King & Spalding

Financial Services

Providing Strategic Legal Guidance to the Global Financial Services Industry

President Signs Bipartisan Law Revising Dodd-Frank and Providing Regulatory Relief to U.S. Financial Institutions

JUNE 6, 2018

On May 24, 2018, President Donald Trump signed into law the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (the "Act"). This new law rolls back certain provisions of the Dodd-Frank Act of 2010 ("Dodd-Frank"), providing regulatory relief to all but the largest financial institutions in the United States. The Act, which enjoyed substantial bipartisan support, was adopted in the U.S. House of Representatives on May 22, 2018 by a vote of 258 to 159, and in the U.S. Senate by a vote of 67 to 31 on March 14, 2018.

The Act represents Congress' most expansive effort to reduce banking industry oversight since Dodd-Frank was signed into law in 2010. This new law preserves the fundamental elements of the post-Dodd-Frank regulatory framework, but it includes modifications that will result in some meaningful regulatory relief for smaller and certain regional banking organizations.

WHAT IS IN THE ACT?

Focused broadly on reducing regulatory requirements that have been imposed on banks since the credit crisis, the Act contains six titles addressing mortgage lending, regulatory relief for "community" banks, regulatory relief for large banks, regulatory relief in securities markets and consumer protection.

Title I—Improving Consumer Access to Mortgage Credit

Title I of the Act aims to relax or provide exemptions to certain mortgage lending rules. In particular, the Title includes several housing-related provisions that 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.

Section 101 of the Act amends the Truth in Lending Act (TILA) to allow a depository institution or credit union with assets below a specified

For more information, contact:

J.C. Boggs
+1 202 626 2383
jboggs@kslaw.com

Robert E. Benson, Jr.
+1 404 572 2445
rbenson@kslaw.com

Robert L. Ehrlich, Jr.
+1 202 626 9710
rehrlich@kslaw.com

George M. Williams, Jr.
+1 212 556 2122
gwilliams@kslaw.com

Wintta M. Woldemariam
+1 202 626 5502
wwoldemariam@kslaw.com

King & Spalding

Washington, D.C.
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4707
Tel: +1 202 737 0500

Atlanta
1180 Peachtree Street, NE
Atlanta, GA 30309-3521
Tel: +1 404 572 4600

New York
1185 Avenue of the Americas
New York, NY 10036-2601
Tel: +1 212 556 2100

threshold to forgo certain ability-to-pay requirements regarding residential mortgage loans. Specifically, those requirements are waived if a loan: (1) is originated by and retained by the institution, (2) complies with requirements regarding prepayment penalties and points and fees, and (3) does not have negative amortization or interest-only terms. Furthermore, for such requirements to be waived, the institution must consider and verify the debt, income, and financial resources of the consumer.

Title II—Regulatory Relief and Protecting Consumer Access to Credit

Title II of the Act is intended to provide regulatory relief to community banks and specifically amends the Bank Holding Company Act of 1956 to exempt from the Volcker Rule banks with: (1) total consolidated assets valued at less than $10 billion, and (2) trading assets and liabilities comprising not more than 5% of total consolidated assets. Section 204 of the Act also eases certain Volcker Rule restrictions for any bank, regardless of total assets, related to sharing a name with hedge funds and private equity funds they organize.

Section 207 of the Act requires the Board of Governors of the Federal Reserve System to meet within 180 days to increase the threshold of total consolidated assets from $1 billion to $3 billion with respect to the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement. This policy statement currently allows bank holding companies with $1 billion or less in total consolidated assets that also meet other requirements to assume more debt than allowed by larger banks in order to complete a merger.

Section 213 of the Act allows banks and credit unions to utilize information from a driver's license or an identification card when opening new accounts for customers when an application is made through the internet or a mobile banking application. Section 215 of the Act further allows banks to collect electronic signatures from consumers when banks are attempting to verify identities while using the Social Security Administration (SSA) Consent Based Social Security Verification system. The use of the SSA verification system may assist in reducing synthetic identity theft.

Tile III—Protections for Veterans, Consumers and Homeowners

Title III of the Act provides several consumer-facing protections. Under Section 301 of the Act, a credit-reporting agency will now be required to increase the length of time that a fraud alert remains on a consumer's credit report from 90 days to one year. In addition, the provision preempts state credit-freeze laws and adopts a national standard for placing and removing credit freezes, including a direction to the Federal Trade Commission to coordinate the process by creating a webpage to access credit reporting agencies.

Title IV—Tailoring Regulations for Certain Bank Holding Companies

Title IV of the Act alters the criteria used to determine which banks are subject to enhanced prudential regulation. More specifically, Section 401 of the Act raises the systemically important financial institution ("SIFI") level from $50 billion to $100 billion immediately, and from $100 billion to $250 billion in 18 months. Furthermore, bank holding companies with consolidated assets between $100 billion and $250 billion will be subject to periodic stress testing by the Federal Reserve to evaluate whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

Under the Act, the Federal Reserve will maintain the discretion to apply prudential standards to such companies as it deems the appropriate. Moreover, U.S. regulators will retain the discretion to impose enhanced prudential standards on foreign banks with global assets between $100 billion and $250 billion. Bank holding companies with consolidated assets in excess of $250 billion and banks deemed as globally systematically important banks (G-SIBs) and foreign banks with global assets more than $250 billion will remain subject to the prudential standards.

In addition, Section 402 of the Act provides capital relief for large custodial bank holding companies that are "predominantly engaged in custody, safekeeping, and asset servicing activities." For those entities, the Act directs the federal banking agencies to amend capital retention regulations to provide that central bank deposits will not be included in the calculation of the supplementary leverage ratio for custodial bank holding companies. Finally, Section 403 of the Act directs the federal banking agencies to amend their liquidity coverage ratio regulations to treat certain municipal securities as high quality assets, and thereby lower the capital risk retention requirement for banks holding those assets.

Title V—Encouraging Capital Formation

Title V of the Act provides regulatory relief from certain securities regulations to encourage additional capital formation. More specifically, Title V amends Section 18(b)(1) of the Securities Act of 1933 to exempt any security designated by the SEC as qualified for trading in the national market system from state registration requirements. Currently, securities listed on exchanges specified by statute or SEC rule are exempt.

In addition, Section 504 of the Act amends Section 3(c)(1) of the Investment Company Act of 1940 ("ICA") to establish a new category of venture funds denoted as "qualifying venture capital funds" that are exempt from designation as an "investment company" under the ICA. The provision defines qualifying venture capital funds as those that have no more than $10,000,000 in aggregate capital contributions and uncalled committed capital and less than 250 investors. Thus, qualifying venture capital funds will no longer be subject to the registration and disclosure requirements formerly required of venture capital funds with more than 100 investors. Section 506 of the Act also modifies the ICA to repeal the registration exemption for investment companies organized in Puerto Rico, the Virgin Islands, or any other possession of the United States.

Section 507 of the Act directs the SEC to amend Rule 701 under the Securities Act of 1933 to increase the amount of securities a non-reporting company may sell to its employees within a 12-month period without being required to register such securities or provide investors with disclosures regarding employee compensatory arrangements. The new law raises the threshold for such sales from $5 million in a 12-month period to $10 million in a 12-month period.

Section 508 of the Act also expands the SEC's Regulation A+, which permits certain non-reporting small and medium-sized companies to offer and sell securities with minimal registration and disclosure requirements from disclosure requirements, to apply to certain reporting companies as well. Additionally, the new law directs the SEC to propose and enact rules that would permit closed-end companies to benefit from the simplified securities offering and proxy rules for well-known seasoned issuers ("WKSIs").

Title VI—Protections for Student Borrowers

Title VI of the Act provides enhanced consumer protection for borrowers of student loans. More specifically, the new law: (1) prohibits a creditor from declaring a default or accelerating the debt of a private student loan on the sole basis of the death or bankruptcy of a cosigner to such a loan, and (2) directs loan holders to release cosigners from any obligation upon the death of the student borrower.

Title VI also amends the Fair Credit Reporting Act to allow a person to request the removal of a previously reported default regarding a private education loan from a consumer report if: (1) the lender chooses to offer a loan-rehabilitation program that requires a number of consecutive on-time monthly payments demonstrating renewed ability and willingness to repay the loan, and (2) the consumer meets those requirements.

Finally, Title VI amends the Financial Literacy and Education Improvement Act to direct the Financial Literacy and Education Commission to establish best practices for teaching financial literacy skills at institutions of higher education.

WHAT'S NEXT?

While some have described the Act as a full-scale dismantling of Dodd-Frank, the new law is better viewed as a more moderate retooling. The bulk of reform consists of the elimination of many perceived technical and regulatory-overreach problems caused by Dodd-Frank, but leaves much of the existing Dodd-Frank framework intact. Indeed, the Act is noteworthy for what it does not address, including the structure and authority of the Consumer Financial Protection Bureau.

Nor does the Act directly affect other impactful post-crisis regulatory requirements that were not established pursuant to Dodd-Frank but are instead grounded in other legal authorities. U.S. financial regulators are expected to revise these requirements to mirror the asset thresholds in the Act, but that process could take some time, especially for regulations that were issued on an interagency basis.

Going forward, virtually every corrective measure included in the Act requires rulemaking by the federal banking agencies. That is because in many instances the Act's provisions directly modify or negate existing regulations for which notice and comment are required to effectuate the Act's corrective measure. Now that the Act has been signed into law, the Federal Reserve will determine when and by how much regional banks and credit unions get relief. Since a number of banks, including those with over $50 billion in assets, are still subject to other rules such as the Federal Reserve's Comprehensive Capital Analysis and Review, any changes by the Federal Reserve could take up to a year.

That said, the Federal Reserve on May 30th released its proposed revisions to the Volcker Rule intended to alleviate some of the rule's burdens on banks by tailoring its compliance requirements to the size of a financial institution's trading activity. Under the proposed revisions, there would be graduated tiers of compliance requirements for firms with "moderate" or "significant" trading assets and liabilities, while firms with "limited" trading assets and liabilities would enjoy a presumption of compliance. The rollout of Volcker 2.0 underscores how the deregulatory momentum has shifted in Washington, pushing the financial regulators to the forefront of efforts to pare back post-crisis financial rules.