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Government Advocacy & Public Policy Practice Group

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U.S. Senate Banking Committee approves the "Economic Growth, Regulatory Relief and Consumer Protection Act"

Amends regulations imposed under "Dodd-Frank"

On December 5, the U.S. Senate Banking Committee approved S. 2155, the *Economic Growth, Regulatory Relief and Consumer Protection Act*, which amends several regulations imposed under the 2010 *Dodd–Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank").

S. 2155 is intended to provide regulatory relief to smaller financial institutions by streamlining capital requirements for community banks and credit unions while leaving the Dodd-Frank regulations imposed on larger financial institutions intact. Drafted by Senate Banking Committee Chairman Mike Crapo (R-ID) and several moderate Committee Democrats including Senators Heidi Heitkamp (D-ND), Joe Donnelly (D-IN), Mark Warner (D-VA) and John Tester (D-MT), the legislation also aims to lower the number of banks considered "systemically important" and thus subject to enhanced bank supervision rules.

Specifically, S. 2155 raises the systemically important financial institution (SIFI) designation threshold, from banks with over $50 billion in consolidated assets to those exceeding $250 billion. Institutions with over $250 billion in assets are still automatically subject to enhanced supervisory rules, including increased capital, liquidity and leverage standards, as well as periodic stress tests by the Board of Governors of the Federal Reserve.

The bill further gives the Federal Reserve discretion to apply enhanced prudential standards to those banks with assets ranging from $100 billion to $250 billion. With the exception of the risk committee requirements, banks with assets ranging from $50 billion to $100 billion would be released from this regime, representing a substantial rollback of the Dodd-Frank rules. However, those institutions would still be required to comply with other Fed requirements, including stress tests to ensure that the institutions have the capacity to withstand severe economic conditions.

S. 2155 also aims to increase access to credit by easing regulatory burdens for community banks, credit unions, and small and mid-size financial institutions. The measure includes a number of reforms impacting smaller and mid-size banks with total assets under $10 billion, including an exemption from the Volcker Rule if the bank's trading assets and liabilities are equal to less than 5% of total assets. The language of the proposed legislation directs regulators

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to develop a new required ratio of capital to assets for qualifying community banks, and exempts community banks from existing risk-based capital ratio and leverage ratio requirements provided they meet the new, higher community bank leverage ratio. Additionally, under the bill, banks that hold less than $5 billion in assets would face reduced reporting requirements.

Under provisions of S. 2155, a number of mortgage lending rules developed after Dodd-Frank are relaxed. For example, mortgages originated and held by financial institutions with less than $10 billion would be designated as qualified mortgages. Additionally, it exempts mortgage loans valued at under $400,000 from appraisal requirements and exempts certain depositories from reporting requirements if they originated few mortgages. With respect to large banks, the legislation does permit certain institutions to qualify municipal bonds as high-quality liquid assets to meet their liquidity obligations, incentivizing investments in municipal bonds.

S. 2155 was voted out of committee with 16 committee members ultimately voting to advance the legislation to the full Senate. Seven members of the committee, most notably Ranking Member Sherrod Brown (D-OH), opposed the measure. Although numerous amendments were offered during the markup, only the Managers' Amendment offered by Chairman Crapo was adopted. That amendment includes additional consumer protections, such as a provision requiring credit bureaus to provide American consumers with an annual security freeze and unfreeze alert. It also includes separate provisions addressing international insurance regulation, the supplementary leverage ratio, company-run stress tests and online banking, among other items.

Given the legislation's bipartisan support, the Senate is likely to take up the measure in early 2018. Once passed, the Senate bill would then need to be reconciled with at least some provisions of the *Financial CHOICE Act* passed by the House of Representatives last summer. That bill goes much further in amending Dodd-Frank, for example by limiting the Consumer Financial Protection Bureau's enforcement capabilities and repealing the Volcker Rule.

The House Financial Services Committee recently passed a number of more targeted bills, including legislation that would strengthen Congress's ability to intervene in international insurance regulatory agreements and renew restrictions on the administration's ability to sell stakes in Fannie Mae and Freddie Mac. In addition, legislation by Rep. Blaine Luetkemeyer (R-MO) proposes to eliminate Dodd-Frank's $50 billion asset threshold above which banks are subject to so-called enhanced prudential standards. Instead, the bill (H.R. 3312) would leave it up to regulators to pick which lenders should have to comply with more stringent rules, though banks labeled "global systemically important" would continue to be subject to tougher standards.

After more than seven years of legislative stagnation in the wake of Dodd-Frank, Congress finally seems poised to address at least some of the law's shortcomings in an effort to expand consumer access to credit and reduce the regulatory burden on small and mid-sized institutions. The Trump Administration has also expressed its strong support for legislative and regulatory efforts intended to roll back significant parts of Dodd-Frank.