ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT

Review and Analysis

Nutter
uncommon law

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INTRODUCTION

The President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act into law on May 24, 2018. The Act is the most significant law specifically affecting the banking and financial services industries since the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Act is not a sweeping overhaul of the Dodd-Frank Act. Instead, the Act provides targeted relief for community banks from several key components of the Dodd-Frank Act, and includes amendments to a variety of post-crisis systemic reforms and miscellaneous other financial laws.

SUMMARY

The law is comprised of six broad Titles. Title I focuses on home mortgage lending reforms, including expansion of the safe harbor for Qualified Mortgages to certain home mortgage loans held in portfolio by community banks, relief from appraisal requirements for mortgage loans under $400,000 in rural areas, and targeted relief from Home Mortgage Disclosure Act ("HMDA") reporting requirements.

Title II provides targeted regulatory relief to community banks across a wide range of post-crisis regulatory requirements. Title II creates a new community bank leverage ratio, exempts certain banking entities from the prohibitions of the so-called "Volcker Rule," and creates a new option for federal savings associations to exercise the same powers as national banks, among other provisions. Other forms of relief for community banks include extended examination cycles, short-form call reports, and an increase in the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement's pro forma consolidated asset threshold.

Title III provides a number of new or improved consumer financial protections, including a requirement that consumer reporting agencies provide consumers with free credit freezes and notify consumers of their availability. Title III also provides immunity from liability for banks and other financial institutions, and certain of their employees, who alert law enforcement or a regulatory agency to the suspected financial exploitation of a senior, and allows borrowers who default on a qualified student loan to request that the default be removed from their credit report if they successfully participate in a rehabilitation program offered by the lender.

Title IV increases from $50 billion to $250 billion the asset threshold above which the Federal Reserve is required to apply to bank holding companies the "enhanced prudential standards" of Section 165 of the Dodd-Frank Act (while providing the Federal Reserve discretion in determining whether to apply such standards to institutions with assets equal to or greater than $100 billion but less than $250 billion), eliminates the Dodd-Frank Act company-run stress tests for bank holding companies, banks, savings and loan holding companies and savings associations with less than $250 billion in assets, and modifies the federal banking agencies' supplementary leverage ratio for "custodial banks" and the federal banking agencies' liquidity coverage ratio relating to the treatment of certain municipal securities.

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Title V promotes regulatory parity among national securities exchanges, provides targeted relief from certain disclosure requirements for issuers that offer securities to employee compensation plans, and expands exemptions from registration under the Securities Act of 1933 ("1933 Act") for certain smaller securities issuances.

Title VI creates limited protections for student loan borrowers, including prohibiting lenders from declaring a default or accelerating student loan debt against the borrower solely on the basis of the bankruptcy or death of a cosigner and requiring the release of any cosigner upon the death of the borrower. Additionally, Title VI provides student loan borrowers a one-time only right to request a financial institution to remove from a consumer report a reported default regarding a student loan subject to certain conditions. Finally, Title VI requires the Financial Literacy and Education Commission to establish best practices for teaching financial literacy skills at higher education institutions.

OUR APPROACH

The review and analysis that follows tracks the Titles in the Act, in order, but includes headings and sub-headings that we prepared in order to enable the reader to move to topics of interest quickly and with an understanding of the context.

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This review and analysis is for information purposes only and should not be construed as legal advice on any specific facts or circumstances. Under the rules of the Supreme Judicial Court of Massachusetts, this material may be considered as advertising.

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This review and analysis was prepared by the Banking and Financial Services Group of Nutter McClennen & Fish LLP. We hope that this information is useful to you. If you have questions or would like further information, please contact your attorney at Nutter.

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TITLE I: IMPROVING CONSUMER ACCESS TO MORTGAGE CREDIT

QUALIFIED MORTGAGE SAFE HARBOR

The Act establishes a new safe harbor from Truth in Lending Act ("TILA") ability to repay requirements for home mortgage loans held in portfolio by insured depository institutions with less than $10 billion in total consolidated assets (a "covered institution"). The Act designates such home mortgage loans as Qualified Mortgages if they comply with certain restrictions on prepayment penalties, have total points and fees that do not exceed 3% of the total loan amount, and do not have negative amortization or interest-only features. The criteria for the new Qualified Mortgage safe harbor also require that the covered institution consider and document the debt, income, and financial resources of borrowers, but covered institutions are not required to comply with the standards for determining monthly debt and income currently codified at Appendix Q to the CFPB's Regulation Z. The Qualified Mortgage safe harbor would continue to apply to a loan sold to another covered institution as long as the loan is retained in portfolio by the purchasing covered institution, and to a loan transferred to a wholly owned subsidiary of a covered institution, provided that the loan is considered to be an asset of the covered institution for regulatory accounting purposes. [Section 101]

FREE APPRAISALS CONDUCTED FOR CHARITABLE PURPOSES

The Act amends the TILA appraisal fee requirements to clarify the circumstances in which mortgage appraisal services donated to an organization eligible to receive tax-deductible charitable contributions will be deemed to be reasonable and customary. [Section 102]

EXEMPTION FOR RURAL APPRAISALS

The Act amends the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to exempt from applicable appraisal requirements certain mortgage loans of less than $400,000 in rural areas if the mortgage originator has difficulty finding a qualified appraiser. Such a loan is subject to certain transfer restrictions. [Section 103]

Nutter Notes: *The federal banking agencies have recently issued a final rule that increases the threshold for commercial real estate transactions that require an appraisal from $250,000 to $500,000. The final rule, which became effective on April 9, 2018, allows a bank to use an evaluation, rather than an appraisal, for commercial real estate transactions exempted by the $500,000 threshold.*

HMDA REPORTING RELIEF

The Act amends HMDA to provide that home mortgage lenders that originate less than 500 closed-end mortgages and less than 500 open-end lines of credit in each of the two preceding years are exempt from new HMDA reporting requirements added by the Dodd-Frank Act, such as reporting the number and dollar amount of mortgage loans grouped according to measurements of total points and fees payable at origination, and the number and dollar amount of mortgage loans and completed applications grouped

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according to measurements of the value of the mortgaged property. However, banks that have received a "needs to improve" rating during each of the last two most recent Community Reinvestment Act exams or a "substantial non-compliance" rating on the most recent exam must still comply with the additional HMDA reporting requirements. [Section 104]

CREDIT UNION MEMBER BUSINESS LOANS ON RESIDENTIAL PROPERTIES

The Act permits credit unions to make a member business loan secured by a mortgage on a one- to four-family dwelling even if the dwelling is not the member's primary residence. [Section 105]

MORTGAGE LOAN ORIGINATOR MOBILITY

The Act makes it easier for a registered mortgage loan originator to change employers by amending the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 to temporarily allow a loan originator who meets specified requirements to continue to originate loans while his or her new license application is pending after moving from one state to another, or from a depository institution to a licensed mortgage company. The amendments take effect 18 months after the date of the Act. [Section 106]

TILA RELIEF FOR HOUSING MANUFACTURERS

The Act amends TILA to clarify that a retailer of manufactured or modular homes that meets certain requirements is generally not a "mortgage originator" for purposes of TILA. [Section 107]

RELIEF FROM TILA ESCROW REQUIREMENTS FOR CERTAIN SMALL BANKS

The Act amends TILA to provide an exception to escrow requirements for insured depository institutions with less than $10 billion in assets that have originated 1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year. [Section 108]

RELIEF FROM TILA WAITING PERIOD FOR LOWERED RATES

The Act amends TILA to eliminate the three-day mortgage disclosure waiting period when a creditor makes a second loan offer with a lower annual percentage rate. The Act also directs the CFPB to provide clear and authoritative guidance on the applicability of the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (known as the ''TRID Rule'') to mortgage assumption transactions, the applicability of the TRID Rule to construction-to-permanent home loans and the conditions under which those loans can be properly originated, and the extent to which lenders can rely on model disclosures without liability if changes to regulations are not reflected in the sample TRID Rule forms published by the CFPB. [Section 109]

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TITLE II: REGULATORY RELIEF AND PROTECTING CONSUMER ACCESS TO CREDIT

CAPITAL SIMPLIFICATION FOR QUALIFYING COMMUNITY BANKS

The Act directs the federal banking agencies to promulgate rules establishing a specified “Community Bank Leverage Ratio” (“CBLR”) (the ratio of an institution’s equity capital to its consolidated assets) between 8% and 10%, compared to a current leverage ratio requirement of 5%, for “qualifying community banks” — defined to include not only depository institutions but also depository institution holding companies with less than $10 billion of total consolidated assets. Under the Act, any qualifying community bank that exceeds the CBLR is considered to have met the generally applicable leverage and risk-based capital requirements and any other capital requirements, including leverage requirements, applicable to it and, in the case of a depository institution, the capital ratio requirements to be considered well capitalized under the Federal Deposit Insurance Act and the federal banking agencies’ prompt corrective action regulations. The Act grants the federal banking agencies broad discretion to determine that a particular institution (or class of institutions) is not a qualifying community bank based on its risk profile taking into account off-balance sheet exposures, trading assets and liabilities, total notional derivatives exposures and other factors the federal banking agencies determine appropriate. The Act also directs the federal banking agencies to establish procedures for the treatment of a qualifying community bank that fails to meet the CBLR, to consult with the applicable state bank supervisors concerning the CBLR, and to notify the applicable state bank supervisors of any qualifying community bank that it supervises that no longer exceeds the CBLR. [Section 201]

LIMITED EXCEPTION FOR RECIPROCAL DEPOSITS

The Act amends the FDIA to exclude reciprocal deposits of an insured depository institution from certain limitations on brokered deposits if the total reciprocal deposits of the institution do not exceed the lesser of $5 billion or 20% of its total liabilities. Reciprocal deposits are deposits that depository institutions make with each other in equal amounts. Generally, an insured depository institution that is not well capitalized is restricted from accepting, renewing or rolling over brokered deposits. [Section 202]

COMMUNITY BANK RELIEF FROM THE VOLCKER RULE

The Act creates an exemption from the prohibitions of Section 13 of the Bank Holding Company Act of 1956 (the “BHC Act”), otherwise known as the “Volcker Rule,” for any insured depository institution and any company that controls an insured depository institution that has (i) $10 billion or less in total consolidated assets and (ii) total trading assets and trading liabilities of 5% or less of total consolidated assets. An insured depository institution that is controlled by a company that exceeds the $10 billion and 5% thresholds does not qualify for the exemption. [Section 203]

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REMOVING VOLCKER RULE NAMING RESTRICTIONS

The Act eases the name-sharing prohibition of the Volcker Rule, subject to certain conditions, regardless of asset size. The Act amends Section 13 of the BHC Act to provide that a hedge fund or private equity fund can share the same name or a variation of the same name as an affiliate or subsidiary of (i) an insured depository institution, (ii) a company that controls an insured depository institution, or (iii) a company that is treated as a bank holding company for purposes of Section 8 of the International Banking Act of 1978 (entities described in (i) – (iii) above referred to below as "Restricted Entities") that is an investment adviser to the hedge fund or private equity fund if (x) the investment adviser is not, and does not share the same name or a variation of the same name with, a Restricted Entity and (y) the name does not include the word "bank." [Section 204]

SHORT FORM CALL REPORTS

The Act amends the FDIA to direct the federal banking agencies to issue regulations that allow for reduced Call Report reporting requirements for the first and third Call Reports each year for insured depository institutions with less than $5 billion in total consolidated assets that meet such other criteria as the federal banking agencies determine appropriate. The asset threshold increase is consistent with ongoing Call Report streamlining efforts undertaken by the Federal Financial Institutions Examination Council. [Section 205]

OPTION FOR FEDERAL THRIFTS TO OPERATE WITH NATIONAL BANK POWERS

The Act amends the Home Owners' Loan Act to allow federal savings associations with $20 billion or less in total consolidated assets as of December 31, 2017 to "opt-in" to the national bank charter regulatory regime without having to formally apply for a charter conversion. The provisions effectively remove the commercial lending limits and balance sheet restrictions under the "qualified thrift lender" test (the "QTL Test") on smaller federal savings associations "opting in" to the national bank charter regulatory regime.

Under the Act, a "covered savings association" can elect to have the same rights and privileges as a national bank and be subject to the same activities restrictions and investment limitations as a national bank (a covered savings association would be required to conform its activities to those permissible for a national bank). However, a covered savings association will still be treated as a federal savings association for purposes of corporate governance matters (e.g., bylaws, boards of directors, shareholders and dividends), mergers, consolidations, dissolution, conversion, conservatorship, receivership and other matters as determined by OCC regulation.

The Act contemplates that, subject to the rules promulgated by the OCC as required under the Act, a covered savings association may continue to operate as a covered savings association if, after the date it makes its election to be treated as a covered savings association, its total consolidated assets increase to more than $20 billion. The

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Act also contemplates that a covered savings association may terminate any election it makes and then make subsequent elections. [Section 206]

***Nutter Notes**: The provisions are important from the perspective of the dual banking system's "two-way street" approach to charter choice. Massachusetts savings banks and cooperative banks already enjoy full commercial banking powers under Massachusetts law. Absent these changes, if a Massachusetts savings bank or cooperative bank were to convert to a federal savings association, the converted bank would be subject to a more restrictive regime in the form of the QTL Test and related limits on the bank's commercial lending authority. These changes enable Massachusetts chartered banks converting to federal savings associations, including mutual banks that cannot convert directly to national banks (national banks can exist only in stock form), to continue to enjoy broad commercial banking powers. These provisions effectively allow a Massachusetts chartered mutual bank to convert to a federal mutual thrift charter and still enjoy full commercial banking powers under the National Bank Act; previously a mutual thrift could not unless it converted to stock form.*

SMALL BANK HOLDING COMPANY POLICY STATEMENT

The Act directs the Federal Reserve to raise, within 180 days of the date of enactment, the pro forma consolidated assets ceiling in the Federal Reserve's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (Appendix C to the Federal Reserve's Regulation Y) (the "Policy Statement") from $1 billion to $3 billion for any bank holding company or savings and loan holding company that continues to satisfy the quantitative and qualitative requirements of the Policy Statement.

Bank holding companies and savings and loan holding companies that qualify for treatment under the Policy Statement are exempt from the minimum regulatory capital requirements mandated by Section 171 of the Dodd-Frank Act and implemented by the Federal Reserve's Regulation Q, are able to engage in more highly leveraged acquisitions, and qualify for certain expedited or waived application and notice requirements. The Act retains the Federal Reserve's discretion to exclude any bank holding company or savings and loan holding company, regardless of asset size, if the Federal Reserve determines such action is warranted for supervisory purposes. [Section 207]

APPLICATION OF THE EXPEDITED FUNDS AVAILABILITY ACT

The Act amends the Expedited Funds Availability Act, which governs (and generally limits) bank deposit holds, to apply to American Samoa, the Commonwealth of the Northern Mariana Islands and Guam. The one-day extension for certain deposits in noncontiguous states or territories will also apply to these territories as a result of the Act. The amendments take effect 30 days after the date of enactment. [Section 208]

SMALL PUBLIC HOUSING AGENCIES

The Act amends the United States Housing Act of 1937 to simplify the inspection and compliance requirements for certain smaller, rural public-housing agencies with fewer

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than 550 units. The Act limits Department of Housing and Urban Development ("HUD") inspections of housing and voucher units to once every three years, unless a small public housing agency is designated as troubled. [Section 209]

ELIGIBILITY FOR 18-MONTH EXAMINATION CYCLE EXPANDED

The Act amends the FDIA to raise the asset threshold from $1 billion to $3 billion by which insured depository institutions can become eligible for an 18-month examination cycle instead of a 12-month examination cycle. Generally, each federal banking agency must conduct a full-scope, on-site examination of the banks it supervises at least once during each 12-month period. Prior to passage of the Act, an insured depository institution with total assets of less $1 billion in assets and that met certain capital, management and other criteria (e.g., well capitalized, well managed, not subject to formal enforcement actions), could be examined only once every 18 months. The Act raises this threshold to $3 billion (while keeping all of the other criteria in place). A rulemaking by the federal banking agencies will be required in order to implement the extended 18-month examination cycle. [Section 210]

INTERNATIONAL INSURANCE CAPITAL STANDARDS ACCOUNTABILITY

The Act requires the Secretary of the Treasury, the Federal Reserve and the Director of the Federal Insurance Office (the "FIO") to support "increasing transparency" at any global insurance or international standard-setting regulatory or supervisory forum in which they participate (e.g., the International Association of Insurance Supervisors). It also requires the Secretary of the Treasury, the Federal Reserve and the Director of the FIO to "achieve consensus positions" with state insurance regulators through the National Association of Insurance Commissioners if they are to "take a position or reasonably intend to take a position with respect to an insurance proposal by a global insurance regulatory or supervisory forum."

The Act requires the Secretary of the Treasury and the Chairman of the Federal Reserve to submit annual reports and provide annual testimony before Congress (through December 31, 2024) concerning, among other things, their efforts regarding any international insurance capital standards prior to the adoption of such standards. The Act also requires within 180 days of enactment the Chairman of the Federal Reserve and the Secretary of the Treasury to submit a report and provide testimony before Congress on efforts "to increase transparency at meetings of the International Association of Insurance Supervisors."

Finally, the Act creates a new Insurance Policy Advisory Committee on International Capital Standards and Other Insurance Issues at the Federal Reserve that will be comprised of up to 21 members who "represent a diverse set of expert perspectives from the various sectors of the United States insurance industry." [Section 211]

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BUDGET TRANSPARENCY FOR THE NCUA

The Act amends the Federal Credit Union Act to require the National Credit Union Administration to publish in the Federal Register and hold public hearings on its draft annual budget. [Section 212]

MAKING ONLINE BANKING INITIATION LEGAL AND EASY

The Act allows an insured depository institution, insured credit union or an affiliate thereof to record personal information from a scan, copy or image of an individual's driver's license or personal identification card when such individual initiates a request through an online service to open an account with or obtain a financial product or service from a financial institution. The legislation is intended to create a new national standard that would preempt state laws that do not permit the scanning of state-issued driver's licenses or personal identification cards to verify a customer's identity. The Act expressly preempts and supersedes any state law that conflicts with a provision of this section of the Act, but only to the extent of such conflict, and does not affect state and federal laws governing a financial institution's disclosure and security of non-public personal information. Finally, the Act requires financial institutions to delete all copies of driver's licenses and personal identification after using them for the permitted purpose. [Section 213]

PROMOTING CONSTRUCTION AND DEVELOPMENT ON MAIN STREET

The Act amends the FDIA to prohibit the federal banking agencies from requiring a depository institution to assign a heightened risk weight to a high volatility commercial real estate ("HVCRE") exposure unless the exposure meets the definition of an HVCRE acquisition, development, or construction ("ADC") loan set forth in that section of the Act.

Under the Act, an HVCRE ADC loan is defined as "a credit facility secured by land or improved real property that … primarily finances … the acquisition, development, or construction of real property, has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property and is dependent upon future income or sales proceeds … for the repayment of such credit facility." The definition specifically excludes any loan made before January 1, 2015—the date on which the U.S. Basel III capital rules were adopted. [Section 214]

Nutter Notes: *In September 2017, the federal banking agencies released a proposed rule that would replace the existing HVCRE exposure category as applied in the standardized approach with a newly defined exposure category called high volatility acquisition, development, or construction ("HVADC") exposure. The proposed risk weight for HVADC exposures would be 130%, a reduction from the 150% risk weight that currently applies to HVCRE exposures under the capital rule's standardized approach. It remains to be seen what the federal banking agencies will do in light of the Act.*

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REDUCING IDENTITY FRAUD

The Act directs the Social Security Administration to maintain a database which can be accessed by financial institutions to verify a person's name, date of birth and social security number for lending decisions and would permit the use of an electronic signature for consumer consent. [Section 215]

TREASURY REPORT ON RISKS OF CYBER THREATS

The Act directs the Department of the Treasury within one year from the date of enactment to issue a report on the risks of cyber threats to financial institutions and capital markets in the United States. [Section 216]

DISCRETIONARY SURPLUS FUNDS

The Act amends the Federal Reserve Act to lower the maximum allowable amount of surplus funds of the Federal Reserve Banks from $7.5 billion to $6.825 billion in order to offset the estimated budgetary costs of the legislation. This is the second time this year Congress has diverted funds from the Federal Reserve banks to pay for legislation, and the third time in recent years. [Section 217]

TITLE III: PROTECTIONS FOR VETERANS, CONSUMERS, AND HOMEOWNERS

FREE CREDIT FREEZES AND EXTENDED FRAUD ALERTS

The Act amends the Fair Credit Reporting Act ("FCRA") to require the credit bureaus to allow consumers to place and remove a credit freeze without cost and to notify consumers of their availability. The Act also permits the legal guardian of a minor or an incapacitated person for whom a guardian or conservator has been appointed to place and remove a credit freeze on behalf of the minor or an incapacitated person without cost.

The Act also amends FCRA to extend the period during which a credit bureau must maintain a fraud alert in a consumer's credit file from 90 days to one year. The amendments to FCRA take effect 120 days after the date of the Act. [Section 301]

LIMITING REPORTS OF MEDICAL DEBTS IN VETERANS' CREDIT REPORTS

The Act amends FCRA to limit the inclusion of a veteran's medical debt in a consumer credit report, and establishes a dispute process and verification procedures with respect to such medical debts. The Act also requires the credit bureaus to provide a free electronic credit monitoring service that must notify active duty military consumers of material additions or modifications to their credit files. The amendments to FCRA take effect one year after the date of the Act. [Section 302]

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PROTECTIONS FOR REPORTING FINANCIAL EXPLOITATION OF SENIOR CITIZENS

The Act provides financial institutions and certain of their employees with immunity from liability if they, in good faith and with reasonable care, disclose the suspected exploitation of a senior citizen to a regulatory or law-enforcement agency. The immunity applies only if the financial institution has provided training to the reporting employee on how to identify and report suspected exploitation of a senior citizen. The Act provides guidance on the content, timing, and record-maintenance requirements related to such training. [Section 303]

REPEAL OF SUNSET OF TENANT FORECLOSURE PROTECTIONS

The Act repeals the sunset provision of the Protecting Tenants at Foreclosure Act, which expired on December 31, 2014. As a result, the repeal restores notification requirements and other protections for tenants from immediate eviction by persons or entities that become owners of residential property through the foreclosure process, and restores additional protections for tenants with HUD Section 8 vouchers. [Section 304]

REMEDIATING LEAD AND ASBESTOS HAZARDS

The Act amends the Emergency Economic Stabilization Act of 2008 to permit the U.S. Treasury Department to use loan guarantees and credit enhancements to facilitate loan modifications to remediate lead and asbestos hazards in residential properties. [Section 305]

FAMILY-SELF-SUFFICIENCY PROGRAM REVISIONS

The Act amends the United States Housing Act of 1937 and its Family-Self-Sufficiency program by combining the public housing and housing choice voucher programs, which are currently separate. The Act also extends program eligibility to tenants of certain privately owned properties subsidized with project-based rental assistance. [Section 306]

CFPB ABILITY-TO-REPAY RULES FOR PACE LOANS

The Act directs the CFPB to develop ability-to-repay rules under TILA that apply consumer protections to financing for energy efficiency and renewable energy improvements on private property that results in a tax assessment on the property commonly known as Property Assessed Clean Energy (PACE) loans. In developing the rules, the Act requires the CFPB to carry out the ability-to-repay requirements, apply TILA's civil liability provisions, and "account for the unique nature of" PACE loans. [Section 307]

GAO REVIEW OF CONSUMER CREDIT REPORTING

The Act directs the Government Accountability Office ("GAO") to submit to Congress within one year a comprehensive report on the current legal and regulatory structure for

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the credit bureaus that includes a review of the accuracy and security of consumer credit reports, and a review of the responsibilities of data furnishers to ensure that accurate information is initially reported to credit bureaus and that such information remains accurate. [Section 308]

PROTECTIONS FOR VETERANS FROM PREDATORY HOME REFINANCE LOANS

The Act prohibits the Department of Veterans Affairs ("VA") from guaranteeing a refinanced home loan unless a specified minimum time period has passed between the original loan and the refinancing, and the lender complies with requirements related to fee recoupment, mortgage interest rates, and net tangible benefit tests. The new home refinancing requirements do not apply to a cash-out refinance in which the amount of the principal for the new loan to be guaranteed or insured is larger than the payoff amount of the refinanced loan. The Act also requires HUD and Ginnie Mae to report on the liquidity of the VA Housing Loan Program. [Section 309]

GSE CREDIT SCORING MODELS

The Act amends the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act to require Fannie Mae and Freddie Mac to develop processes for validating, approving, and updating of credit-scoring models used to determine whether to purchase a home mortgage loan. The Act directs the Federal Housing Finance Agency to establish standards and criteria for processes used by Fannie Mae and Freddie Mac to validate and approve credit-scoring models. [Section 310]

GAO REPORT ON HURRICANE MARIA FORECLOSURES

The Act directs the GAO to submit to Congress within one year a report on foreclosures, homeownership, and mortgage defaults in Puerto Rico before and after Hurricane Maria. [Section 311]

LEAD BASED PAINT HAZARD PREVENTION

The Act requires HUD to report on and provide recommendations for lead-based paint hazard prevention and abatement, with an emphasis on preventing exposure in children. [Section 312]

FORECLOSURE RELIEF FOR SERVICEMEMBERS

The Act amends the Servicemember Civil Relief Act to make permanent the one-year grace period during which a servicemember is protected from foreclosure after leaving military service. The foreclosure protections include a stay of proceedings, a period of adjustment of obligations, and a period of relief from sale, foreclosure, or seizure of the mortgaged property. [Section 313]

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TITLE IV: TAILORING REGULATIONS FOR CERTAIN BANK HOLDING COMPANIES

ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR CERTAIN BANK HOLDING COMPANIES

SIFI Threshold. The Act increases the asset threshold from $50 billion to $250 billion above which the Federal Reserve is required to apply certain enhanced prudential standards to bank holding companies. Under the Act:

- Bank holding companies with total consolidated assets of $250 billion or more and those identified as global systemically important bank holding companies ("G-SIBs"), regardless of asset size, remain subject to the enhanced prudential standards of Section 165.

- Bank holding companies with total consolidated assets of $100 billion or more but less than $250 billion will no longer subject to the requirements of Section 165 effective 18 months after the date of enactment. (The Act provides the Federal Reserve the authority, by order, to exempt any bank holding company with total consolidated assets of less than $250 billion from any enhanced prudential standards during the 18-month period. The Act also provides the Federal Reserve the authority to determine, pursuant to a rulemaking, that any bank holding company or bank holding companies with assets equal to or greater than $100 billion will be subject to any enhanced prudential standards.)

- Bank holding companies with less than $100 billion in total consolidated assets are no longer subject to the requirements of Section 165 of the Dodd-Frank Act immediately upon enactment.

Dodd-Frank Act Supervisory Stress Test Requirements. The Act makes the following changes to the Dodd-Frank Act supervisory stress test requirements:

- Bank holding companies with total consolidated assets of $250 billion or more and G-SIBs remain subject to the annual Dodd-Frank Act supervisory stress test requirements. The Act eliminates the "adverse scenario" for the supervisory stress test (leaving the "baseline" and "severely adverse" scenarios).

- Bank holding companies with total consolidated assets of $100 billion or more but less than $250 billion will be subject to periodic, rather than annual, Dodd-Frank Act supervisory stress tests.

- Bank holding companies with less than $100 billion in total consolidated assets are no longer subject to the Dodd-Frank Act supervisory stress test requirements.

Dodd-Frank Act Company-Run Stress Test Requirements. The Act makes the following changes to the Dodd-Frank Act company-run stress test requirements:

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- Bank holding companies with total consolidated assets of $250 billion or more and G-SIBs remain subject to the Dodd-Frank Act company-run stress test requirements; however, under the Act, such company-run stress tests can be conducted on a "periodic" basis, rather than an annual or semi-annual basis. The Act also eliminates the "adverse scenario" for the company-run stress test.

- The Act exempts bank holding companies, banks, savings and loan holding companies, and savings associations with less than $250 billion in total consolidated assets from the company-run stress test requirements. However, the Federal Reserve may designate a bank holding company with total consolidated assets of $100 billion or more but less than $250 billion as subject to the Dodd-Frank Act company-run stress test requirements.

U.S. Risk Committee Requirement. Finally, the Act increases the threshold from $10 billion to $50 billion or more in total consolidated assets at which publicly traded bank holding companies are required to establish a U.S. risk committee. [Section 401]

Nutter Notes*: Although the Act increases the threshold from $10 billion to $50 billion or more in total consolidated assets at which publicly traded bank holding companies are required to establish a U.S. risk committee, it is still going to be a best practice for such institutions to maintain their U.S. risk committees. In that regard, the Act provides that the Federal Reserve may require publicly traded bank holding companies with less than $50 billion in total consolidated assets to establish a U.S. risk committee.*

SUPPLEMENTARY LEVERAGE RATIO FOR CUSTODIAL BANKS

The Act requires the federal banking agencies to exclude, for purposes of calculating a custodial bank's supplementary leverage ratio, funds of a custodial bank that are deposited with a central bank. The "supplementary leverage ratio" is a capital adequacy measure that refers to the ratio of a banking organization's tier-one capital to its leverage exposure. The amount of such funds may not exceed the total value of deposits of the custodial bank linked to fiduciary or custodial and safekeeping accounts. [Section 402]

Nutter Notes*: Although the provision is largely intended to be for the benefit of the nation's largest custodial banks, it remains to be seen whether other large institutions with significant custodial businesses may benefit from this provision if they can demonstrate they are "… predominantly engaged in custody, safekeeping, and asset servicing activities."*

TREATMENT OF CERTAIN MUNICIPAL OBLIGATIONS

The Act requires the federal banking agencies to amend their liquidity coverage ratio rules within 90 days after the date of enactment to provide that certain municipal obligations be treated as level 2B liquid assets if they are investment grade, liquid, and readily marketable. Under current law, corporate debt securities and publicly traded

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common-equity shares, but not municipal obligations, may be treated as level 2B liquid assets (which are considered to be high-quality assets). [Section 403]

TITLE V: ECOURAGING CAPITAL FORMATION

NATIONAL SECURITIES EXCHANGE REGULATORY PARITY

The bill amends Section 18(b)(1) of the 1933 Act by deleting from the definition of "covered security" specific references to securities listed or authorized for listing on the New York Stock Exchange, American Stock Exchange or the national market system of the Nasdaq and replacing those references with a reference to any security designated as qualified for trading in the national market system. A covered security under Section 18(a) of the 1933 Act is generally exempt from state securities registration or qualification requirements. The provision is intended to promote regulatory parity among national securities exchanges. [Section 501]

SEC STUDY ON ALGORITHMIC TRADING

The bill directs SEC staff to prepare and submit to Congress within 18 months after enactment a report on the benefits and risks of algorithmic trading in capital markets in the United States. The report must include, among other things, an assessment of the benefits and risks to equity and debt markets in the United States of algorithmic trading, an assessment of the effect of algorithmic trading in equity and debt markets in the United States on liquidity in stressed and normal market conditions, an analysis of whether algorithmic trading is subject to appropriate federal supervision and regulation, and a recommendation as to whether any changes are necessary to existing rules. [Section 502]

ANNUAL REVIEW OF GOVERNMENT-BUSINESS FORUM ON CAPITAL FORMATION

The bill requires the SEC to review the findings and recommendations of the annual government business forum that the SEC is required to conduct under Section 503 of the Small Business Investment Incentive Act of 1980 and, each time the forum submits a finding or recommendation to the SEC, issue a public statement assessing the finding or recommendation and disclosing the action, if any, the SEC intends to take as a result of the finding or recommendation. [Section 503]

EXEMPTING SMALL VENTURE CAPITAL FUNDS FROM INVESTMENT COMPANY REGULATION

The bill provides that any "qualifying venture capital fund" the outstanding securities of which are beneficially owned by 250 or fewer persons and which does not make or propose to make a public offering of securities is not an investment company for purposes of the Investment Company Act of 1940, with certain exceptions. The term "qualifying venture capital fund" means a venture capital fund that does not have more than $10 million in aggregate capital contributions and uncalled committed capital, indexed for inflation. [Section 504]

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OFFSETS FOR OVERPAYMENTS TO THE SEC BY EXCHANGES AND ASSOCIATIONS

The bill provides that registered national securities exchanges and registered national securities associations that have overpaid fees or assessments to the SEC prior to the date of enactment must receive a credit for any such overpayments by offsetting the amounts of the overpayments against future fees and assessments due. [Section 505]

EXEMPTION ELIMINATED FOR INVESTMENT COMPANIES ORGANIZED IN US TERRITORIES

The bill eliminates the exemption from investment company regulation for investment companies organized and headquartered in Puerto Rico, the Virgin Islands, or any other possession of the United States, with an effective date three years from the date of enactment. The SEC is given authority to further extend the effective date. [Section 506]

CEILING RAISED ON RULE 701 OFFERINGS OF SECURITIES TO EMPLOYEES

The bill requires the SEC to revise the securities offering exemption for issuers offering securities as compensation to employees. The current exemption, in Rule 701 under the 1933 Act, requires issuers to make certain special disclosures if the amount of securities offered under the exemption exceeds $5 million during a 12-month period. The SEC must now revise this exemption so that special disclosures are required only if the amount of securities offered exceeds $10 million during a 12-month period. [Section 507]

REGULATION A+ OFFERING AVAILABILITY EXPANDED

The bill permits an entity already subject to SEC reporting requirements to conduct a Regulation A+ offering. Previously, Regulation A+ was only available to companies that were not subject to SEC reporting requirements at the time of the offering. The bill also provides that any issuer that conducts a Tier 2 Regulation A+ offering will be deemed to comply with the Regulation A+ reporting requirements if the issuer is already subject to SEC reporting requirements and complies with those requirements. [Section 508]

LISTED CLOSED-END FUNDS MAY USE GENERAL SECURITIES OFFERING AND PROXY RULES

The bill requires the SEC to issue rules permitting registered closed-end investment companies that are listed on a national securities exchange or that make certain periodic repurchase offers to use the securities offering and proxy rules that are available to other issuers that are SEC reporting companies. The rules are required to be proposed within one year and finalized within two years from the date of enactment. [Section 509]

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TITLE VI: PROTECTIONS FOR STUDENT BORROWERS

PROTECTIONS IN THE EVENT OF DEATH OR BANKRUPTCY

The Act amends Section 140 of TILA by creating a new subsection offering additional protections to student loan borrowers or cosigners of private education loans. The Act prohibits student loan lenders from declaring a default or accelerating student loan debt against the student loan borrower solely on the basis of the bankruptcy or death of a cosigner and requiring the release of any cosigner upon the death of the student loan borrower. The Act also requires student loan lenders to release the cosigner of a private education loan in the event such lender is notified of the death of the student loan borrower. [Section 601]

REHABILITATION OF PRIVATE EDUCATION LOANS

The Act amends FCRA to allow a consumer to request a lender to remove from a consumer report a previously reported default regarding a private education 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. Under the Act, a consumer may obtain the rehabilitation benefits only once per loan. The Act requires any financial institution supervised by a federal banking agency to seek written approval concerning the terms and conditions of any loan rehabilitation program. The Act also requires the GAO to report on the implementation of these provisions not later than one year after the date of enactment. [Section 602]

BEST PRACTICES FOR HIGHER EDUCATION FINANCIAL LITERACY

The Act amends the Financial Literacy and Education Improvement Act to direct the Financial Literacy and Education Commission to establish, within one year of the date of the enactment and after soliciting public comments, best practices for teaching financial literacy skills at higher education institutions. [Section 603]

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