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Senate Approves Bipartisan Financial Services Regulatory Relief Bill

Last week, the United State Senate passed bipartisan legislation designed to substantially amend the *Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010* ("Dodd-Frank"). Originally drafted by Senate Banking Committee Chairman Mike Crapo (R-ID) and a number of moderate Democrats, including Senators Jon Tester (D-MT), Heidi Heitkamp (D-ND) and Joe Donnelly (D-IN), the bill provides for lighter regulation of small banks, new exemptions for regional banks and a handful of consumer based protection measures.

The bill began as a public call by the Committee's chairman for proposals to improve the financial regulatory system, eventually leading to multiple committee hearings and a markup of the legislation last December. The Committee-approved bill included additional consumer protections, such as a provision requiring credit bureaus to provide American consumers with an annual security freeze and unfreeze alert. It also contained separate provisions addressing international insurance regulation, the supplementary leverage ratio, company-run stress tests and online banking, among other items.

The full Senate took up the *Economic Growth, Regulatory Relief and Consumer Protection Act* (S. 2155) earlier this month and eventually approved the measure by a vote of 67 to 31, marking the Senate's most expansive effort to reduce banking industry oversight since Dodd-Frank was signed into law. Sponsored by one-fourth of the Senate, the legislation preserves many of the foundations of the Dodd-Frank regulatory framework, while including significant modifications that will result in meaningful regulatory relief for smaller and medium-sized banks.

WHAT'S IN THE BILL?

First and foremost, the Senate-passed legislation raises the threshold for banks to be considered "systemically important" from $50 billion to $250 billion in assets. While the Federal Reserve had previously eased stress tests for midsize banks, Dodd-Frank currently requires that all banks above $50 billion in assets must face stricter rules. By effectively raising that threshold to $250 billion, the new legislation provides the Fed some discretion to keep a closer eye on banks in the $100 billion to $250 billion range, depending on their perceived risk levels.

In addition, banks with assets of between $50 to 100 billion will no longer be required to comply with the “enhanced prudential standards,” thought they will continue to be subject to Federal Reserve requirements to guarantee the institutions can survive strenuous economic conditions. Furthermore, small and mid-size community banks, credit unions and financial intuitions with less than $10 billion in assets would be exempt from the Volcker Rule. These smaller banks would also file shorter financial reports with regulators, be examined less often and be released from some capital rules as long as they maintain a relatively high ratio of equity to assets.

A group of housing-related provisions would eliminate escrow requirements for higher-cost mortgages made by institutions with assets of up to $10 billion (up from $2 billion) and would exempt portfolio loans from the Qualified Mortgage Rule, which required lenders to assess the borrower’s ability to repay the loan. The legislation would also charge the Federal Housing Finance Agency with establishing a process for Fannie Mae and Freddie Mac to use alternative credit score models to FICO for mortgages.

S. 2155 would also make it easier for large banks to buy bonds from state and local governments and would lower a leverage ratio capital requirement for “custody” banks that predominantly hold clients’ assets for safekeeping, rather than lending out client money like traditional banks.

On the consumer front, the legislation requires credit bureaus to provide free security freezes, during which a person’s credit information cannot be disclosed. Another provision requires the Treasury to conduct a study on the risks of cyber threats to financial institutions and the U.S. capital markets and how regulators are addressing these risks. Finally, in order to combat “synthetic identity fraud,” the Senate bill requires the Social Security Administration to run a database allowing financial institutions to verify whether a name, Social Security number or date of birth are tied to a real person.

As passed by the Senate, S. 2155 includes some provisions from a broader House deregulatory package that passed the chamber last year on partisan lines. It also incorporates other legislation that advanced through the House in recent years. However, House Republicans want more and want to convene a formal or informal panel of lawmakers from both chambers to negotiate a broader deal.

WHAT’S NEXT

The legislation now moves to the U.S. House of Representatives, where Republicans leaders say they want to add provisions to the bill. During the Senate’s debate on S. 2155, Chairman Crapo and other Senators continued to negotiate the extent to which House language would be included in the Senate bill, in order to enhance the House’s backing. Adding to it now would arguably upset the delicate balance struck between Chairman Crapo and a group of moderate Democrats, possibly delaying final passage for weeks or months, or derailing the legislation entirely.

House Financial Services Chairman Jeb Hensarling (R-TX) released a list of nearly 30 bipartisan bills already passed by the House that he would like to see incorporated in the final package and has called for additional regulatory changes to the Senate bill. A number of those proposals have already been incorporated into the Senate bill, including the provision modifying the $50 billion threshold for banks designated as having a SIFI status. Yet about two dozen others were left on the cutting room floor.

For example, one measure that passed the House by a 344 to 73 vote would clarify existing regulations governing how startups pitch potential investors on private offerings. Another provision that passed by unanimous consent would revamp the criteria by which individual investors are deemed eligible to invest in closely held startups.

House Republicans would like to incorporate a number of these bipartisan amendments into the final package and believe that they can do so without endangering Democratic support in the Senate. However, Senate Republicans and the White House have expressed little appetite for another vote on the bill. Moreover, substantially amending the legislation would likely result in diminished support from moderate Senate Democrats whose votes are needed for final passage.

If Senate leadership and the White House can persuade the House to accept and pass the Senate bill, the legislation could be sent to the President and signed into law in fairly short order. Alternatively, Congressional leadership may attempt to resolve the impasse through informal negotiations, or through the more formal conference committee process requiring House and Senate leaders to appoint conference committee members from both parties to work out a compromise. In this last scenario, any compromise bill that emerges from the conference committee would need to be passed again by both the Senate and the House.

Requiring another round of floor votes in each chamber, following a conference, will necessarily delay final passage of the legislation and will further complicate its enactment into law. Adding pressure to the dynamic, the White House endorsed S. 2155, stating that “the net impact of this legislation will be to foster economic growth by expanding prudent lending, reducing regulatory costs and strengthening consumers' ability to protect their credit records, while ensuring the proper oversight and regulation of the financial system.” President Trump said he “looks forward to discussing any further revisions the House is interested in making, with the goal of bipartisan, pro-growth Dodd-Frank relief reaching his desk as soon as possible.”

CONCLUSION

In sharp contrast to passage of Dodd-Frank eight years ago, S. 2155 marks one of the Senate’s few bipartisan accomplishments in recent memory. Centrist Democrats who helped author the bill say the legislation recalibrates a series of post-financial-crisis rules that have stifled smaller banks in their home states. If and when it becomes law, the *Economic Growth, Regulatory Relief and Consumer Protection Act* will represent the most significant revamp of financial rules since Republicans took control of government last year and the Trump administration set out broad goals to reduce business regulations.