Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA)

Sponsored by
Independent Community Bankers of America
July 23, 2018

Tara L. Elgie
Hunton Andrews Kurth LLP
1445 Ross Avenue, #3700
Dallas, Texas 75202
(214) 979-8212
telgie@huntonak.com

Carleton Goss
Hunton Andrews Kurth LLP
1445 Ross Avenue, #3700
Dallas, Texas 75202
(214) 468-3330
cgoss@huntonak.com

70225242

Overview

- President Trump signs EGRRCPA, also known as S.2155, on May 24, 2018.
- Provisions in the Act can be grouped into one of five areas
  - Mortgage lending;
  - Regulatory relief for community banks;
  - Consumer protection;
  - Regulatory relief for capital formation; and
  - Regulatory relief for large banks.

I. Mortgage Lending

Mortgage Lending Overview

HUNTON ANDREWS KURTH

- Title I of the Act is designed to reduce regulatory burden on smaller banks in mortgage lending and expand credit availability.
- There has been a long-standing tension in credit regulation because of the perceived trade-off between consumer protection and credit availability.
- Difficult to isolate the effects of the regulatory burdens imposed on lending institutions from the effects of broader economic and market forces.

Qualified Mortgage Portfolio Loans – ATR Safe Harbor

HUNTON ANDREWS KURTH

- Section 101 amends TILA to allow certain depository institutions to forgo some ability-to-repay (ATR) requirements by adding another safe harbor category of qualified mortgages.

- Requirements are waived for depository institutions or credit unions
  - With less than $10 billion in total consolidated assets; and
  - If the institution considers and verifies the debt, income, and financial resources of the consumer.

- And if the loan:
  - Is originated and retained by the institution
  - Complies with existing provisions in ATR/QM rule regarding prepayment penalties; and
  - Has no negative amortization or interest-only terms.

Appraisal Exemption for Real Estate Located in Rural Areas

- Section 103 provides an exemption from appraisal requirements for rural real estate transactions if:
  - The mortgage originator retains the loan in the portfolio;
  - The mortgage originator contacted at least 3 state-licensed or state-certified appraisers and documented that none were available within 5 business days beyond customary and reasonable fee and timeliness standards;
  - The mortgage originator is subject to oversight by a federal financial institutions regulatory agency; and
  - The transaction value is less than $400,000.

HMDA Adjustment

HUNTON ANDREWS KURTH

- Section 104 amends the Home Mortgage Disclosure Act (HMDA) to provide partial exemptions from the 2015 HMDA Rule for certain depository institutions and credit unions.

- These exemptions apply:

  - For closed-end mortgage loans, the institution originated fewer than 500 closed-end mortgage loans in each of the 2 preceding calendar years;

  - For open-end lines of credit, the institution originated fewer than 500 open-end lines of credit in each of the 2 preceding calendar years; and

  - The institution did not receive a rating of
    - "**Needs to improve**" record of meeting community credit needs during each of its 2 most recent examinations, or

    - "**Substantial noncompliance**" in meeting community credit needs on its most recent examination under the Community Reinvestment Act.

- This section also requires the Comptroller General to conduct a study to evaluate the impact of the HMDA amendments and submit a report of the results to Congress.

Employment Transition of Loan Originators

HUNTON ANDREWS KURTH

- Section 106 facilitates the employment transition for loan originators by providing temporary licensing authority for licensed loan originators who move either from a depository to a non-depository institution or from state to state.

- If certain other requirements are satisfied, a previously licensed loan originator has temporary authority to act as a loan originator in the application state for the earlier of :
  - 120 days from the date the application is submitted;
  - The date he or she withdraws the application;
  - The date the application state denies or issues a notice of intent to deny the application; or
  - The date the application state grants the state license.

Escrow Exemption

- Section 108 exempts certain depository institutions and credit unions from mandatory escrow requirements for higher priced mortgage loans under TILA.
- These exemptions apply if the institution:
  - Has total assets of $10 billion or less;
  - Originated 1,000 or fewer first lien loans secured by a principal dwelling during the preceding calendar year;
  - Made a loan in a rural or underserved area within a certain timeframe; and
  - Does not otherwise maintain mortgage loan escrow accounts.

TRID Clarification

- Section 109 removes the present three-day waiting period under the TRID rules when a creditor provides a consumer with a second offer of credit that has a lower Annual Percentage Rate.
- Section 109 also provides that the CFPB "should endeavor" to provide clearer, authoritative guidance on the applicability of TRID to
    - Mortgage assumption transactions;
    - Construction-to-permanent home loans and when those loans can be properly originated; and
    - The extent to which lenders can rely on model disclosures published by CFPB if recent changes to the regulations are not reflected in the published forms.
- There have been long-standing questions about applicability of certain TRID provisions given the lack of clarity in the statute. Only time will tell whether CFPB is able to provide the clear guidance that Congress is seeking.

II. Regulatory relief for Community Banks

Community Bank Relief Overview

HUNTON ANDREWS KURTH

- Title II of the Act is focused on providing regulatory relief for community banks.
- Community banks are
  - more likely to be concentrated in making loans and taking deposits;
  - more likely to be concentrated geographically;
  - more likely to practice relationship lending; and
  - less likely to pose systemic risk.
- Because compliance costs subject to economies of scale, cost of compliance disproportionately affects smaller institutions.

Community Bank Leverage Ratio

- Section 201 requires regulators to develop community bank leverage ratio of between 8% and 10%.
- If bank w/<$10 billion TA meets the ratio, it will be exempt from all other leverage and risk-based requirements.
- No timing from regulators on rulemaking.
- Congressional budget office assumes regulators would select 9% leverage ratio and that 70% of eligible banks opt-in.
- CBO forecast that these banks would take on more risk and raise costs to the FDIC fund by $240 million over next 10 years.

Reciprocal Deposits

HUNTON ANDREWS KURTH

- Section 202 exempts reciprocal deposits exempt from brokered deposit prohibitions.
- Reciprocal deposits means swapping deposits between two banks that have the same maturity (if any) and same amount.
- Reciprocal deposits differ from other brokered deposits in that the loss of your reciprocal deposits leads to the return of the matching deposits.
- Reciprocal deposits capped at the lesser of $5 billion or 20% of total liabilities.
- Third party deposit brokers likely to self-adjust and present adoption options to banks.

Volcker Rule

HUNTON ANDREWS KURTH

- Sections 203 and 204 amend the Volcker Rule.
- Volcker Rule would not apply to banks (i) w/<$10 billion in TA and (ii) trading assets and liabilities <5% of TA.
- In Volcker Rule revisions published in May 2018, banking agencies noted
  - they plan to address Sections 203 and 204 in separate rulemaking;
  - amendments took effect upon enactment; and
  - agencies will not enforce Volcker Rule in a manner inconsistent with Act.
- Take-away: should not be Volcker components of exam if bank qualifies for exemption.

Call Reports, Small Bank Holding Company Policy Statement and Examination Cycle

HUNTON ANDREWS KURTH

- Section 205 requires agencies to issue a regulation reducing call reporting requirements for banks w/<$5 billion in TA.
- Such banks would file a shorter or simplified call report in first and third quarters.
- Section 207 raises the asset threshold for the small bank holding company policy statement from $1 billion to $3 billion.
- Section 210 raises the asset threshold for the 18-month examination cycle from $1 billion to $3 billion.
- Makes more attractive growth for institutions in the $1 - $3 billion range (either organic or through transaction).

Thrift Opt-In

- Section 206 directs the OCC to issue regulations whereby thrifts w/<$20 billion in TA can opt out of federal thrift rules and into national bank rules without a charter change.
- No timing from OCC on rulemaking.
- Implications for state thrifts in states with parity provisions would need to be evaluated on a state-by-state basis.
- Facilitate charter conversion without the associated costs.
- Possibly of interest to thrifts that want to increase commercial lending.

HVCRE

HUNTON ANDREWS KURTH

- Section 214 narrows and simplifies the definition of HVCRE.
- Loan must now qualify as "HVCRE ADC" to trigger the 150 risk weighting.
- Currently effective, no rulemaking required.
- HVCRE ADC means
  - First lien on land or improved real estate;
  - <u>Primarily</u> finances acquisition, development or construction;
  - Has objective to develop or improve CRE into income-producing property; and
  - Dependent on income from property or sale of property.

HVCRE (cont'd)

HUNTON ANDREWS KURTH

- HVCRE ADC does not include any loan made prior to Jan. 1, 2015
- Use of primarily appears to take a binary approach (as opposed to current allocation approach) to HVCRE ADC classification.
  - If credit not "primarily" HVCRE ADC (i.e. for a purpose other than ADC of real property) then credit not HVCRE ADC.
- HVCRE ADC classification removed when
  - Substantial completion of the financed project and
  - Sufficient cash flow generated to support debt services and expenses of project.
- Regulators proposed revisions to HVCRE rulemaking in September 2017. Unlikely those will be finalized.

III. Consumer Protection

Consumer Protection Overview

- Title III amends various statutes to provide additional consumer protection – particularly in the areas of credit reporting and for Veterans or active duty servicemembers.
- In the wake of recent highly publicized data breaches, the FCRA revisions focus on fraud alerts, security freezes, and additional credit monitoring enhancements for active duty servicemembers.

Fraud Alert and Credit Report Freezes

HUNTON ANDREWS KURTH

- Section 301 amends the Fair Credit Reporting Act (FCRA)* to require credit reporting agencies (CRA) to:
  - Include a fraud alert on a consumer's file for 1 year (up from current 90 days) when consumer notifies credit bureau that he or she has been the victim of identity theft.
  - Impose a security freeze upon direct request from the consumer that would prohibit the CRA from disclosing the contents of a consumer report subject to the freeze.
    - CRA has 1 business day to impose the freeze if the request is received by toll-free telephone or secure electronic means or 3 business days if the request is received by mail.

Fraud Alert and Credit Report Freezes (cont'd)

HUNTON ANDREWS KURTH

- Exceptions
  - Consumer reports may still be used for the following even after a security freeze is in place for specific enumerated purposes, including:
    - To review an existing account or collecting the financial obligation owed for the account;
    - Firm offers of credit;
    - Pursuant to a credit monitoring service;
    - Upon the request of a consumer;
    - To underwrite insurance;
    - For employment, tenant, or background screening purposes;
    - To authenticate a consumer's identity other than for (a) granting credit or (b) investigating or preventing actual or potential fraud.

Veteran & Servicemember Protections

HUNTON ANDREWS KURTH

- Section 302 amends the FCRA to
  - Provide a dispute and verification process with respect to inclusion of a veteran's medical debt in a consumer report.
  - Require a CRA to provide a free electronic credit monitoring service to any consumer who provides proof that he or she is an active duty military consumer.
- Section 309 enhances consumer protections for veterans that refinance their home loans, except if the transaction is a cash-out refinance.

Foreclosure Relief

- Section 304 restores the notification requirements and other protections related to the eviction of renters in foreclosed properties.
  - These provisions restore the Protecting Tenants at Foreclosure Act, effective June 23, 2018.
- Section 313 makes permanent the one-year protection period active duty servicemembers have against the sale, foreclosure or seizure of mortgage properties.

IV. Regulatory Relief for Capital Formation

Capital Formation Overview

HUNTON ANDREWS KURTH

- Title V is focused on providing regulatory relief to capital markets participants.
- Section 504 creates a new subset of venture capital funds called *qualifying venture capital funds* and exempts them from the definition of "investment company."
- Section 507 requires the SEC to double the threshold of the amount of stock company can sell to its personnel without being subject to additional disclosure requirements ($5 million to $10 million).
- Section 508 expands the set of eligible issuers under Regulation A+.

V. Regulatory Relief for Large Banks

Large Bank Relief Overview

HUNTON ANDREWS KURTH

- Title IV covers regulatory relief for large banks.
- Section 401 increases some of the asset thresholds associated with the Federal Reserve's enhanced prudential regulation framework.
  - Includes no stress testing for BHCs<$100 billion in TA. Federal Reserve extended carve out to apply to Banks<$100 billion in TA.
- Section 402 allows custody banks to no longer hold capital against central bank deposits.
- Section 403 requires regulators to include municipal bonds as a level 2B high-quality liquid assets for purposes of the liquidity coverage ratio.

Questions?

Thank you for your time

Tara L. Elgie
(214) 979-8212
telgie@huntonak.com

Carleton Goss
(214) 468-3330
cgoss@huntonak.com