community banks

Regulatory relief for community banks is one of the primary goals of regulatory reform legislation being considered in Congress. Key provisions would:

— **Introduce exemptions to the Volcker Rule:** Banking entities with less than $10 billion in total consolidated assets, and trading assets and trading liabilities that are not more than five percent of the total consolidated assets, would be exempt from the Volcker Rule.

— **Provide capital "simplification" for qualifying banks:** Section 201would allow banks and BHCs with total consolidated assets of less than $10 billion to be deemed to satisfy certain capital and leverage requirements if they exceed the Community Bank Leverage Ratio established by the Federal banking agencies (through notice and comment, required to be between 8 percent and 10 percent) and have an appropriate risk profile.

— **Implement mortgage-related provisions**: Community banks with total consolidated assets of $10 billion or less would be exempt from mandatory escrow requirements for certain mortgage loans, and certain mortgage loans originated and retained in portfolio by these community banks would be deemed to be "qualified mortgages."

New consumer protections

Title III of S.2155 would introduce a variety of new consumer protections including provisions that would:

— Permit consumers to place or remove a "security freeze" on their credit report at no cost when identity theft is suspected.

— Protect a veteran's consumer report against certain information related to medical debt.

— Provide immunity for certain individuals and covered financial institutions that disclose suspected financial exploitation of a senior citizen to a covered agency.

— Protect student loan borrowers when the borrower or cosigner dies.

Closing thoughts

While the Senate bill was passed on a bipartisan basis, the chances that the bill will become law are largely dependent on the House of Representatives. House changes to the Senate bill would require a bicameral conference to negotiate a final bill that would then be required to again pass through both the House and the Senate. The addition of any major or controversial revisions, such as provisions to significantly change the Consumer Financial Protection Bureau or repeal the Dodd-Frank Act Orderly Liquidation Authority, would reduce the likelihood of negotiating a bipartisan, bicameral bill that could pass out of the Senate. It is more likely that any additive measures put forth by the House will be from among the smaller, stand-alone bills recently passed in the House, many of which were derived from the House-passed regulatory reform bill, the Financial CHOICE Act.

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