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

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The Senate Committee on Banking, Housing, and Urban Affairs has scheduled an executive session to consider the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155) on December 5, 2017. In general, the bill aims to provide regulatory relief to banks, relax mortgage lending rules, and provide additional consumer protections related to credit reporting and other areas.

Some observers assert the financial crisis of 2007-2009 revealed excessive risk had built up in the financial system, and that weaknesses in regulation contributed to that build up and the resultant instability. In response, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203; the Dodd-Frank Act). In addition, regulators strengthened rules under existing authorities, such as by implementing regulations adhering to the Basel III Accords—the international agreement setting standards for bank regulation. Following this broad overhaul of financial regulation, some observers argue the changes are an overcorrection and certain regulations are unduly burdensome. In general, S. 2155 aims to address these concerns by providing regulatory relief in certain segments of the financial system.

Proponents of the bill assert it would provide targeted financial regulatory relief that will eliminate a number of unduly burdensome regulations, foster economic growth, and provide increased consumer protections. Opponents of the bill argue it would needlessly pare back important Dodd-Frank protections to the benefit of large and profitable banks. This Insight highlights major policy proposals of the bill, but it is not a comprehensive summary of every provision in the bill.

In general, the changes proposed by S. 2155 can be grouped into one of four categories: (1) regulatory relief for "community" banks, (2) regulatory relief for large banks, (3) amendments to mortgage lending regulations, and (4) new consumer protections in credit reporting.

Small Banks

No consensus definition of what constitutes a small bank exists, and definitions vary from regulation to regulation. Nevertheless, certain bank regulations are tailored to banks of different sizes. Whether current regulation appropriately balances the benefits and costs of regulation for small banks is subject to debate. Given these considerations, S. 2155 uses several different size thresholds in different sections of the bill. Some provisions create new exemptions from certain regulations, some raise existing thresholds, and some provide regulatory relief to banks of all sizes.

Banks with less than $10 billion in assets would be exempt from the "Volcker Rule" (a ban on proprietary trading and the sponsorship of hedge funds and private equity funds). These banks would also be exempt from existing risk-based capital ratio and leverage ratio requirements provided they meet a higher c*ommunity bank leverage ratio*—a new regulatory ratio of capital to assets that S. 2155 directs bank regulators to develop. Banks with less than $5 billion would face reduced reporting requirements. The asset-size threshold at which banks become subject to less frequent examinations and at which bank holding companies become exempt from the same capital requirements as depository subsidiaries (known as the "Collins Amendment") would be raised from $1 billion to $3 billion. In addition, other provisions provide relief to thrifts or credit unions.

Large Banks

In an effort to increase systemic stability, the Dodd-Frank Act subjected all banks with more than $50 billion in assets to *enhanced prudential regulation* (heightened safety and soundness standards compared with other banks). Some critics have argued the $50 billion threshold is set too low, subjecting banks that are not systemically important to unduly burdensome regulation.

Under S. 2155, the criteria used to determine which banks are subject to enhanced prudential regulation would be changed, releasing certain banks from the regime. Banks that had been designated as *globally systemically important banks* and banks with more than $250 billion in assets would still be automatically subjected to enhanced regulation. Banks with between $100 billion and $250 billion in assets would be subject to only supervisory stress tests, and the Federal Reserve would have discretion to apply other individual enhanced prudential provisions to these banks. Banks with assets between $50 billion and $100 billion would no longer be subject to enhanced regulation, except for the risk committee requirement. In addition, leverage requirements would be relaxed for large custody banks, and certain municipal bonds could be used by large banks to meet their liquidity requirements.

Mortgage Lending

Most observers assert that relaxed mortgage lending standards played a role in precipitating the 2008 financial crisis. As a result of the lower standards, there were more mortgage delinquencies and foreclosures, which spread instability throughout the financial system. In response, a number of mortgage lending rules were introduced or strengthened pursuant to the Dodd-Frank Act and by other authorities. In recent years, critics of some of these rules have argued that they are unduly burdensome, needlessly restricting the availability of mortgage credit for certain borrowers. Provisions in S. 2155 would relax or provide exemptions to some of these rules.

For example, certain mortgages originated and held by banks and credit unions with less than $10 billion in assets would be considered *qualified mortgages* for the purposes of the Ability-to-Repay Rule. In addition, depositories that originated few mortgages would be exempt from certain reporting requirements. Furthermore, certain mortgages under $400,000 will be exempt from certain appraisal requirements.

Credit Reporting

Inaccurate or incomplete credit reporting, which may affect consumers' access to financial products or employment opportunities, is a long-standing congressional policy issue. In light of a data breach at Equifax—a major credit reporting agency—announced on September 7, 2017, congressional interest in consumer data protection and security measures has increased. Certain provisions in S. 2155 are designed to improve credit reporting accuracy.

Under S. 2155, credit reporting agencies (CRAs) would face additional requirements designed to increase consumer protections and improve the accuracy of credit reporting. CRAs would also be required to provide fraud alerts for consumer files for at least one year under certain circumstances; provide consumers one free freeze alert and one free unfreeze alert per year; and provide further protections for minors. In addition, CRAs would have to exclude certain medical debt from veterans' credit reports.