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Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) and Selected Policy Issues

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Summary

Some observers assert the financial crisis of 2007-2009 revealed that excessive risk had built up in the financial system, and that weaknesses in regulation contributed to that buildup 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), and regulators strengthened rules under existing authority. Following this broad overhaul of financial regulation, some observers argue certain changes are an overcorrection, resulting in unduly burdensome regulation.

The Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155, P.L. 115-174) was signed into law by President Donald Trump on May 24, 2018. P.L. 115-174 modifies Dodd-Frank provisions, such as the Volcker Rule (a ban on proprietary trading and certain relationships with investment funds), the *qualified mortgage* criteria under the Ability-to-Repay Rule, and enhanced regulation for large banks; provides smaller banks with an "off ramp" from Basel III capital requirements—standards agreed to by national bank regulators as part of an international bank regulatory framework; and makes other changes to the regulatory system.

Most changes made by P.L. 115-174 can be grouped into one of five issue areas: (1) mortgage lending, (2) regulatory relief for "community" banks, (3) consumer protection, (4) regulatory relief for large banks, and (5) regulatory relief for capital formation.

Title I of P.L. 115-174 relaxes or provides exemptions to certain mortgage lending rules. For example, it creates a new compliance option for mortgages originated and held by banks and credit unions with less than $10 billion in assets to be considered qualified mortgages for the purposes of the Ability-to-Repay Rule. In addition, P.L. 115-174 exempts certain insured depositories and credit unions that originate few mortgages from certain Home Mortgage Disclosure Act reporting requirements.

A number of Title II provisions provide regulatory relief to community banks. For example, banks with under $10 billion in assets are exempt from the Volcker Rule, and certain banks that meet a new *Community Bank Leverage Ratio* are exempt from other risk-based capital ratio and leverage ratio requirements.

Title III enhances consumer protections in targeted areas. For example, it subjects credit reporting agencies (CRAs) to additional requirements, including requirements to generally provide fraud alerts for consumer files for at least a year and to allow consumers to place security freezes on their credit reports. In addition, it requires CRAs to exclude certain medical debt from veterans' credit reports.

Title IV alters the criteria used to determine which banks are subject to *enhanced prudential regulation* from the original $50 billion asset threshold original set by Dodd-Frank. Banks designated as *global systemically important banks* and banks with more than $250 billion in assets are still automatically subjected to enhanced regulation. However, under P.L. 115-174 banks with between $100 billion and $250 billion in assets are automatically subject only to supervisory stress tests, while the Federal Reserve (Fed) has discretion to apply other individual enhanced prudential provisions to these banks. Banks with assets between $50 billion and $100 billion will no longer be subject to enhanced regulation, except for the risk committee requirement. In addition, P.L. 115-174 relaxes leverage requirements for large custody banks, and allows certain municipal bonds to be counted toward large banks' liquidity requirements.

Title V provides regulatory relief to certain securities regulations to encourage capital formation. For example, it exempts more securities exchanges from state securities regulation and subjects certain investment pools to fewer registration and disclosure requirements.

Title VI provides enhanced consumer protection for borrowers of student loans. For example, it requires CRA to exclude certain defaulted private student loan debt from credit reports.

Proponents of P.L. 115-174 assert it provides necessary and targeted regulatory relief, fosters economic growth, and provides increased consumer protections. Opponents of the legislation argue it needlessly pares back important Dodd-Frank protections to the benefit of large and profitable banks.

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Introduction

The Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155) was reported out by the Senate Committee on Banking, Housing, and Urban Affairs on December 18, 2017. It was then passed by the Senate on March 14, 2018, following the inclusion of a manager's amendment that added a number of provisions to the bill as reported.[1] The House passed P.L. 115-174 on May 22, 2018, and President Donald Trump signed it into law on May 24, 2018.

P.L. 115-174 changes a number of financial regulations; its six titles alter certain aspects of the regulation of banks, capital markets, mortgage lending, and credit reporting agencies. Many of the provisions can be categorized as providing regulatory relief to banks and certain companies accessing capital markets. Others are designed to relax mortgage lending rules and provide additional protections to consumers, including protections related to credit reporting, veterans' mortgage refinancing, and student loans.

Some P.L. 115-174 provisions amend the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203), regulatory reform legislation enacted following the 2007-2009 financial crisis that initiated the largest change to the financial regulatory system since at least 1999.[2] Other provisions amend certain rules implemented by bank regulators under existing authorities and which closely adhere to the Basel III Accords—the international bank regulation standards-setting agreement. Finally, other provisions address long-standing or more recent issues not directly related to Dodd-Frank or Basel III.

Proponents of the legislation assert it provides targeted financial regulatory relief that eliminates a number of unduly burdensome regulations, fosters economic growth, and strengthens consumer protections.[3] Opponents of the legislation argue it needlessly pares back important Dodd-Frank safeguards and protections to the benefit of large and profitable banks.[4]

Prior to passage of P.L. 115-174, the House and the Administration had also proposed wide-ranging financial regulatory relief plans. In terms of the policy areas addressed, some of the changes in P.L. 115-174 are similar to those proposed in the Financial CHOICE Act (FCA; H.R. 10), which passed the House on June 8, 2017 (see **Appendix B**).[5] However, the two bills generally differ in the scope and degree of proposed regulatory relief. The FCA calls for widespread changes to the regulatory framework across the entire financial system, whereas P.L. 115-174 is more focused on the banking industry, mortgages, capital formation, and credit reporting. Likewise, many of the provisions found in P.L. 115-174 parallel regulatory relief recommendations made in the Treasury Department's series of reports pursuant to Executive Order 13772, particularly the first report on banks and credit unions.[6] The Treasury reports are

[1] Previous versions of this report examined S. 2155, as reported. This updated version of the report examines P.L. 115-174, as passed by the Senate and House and signed into law by the President.

[2] For more information, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by Baird Webel.

[3] Senate Committee on Banking, Housing, and Urban Affairs, "Senators Announce Agreement on Economic Growth Legislation," majority press release, November 13, 2017, at https://www.banking.senate.gov/public/index.cfm/republican-press-releases.

[4] Senate Committee on Banking, Housing, and Urban Affairs, "Brown Opposes Legislation to Roll Back Dodd-Frank Protections," minority press release, November 13, 2017, at https://www.banking.senate.gov/public/index.cfm/democratic-press-releases.

[5] For more information, see CRS Report R44839, *The Financial CHOICE Act in the 115th Congress: Selected Policy Issues*, by Marc Labonte et al.

[6] U.S. Department of the Treasury, *A Financial System That Creates Opportunities: Banks and Credit Unions*, June

more wide-ranging than P.L. 115-174, however, and more focused on changes that can be made by regulators without congressional action.

The Congressional Budget Office (CBO) estimated that P.L. 115-174 would reduce the budget deficit by $23 million over 10 years.[7] CBO estimated that only one provision would reduce the deficit—Section 217 requires the Federal Reserve (Fed) to transfer $675 million from its surplus account to the Treasury, where it is added to general revenues. CBO estimated that this provision would increase revenues by $478 million on net over 10 years.[8] CBO assumed when making the estimate that the Fed would finance the transfer by selling Treasury securities, which otherwise would have earned $177 million in income that would have been remitted to the Treasury in the next 10 years. Thus, the provision can be thought of as shifting Fed remittances from the future to the present, as opposed to representing new economic resources available to the federal government. Various other provisions are forecast to increase the deficit, with the three provisions with the largest effect on the deficit being the community bank leverage ratio (Section 201), changes to the enhanced regulation threshold (Section 401), and changes to the supplementary leverage ratio for custody banks (Section 402).[9]

This report summarizes P.L. 115-174 as enacted and highlights major policy proposals of the legislation. Most changes proposed by P.L. 115-174, as passed, can be grouped into one of five issue areas: (1) mortgage lending, (2) regulatory relief for "community" banks, (3) consumer protection, (4) regulatory relief for large banks, and (5) regulatory relief in securities markets. The report provides background on each policy area, describes the P.L. 115-174 provisions that make changes in these areas, and examines the prominent policy issues related to those changes. In its final section, this report also provides an overview of provisions that do not necessarily relate directly to these five topics. This report also includes a contact list of CRS experts on topics addressed by P.L. 115-174, a summary of various exemption thresholds created or raised by P.L. 115-174 in **Appendix A**, and a list of provisions in P.L. 115-174 that address similar issues as a number of House bills in **Appendix B**.

Amending Mortgage Rules

Title I of P.L. 115-174 is intended to reduce the regulatory burden involved in mortgage lending and to expand credit availability, especially in certain market segments. Following the financial crisis, in which lax mortgage standards are believed by certain observers to have played a role, new mortgage regulations were implemented and some existing regulations were strengthened. Some analysts are now concerned that certain new and long-standing regulations unduly impede the mortgage process and unnecessarily restrict the availability of mortgages. To address these concerns, several provisions in P.L. 115-174 are designed to relax mortgage rules, including by providing relief to small lenders and easing rules related to specific mortgage types or markets.

2017, at https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf. For a summary, see CRS Insight IN10720, *First Treasury Report on Regulatory Relief: Depository Institutions*, by David W. Perkins.

[7] Congressional Budget Office, *Estimates of the Direct Spending and Revenue Effects of Amendment Number 2151*, March 8, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155amendmentnumber2151.pdf.

[8] Congressional Budget Office, *Estimates of the Direct Spending and Revenue Effects of Amendment Number 2151*, March 8, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155amendmentnumber2151.pdf.

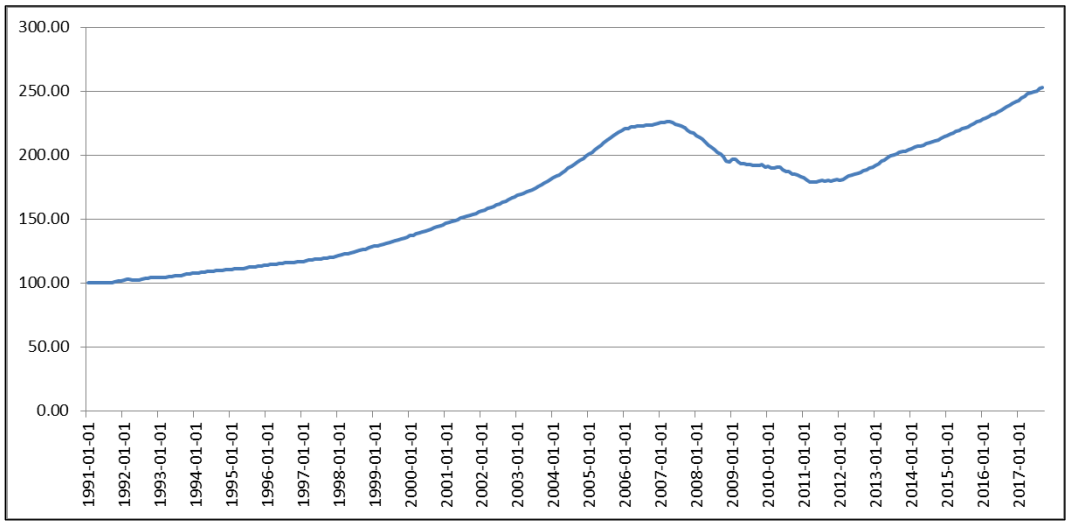
[9] Congressional Budget Office, Cost Estimate, P.L. 115-174, March 5, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155.pdf.

Other analysts argue that market developments have contributed to a tightening of mortgage credit and, though some changes to regulations may be desirable, the regulatory structure in place prior to the enactment of P.L. 115-174 generally provided important consumer protections.

Background[10]

The bursting of the housing bubble in 2007 preceded the December 2007-June 2009 recession and a financial panic in September 2008. As shown in **Figure 1**, house prices rose significantly between 1991 and 2007 and then declined sharply for several years. Nationwide house prices did not return to their peak levels until the end of 2015. The decrease in house prices reduced household wealth and resulted in a surge in foreclosures. This had negative effects on homeowners and contributed to the financial crisis by straining the balance sheets of financial firms that held nonperforming mortgage products.

Figure 1. House Prices, 1991-2017



Source: Figure created by CRS using data from the Federal Housing Finance Agency House Price Index (Seasonally Adjusted Purchase-Only Index).

Note: January 1991 is set to 100 for this index.

Many factors contributed to the housing bubble and its collapse, and there is significant debate about the underlying causes even a decade later. Many observers, however, point to relaxed mortgage underwriting standards, an expansion of nontraditional mortgage products, and misaligned incentives among various participants as underlying causes.[11]

Mortgage lending has long been subject to regulations intended to protect homeowners and to prevent risky loans, but the issues evident in the financial crisis spurred calls for reform. The Dodd-Frank Act made a number of changes to the mortgage system, including establishing the Consumer Financial Protection Bureau (CFPB)[12]—which consolidated many existing authorities

[10] For more information, see CRS In Focus IF10126, *Introduction to Financial Services: The Housing Finance System*, by Katie Jones and N. Eric Weiss.

[11] The Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report*, January 2011, pp. 213-230, https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[12] P.L. 111-203 Title X.

and established new authorities, some of which pertained to the mortgage market—and creating numerous consumer protections in Dodd-Frank's Title XIV, which was called the Mortgage Reform and Anti-Predatory Lending Act.[13]

A long-standing issue in the regulation of mortgages and other consumer financial services is the perceived trade-off between consumer protection and credit availability. If regulation intended to protect consumers increases the cost of providing a financial product, some lenders may charge a higher price and provide the service more selectively.[14] Those who still receive the product may benefit from the enhanced disclosure or added legal protections of the regulation, but that benefit may result in a higher price for the product.

Some policymakers generally believe that the postcrisis mortgage rules have struck the appropriate balance between protecting consumers and ensuring that credit availability is not restricted due to overly burdensome regulations. They contend that the regulations are intended to prevent those unable to repay their loans from receiving credit and have been appropriately tailored to ensure that those who can repay are able to receive credit.[15]

Critics counter that some rules have imposed compliance costs on lenders of all sizes, resulting in less credit available to consumers and restricting the types of products available to them. Some assert this is especially true for certain nonstandard types of mortgages, such as mortgages for homes in rural areas or for manufactured housing. They further argue that the rules for certain types of lenders, usually small lenders, are unduly burdensome.[16]

A variety of experts and organizations attempt to measure the availability of mortgage credit, and although their methods vary, it is generally agreed that mortgage credit is tighter than it was in the years prior to the housing bubble and subsequent housing market turmoil. **Figure 2** shows that mortgage originations to borrowers with FICO credit scores below 720 have decreased in absolute and percentage terms. However, no consensus exists on whether or to what degree mortgage rules have unduly restricted the availability of mortgages, in part because it is difficult to isolate the effects of rules and the effects of broader economic and market forces. For example, the supply of homes on the market, demand for those homes, and demographic trends may also be playing a role.[17] In addition, whether a tightening of credit should be interpreted as a desirable correction to precrisis excesses or an unnecessary restriction on credit availability is subject to debate.

[13] P.L. 11-203 Title XIV.

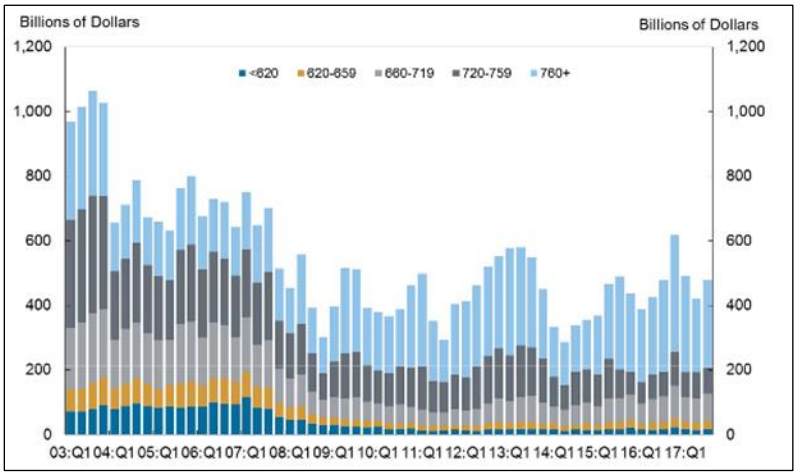
[14] House Financial Services Committee, *The Financial CHOICE Act*, A Republican Proposal to Reform The Financial Regulatory System, April 24, 2017, pp. 6-7, 51-52.

[15] H.Rept. 115-153, Part 1, Book 2, "Minority View," pp. 968-971.

[16] House Financial Services Committee, *The Financial CHOICE Act*, A Republican Proposal to Reform The Financial Regulatory System, April 24, 2017, pp. 6-7, 51-52.

[17] For example, see Joint Center for Housing Studies, *The State of the Nation's Housing 2015*, pp. 8-9.

Figure 2. Mortgage Originations by Credit Score



Source: Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit*, *2017 Q3*, p. 6, at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2017Q3.pdf.

Provisions and Selected Analysis

Title I contains 10 sections that amend various laws that affect relatively small segments of the nation's mortgage market. Some sections pertain to consumer protection, and are generally intended to relax consumer protections in areas and markets in which the costs of these regulations are thought by some observers to be high relative to the rest of the mortgage market. In some cases, the legislation removes perceived regulatory barriers to the efficient functioning of specific segments of the mortgage market. Other provisions aim to balance safety and soundness concerns with concerns about access to credit.

Section 101—Qualified Mortgage Status for Loans Held by Small Banks

Provision

Section 101 creates a new qualified mortgage (QM) compliance option for mortgages that depositories with less than $10 billion in assets originate and hold in portfolio. To be eligible, the lender has to consider and document a borrower's debts, incomes, and other financial resources, and the loan has to satisfy certain product-feature requirements.

Analysis

Title XIV of the Dodd-Frank Act established the ability-to-repay (ATR) requirement to address problematic market practices and policy failures that some policymakers believe fueled the housing bubble that precipitated the financial crisis. Under the ATR requirement, a lender must verify and document that, at the time a mortgage is made, the borrower has the ability to repay the loan. Lenders that fail to comply with the ATR rule could be subject to legal liability, such as the payment of certain statutory damages.[18]

[18] Consumer Financial Protection Bureau (CFPB), "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," 78 *Federal Register* 6416, January 30, 2013, at https://www.gpo.gov/fdsys/pkg/FR-2013-01-30/pdf/2013-00736.pdf.

The CFPB issued regulations in January 2013 implementing the ATR requirement. A lender can comply with the ATR requirement in different ways, one of which is by originating a QM. When a lender originates a QM, it is presumed to have complied with the ATR requirement, which consequently reduces the lender's potential legal liability for its residential mortgage lending activities. The definition of a QM, therefore, is important to a lender seeking to minimize the *legal risk* of its residential mortgage lending activities, specifically its compliance with the statutory ATR requirement.

The Dodd-Frank Act provides a general definition of a QM, but also authorizes CFPB to issue "regulations that revise, add to, or subtract from" the general statutory definition.[19] The CFPB-issued QM regulations establish a *Standard QM* that meets all of the underwriting and product-feature requirements outlined in the Dodd-Frank Act. However, the QM regulations also establish several additional categories of QMs, one of which is the *Small Creditor Portfolio QM,* which provide lenders the same presumption of compliance with the ATR requirement as the Standard QM. Compared with the Standard QM compliance option, the Small Creditor Portfolio QM has less prescriptive underwriting requirements. It is intended to reduce the regulatory burden of the ATR requirement for certain small lenders.

A mortgage can qualify as a Small Creditor Portfolio QM if three broad sets of criteria are satisfied.[20] First, the loan must be held in the originating lender's portfolio for at least three years (subject to several exceptions). Second, the loan must be held by a *small creditor*, which is defined as a lender that originated 2,000 or fewer mortgages in the previous year and has less than $2 billion in assets. Third, the loan must meet the underwriting and product-feature requirements for a Standard QM except for the debt-to-income ratio.

Some argue that the QM definition has led to an unnecessary constriction of credit and has been unduly burdensome for lenders. In particular, critics argue that not all of the lender and underwriting requirements included in the Small Creditor Portfolio QM are essential to ensuring that a lender will verify a borrower's ability to repay, and instead argue that holding the loan in portfolio is sufficient to encourage thorough underwriting.[21]

By keeping the loan in portfolio, lenders have added incentive to consider whether the borrower will be able to repay the loan. Keeping the loan in portfolio means that the lender retains the default risk and could be exposed to losses if the borrower does not repay. This retained risk, the argument goes, encourages small creditors to provide additional scrutiny during the underwriting process, even in the absence of a legal requirement to do so. The expanded portfolio option, according to supporters, will spur lenders to offer more mortgages and reduce the burden associated with the more prescriptive underwriting standards of the existing QM options. The less prescriptive standards could most benefit creditworthy borrowers with atypical financial situations, such as self-employed individuals or seasonal employees, who may have a difficult time conforming to the existing standards.

As summarized in **Table 1**, P.L. 115-174 creates a new compliance option for lenders who keep a mortgage in portfolio in addition to the existing Small Creditor Portfolio QM. Compared with the CFPB's Small Creditor Portfolio QM, P.L. 115-174 allows larger lenders to use the portfolio compliance option (raising the asset threshold from $2 billion to $10 billion and eliminating the origination limits) but limits the new option to insured depositories (banks and credit unions)

[19] 15 U.S.C. §1639c.

[20] 12 C.F.R. §1026.43.

[21] For example, see Rep. Andy Barr, "Barr Introduces Legislation to Help Homebuyers, Prevent Bailouts," press release, February 27, 2015, at https://barr.house.gov/media-center/press-releases/barr-introduces-legislation-to-help-homebuyers-prevent-bailouts.

rather than to both depository and nondepository lenders. The new portfolio option created by P.L. 115-174 has more restrictive portfolio requirements, requiring lenders to hold the loan in portfolio for the life of the loan (with certain exceptions) rather than for just three years. However, the P.L. 115-174 option has more relaxed loan criteria. Lenders have to comply with some product-feature restrictions, but those restrictions are generally less stringent than under the other compliance option. In addition, P.L. 115-174 relaxes underwriting criteria, requiring lenders to consider and document a borrower's debts, incomes, and other financial resources in accordance with less prescriptive guidance than is required under certain other QM option criteria.

Table 1. Comparison of P.L. 115-174 to the CFPB's Small Creditor Portfolio QM

	CFPB's Small Creditor Portfolio QM	P.L. 115-174
Portfolio Requirements	Mortgage must be held in portfolio for three years. It may be transferred to another small lender and retain QM status.	Mortgage must be held in portfolio by the originator. It may be transferred and retain QM status under certain limited circumstances.
Lender Restrictions	Limited to small lenders (depositories and nondepositories) with less than $2 billion in assets and fewer than 2,000 originations a year (excluding those held in portfolio).	Limited to small insured depositories (banks and credit unions) with less than $10 billion in assets.
Loan Criteria	Loan must satisfy the underwriting and product feature requirements of the Standard QM Option, with the exception of the Standard QM Option's DTI requirement.	Loan must satisfy fewer product-feature restrictions and less prescriptive underwriting guidance than the CFPB's Small Creditor Portfolio QM.

Source: Table created by the Congressional Research Service.

Notes: QM = qualified mortgage. DTI = debt-to-income ratio. CFPB Small Creditor Portfolio QM refers to compliance option available in 12 C.F.R. §1026.43.

Although supporters of the expanded portfolio QM option in P.L. 115-174 argue that the new compliance option will expand credit availability and appropriately align the incentives of the borrower and lender, critics of the proposal counter that the incentives of holding the loan in portfolio are insufficient to protect consumers and that the protections in the rule in place prior to the enactment of P.L. 115-174 are needed to ensure that the hardships caused by the housing crisis are not repeated.

Section 102—Charitable Tax Deduction for Appraisals

Under current law,[22] appraisers who meet certain criteria (such as an appraiser who is not an employee of the mortgage loan originator) are required to be compensated at a rate that is customary and reasonable for appraisal services in the market in which the appraised property is located. During the buildup of the housing bubble and its subsequent bust, house prices rose quickly and then fell steeply in many parts of the country, causing some policymakers to question the accuracy of the appraisals that supported the mortgage loans during the housing bubble, and the independence of the appraisers. The customary-and-reasonable fee requirement in current law is intended to help ensure that appraisers are acting with appropriate independence and not in the interest of the lender, seller, borrower, or other interested party. However, some have argued that the requirement for appraisers to receive a customary and reasonable fee made it difficult for

[22] 15 U.S.C. §1639e.

them to donate their services to charitable organizations. Section 102 allows appraisers to donate their appraisal services to a charitable organization eligible to receive tax-deductible charitable contributions, such as Habitat for Humanity, by clarifying that a donated appraisal service to a charitable organization would not be in violation of the customary-and-reasonable fee requirement.

Section 103—Exemption from Appraisals in Rural Areas

Provision

The Dodd-Frank Act strengthened appraisal requirements after concerns were raised about the role that inaccurate appraisals played in the housing crisis. In recent years, there have been reports of shortages of qualified appraisers, especially in rural areas.[23] Section 103 waives the general requirement for independent home appraisals for federally related mortgages in rural areas where the lender has contacted three state-licensed or state-certified appraisers who could not complete an appraisal in "a reasonable amount of time."[24] An originator who makes a loan without an appraisal could sell the mortgage only under certain circumstances, such as bankruptcy.

Section 104—Home Mortgage Disclosure Act Adjustment

Provision

Section 104 exempts banks and credit unions from certain Home Mortgage and Disclosure Act (HMDA; P.L. 94-200) reporting requirements—generally new requirements implemented by the Dodd-Frank Act.[25] Lenders that have originated fewer than 500 closed-end mortgage loans in each of the preceding two years qualify for reduced reporting on those loans and lenders originating fewer than 500 open-end lines of credit in each of the preceding two years qualify for reduced reporting on those loans, provided they achieve certain Community Reinvestment Act compliance scores.

HMDA, which was originally enacted in 1975, requires most lenders to report data on their mortgage business so that the data can be used to assist (1) "in determining whether financial institutions are serving the housing needs of their communities"; (2) "public officials in distributing public-sector investments so as to attract private investment to areas where it is needed"; and (3) "in identifying possible discriminatory lending patterns."[26] The Dodd-Frank Act required lenders to collect additional data through HMDA, such as points and fees payable at origination, the term of the mortgage, and certain information about the interest rate. Currently, depository lenders generally have to comply with the HMDA reporting requirements if they have $45 million or more of assets, originated at least 25 home purchase loans in each of the previous

[23] For example, see Federal Reserve System, FDIC, NCUA, OCC, *Interagency Advisory on the Availability of Appraisers*, May 31, 2017, at https://www.occ.gov/news-issuances/news-releases/2017/nr-ia-2017-60a.pdf.

[24] For more on the regulation of real estate appraisers, see CRS Report RS22953, *Regulation of Real Estate Appraisers*, by N. Eric Weiss.

[25] Regulation pursuant to Section 1094 of Dodd-Frank was fully effective on January 1, 2018. See Bureau of Consumer Financial Protection, "Home Mortgage Disclosure (Regulation C)," 80 *Federal Register* 208, October 28, 2015.

[26] FFIEC, "HMDA: Background and Purpose," at https://www.ffiec.gov/hmda/history.htm. The 500-loan exemption from HMDA reporting requirements does not apply to a lender that receives "needs improvement" or lower rating in both of their two most recent Community Reinvestment Act examinations.

two years, and satisfied other criteria.[27] Section 104 exempts additional depository lenders from most of the HMDA requirements that were added by the Dodd-Frank Act.

Section 105—Credit Union Loans for Nonprimary Residences

Provision

Section 105 excludes loans made by a credit union for a single-family home that is not the member's primary residence from the definition of a *member business loan*.[28] Credit unions face certain restrictions on the type and volume of loans that they can originate. One such restriction relates to member business loans. A member business loan means "any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate or other business investment property or venture, or agricultural purpose," with some exceptions, made to a credit union member.[29] The aggregate amount of member business loans made by a credit union must be the lesser of 1.75 times the credit union's actual net worth, or 1.75 times the minimum net worth amount required to be well capitalized. A loan for a single-family home that is a primary residence is not considered a member business loan, but a similar loan for a nonprimary residence, such as an investment property or vacation home, was considered a member business loan prior to the enactment of P.L. 115-174. Section 105 modifies the definition such that nonprimary residence transactions are excluded from the member business loan definition.

Section 106—Mortgage Loan Originator Licensing and Registration

Provision

Section 106 allows certain state-licensed mortgage loan originators (MLOs) who are licensed in one state to temporarily work in another state while waiting for licensing approval in the new state. It also grants MLOs who move from a depository institution (where loan officers do not need to be state licensed) to a nondepository institution (where they do need to be state licensed) a grace period to complete the necessary licensing.

Under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; SAFE Act),[30] MLOs who work for a bank must register with the National Mortgage Licensing System and Registry (NMLS), and those working for a nonbank mortgage lender must be licensed and registered in their state. Supporters of the original 2008 legislation argued that without registration and licensing, unscrupulous or incompetent MLOs may be able to move from job to job to escape the consequences of their actions. For MLOs at nonbank lenders, the process of becoming licensed and registered in a state can be time intensive, involving criminal background checks and prelicensing education. This could potentially be problematic for individuals moving (1) from a bank lender to a nonbank lender, or (2) from a nonbank lender in one state to a nonbank lender in another state. To address transition issues, Section 106 provides

[27] Asset threshold is adjusted annually for inflation. 12 C.F.R. §1003.2 *Financial Institution*(1). For the 2018 asset threshold, see Bureau of Consumer Financial Protection, "Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold," 82 *Federal Register* 61145, December 27, 2017. In addition, nondepository lenders must comply if they have $10 million or more in assets or originated 100 or more home purchase loans. See 12 C.F.R. §1003.2 *Financial Institution*(2).

[28] For more on member business loans, see CRS Report R43167, *Policy Issues Related to Credit Union Lending*, by Darryl E. Getter.

[29] 12 U.S.C. §1757a.

[30] 12 U.S.C. §5106.

grace periods to allow individuals who are transferring positions in the situations mentioned above (and meet other performance criteria, such as not having previously had his or her license revoked or suspended) to become appropriately licensed and registered.

Section 107—Manufactured Homes Retailers

Provision

In response to problems in the mortgage market when the housing bubble burst, the SAFE Act and the Dodd-Frank Act established new requirements for mortgage originators' licensing, registration, compensation, and training, among other practices. A mortgage originator is someone who, among other things, "(i) takes a residential mortgage loan application; (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or (iii) offers or negotiates terms of a residential mortgage loan."[31] The definition used in implementing the regulation in place at the time of the enactment of P.L. 115-174 excluded employees of manufactured-home retailers under certain circumstances, such as "if they do not take a consumer credit application, offer or negotiate credit terms, or advise a consumer on credit terms."[32] Section 107 expands the exception such that retailers of manufactured homes or their employees are not be considered mortgage originators if they do not receive more compensation for a sale that included a loan than for a sale that did not include a loan, and if they provide customers certain disclosures about their affiliations with other creditors.

Section 108—Escrow Requirements Relating to Certain Consumer Credit Transactions

Provision

Section 108 exempts any loan made by a bank or credit union from certain escrow requirements if the institution has assets of $10 billion or less, originated fewer than 1,000 mortgage loans in the preceding year, and meets certain other criteria.

An escrow account is an account that a "mortgage lender may set up to pay certain recurring property-related expenses ... such as property taxes and homeowner's insurance."[33] Escrow accounts may only be used for the purpose they were created. For example, a mortgage escrow account can only be used to pay for expenses (such as property taxes) for that mortgage, not for the mortgage lender's general expenses. Escrow accounts provide a way for homeowners to make monthly payments for annual or semi-annual expenses. Maintaining escrow accounts for borrowers are potentially costly for some banks, such as certain small institutions.

Higher-priced mortgage loans have been required to maintain an escrow account for at least one year pursuant to a regulation that was implemented before the Dodd-Frank Act.[34] The Dodd-

[31] 15 U.S.C. §1602(cc). The definition of mortgage originator has multiple exemptions, such as for those who perform primarily clerical or administrative tasks in support of a mortgage originator or those who engage in certain forms of seller financing.

[32] CFPB, *Manufactured-Housing Consumer Finance in the United States*, September 2014, p. 51, at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

[33] CFPB, "What Is an Escrow or Impound Account?" at http://www.consumerfinance.gov/askcfpb/140/what-is-an-escrow-or-impound-account.html.

[34] A higher-priced mortgage loan is a loan with an APR "that exceeds an 'average prime offer rate' for a comparable transaction by 1.5 or more percentage points for transactions secured by a first lien, or by 3.5 or more percentage points

Frank Act, among other things, extended the amount of time an escrow account for a higher-priced mortgage loan must be maintained from one year to five years, although the escrow account can be terminated after five years if certain conditions are met. It also provided additional disclosure requirements.[35]

The Dodd-Frank Act gave the CFPB the discretion to exempt from certain escrow requirements lenders operating in rural areas if the lenders satisfied certain conditions.[36] The CFPB's escrow rule included exemptions from escrow requirements for lenders that (1) operate in rural or underserved areas; (2) extend 2,000 mortgages or fewer; (3) have less than $2 billion in total assets; and (4) do not escrow for any mortgage they service (with some exceptions).[37] Additionally, a lender that satisfies the above criteria must intend to hold the loan in its portfolio to be exempt from the escrow requirement for that loan. Section 108 amends the exemption criteria such that a bank or credit union also are exempt from maintaining an escrow account for a mortgage as long as it has assets of $10 billion or less, originated fewer than 1,000 mortgage loans in the preceding year, and met certain other criteria.

Section 109—Waiting Period Requirement for Lower-Rate Mortgage

Provision

The Dodd-Frank Act directed the CFPB to combine mortgage disclosures required under the Truth in Lending Act (P.L. 90-321; TILA) and Real Estate Settlement Procedures Act (P.L. 93-533; RESPA) into a TILA-RESPA Integrated Disclosure (TRID) form. On November 20, 2013, the CFPB issued the TRID final rule that would require lenders to use the streamlined disclosure forms. Under current law,[38] a borrower generally must receive the disclosures at least three days before the closing of the mortgage. After receiving their required disclosures, borrowers have in some cases been offered new mortgage terms by their lender, which requires new disclosures and potentially delays their mortgage closing. Section 109 waives the three-day waiting period between a consumer receiving a mortgage disclosure and closing on the mortgage if a consumer receives an amended disclosure that includes a lower interest rate than was offered in the previous disclosure.

Section 109 also expresses the sense of Congress that the CFPB should provide additional guidance on certain aspects of the final rule, such as whether lenders receive a safe harbor from liability if they use model disclosures published by the CFPB that do not reflect regulatory changes issued after the model forms were published.

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for transactions secured by a subordinate lien." CFPB, "Escrow Requirements Under the Truth in Lending Act (Regulation Z)," 78 *Federal Register* 4726, January 22, 2013. If the first lien is a jumbo mortgage (above the conforming loan limit for Fannie Mae and Freddie Mac), then it is considered a higher-priced mortgage loan if its APR is 2.5 percentage points or more above the average prime offer rate.

[35] CFPB, *Small Entity Compliance Guide: TILA Escrow Rule*, April 18, 2013, p. 4, at http://files.consumerfinance.gov/f/201307_cfpb_updated-sticker_escrows-implementation-guide.pdf.

[36] P.L. 111-203, §1461.

[37] See 12 C.F.R. §1026.35 and CFPB, "Escrow Requirements Under the Truth in Lending Act (Regulation Z)," 78 *Federal Register* 4726, January 22, 2013. In a September 2015 rule the CFPB amended certain escrow requirements; see CFPB, "Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z)," at http://files.consumerfinance.gov/f/201509_cfpb_amendments-relating-to-small-creditors-and-rural-or-underserved-areas-under-the-truth-in-lending-act-regulation-z.pdf.

[38] 15 U.S.C. §1639(b).

Regulatory Relief for Community Banks

Title II of P.L. 115-174 is focused on providing regulatory relief to *community banks*. Although small banks qualify for various exemptions from certain regulations, whether the regulations have been appropriately tailored is the subject of debate. Certain Title II provisions raise previous asset thresholds or create new ones at which banks and other depositories are exempt from regulation or otherwise qualify for reduced regulatory obligations.

Background[39]

The term community bank typically refers to a small bank focused on a traditional commercial bank business of taking deposits and making loans to meet the financial needs of a particular community. Although conceptually size does not necessarily have to be a determining factor, community banks are nevertheless often identified as such based on having a small asset size. No consensus exists on what size limit is compatible with the community bank concept, and some observers doubt the effectiveness of size-based measures in identifying community banks.[40]

Community banks are more likely to be concentrated in core commercial bank businesses of making loans and taking deposits and less concentrated in other activities like securities trading or holding derivatives. Community banks also tend to operate within a smaller geographic area. Also, these banks are generally more likely to practice *relationship lending*, wherein loan officers and other bank employees have a longer-standing and perhaps more personal relationship with borrowers.[41]

Due in part to these characteristics, proponents of community banks assert that these banks are particularly important credit sources to local communities and otherwise underserved groups, as big banks may be unwilling to meet the credit needs of a small market of which they have little direct knowledge. If this is the case, imposing burdens on small banks that potentially restrict the amount of credit they make available could have a cost for these groups. In addition, relative to large banks, small banks individually pose less of a systemic risk to the broader financial system, and are likely to have fewer employees and resources to dedicate to regulatory compliance.[42] Arguably, this means regulation aimed at systemic stability might produce little benefit at a high cost when applied to these banks.[43]

Thus, one rationale for easing the regulatory burden for community banks would be that regulation intended to increase systemic stability need not be applied to such banks since they individually do not pose a risk to the entire financial system. Sometimes the argument is extended to assert that because small banks did not cause the 2007-2009 crisis and pose less systemic risk, they need not be subject to new regulations.

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[39] For more information, see CRS Report R44855, *Banking Policy Issues in the 115th Congress*, by David W. Perkins.

[40] Federal Deposit Insurance Corporation, *FDIC Community Banking Study*, December 2012, at https://www.fdic.gov/regulations/resources/cbi/report/cbi-full.pdf.

[41] Federal Deposit Insurance Corporation, *FDIC Community Banking Study*, December 2012, at https://www.fdic.gov/regulations/resources/cbi/report/cbi-full.pdf.

[42] Drew Dahl, Andrew Meyer, and Michelle Neely, "Scale Matters: Community Banks and Compliance Costs," *Federal Reserve Bank of St. Louis, The Regional Economist*, July 2016, at https://www.stlouisfed.org/~/media/Publications/Regional-Economist/2016/July/scale_matters.pdf.

[43] CRS Report R43999, *An Analysis of the Regulatory Burden on Small Banks*, by Sean M. Hoskins and Marc Labonte.

Another potential rationale for easing regulations on small banks would be if there are economies of scale to regulatory compliance costs, meaning that as banks become bigger, their costs do not rise as quickly as asset size. From a cost-benefit perspective, if regulatory compliance costs are subject to economies of scale, then the balance of costs and benefits of a particular regulation will depend on the size of the bank. Although regulatory compliance costs are likely to rise with size, those costs as a percentage of overall costs or revenues are likely to fall. In particular, as regulatory complexity increases, compliance may become relatively more costly for small firms.[44] Empirical evidence on whether compliance costs are subject to economies of scale is mixed.[45] Some argue for reducing the regulatory burden on small banks on the grounds that they provide greater access to credit or offer credit at lower prices than large banks for certain groups of borrowers. These arguments tend to emphasize potential market niches small banks occupy that larger banks may be unwilling to fill.[46] For these reasons, community banks differ from large institutions in a number of ways besides size that arguably could result in their being subject to certain regulations that are *unduly burdensome*—meaning the benefit of the regulation does not justify the cost.

Other observers assert that the regulatory burden facing small banks is appropriate, citing the special regulatory emphasis already given to minimizing small banks' regulatory burden. For example, during the rulemaking process, bank regulators are required to consider the effect of rules on small banks.[47] In addition, they note that many regulations already include an exemption for small banks or are tailored to reduce the cost for small banks to comply. Supervision is also structured to put less of a burden on small banks than larger banks, such as by requiring less frequent bank examinations for certain small banks.[48] Furthermore, they counter that although small institutions were not a major cause of the past crisis, they did play a prominent role in the savings and loan crisis of the late 1980s, a systemic event that cost taxpayers $124 billion, according to one analysis.[49] Also, they note that systemic risk is only one of the goals of regulation, along with prudential regulation and consumer protection, and argue that the failure of hundreds of banks during the crisis illustrates that precrisis prudential regulation for small banks was not stringent enough.[50]

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[44] Drew Dahl, Andrew Meyer, and Michelle Neely, "Scale Matters: Community Banks and Compliance Costs," *Federal Reserve Bank of St. Louis, The Regional Economist*, July 2016, at https://www.stlouisfed.org/~/media/Publications/Regional-Economist/2016/July/scale_matters.pdf.

[45] For example, see FDIC, *FDIC Community Banking Study*, p. B-2, December 2012; FDIC Office of Inspector General, *The FDIC's Examination Process for Small Community Banks*, AUD-12-011, August 2012; CFPB, *Understanding the Effects of Certain Deposit Regulations on Financial Institutions' Operations*, November 2013, p. 113; and Independent Community Bankers of America, *2014 ICBA Community Bank Call Report Burden Survey*.

[46] See FDIC, *FDIC Community Banking Study*, pp. 3-6, December 2012, at https://www.fdic.gov/regulations/resources/cbi/report/cbi-full.pdf.

[47] See Regulatory Flexibility Act of 1980 (P.L. 96-354), 5 U.S.C. §§601-612; and the Riegle Community Development and Regulatory Improvement Act (P.L. 103-325), 12 U.S.C. §4802(a).

[48] For example, see Federal Reserve System, "Inspection Frequency and Scope Requirements for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of $10 Billion or Less," SR 13-21, December 17, 2013, at http://www.federalreserve.gov/bankinforeg/srletters/sr1321.htm.

[49] Timothy Curry and Lynn Shibut, "The Cost of the Savings and Loan Crisis: Truth and Consequences," *FDIC Banking Review*, vol. 13, no. 2 (Fall 2000).

[50] An FDIC study found that community banks did not account for a disproportionate share of bank failures between 1975 and 2011, relative to their share of the industry. Because community banks account for more than 90% of organizations (by the FDIC definition, which as noted above is not limited to a size threshold), most bank failures are community banks, however. See FDIC, *FDIC Community Banking Study*, pp. 2-10, December 2012, at https://www.fdic.gov/regulations/resources/cbi/report/cbi-full.pdf.

Provisions and Selected Analysis

This section reviews eight provisions in Title II that amend various laws and regulations that affect depositories, including banks, federal savings associations, and credit unions. Although some provisions relax certain regulations for all banks, Title II provisions are generally aimed at providing regulatory relief to institutions under certain asset thresholds. Several sections amend prudential regulation rules, including minimum capital requirements and the Volcker Rule, whereas others are designed to reduce supervisory requirements by decreasing exam frequency and reporting requirements for small banks. Other sections in Title II are related to public housing, insurance, and the National Credit Union Administration and are described in the "Miscellaneous Proposals in P.L. 115-174" section.

Section 201—Community Bank Leverage Ratio

Provision

Section 201 directs regulators to develop a *Community Bank Leverage Ratio* (CBLR) and set a threshold ratio of between 8% and 10% capital to unweighted assets—compared with the general leverage ratio requirement of 5%—to be considered well capitalized. If a bank with less than $10 billion in assets maintains a CBLR above that threshold, it will be exempt from all other leverage and risk-based capital requirements. Banking regulators may determine that an individual bank with under $10 billion in assets is not eligible to be exempt based on its risk profile.

Analysis

Capital—defined by the legislation as tangible equity (e.g., ownership shares)[51]—gives a bank the ability to absorb losses without failing, and regulators set minimum amounts a bank must hold. These capital requirements are expressed as *capital ratio requirements*—ratios of a bank's assets and capital. The ratios are generally one of two main types—a risk-weighted capital ratio or a leverage ratio. Risk-weighted ratios assign a risk weight—a number based on the riskiness of the asset that the asset value is multiplied by—to account for the fact that some assets are more likely to lose value than others. Riskier assets receive a higher risk weight, which requires banks to hold more capital—to better enable them to absorb losses—to meet the ratio requirement.[52] In contrast, leverage ratios treat all assets the same, requiring banks to hold the same amount of capital against the asset regardless of how risky each asset is.

Whether multiple risk-based capital ratios should be replaced with a single leverage ratio is subject to debate. Some observers argue that it is important to have both risk-weighted ratios and a leverage ratio because the two complement each other. Riskier assets generally offer a greater rate of return to compensate the investor for bearing more risk. Without risk weighting, banks may have an incentive to hold riskier assets because the same amount of capital would be required to be held against risky, high-yielding assets and safe, low-yielding assets. Therefore, a

[51] The legislation's definition of capital differs from the definition used in other leverage ratio regulation, which require banks to meet a leverage ratio based on *Tier 1* capital, which includes both Common Equity Tier 1 capital (e.g., common stock and retained earnings) and Additional Tier 1 capital (e.g., noncumulative perpetual preferred stock). For a complete list of instruments included in Tier 1 capital, see FDIC, *Expanded Community Bank Guide to the New Capital Rule for FDIC-Supervised Banks*, pp. 5-11, at https://www.fdic.gov/regulations/capital/capital/community_bank_guide_expanded.pdf.

[52] FDIC, *Risk Management Manual of Examination Policies: Section 2.1 Capital*, pp. 2-9, at https://www.fdic.gov/regulations/safety/manual/section2-1.pdf.

leverage ratio alone—even if set at higher levels—may not fully account for a bank's riskiness because a bank with a high concentration of very risky assets could have a similar ratio to a bank with a high concentration of very safe assets.[53]

However, others assert the use of risk-weighted ratios should be optional, provided a high leverage ratio is maintained.[54] Risk weights assigned to particular classes of assets could potentially be an inaccurate estimation of some assets' true risk, especially because they cannot be adjusted as quickly as asset risk might change. Banks may have an incentive to overly invest in assets with risk weights that are set too low (they would receive the high potential rate of return of a risky asset, but have to hold only enough capital to protect against losses of a safe asset), or inversely to underinvest in assets with risk weights that are set too high. Some observers believe that the risk weights in place prior to the financial crisis were poorly calibrated and "encouraged financial firms to crowd into" risky assets, exacerbating the downturn.[55] For example, banks held highly rated mortgage-backed securities (MBSs) before the crisis, in part because those assets offered a higher rate of return than other assets with the same risk weight. MBSs then suffered unexpectedly large losses during the crisis.

Some critics of the current requirements are especially opposed to their application to small banks. They argue that the risk-weighted system involves "needless complexity" and is an example of regulator micromanagement.[56] Furthermore, they say, that complexity could benefit the largest banks that have the resources to absorb the added regulatory cost compared with small banks that could find compliance costs relatively more burdensome. Thus, they contend that a simpler system should be implemented for small banks to avoid giving large banks a competitive advantage over them.

In its cost estimate, CBO assumed that regulators would select a 9% leverage ratio and estimates that 70% of community banks will opt in to the new leverage regime. As a result, they forecasted that some community banks would take on more risk and increase the likelihood that more community banks will fail than would under the general capital and leverage ratio regime. CBO estimated that this will raise costs to the Deposit Insurance Fund by $240 million, about half of which would be offset by higher insurance premiums over the 10-year budget window.[57]

For further information on leverage and capital ratios, see CRS In Focus IF10809, *Financial Reform: Bank Leverage and Capital Ratios*, by David W. Perkins.

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[53] See Former Fed Chair Yellen's comments during U.S. Congress, House Committee on Financial Services, *Monetary Policy and the State of the Economy*, 114th Cong., 2nd sess., June 22, 2016, at http://www.cq.com/doc/congressionaltranscripts-4915133?2.

[54] House Committee on Financial Services, *The Financial CHOICE Act: A Republican Proposal to Reform the Financial Regulatory System*, June 23, 2016, p. 6, at http://financialservices.house.gov/uploadedfiles/financial_choice_act_comprehensive_outline.pdf.

[55] Ibid., p. 8.

[56] House Committee on Financial Services, *The Financial CHOICE Act: A Republican Proposal to Reform the Financial Regulatory System*, June 23, 2016, p. 6, at http://financialservices.house.gov/uploadedfiles/financial_choice_act_comprehensive_outline.pdf.

[57] Congressional Budget Office, Cost Estimate, P.L. 115-174, March 5, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155.pdf. CBO's score of this provision did not change in its score of the manager's amendment. Congressional Budget Office, *Estimates of the Direct Spending and Revenue Effects of Amendment Number 2151*, March 8, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155amendmentnumber2151.pdf.

Section 202—Allowing More Banks to Accept Reciprocal Deposits

Provision

Section 202 makes *reciprocal deposits*—deposits that two banks place with each other in equal amounts—exempt from the prohibitions against taking *brokered deposits* faced by banks that are not well capitalized (i.e., those that may hold enough capital to meet the minimum requirements, but not by the required margins to be classified as well capitalized), subject to certain limitations.

Analysis

Certain deposits at banks are not placed there by individuals or companies utilizing the safekeeping, check writing, and money transfer services the banks provide. Instead, brokered deposits are placed by a third-party broker that places clients' savings in accounts paying higher interest rates. Regulators consider these deposits less stable, because brokers are more willing to withdraw them and move them to another bank than individuals and companies who face higher switching costs and inconvenience when switching banks (e.g., filling out and submitting new direct deposit forms to one's employer, getting new checks, and changing automatic bill payment information). Due to these characteristics, regulators generally prohibit not-well-capitalized banks from accepting brokered deposits in order to limit potential losses to the Federal Deposit Insurance Corporation (FDIC) in the event the bank fails.

Section 202 allows certain not-well-capitalized banks to accept a particular type of brokered deposit called *reciprocal deposits*, an arrangement between two banks in which each bank places a portion of its own customers' deposits with the other bank. Generally, the purpose of this transaction is to ensure that large accounts stay under the $250,000-per-account deposit insurance limit, with any amount in excess of the limit placed in a separate account at another bank. Like other brokered deposits, reciprocal deposits are funding held by a bank that does not have a relationship with the underlying depositors. However, reciprocal deposits differ from other brokered deposits in that if reciprocal deposits are withdrawn from a bank, the bank receives its own deposits back and thus may better maintain its funding.

CBO estimated that Section 202 would increase the budget deficit by $25 million over 10 years because permitting reciprocal deposits will increase deposit insurance payouts from bank failures, imposing losses on the FDIC insurance fund that would not fully be offset by higher deposit insurance premiums within the 10-year budget window.[58]

Section 203 and 204—Changes to the Volcker Rule

Provision

Section 203 creates an exemption from prohibitions on propriety trading—owning and trading securities for the bank's own portfolio with the aim of profiting from price changes—and relationships with certain investment funds for banks with (1) less than $10 billion in assets, and (2) trading assets and trading liabilities less than 5% of total assets. Pursuant to Section 619 of the Dodd-Frank Act, often referred to as the "Volcker Rule," bank organizations generally face these prohibitions.[59] In addition to Section 203's exemption for small banks, Section 204 eases certain

[58] Congressional Budget Office, Cost Estimate, P.L. 115-174, March 5, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155.pdf.

[59] The rule is named after Paul Volcker, the former Chair of the Federal Reserve (Fed), former Chair of President

Volcker Rule restrictions on all bank entities, regardless of size, related to sharing a name with hedge funds and private equity funds they organize.

Analysis

The Volcker Rule generally prohibits banking entities from engaging in proprietary trading or sponsoring a hedge fund or private equity fund. Proponents of the rule argue that proprietary trading adds further risk to the inherently risky business of commercial banking. Furthermore, they assert that other types of institutions are very active in proprietary trading and better suited for it, so bank involvement in these markets is unnecessary for the financial system.[60] Finally, proponents assert moral hazard is problematic for banks in these risky activities. Because deposits—an important source of bank funding—are insured by the government, a bank could potentially take on excessive risk without concern about losing this funding. Thus, support for the Volcker Rule has often been posed as preventing banks from "gambling" in securities markets with taxpayer-backed deposits.[61]

Some observers doubt the necessity and the effectiveness of the Volcker Rule in general. They assert that proprietary trading at commercial banks did not play a role in the financial crisis, noting that issues that played a direct role in the crisis—including failures of large investment banks and insurers, and losses on loans held by commercial banks—would not have been prevented by the rule.[62] In addition, although the activities prohibited under the Volcker Rule pose risks, it is not clear whether they pose greater risks to bank solvency and financial stability than "traditional" banking activities, such as mortgage lending. Taking on additional risks in different markets potentially could diversify a bank's risk profile, making it less likely to fail.[63] Some contend the rule poses practical supervisory problems. The rule includes exceptions for when bank trading is deemed appropriate—such as when a bank is hedging against risks and market-making—and differentiating among these motives creates regulatory complexity and compliance costs that could affect bank trading behavior.[64]

In addition to the broad debate over the necessity and efficacy of the Volcker Rule, whether small banks should be subjected to the rule is also a debated issue. Proponents of the rule contend that the vast majority of community banks do not face compliance obligations under the rule, and so do not face an excessive burden by being subject to it. They argue that those community banks that are subject to compliance obligations can comply simply by having clear policies and procedures in place that can be reviewed during the normal examination process. In addition, they

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Obama's Economic Recovery Advisory Board, and a vocal advocate of a prohibition on proprietary trading at commercial banks.

[60] Paul Volcker, "How to Reform Our Financial System," *New York Times*, January 30, 2010.

[61] See, for example, House Financial Services Committee, "Waters: Dodd-Frank Repeal Is Truly the Wrong Choice," press release, June 24, 2016, at http://democrats.financialservices.house.gov/news/documentsingle.aspx?DocumentID=399901.

[62] House Financial Services Committee, *The Financial CHOICE Act: Comprehensive Summary*, June 23, 2016, pp. 81-86, at http://financialservices.house.gov/uploadedfiles/financial_choice_act_comprehensive_outline.pdf.

[63] Anjan V. Thakor, *The Economic Consequences of the Volcker Rule*, U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, Summer 2012, pp. 28-30, at http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/17612_CCMC-Volcker-RuleFINAL.pdf.

[64] House Financial Services Committee, *The Financial CHOICE Act: Comprehensive Summary*, June 23, 2016, pp. 81-86, at http://financialservices.house.gov/uploadedfiles/financial_choice_act_comprehensive_outline.pdf.

assert the small number of community banks that are engaged in complex trading should have the expertise to comply with the Volcker Rule.[65]

Others argue that the act of evaluating the Volcker Rule to ensure banks' compliance is burdensome in and of itself. They support a community bank exemption so that community banks and supervisors do not have to dedicate resources to complying with and enforcing a regulation whose rationale is unlikely to apply to smaller banks.[66]

Section 205—Financial Reporting Requirements for Small Banks

Provision

Section 205 directs the federal banking agencies to issue regulations to reduce the reporting requirements that banks with assets under $5 billion must comply with in the first and third quarters of the year. Currently, all banks must submit a report of condition and income to the federal bank agencies at the end of every financial quarter of the year, sometimes referred to as a "call report."[67] Completing the call report involves entering numerous values into forms or "schedules" in order to provide the regulator with a detailed accounting of many aspects of each bank's income, expenses, and balance sheet. The filing requires an employee or employees to dedicate time to the exercise and in some cases banks purchase certain software products that assist in the task. Section 205 directs the regulators to shorten or simplify the reports banks with assets under $5 billion file in the first and third quarter.

For more information about bank supervision, including a discussion about bank financial reporting, see CRS In Focus IF10807, *Financial Reform: Bank Supervision*, by Marc Labonte and David W. Perkins.

Section 206—Allowing Thrifts to Opt-In to National Bank Regulatory Regime

Provision

Section 206 creates a mechanism for federal savings associations (or "thrifts") with under $20 billion in assets to opt out of the federal thrift regulatory regime and enter the national bank regulatory regime without having to go through the process of changing their charter. An institution that makes loans and takes deposits can have one of several types of charters—including a national bank charter and federal savings association charter, among others—each of which subjects the institutions to regulations that can differ in certain ways.[68] Without this provision, if an institution wanted to switch from one regime to another, it would have to change its charter.

Historically, thrifts were intended to be institutions focused on residential home mortgage lending, and as such they are subject to regulatory limitations on how much of other types of

[65] Thomas Hoenig, speech at the National Press Club, April 15, 2015, at https://www.fdic.gov/news/news/speeches/spapril1515.html.

[66] Federal Reserve Gov. Daniel Tarullo, "A Tiered Approach to Regulation and Supervision of Community Banks," speech at the Community Bankers Symposium, Chicago, Illinois, November, 7, 2014, at http://www.federalreserve.gov/newsevents/speech/tarullo20141107a.htm.

[67] 12 U.S.C. §324; 12 U.S.C. §1817; 12 U.S.C. §161; and 12 U.S.C. §1464.

[68] Federal Financial Institutions Examination Council, *Interagency Statement on Regulatory Conversions (FIL-40-2009)*, July 7, 2009.

lending they can do. Certain thrifts may want to expand their lending in other business lines, but be unable to do so because of these limitations. Without the mechanism provided by Section 206, if a thrift wanted to exceed the limitations, it would have to convert its charter to a national bank charter, which could potentially be costly.[69]

For more information on federal thrift chartering issues, see CRS In Focus IF10818, *Financial Reform: Savings Associations or "Thrifts"*, by Marc Labonte and David W. Perkins.

Section 207—Small Bank Holding Company Policy Statement Threshold

Provision

Section 207 raises the asset threshold in the Federal Reserve Small Bank Holding Company (BHC) and Small Saving and Loan Holding Company Policy Statement from $1 billion to $3 billion in total assets. In the policy statement, the Federal Reserve permits BHCs under the asset threshold to take on more debt in order to complete a merger (provided they meet certain other requirements concerning nonbank activities, off-balance-sheet exposures, and debt and equities outstanding) than would be allowed for a larger BHC.[70] In addition, Section 171 of the Dodd-Frank Act (sometimes referred to as the "Collins Amendment") exempts BHCs subject to this policy statement from the requirement that banking organizations meet the same capital requirements at the holding company level that depository subsidiaries face.[71] The significance of the Collins Amendment arguably depends on the extent to which a BHC has activities in nonbank subsidiaries, and many small banks do not have substantial activities in nonbank subsidiaries.

For more information on the Federal Reserve's Small Bank Holding Company Policy Statement, see CRS In Focus IF10837, *Financial Reform: Small Bank Holding Company Threshold*, by Marc Labonte and David W. Perkins.

Section 210—Frequency of Examination for Small Banks

Provision

Section 210 raises the asset threshold below which banks can become eligible for an 18-month examination cycle instead of a 12-month cycle from $1 billion to $3 billion. Generally, federal bank regulators must conduct an on-site examination of the banks they oversee at least once in each 12-month period. However, if a bank below the asset threshold meets certain criteria related to capital adequacy and scores received on previous examinations, then it can be examined only once every 18 months.[72] Raising this threshold allows more banks to be subject to less frequent examination.

For more information about bank supervision, including a discussion about bank examinations, see CRS In Focus IF10807, *Financial Reform: Bank Supervision*, by Marc Labonte and David W. Perkins.

[69] Office of the Comptroller of the Currency, "Summary of Proposed Legislation to Add Flexibility to the Federal Savings Association Charter," November 18, 2014, at https://www.occ.treas.gov/topics/bank-management/mutual-savings-associations/summary-of-proposed-legislation-11-18-2014.pdf.

[70] 12 C.F.R. Appendix C to Part 225.

[71] 12 U.S.C. §5371(b)(5)(C).

[72] 12 U.S.C. §1820(d).

Section 213—Identification When Opening an Account Online

Provision

Section 213 permits financial institutions to use a scan of, make a copy of, or receive the image of a driver's license or identification card to record the personal information of a person requesting to open an account or for some other service through the internet.

Section 214—Classifying High Volatility Commercial Real Estate Loans

Provision

Section 214 allows banks to classify certain credit facilities (e.g., business loans, revolving credit, and lines of credit) that finance the acquisition, development, or construction of commercial properties as regular commercial real estate exposures instead of *high volatility commercial real estate* (HVCRE) exposures for the purposes of calculating their risk-weighted capital requirements, previously discussed in the Section 201 "Analysis" section. Prior to the enactment of P.L. 115-174, banks generally were required to classify facilities financing commercial real estate projects as HVCRE, unless the developer contributed capital of at least 15% of the estimated "as completed value" of the project. Under that rule, capital included cash, unencumbered readily marketable assets, and out of pocket-expenses. Being classified as HVCRE means the exposure must be given a risk weight of 150% instead of the 100% weight given to other CRE exposures, thus requiring banks to hold more capital to finance those projects.

Section 214 offers a number of additional avenues for commercial real estate exposures to avoid or shed HVCRE status. It allows the appraised value of the property being developed to count as a capital contribution, providing another avenue for projects to reach the minimum 15% threshold. In addition, Section 214 allows certain credit facilities financing the acquisition or improvement of already-income-producing properties to avoid classification as HVCRE, provided the cash flow is sufficient to support the property's debt service and other expenses. Finally, a HVCRE could achieve reclassification when the property development is substantially completed or when it begins generating cash flow sufficient to support the property's debt service and other expenses. A lower capital requirement gives banks greater incentive to make HVCRE loans, but provides banks with less capital cushion against potential losses on what has been historically a risky category of lending.

For further information on leverage and capital ratios, see CRS In Focus IF10809, *Financial Reform: Bank Leverage and Capital Ratios*, by David W. Perkins.

Consumer Protections

Title III, Title VI, and Section 215 of Title II are intended to address various consumer protection challenges facing the credit reporting industry and borrowers in certain credit markets, such as active duty servicemembers, veterans, student borrowers, and borrowers funding energy efficiency projects.

Background[73]

Credit Reporting

The credit reporting industry collects and subsequently provides information to companies about behavior when consumers conduct various financial transactions. A credit report typically includes information related to a consumer's identity (such as name, address, and Social Security number), existing or recent credit transactions (including credit card accounts, mortgages, and other forms of credit), public record information (such as court judgments, tax liens, or bankruptcies), and credit inquiries made about the consumer.

Credit reports are prepared by credit reporting agencies (CRAs). The three largest CRAs—Equifax, TransUnion, and Experian—are the most well-known, but they are not the only CRAs. Approximately 400 smaller CRAs either are regional or specialize in collecting specific types of information or information for specific industries, such as information related to payday loans, checking accounts, or utilities.

Companies use credit reports to determine whether consumers have engaged in behaviors that could be costly or beneficial to the companies. For example, lenders rely upon credit reports and scoring systems to determine the likelihood that prospective borrowers will repay mortgage and other consumer loans. Insured depository institutions (i.e., banks and credit unions) rely on consumer data service providers to determine whether to make checking accounts or loans available to individuals. Insurance companies use consumer data to determine what insurance products to make available and to set policy premiums.[74] Employers may use consumer data information to screen prospective employees to determine, for example, the likelihood of fraudulent behavior. In short, numerous firms rely upon consumer data to identify and evaluate the risks associated with entering into financial relationships or transactions with consumers.

Much of what is thought of as the business of credit reporting is regulated through the Fair Credit Reporting Act (FCRA; P.L. 91-508).[75] The FCRA requires "that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information."[76] The FCRA establishes consumers' rights in relation to their credit reports, as well as permissible uses of credit reports. For example, the FCRA requires that consumers be told when their information from a CRA has been used after an adverse action (generally a denial of a loan) has occurred, and disclosure of that information must be made free of charge.[77] Consumers have a right to one free credit report every year from each of the three largest nationwide credit reporting providers in the absence of an adverse action. Consumers have the right to dispute inaccurate or

[73] For more information, see CRS Report R44125, *Consumer and Credit Reporting, Scoring, and Related Policy Issues*, by Darryl E. Getter.

[74] See CRS Report RS21341, *Credit Scores: Credit-Based Insurance Scores*, by Baird Webel.

[75] P.L. 91-508. Title VI, §601, 84 Stat. 1128 (1970), codified as amended at 15 U.S.C. §§1681-1681x. For the legal definition, see 12 C.F.R. §1090.104, "Consumer Reporting Market," at http://www.ecfr.gov/cgi-bin/text-idx?SID=c13cb74ad55c0e8d6abf8d2d1b26a2bc&mc=true&node=se12.9.1090_1104&rgn=div8. The Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Equal Credit Opportunity Act are all consumer credit protection amendments included in the Consumer Credit Protection Act (P.L. 90-321).

[76] 15 U.S.C. §1681.

[77] See FTC, *A Summary of your Rights Under the Fair Credit Reporting Act*, at https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf.

incomplete information in their report. The CRAs must investigate and correct, usually within 30 days. The FCRA also imposes certain responsibilities on those who collect, furnish, and use the information contained in consumers' credit reports.

Although the FCRA originally delegated rulemaking and enforcement authority to the Federal Trade Commission (FTC), the Dodd-Frank Act transferred that authority to the Consumer Financial Protection Bureau. The CFPB coordinates its enforcement efforts with the FTC's enforcements under the Federal Trade Commission Act.[78] Since 2012, the CFPB has subjected the "larger participants" in the consumer reporting market to supervision.[79] Previously, CRAs were not actively supervised for FCRA compliance on an ongoing basis.

How consumers' personal information is used and protected has been an area of concern. For example, if a fraudster is able to obtain a consumer's personal identifying information he or she could "steal" that person's identity, using it to obtain credit with no intention of repaying. The unpaid debt would then appear on the consumer's credit report, making him or her appear uncreditworthy and potentially resulting in a denial of credit or other adverse outcomes. In September 2017, Equifax announced a security breach[80] in which the sensitive information of an estimated 145.5 million U.S. consumers was potentially compromised, which highlighted the importance of this issue.[81]

Veterans and Active Duty Servicemembers

Active duty military members are subject to sudden and often times dangerous deployments and assignments that require them to be away from home in a way that is unique from other professions and could adversely affect servicemembers' ability to meet financial obligations. As a result, a number of U.S. laws dating at least as far back as World War I are designed to ease the financial burden on military members and protect them from being financially mistreated.[82] More recently, the Servicemembers Civil Relief Act (SCRA; P.L. 108-189) amended and expanded certain protections for active duty servicemembers. However, some observers assert servicemembers remain inadequately protected in certain transactions and markets, including in the reporting of medical debt to credit reporting agencies, home mortgage refinancing, and mortgage foreclosures.

[78] Memorandum of Understanding Between the Consumer Financial Protection Bureau and the Federal Trade Commission, at https://www.ftc.gov/system/files/120123ftc-cfpb-mou.pdf.

[79] The definition of larger participants includes entities with more than $7 million in annual receipts from consumer reporting activities. When the rule was published in 2012, this definition covered approximately 30 of the 410 consumer reporting agencies. Bureau of Consumer Financial Protection, "12 CFR Part 1090: Defining Larger Participants of the Consumer Reporting Market," 77 *Federal Register* 42874-42900, July 20, 2012.

[80] See Equifax, "Equifax Announces Cybersecurity Incident Involving Consumer Information," press release, September 7, 2017, at https://www.equifaxsecurity2017.com/2017/09/07/equifax-announces-cybersecurity-incident-involving-consumer-information/; and Equifax, "Equifax Announces Cybersecurity Firm has Concluded Forensic Investigation of Cybersecurity Incident," press release, October 2, 2017, at https://investor.equifax.com/news-and-events/news/2017/10-02-2017-213238821.

[81] For more information, see CRS Insight IN10792, *The Equifax Data Breach: An Overview and Issues for Congress*, by N. Eric Weiss.

[82] More information is in CRS Report RL34575, *The Service Members Civil Relief Act: An Explanation*, by R. Chuck Mason (out-of-print; available to congressional clients upon request).

Student Loans[83]

Aggregate student loan debt in the United States has increased markedly over time. According to the U.S. Department of Education (ED), "[a]verage tuition prices have more than doubled at U.S. colleges and universities over the past three decades, and over this time period a growing proportion of students borrowed money to finance their postsecondary education"[84] The ED's Federal Student Aid Data Center estimated that the total amount of outstanding federal student loan debt exceeded $1.37 trillion at the end of the 2017 fiscal year.[85]

As overall student loan indebtedness has increased, some studies have suggested that repayment burdens facing many borrowers and co-signers have also increased. For example, statistics published by ED suggest that many borrowers face an average educational debt burden that exceeds the "manageable percentage of income that a borrower can" realistically "be expected to devote to loan payment,"[86] although other studies have come to different conclusions.[87] This has led some observers to broadly question whether appropriate protections are in place in this market. A specific area of concern are private student loans, which generally are not required to offer the same repayment relief, loan rehabilitation, and loan discharge options that are offered in federal student loans.[88]

Provisions and Selected Analysis

Section 215—Reducing Identity Theft

Provisions

Section 215 directs the Social Security Administration (SSA) to allow certain financial institutions to receive customers' consent by electronic signature to verify their name, date of birth, and Social Security number with SSA. In addition, the section directs SSA to modify their databases or systems to allow for the financial institutions to electronically and quickly request and receive accurate verification of the consumer data.

Some identity thefts use a technique called *synthetic identity theft* in which they apply for credit using a mixture of real, verifiable information of an existing person with fictitious information, thus creating a "synthetic" identity. Often these identity thieves use real Social Security numbers of people they know are unlikely to have existing credit files, such as children or recent

[83] This section is adapted from CRS Report R45113, *Bankruptcy and Student Loans*, by Kevin M. Lewis.

[84] National Center for Education Statistics, *Stats in Brief: Use of Private Loans by Postsecondary Students: Selected Years 2003-04 Through 2011-12*, U.S. Department of Education, November 2016, at https://nces.ed.gov/pubs2017/2017420.pdf.

[85] Federal Student Aid, *Federal Student Loan Portfolio*, U.S. Department of Education, at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

[86] National Center for Education Statistics, *Stats in Brief: The Debt Burden of Bachelor's Degree Recipients*, U.S. Department of Education, April 2017, at https://nces.ed.gov/pubs2017/2017436.pdf.

[87] For example, Beth Akers and Matthew M. Chingos, *Is a Student Loan Crisis on the Horizon*, Brown Center on Education Policy at Brookings, June 2014, at https://www.brookings.edu/wp-content/uploads/2016/06/Is-a-Student-Loan-Crisis-on-the-Horizon.pdf.

[88] For more information on federal student loans, see CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, by David P. Smole.

immigrants.[89] The SSA Consent-Based Social Security Number Verification system was created to fight identity fraud such as this, but prior to the enactment of P.L. 115-174 it required financial institutions to obtain a physical written signature to make a verification request. Some observers feel this requirement is outdated and time consuming, undermining the effectiveness of the program.[90] Section 215 aims to modernize and make the SSA's verification system more efficient by allowing the use of electronic signatures.

Section 301—Fraud Alerts and Credit Report Security Freezes

Provisions

Section 301 amends the FCRA to require credit bureaus to provide fraud alerts for consumer files for at least one year (up from 90 days) when notified by an individual who believes he or she has been or may become a victim of fraud or identity theft. It also provides consumers the right to place (and remove) a security freeze on their credit reports free of charge. In addition, Section 301 creates new protections for the credit reports of minors.

A fraud alert is the inclusion in an individual's report, at the request of the individual, of a notice that the individual has reason to believe they might be the victim of fraud or identity theft. Generally, when a lender receives a credit report on a prospective borrower that includes a fraud alert, the lender must take reasonable steps to verify the identity of the prospective borrower, thus making it more difficult for a fraudster or identity thief to take out loans using the victim's identity. Prior to the enactment of P.L. 115-174, when an individual requested a fraud alert, the CRAs were required to include the alert in the credit report for 90 days, unless the individual asked for its removal sooner. Section 301 increases this period to one year.

A security freeze can be placed on an individual's credit report at the request of the individual (or in the case of a minor, at the request of an authorized representative), and generally prohibits the CRAs from disclosing the contents of the credit report for the purposes of new extensions of credit. If a consumer puts a security freeze on his or her credit report, it would make it harder to fraudulently open new credit lines using that consumer's identity.

Analysis

By lengthening the time fraud alerts stay on credit reports and by allowing consumers to place security freezes on their credit reports, Section 301 gives consumers the ability to make it more difficult for identity thieves to get credit using a victim's identity. Reducing the prevalence of erroneous information appearing on credit reports as a result of fraud would reduce the occurrence of defrauded consumers being denied credit on the basis of erroneous information. However, these protections can create some potential costs for lenders and consumers. While a fraud alert is active, the increased verification requirements could potentially increase costs for the lender. A security freeze restricts the use of credit report information in a credit transaction, reducing the information available to lenders and possibly reducing the consumer's access to credit. Although requesting a fraud alert or credit freeze be turned off or "lifted" during a period

[89] Representative Randy Hultgren, "How to Better Combat Identity Fraud," *Crain's Chicago Business*, March 9, 2018.

[90] Letter from Senators Bill Cassidy, Tim Scott, Claire McCaskill and Gary Peters, to Nancy A. Berryhill, Acting Commissioner of Social Security, February 12, 2018, https://www.cassidy.senate.gov/imo/media/doc/Synthetic%20Identity%20Fraud.pdf.

when a consumer expects to apply for new credit is not especially difficult, doing so is an additional step facing consumers seeking credit and requires some time and attention.[91]

Section 301 also is related to broader debates over the availability, use, and control of personal financial information. Information that financial institutions and service providers have about consumers allows those firms to make better assessments of the consumers' needs and creditworthiness. Credit reports that contain accurate and complete information may improve the efficiency of consumer credit markets, potentially reducing the cost of consumer credit and the frequency of loan default while also increasing the availability of credit. However, as availability of personal financial information increases, it raises questions about what control individuals have over their own personal, sensitive financial information, particularly in cases in which firms use the information to make adverse decisions against an individual and in which an individual's information is in some way compromised as in the case of fraud. By requiring CRAs to place security freezes at the request of consumers and lengthening the time fraud alerts placed by consumers stay on their reports, Section 301 gives greater control to individuals over how and when their credit reports are used.

Section 302—Veteran Medical Debt in Credit Reports

Provisions

Section 302 amends the FCRA to mandate that certain information related to certain medical debt incurred by a veteran be excluded from the veteran's credit report. This medical debt cannot be included in the credit report until one year had passed from when the medical service was provided. The CRAs have already implemented a six-month delay on reporting medical debt for all individuals, so Section 302 gives veterans an additional six months before their medical debts are reported. In addition, Section 302 requires that any information related to medical debt that had been characterized as delinquent, charged off, or in collection be removed once the debt was fully paid or settled. Furthermore, Section 302 establishes a dispute process for veterans wherein a CRA must remove information related to a debt if the veterans notifies and provides documentation to a CRA showing that the Department of Veterans Affairs is in the process of making payment. Finally, Section 302 requires credit reporting agencies to free credit monitoring to active duty military members that would alert them to material changes in their credit scores.

Section 303—Whistleblowers on Senior Exploitation

Provision

Section 303 protects certain financial institution employees from liability for disclosing suspected fraudulent or unauthorized use of the resources or assets of a person 65 years of age or older by another individual, such as a caregiver or fiduciary.

[91] Lisa Weintraub Schifferle, "Fraud Alert or Credit Freeze—Which Is Right for You?," *Federal Trade Commission Consumer Information*, September 14, 2017.

Section 304—Protecting Tenants at Foreclosure

Provision

Section 304 repeals the sunset provision of the Protecting Tenants at Foreclosure Act (P.L. 111-22), which expired at the end of 2014, thus restoring certain notification and eviction requirements related to renters living in foreclosed-upon properties.

Section 307—Real Property Retrofit Loans

Provision

Section 307 requires the CFPB to issue regulations requiring creditors to assess a borrower's ability to repay a home improvement loan that is financed through a property lien and included in real property tax payments.

Some states have encouraged retrofitting homes through Property Assessed Clean Energy (PACE) financing programs that allow state and local governments to issue bonds and use the funds raised to finance residential, commercial, or industrial energy efficiency and renewable energy projects. The proceeds from PACE bonds are lent to property owners, who use the funds to invest in energy efficiency upgrades or renewable energy property. The loans are added to property tax bills through special assessments and paid off over time. PACE programs offer an alternative to traditional loans and repayments. Some observers have expressed concerns that PACE loans could lead to mortgage defaults, as PACE loans often have relatively high interest rates compared with home-purchase loans.[92] To address this issue, Section 307 extends consumer protections of the ability-to-repay requirement to PACE loans.

Section 309—Protecting Veterans from Harmful Mortgage Refinancing

Provision

Section 309 enhances consumer protections for veterans when they refinance housing loans by (1) placing restrictions on the new loan terms to keep refinancing costs reasonable and (2) requiring lenders to provide borrowers with information illustrating how the borrower benefits from a refinancing. These protections are designed to address the practice of offering veterans with VA-backed loans—which have more relaxed credit score standards than other mortgages and typically have no down payment requirement—lower monthly payments but charging them deceptively high upfront fees.[93] Section 309 requires the VA to only insure or guarantee refinancing that met certain standards. For example, the borrower must be able to "recoup" upfront fees in the form of lower monthly payments within 36 months; the new interest rate must be a certain minimum level below the rate of the original loan; and the lender must provide the borrower with a *net tangible benefit test* demonstrating that the borrower would benefit from the refinancing. In addition, Section 309 directs the VA to provide annual reports to Congress on market activity pertaining to certain veteran mortgage refinancing.

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[92] For example, see Kirsten Grind, "More Borrowers Are Defaulting on Their 'Green' PACE Loans," *Wall Street Journal*, August 15, 2017, at https://www.wsj.com/articles/more-borrowers-are-defaulting-on-their-green-pace-loans-1502789401.

[93] Senator Thom Tillis, "Congress Needs to Protect Veterans From Bad Actors in VA Home Loan Financing," *The Hill*, November 9, 2017, at http://thehill.com/blogs/congress-blog/politics/359591-congress-needs-to-protect-veterans-from-bad-actors-in-va-home.

Section 310—Consider Use of Alternative Credit Scores for Mortgage Underwriting

Provisions

Section 310 requires Fannie Mae and Freddie Mac to solicit applications to evaluate additional credit scores to their mortgage underwriting (evaluating) process. In addition, it directs Fannie Mae and Freddie Mac to establish approval criteria in the areas of integrity, reliability, and accuracy. Fannie Mae, Freddie Mac, and the Federal Housing Finance Agency could add additional requirements.

Currently, when determining whether to buy a mortgage, Fannie Mae and Freddie Mac use a particular version of a Fair Isaac Corporation's FICO credit scoring model that was first developed in the late 1990s.[94] This version, sometimes called *classic FICO*, is used to score a homebuyer's credit files from each of the three major credit reporting agencies (Experian, Equifax, and TransUnion). Some observers see shortcomings with how this score is calculated, including its lack of consideration of rent, utility, and cell phone payments, and believe it to be outdated.[95] Fair Isaac has recently developed new credit scores, and a company owned by the three major credit reporting agencies has developed another called the VantageScore. Furthermore FHFA, Fannie Mae, and Freddie Mac are evaluating the merits of the various scores, and FHFA issued a request for feedback about issues that they should consider in evaluating various scoring options, which closed on March 30, 2018.[96] Section 310 directs Fannie Mae and Freddie Mac to create a process by which other credit models can be approved and validated for use in their mortgage purchase decisions.

Section 313—Foreclosure Relief Extension for Servicemembers

Provisions

Section 313 makes permanent the length of the one-year protection period active duty servicemembers have against the sale, foreclosure, or seizure of their mortgage properties. The Servicemembers Civil Relief Act (SCRA; P.L. 114-142) grants protections pertaining to the sale, foreclosure, or seizure of a servicemember's mortgaged property.[97] Specifically, a legal action to enforce a real estate debt against a servicemember on "active duty" or "active service" (or a spouse or dependent of a servicemember) may be stopped by a court if such action occurs within

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[94] Laurie Goodman, *In Need of an Update: Credit Scoring in the Mortgage Market*, The Urban Institute, July 2017, at https://www.urban.org/sites/default/files/publication/92301/in-need-of-an-update-credit-scoring-in-the-mortgage-market_2.pdf, and Fannie Mae, *Selling Guide*, April 3, 2018, p. 476, at https://www.fanniemae.com/content/guide/sel040318.pdf.

[95] Senator Tim Scott, "Senators Scott, Warner Champion Homeownership for the 'Credit Invisible,'" press release, August 1, 2017, at https://www.scott.senate.gov/media-center/press-releases/senators-scott-warner-champion-homeownership-for-the-credit-invisible.

[96] Federal Housing Finance Agency, *Credit Score Request for Input*, December 20, 2017, at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/CreditScore_RFI-2017.pdf, and Federal Housing Finance Agency, *FHFA Extends Deadline to March 30 for Request for Input on Fannie Mae and Freddie Mac Credit Score Requirements*, February 2, 2018, at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Deadline-for-RFI-on-Fannie-Mae-and-Freddie-Mac-Credit-Score-Requirements.aspx.

[97] See U.S. Department of Housing and Urban Development, Office of Housing, *Servicemembers Civil Relief Act Notice Disclosure*, OMB Approval 2502-0584, December 31, 2017, at https://www.hud.gov/sites/documents/92070.PDF.

a certain protection period (unless the creditor has obtained a valid court order). The original length of the protection period was 90 days from the servicemember's end of active service. Congress temporarily extended the protection period pursuant to the SCRA to one year at various times, most recently in the National Defense Authorization Act for Fiscal Year 2018 enacted on December 12, 2017 (as P.L. 115-91). Absent the enactment of P.L. 115-174, the protection period would have reverted to 90 days on January 1, 2020.[98]

Section 601—Student Loan Protections in the Event of Death or Bankruptcy

Provisions

Section 601 enhances consumer protections for student borrowers and cosigners of student loans by (1) prohibiting lenders from declaring automatic default in the case of death or bankruptcy of the co-signer; and (2) requiring lenders to release cosigners from obligations related to a student loan in the event of the death of the student borrower. Prior to the enactment of P.L. 115-174, a private lender could declare an otherwise performing student loan as being in default if the cosigner—typically a parent of the student who shares the obligation to repay the loan—declares bankruptcy or dies. In addition, whereas a federal student loan had to be discharged when the primary student borrower died,[99] a private lender of a student loan could potentially require the cosigner to continue paying the loan.

Section 602—Certain Student Loan Debt in Credit Reports

Provisions

Section 602 amends the FCRA to allow a consumer to request that information related to a default on a qualified private student loan be removed from a credit report if the borrower satisfies the requirements of a loan rehabilitation program offered by a private lender (with the approval of prudential regulators).

Borrowers who default on some federal student loan programs (defined as not having made a payment in more than 270 days[100]) have a one-time loan rehabilitation option.[101] If the defaulted borrower makes nine on-time monthly payments during a period of 10 consecutive months, the loan is considered rehabilitated.[102] The borrower's credit report would then be updated to show that the loan is no longer in default, although the information pertaining to the late payments that

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[98] U.S. Department of Housing and Urban Development webpage, "Questions and Answers for Reservists, Guardsmen, and Other Military Personnel," at https://www.hud.gov/program_offices/housing/sfh/nsc/qasscra1.

See also, Office of the Comptroller of the Currency, U.S. Department of the Treasury, *Description: Extension of Time Period for Certain Protections*, at https://www.occ.treas.gov/news-issuances/bulletins/2016/bulletin-2016-20.html; and Federal Deposit Insurance Corporation, *FDIC Compliance Examination Manual, V. Lending—Servicemembers Civil Relief Act*, April 2016, at https://www.fdic.gov/regulations/compliance/manual/5/v-11.1.pdf.

[99] See U.S. Department of Education, Office of Federal Student Aid, "*If your loan servicer receives acceptable documentation of your death, your federal student loans will be discharged,"* at https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/death.

[100] 34 C.F.R. §§682.200 and 685.102.

[101] See CFPB, "What Does It Mean to 'Default' on My Federal Student Loans?" press release, August 4, 2016, at https://www.consumerfinance.gov/ask-cfpb/what-does-it-mean-to-default-on-my-federal-student-loans-en-649/.

[102] See CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, by David P. Smole.

led up to the rehabilitation generally would still remain on the report for seven years.[103] Students who default on private loans do not necessarily have a similar rehabilitation option.[104] Section 307 does not require banks to offer rehabilitations, but each bank has the discretion to do so in light of various business, accounting, and regulatory considerations. If a financial institution does choose to offer a rehabilitation program—after getting permission from its federal bank regulator—and the consumer completes the terms of the program, Section 307 allows for the exclusion of default information related to the rehabilitated loan from the consumer's credit report.

Regulatory Relief for Large Banks

Title IV is intended to provide regulatory relief to certain large banks. In general, there is widespread agreement that the largest, most complex financial institutions whose failure could pose a risk to the stability of the financial system should be regulated differently than other institutions. However, identifying which institutions fit this description and how their regulatory treatment should differ are subjects of debate.

Background

The 2007-2009 financial crisis highlighted the problem of "too big to fail" (TBTF) financial institutions—the concept that the failure of a large financial firm could trigger financial instability, which in several cases prompted extraordinary federal assistance to prevent their failure. In addition to fairness issues, economic theory suggests that expectations that a firm will not be allowed to fail create *moral hazard*—if the creditors and counterparties of a TBTF firm believe that the government will protect them from losses, they have less incentive to monitor the firm's riskiness because they are shielded from the negative consequences of those risks.

Enhanced prudential regulation is one pillar of the policy response for addressing financial stability and ending TBTF. Under this regime, the Fed is required to apply a number of safety and soundness requirements to large banks that are more stringent than those applied to smaller banks. Enhanced regulation is tailored, with the largest banks facing more stringent regulatory requirements than medium-sized and smaller banks. Specifically, under criteria set by Dodd-Frank and the Basel III accords, organizations were divided into the following three tiers that determine which enhanced regulations they are subject to

1. about 38 U.S. bank holding companies or the U.S. operations of foreign banks with more than $50 billion in assets;
2. a subset of 15 *advanced approaches* banks with $250 billion or more in assets or $10 billion or more in foreign exposure;[105] and

[103] See Experian, "I've Defaulted on My Student Loans. Should I Consider Loan Rehabilitation?" press release, October 18, 2016, at https://www.experian.com/blogs/ask-experian/defaulted-on-student-loans-should-i-consider-loan-rehabilation/.

[104] CFPB, *Private Student Loans*, Report to the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House of Representatives Committee on Financial Services, and the House of Representatives Committee on Education and the Workforce, August 29, 2012, at http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

[105] The term "advanced approaches" comes from a Basel III rule that applies capital requirements to the activities undertaken primarily by large banks and is a more complex, sophisticated set of requirements than those applying to smaller institutions. Basel III is a nonbinding international agreement that the United States is currently implementing.

3. a further subset of *globally systemically important banks* (G-SIBs), designated as such based on a bank's cross-jurisdictional activity, size, interconnectedness, substitutability, and complexity. There are currently 8 G-SIBs headquartered in the United States out of 30 G-SIBs worldwide.[106]

Title I of the Dodd-Frank Act created a new enhanced prudential regulatory regime that applied to all banks with more than $50 billion in assets (unless noted below):

- **Stress tests and capital planning** ensure banks hold enough capital to survive a crisis.
- **Living wills** provide a plan to safely wind down a failing bank.
- **Liquidity requirements** ensure that banks are sufficiently liquid if they lose access to funding markets. These liquidity requirements are being implemented through three rules: (1) a 2014 final rule implementing firm-run liquidity stress tests,[107] (2) a 2014 final rule implementing a Fed-run liquidity coverage ratio (LCR) to ensure that banks hold sufficient "high quality liquid assets,"[108] and (3) a 2016 proposed rule that would implement the Fed-run net stable funding ratio (NSFR) to ensure that banks have adequate sources of stable funding.[109]
- **Counterparty limits** restrict the bank's exposure to counterparty default through a single counterparty credit limit (SCCL) and credit exposure reports.
- **Risk management standards** require publicly traded companies with more than $10 billion in assets to have risk committees on their boards, and banks with more than $50 billion in assets to have chief risk officers.
- **Financial stability requirements** mandate that a number of regulatory interventions can be taken only if a bank poses a threat to financial stability. For example, the Fed may limit a firm's mergers and acquisitions, restrict specific products it offers, terminate or limit specific activities, or require it to divest assets. Other emergency powers include a 15 to 1 debt to equity ratio; FSOC reporting requirements; early remediation requirements; and enhanced FDIC examination and enforcement powers.[110]

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[106] Since 2011, the Financial Stability Board (FSB), an international forum that coordinates the work of national financial authorities and international standard-setting bodies, has annually designated G-SIBs. U.S. bank regulators have incorporated the advanced approaches and G-SIB definitions into U.S. regulation for purposes of applying the following regulations. In addition, several of the foreign G-SIBs have U.S. subsidiaries. Financial Stability Board, "Policy Measures to Address Systemically Important Financial Institutions," November 4, 2011, at http://www.financialstabilityboard.org/publications/r_111104bb.pdf. The identification methodology is described in Basel Committee on Banking Supervision, "Global Systemically Important Banks: Assessment Methodology," *Consultative Document*, July 2011, at http://www.bis.org/publ/bcbs201.pdf.

[107] Federal Reserve, "Enhanced Prudential Standards," 79 *Federal Register* 59, p. 17240, March 27, 2014, at https://www.gpo.gov/fdsys/pkg/FR-2014-03-27/pdf/2014-05699.pdf.

[108] The Office of the Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation, "Liquidity Coverage Ratio: Liquidity Risk Measurement Standards," 79 *Federal Register*, October 10, 2014.

[109] The Office of the Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation, "Net Stable Funding Ratio; Liquidity Risk Measurement Standards and Disclosure Requirements; Proposed Rule," 81 *Federal Register* 105, June 1, 2016.

[110] For a comprehensive list of these provisions, see CRS Report R45036, *Bank Systemic Risk Regulation: The $50 Billion Threshold in the Dodd-Frank Act*, by Marc Labonte and David W. Perkins.

Most of these requirements were already in place at the time of enactment of P.L. 115-174, but some proposed rules had not yet been finalized. Some of these requirements had been tailored so that more stringent regulatory or compliance requirements were applied to advanced approaches banks or G-SIBs. For example, versions of the LCR, NSFR, and SCCL applied to advanced approaches banks are more stringent than those applied to banks with more than $50 billion in assets that are not advanced approaches banks. The SCCL as proposed also includes a third, most stringent requirement that applies only to G-SIBs.

Pursuant to Basel III, banking regulators have implemented additional prudential regulations that apply only to large banks. For these requirements, $50 billion in assets was not used as a threshold. The following requirement applies to advanced approaches banks, with a more stringent version applied to G-SIBs, and are affected by a provision in P.L. 115-174:

- **Supplementary Leverage Ratio (SLR).** Leverage ratios determine how much capital banks must hold relative to their assets without adjusting for the riskiness of their assets. Advanced approaches banks must meet a 3% SLR, which includes off-balance-sheet exposures. G-SIBs are required to meet an SLR of 5% at the holding company level in order to pay all discretionary bonuses and capital distributions and 6% at the depository subsidiary level to be considered well capitalized as of 2018.[111]

Large banks are also subject to other Basel III regulations that are not directly affected by P.L. 115-174. The *countercyclical capital buffer* requires advanced approaches banks to hold more capital than other banks when regulators believe that financial conditions make the risk of losses abnormally high. It is currently set at zero (as it has been since it was introduced), but can be modified over the business cycle.[112] The *G-SIB capital surcharge* requires G-SIBs to hold relatively more capital than other banks in the form of a common equity surcharge of at least 1% and as high as 4.5% to "reflect the greater risks that they pose to the financial system."[113] G-SIBs are also required to hold a minimum amount of capital and long-term debt at the holding company level to meet *total loss-absorbing capacity* (TLAC) requirements. To further the policy goal of preventing taxpayer bailouts of large financial firms, TLAC requirements are intended to increase the likelihood that equity- and debt-holders can absorb losses and be "bailed in" in the event of the firm's insolvency.[114]

[111] Office of the Comptroller of the Currency et al., "Regulatory Capital Rules," 79 *Federal Register* 84, May 1, 2014, p. 24528, at https://www.gpo.gov/fdsys/pkg/FR-2014-05-01/pdf/2014-09367.pdf.

[112] Federal Reserve, "Regulatory Capital Rules: The Federal Reserve Board's Framework for Implementing the U.S. Basel III Countercyclical Capital Buffer," 81 *Federal Register* 180, September 16, 2016, p. 63682, at https://www.federalreserve.gov/newsevents/press/bcreg/20160908b.htm.

[113] Bank for International Settlements, *Basel III Summary Table*, at http://www.bis.org/bcbs/basel3/b3summarytable.pdf.

[114] Federal Reserve, "Total Loss-Absorbing Capacity, Long-Term Debt, And Clean Holding Company Requirements For Systemically Important U.S. Bank Holding Companies," 82 *Federal Register* 8266, January 24, 2017, p. 8266, at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20161215a.htm.

Provisions and Selected Analysis

Section 401—Enhanced Prudential Regulation and the $50 Billion Threshold

Provision

Section 401 of P.L. 115-174 automatically exempts banks with assets between $50 billion and $100 billion from enhanced regulation, except for the risk committee requirements. Banks with between $100 billion and $250 billion in assets will still be subject to supervisory stress tests, and the Fed has discretion to apply other individual enhanced prudential provisions (except for most of those included in the "Financial Stability" bullet above)[115] to these banks if it would promote financial stability or the institutions' safety and soundness. Banks that have been designated as domestic G-SIBs and banks with more than $250 billion in assets remain subject to enhanced regulation. To illustrate how specific firms might be affected by P.L. 115-174, **Table 2** matches the criteria found in the three categories created by the legislation to firms' assets as of September 30, 2017. The $250 billion threshold matches one of the two thresholds used to identify advanced approaches banks (it does not include the foreign exposure threshold).

Prior to the enactment of P.L. 115-174, foreign banking organizations that have more than $50 billion in *global* assets and operate in the United States were also potentially subject to enhanced regulatory regime requirements. P.L. 115-174 replaces that threshold with $250 billion in global assets (with Fed discretion to impose individual standards between $100 billion and $250 billion). All of the IHCs in **Table 2** belong to a foreign parent with more than $250 billion in global assets.[116] During the period the threshold was set at $50 billion, the implementing regulations in practice imposed significantly lower requirements on foreign banks with less than $50 billion in *U.S.* nonbranch assets compared to those with more than $50 billion in U.S. nonbranch assets. Foreign banks with more than $50 billion in U.S. nonbranch assets must form intermediate holding companies (IHCs) for their U.S. operations, which are essentially treated as equivalent to U.S. banks for purposes of applicability of the enhanced regime and bank regulation more generally. The manager's amendment to P.L. 115-174 clarified that the increase in the $50 billion threshold to $250 billion would not invalidate the rule implementing an IHC, capital planning, stress tests, risk management, and liquidity requirements for banks with more than $100 billion in global assets and would not limit the Fed's authority to establish an IHC or implement enhanced prudential standards for banks with more than $100 billion in global assets. Thus, it remains at the discretion of the Fed how to tailor enhanced regulation for foreign banks with a smaller U.S. presence, including what IHC threshold to use.

[115] The Fed could only subject banks with $100 billion to $250 billion in assets to requirements found in Section 165 of the Dodd-Frank Act. Those include a 15 to 1 emergency debt to equity ratio. Most of the provisions covered by the bullet are found in other parts of Title I of the act, including FSOC reporting requirements; emergency powers to require block mergers, limit activities, and divestiture; approval of acquisitions; early remediation requirements; and FDIC examination and enforcement powers. For more information, see CRS Insight IN10877, *P.L. 115-174 and Enhanced Regulation for Large Banks*, by Marc Labonte.

[116] See Federal Reserve, "Enhanced Prudential Standards," 79 *Federal Register* 59, p. 17269, March 27, 2014, at https://www.gpo.gov/fdsys/pkg/FR-2014-03-27/pdf/2014-05699.pdf.

Table 2. BHCs and IHCs with Over $50 Billion in Assets

(as of September 30, 2017; dollar amounts in billions)

Institution Name	Assets
Banks With Over $250 Billion in Assets or G-SIBs	
JPMorgan Chase & Co.	$2,563
Bank of America Corporation	$2,285
Wells Fargo & Company	$1,935
Citigroup Inc.	$1,889
Goldman Sachs Group, Inc.	$930
Morgan Stanley	$854
U.S. Bancorp	$459
PNC Financial Services Group, Inc.	$375
TD Group U.S. Holdings LLC[a]	$374
Capital One Financial Corporation	$361
Bank of New York Mellon Corporation	$354
HSBC North America Holdings Inc.[a]	$286
State Street Corporation	$236
Banks With $100 Billion to $250 Billion in Assets	
BB&T Corporation	$220
Credit Suisse Holdings (USA), Inc.[a]	$220
Suntrust Banks, Inc.	$208
Barclays US LLC[a]	$175
American Express Company	$169
DB USA Corporation[a]	$165
Ally Financial Inc.	$164
MUFG Americas Holdings Corporation[a]	$155
Citizens Financial Group, Inc.	$152
UBS Americas Holding LLC[a]	$146
BNP Paribas USA, Inc.[a]	$146
Fifth Third Bancorp	$142
RBC USA Holdco Corporation[a]	$138
Keycorp	$137
Santander Holdings USA, Inc.[a]	$132
Northern Trust Corporation	$131
BMO Financial Corp.[a]	$131
Regions Financial Corporation	$124
M&T Bank Corporation	$120
Huntington Bancshares Incorporated	$102

Institution Name	Assets
Banks With $50 Billion to $100 Billion in Assets	
Discover Financial Services	$98
BBVA Compass Bancshares, Inc.[a]	$86
Comerica Incorporated	$72
Zions Bancorporation	$66
CIT Group Inc.[b]	$49

Sources: CRS, using Federal Reserve data reported in Bank Holding Company Performance Report; S&P Global.

Notes: Domestic G-SIBs are bolded. IHC = intermediate holding company. BHC = bank holding company. SVB Financial Group has had more than $50 billion in assets for less than four quarters. If its assets remain above $50 billion for four consecutive quarters, it will become subject to enhanced regulation, per 12 C.F.R. 252.

a. IHC whose foreign parent has more than $250 billion in assets.

b. CIT Group has had less than $50 billion in assets for less than four quarters. If its assets remain under $50 billion in assets for four consecutive quarters, it will no longer be subject to enhanced regulation.

P.L. 115-174 makes tailoring of the regime (e.g., imposing different compliance standards on different banks) mandatory instead of discretionary. For banks with less than $100 billion in assets, Section 401 took effect immediately. For banks with more than $100 billion in assets, the changes take effect within 18 months of enactment, although the Fed has discretion to alter any prudential standard for banks with $100 billion to $250 billion in assets before that date.

The legislation also makes changes to specific enhanced prudential requirements. Section 401 gives regulators the discretion to reduce the number of scenarios used in stress tests. It also gives regulators the discretion to reduce the frequency of company-run stress tests and supervisory stress tests for banks with $100 billion to $250 billion in assets. It increases the asset thresholds for company-run stress tests from $10 billion to $250 billion and for a mandatory risk committee at publicly traded banks from $10 billion to $50 billion. The bill makes the implementation of credit exposure report requirements discretionary for the Federal Reserve instead of mandatory. To date, the Fed has not finalized a rule implementing credit exposure reports.

Banks and thrifts with $50 billion to $100 billion in assets no longer must pay assessments to finance the cost of enhanced regulation, and any bank or thrift with $100 billion to $250 billion in assets will have its assessments adjusted to reflect changes in its regulatory status. Banks with $50 billion to $250 billion no longer pay assessments to fund the Office of Financial Research.

Analysis

Supporters and opponents of P.L. 115-174 generally agree that enhanced prudential regulation should apply to systemically important banks, but disagree about which banks could pose systemic risk. Prior to the enactment of P.L. 115-174, there had been widespread support for raising the $50 billion threshold, including from certain prominent regulators, but no consensus on how it should be modified.[117] In particular, critics of the $50 billion threshold distinguish between *regional banks* (which tend to be at the lower end of the asset range and, it is claimed, have a traditional banking business model comparable to community banks) and *Wall Street banks* (a term applied to the largest, most complex organizations that tend to have significant

[117] See, for example, Daniel Tarullo, "Rethinking the Aims of Prudential Regulation," speech at the Federal Reserve Bank of Chicago, May 8, 2014, at https://www.federalreserve.gov/newsevents/speech/tarullo20140508a.htm.

nonbank financial activities).[118] If there are economies of scale to regulatory compliance, the regulatory burden of enhanced regulation is disproportionately higher for the banks with closer to $50 billion in assets. Thus, if the legislation reduces the number of banks that are subject to enhanced regulation but are not systemically important, a significant reduction in cost could be achieved without a significant increase in systemic risk.

Definitively identifying banks that are systemically important is not easily accomplished, in part because potential causes and mechanisms through which a bank could disrupt the financial system and spread distress are numerous and not well understood in all cases. In addition, there is not an exact correlation between size and traditional banking activities.

Many economists believe that the economic problem of "too big to fail" is really a problem of firms that are too complex or too interdependent to fail. Size correlates with complexity and interdependence, but not perfectly. Size is a much simpler and more transparent metric than complexity or interdependence, however. As a practical matter, if size is well correlated with systemic importance, a dollar threshold could serve as a good proxy that is inexpensive and easy to administer. Designating banks on a case-by-case basis could raise similar issues that have occurred in the designation of nonbanks, such as the slow pace of designations; difficulty in finding objective, consensus definitions of what constitutes systemic importance; and legal challenges to overturn their designation.

P.L. 115-174 attempts to maximize the benefits and minimize the problems by using both approaches—an automatic designation for banks with assets of more than $250 billion and a case-by-case application of standards for banks with assets between $100 billion and $250 billion. This approach can mitigate the drawbacks inherent in both approaches, but cannot eliminate them. Any dollar threshold still potentially includes banks that do not pose systemic risk with assets above that threshold. Compared with a dollar threshold, any case-by-case application of standards would be more expensive, time-consuming, and subjective, and could potentially create opportunities for legal challenges.

Aside from the effects on financial stability, reducing the number of banks subject to enhanced regulation also reduces second-order benefits, such as protecting taxpayers against FDIC insurance losses. It could also worsen the "too big to fail" problem if market participants perceive the banks subject to enhanced regulation as officially too big to fail. This could lead to greater moral hazard—if the creditors and counterparties of a TBTF firm believe that the government will protect them from losses, they have less incentive to monitor the firm's riskiness because they are shielded from the negative consequences of those risks. One rationale for (1) setting the asset threshold low and (2) subjecting any bank above it to enhanced prudential regulation automatically is that this method would reduce the likelihood that banks in the regime would be viewed as having a de facto TBTF designation.

P.L. 115-174 makes tailoring of the regime mandatory instead of discretionary, and likely will result in more tailored regulation for banks with between $100 billion and $250 billion in assets because the Fed will likely consider the application of each provision separately. In contrast, systemic risk regulation may be less tailored overall, because the legislation mostly eliminates two existing tiers of regulations—those that apply at $10 billion and $50 billion in assets. However, expanding beyond systemic risk regulation, overall bank regulation will be more tailored because of the new size-based exemptions included in other titles of the legislation.

[118] See, for example, Deron Smithy, testimony before the Senate Banking Committee, March 24, 2015, at http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=14d286e0-9c50-4b96-87cf-fe999112550f.

CBO estimated that Section 401 would increase the deficit by $114 million, for two reasons. First, CBO estimated that the probability of a large bank failing would be greater if fewer banks were subject to enhanced regulation, imposing losses on the FDIC insurance fund that would not fully be offset by higher deposit insurance premiums within the 10-year budget window. Although CBO believed a large bank failure would be a relatively large cost to the government (via the FDIC), the change in probability of failure under the legislation is small. Thus, CBO's estimate of the provision's budgetary effect was small. Second, CBO estimated that the reduction in banks paying fees to cover the costs of the Fed's duties under enhanced regulation would exceed the reduction in costs to the Fed of no longer subjecting those banks to enhanced regulation.[119]

For more information about the enhanced prudential regulation threshold, see CRS Report R45036, *Bank Systemic Risk Regulation: The $50 Billion Threshold in the Dodd-Frank Act*, by Marc Labonte and David W. Perkins.

Section 402—Custody Banks and the Supplementary Leverage Ratio

Provision

Section 402 allows custody banks—defined by the legislation as banks predominantly engaged in custody, safekeeping, and asset servicing activities—to no longer hold capital against funds deposited at certain central banks[120] to meet the SLR, up to an amount equal to customer deposits linked to fiduciary, custodial, and safekeeping accounts. As discussed in the leverage section above, under leverage ratios, including the SLR, the same amount of capital must be held against any asset, irrespective of risk.

Analysis

Custody banks provide a unique set of services not offered by many other banks, but are generally subject to the same regulatory requirements as other banks. Custodian banks hold securities, receive interest or dividends on those securities, provide related administrative services, and transfer ownership of securities on behalf of financial market asset managers, including investment companies such as mutual funds. Asset managers access central counterparties and payment systems via custodian banks. Custodian banks play a passive role in their clients' decisions, carrying out instructions. Generally, banks must hold capital against their deposits at central banks under the leverage or supplemental leverage ratio, but custody banks argue that this disproportionately burdens them because of their business model.[121] However,

[119] Congressional Budget Office, Cost Estimate, P.L. 115-174, March 5, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155.pdf. CBO's score of the manager's amendment reduced the cost associated with this provision, but did not explain the source of the reduction. The manager's amendment changed both the number of banks subject to enhanced regulation and the number subject to fees. Congressional Budget Office, *Estimates of the Direct Spending and Revenue Effects of Amendment Number 2151,* March 8, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155amendmentnumber2151.pdf.

[120] The central banks that currently qualify for this exemption include all countries belonging to the Organization for Economic Cooperation and Development (OECD) except Mexico and Turkey. For a list, see OECD, Country Risk Classifications of the Participants to the Arrangement on Officially Supported Export Credits, January 26, 2018, at http://www.oecd.org/trade/xcred/cre-crc-current-english.pdf.

[121] Bank of New York Mellon, Northern Trust, and State Street, letter to the Honorable Mike Crapo and Honorable Sherrod Brown, April 14, 2017, at https://www.banking.senate.gov/public/_cache/files/1c835896-8b5e-4387-8431-b3c5c41810b9/AFC62A5DEEDEF3838A75891481F5471F.custody-bank-coalition-submission.pdf.

other observers argue that the purpose of the leverage ratio is to measure the amount of bank capital against assets regardless of risk, and to exempt "safe" assets undermines the usefulness of that measure.[122]

P.L. 115-174 leaves it to bank regulators to define which banks meet the definition of "predominantly engaged in custody, safekeeping, and asset servicing activities." Other large banks that offer custody services but do not qualify for relief under the "predominantly engaged" definition may be at a relative disadvantage under this provision. A CRS analysis of call report data[123] identified three banks that had a significantly greater amount of assets under custody than total exposures—Bank of New York Mellon, Northern Trust, and State Street.[124] If determined to be custody banks, Northern Trust (as an advanced approaches bank) would be able to reduce its capital by $3 for every $100 it deposits at central banks, and Bank of New York Mellon and State Street (as G-SIBs) would be able to reduce their capital by $6 for every $100 of banking subsidiary deposits at central banks. The FDIC reports that Bank of New York Mellon held $36 billion, Northern Trust held $23 billion, and State Street held $25 billion of deposits at the Federal Reserve at the end of December 2017.[125] The FDIC does not separately report bank deposits at foreign central banks, which will also receive capital relief under the legislation for some deposits, or custodial or safekeeping deposits, which could potentially limit the amount of capital relief. As mentioned earlier, whether banks in addition to the three identified here will also receive relief under Section 402 will be up to the regulators' discretion.

CBO estimated that Section 402 would increase the budget deficit by $45 million over 10 years because a reduction in capital held by custody banks would result in a greater likelihood that a custodial bank would fail, imposing losses on the FDIC insurance fund that would not fully be offset by higher deposit insurance premiums within the 10-year budget window.[126] Although CBO believed a large bank failure would be a relatively large cost to the government (via the FDIC), the change in probability of failure under the legislation is small. Thus, CBO's estimate of the provision's budgetary effect was small.

For more information on custody banks and the SLR, see CRS In Focus IF10812, *Financial Reform: Custody Banks and the Supplementary Leverage Ratio*, by Rena S. Miller.

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[122] Former Federal Reserve Governor Daniel K. Tarullo, "Departing Thoughts," Remarks at the Woodrow Wilson School, Princeton University, Princeton, NJ, April 4, 2017, pp. 11-13, https://www.federalreserve.gov/newsevents/speech/files/tarullo20170404a.pdf.

[123] Federal Financial Institutions Examination Council, *Banking Organization Systemic Risk Report (FR Y-15), Fourth Quarter 2016*.

[124] Each of those three had at least 48 times as many assets under custody as total exposures. The bank with the next highest ratio, Charles Schwab, had more than 12 times as many. These are the same three banks that noted that they lead the custody banking business in a letter to the Senate Banking Committee requesting the provision. See Bank of New York Mellon, Northern Trust, and State Street, letter to the Honorable Mike Crapo and Honorable Sherrod Brown, April 14, 2017, at https://www.banking.senate.gov/public/_cache/files/1c835896-8b5e-4387-8431-b3c5c41810b9/AFC62A5DEEDEF3838A75891481F5471F.custody-bank-coalition-submission.pdf.

[125] Data from Federal Financial Institutions Examination Council, Consolidated Report of Condition and Income (FFIEC 031), Schedule RC-A and Schedule RC-T, Fourth Quarter 2017.

[126] Congressional Budget Office, Cost Estimate, P.L. 115-174, March 5, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155amendmentnumber2151.pdf.

Section 403—Municipal Bonds and Liquidity Coverage Ratio

Provision

Section 403 requires bank regulators to treat any municipal bond "that is both liquid and readily marketable and investment grade" as a level 2B high-quality liquid asset for purposes of complying with the LCR. Municipal bonds are debt securities issued by state and local governments or public entities. Prior to the enactment of P.L. 115-174, the Fed allowed banks to count a limited amount of municipal securities as level 2B assets, but the FDIC and the Office of the Comptroller of the Currency (OCC) did not. Half of the value of a level 2B asset may be counted toward fulfilling the LCR, and level 2B assets may not exceed 15% of total high-quality liquid assets (HQLA).

Analysis

To the extent that the LCR reduces the demand for bank holding companies to hold municipal securities, it would be expected to increase the borrowing costs of states and municipalities.[127] The impact of the LCR on the municipal bond market may be limited by the fact that relatively few banks are subject to the LCR. Finally, even banks subject to the LCR are still allowed to hold municipal bonds, as long as they have a stable funding source to back their holdings. CRS estimates that banks subject to the LCR held $187 billion in state and municipal bonds in the third quarter of 2017, compared with total outstanding municipal debt of $3.8 trillion.[128] CRS was unable to determine what portion of these bonds meet the "liquid and readily marketable and investment grade" criteria.

Arguments that municipal bonds should qualify as HQLA because most pose little default risk confuse default risk, which is addressed by capital requirements, with liquidity risk, which is addressed by the LCR. The purpose of the LCR is to ensure that banks have ample assets that can be easily liquidated in a stress scenario; a municipal bond may pose very little default risk, but nevertheless be illiquid (i.e., hard to sell quickly).

For more information on municipal bonds and the liquidity coverage ratio, see CRS In Focus IF10804, *Financial Reform: Muni Bonds and the LCR*, by Marc Labonte and David W. Perkins.

Capital Formation

Title V of P.L. 115-174 is focused on providing regulatory relief to participants of *capital markets*. Certain provisions of Title V provide streamlined registration and disclosure requirements for certain securities issuers as well as market intermediaries (e.g., asset managers and stock exchanges). These provisions allow for reduced regulatory obligations in relation to selected aspects of capital formation.

[127] For more information, see CRS Report R44146, *The Demand for Municipal Bonds: Issues for Congress*, by Darryl E. Getter and Raj Gnanarajah.

[128] Federal Reserve Y-9C data accessed on December 27, 2017, at https://www.chicagofed.org/applications/bhc/bhc-home; Securities Industry and Financial Markets Association, U.S. Bond Market Issuance and Outstanding data, accessed on January 3, 2018, at https://www.sifma.org/wp-content/uploads/2017/06/cm-us-bond-market-sifma.xls.

Background

Companies turn to a variety of sources to access the funding they need to grow, including by accessing capital markets. Capital markets are segments of the financial system in which funding is raised through issuing equity or debt securities.[129] Equity securities—also called stocks or shares—represent part ownership of a firm. Debt securities, such as bonds, represent indebtedness of a firm. Capital markets are the largest source of financing for U.S. nonfinancial companies, representing 65% of all financing for such companies in 2016,[130] significantly more than bank loans and other forms of financing. U.S. capital markets are considered the deepest and most liquid in the world. U.S. companies are generally more reliant on capital markets for funding than companies in other countries with developed economies, which rely more on bank loans.[131] The principal regulator of U.S. capital markets is the Securities and Exchange Commission (SEC).

Capital markets are often the focus of policy discussions. Access to capital allows businesses to fund their growth, to innovate, to create jobs, and to ultimately help raise society's overall standard of living. Capital formation also involves investor protection challenges, including the challenge to ensure that investors, such as less sophisticated retail investors, could comprehend the risks of their investments. Policymakers frequently debate the balance between these two potentially conflicting objectives: (1) facilitating capital formation and (2) fostering investor protection largely through mandatory disclosure and compliance. Proposals that reduce the regulatory compliance that a securities issuer or a market intermediary must comply with can decrease these market participants' compliance costs and increase the speed and efficiency of capital formation. However, this reduced regulation may also expose investors to additional risks. These risks could potentially include the reduction in information that is important to investment decisionmaking; and the lack of compliance that could hinder an intermediary's capacity to safeguard investor assets or act in the best interest of investors, among other investor protection concerns. In addition, investor protection can help contribute to healthy and efficient capital markets because investors may be more willing to provide capital, and even at a lower cost, if they have faith in the integrity and transparency of the underlying markets.

Many of the provisions in Title V involve some version of the policy debate mentioned above. On the one hand, some observers generally believe that capital markets require updated regulations to ensure that companies have adequate access to markets and that they are not unduly burdened by inefficient or outdated regulations with limited benefits. In particular, they argue that small- and medium-sized companies have more difficulty accessing capital relative to larger companies, and should be given regulatory relief. On the other hand, other observers generally believe that capital market regulations in place prior to the enactment of P.L. 115-174 strike an appropriate balance between capital access and investor protection, and that paring back protections unnecessarily exposes investors to risks, particularly among investors that may lack sophisticated knowledge or the ability to withstand unexpected financial losses.

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[129] A more detailed definition of securities could be found through the Howey test. In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), the Supreme Court set forth the foundational test for whether a transaction qualifies as a form of security known as an *investment contract*. Under *Howey*, an investment contract is (1) an investment of money (2) in a common enterprise (3) with a reasonable expectation of profits (4) to be derived from the entrepreneurial or managerial efforts of others. See also SEC v. Edwards, 540 U.S. 389, 393 (2004). Rahul Mukhi and James Michael Blakemore, Cleary, Gottlieb, Steen & Hamilton LLP, "SEC Cyber Unit and Allegedly Fraudulent ICO," December 26, 2017, at https://corpgov.law.harvard.edu/2017/12/26/sec-cyber-unit-and-allegedly-fraudulent-ico.

[130] Data provided by SIFMA.

[131] SIFMA, *U.S. Capital Markets Deck*, September 2017, at https://www.sifma.org/wp-content/uploads/2016/10/US-Capital-Markets-Deck-2017-09-11-SIFMA.pdf.

Provisions and Selected Analysis

Section 501—National Security Exchange Parity

Provisions

Section 501 alters a criterion that exempts covered securities from state securities regulation under the Securities Act of 1933. Prior to the enactment of P.L. 115-174, "covered" securities were defined as securities that are listed on the New York Stock Exchange, the American Stock Exchange, and the National Market System of the Nasdaq Stock Market, or on an exchange that the SEC determines has securities listing standards that are "substantially similar" to those three.[132] If a security meets the definition of a covered security, then it is exempt from certain state regulations. Section 501 removes the substantially similar criterion and gives covered status to any securities listed on exchanges that are SEC-registered, which is generally required of all domestic exchanges.

The provision's advocates claim that the substantially similar criterion was outdated, and as a result, the SEC could have been limiting the number of potentially innovative and competitive exchanges. Furthermore, they argue that some of these innovative exchanges could help alleviate the lack of access small companies have to secondary capital markets.[133] Critics, however, are concerned that eliminating the SEC's regulatory authority in this area could help spur the development of securities exchanges with lower listing standards and fewer regulatory requirements, and thus increase the opportunities for investor fraud.[134]

For more information on securities exchange reform proposals, see CRS In Focus IF10862, *Securities Exchanges: Regulation and Reform Proposals (Section 501 of P.L. 115-174, Section 496 of H.R. 10, and H.R. 4546)*, by Gary Shorter.

Section 504—Registration Requirements for Small Venture Capital Funds

Provision

Section 504 creates a new subset of *venture capital funds* called *qualifying venture capital funds* (QVCFs) and exempts them from the definition of *investment company* under the Investment Company Act of 1940 (ICA; P.L. 76-768). No longer being classified as an investment company under the ICA reduces the qualifying fund's registration and disclosure requirements. Venture capital funds are investment pools that manage the funds of generally wealthy investors interested in acquiring private equity stakes in emerging small- and medium-sized firms and startup firms with perceived growth potential. The funds often take an active role in the businesses, including providing managerial guidance and occupying corporate board seats. The ICA requires certain pooled investments—including venture capital funds—to register with the SEC. Registration triggers certain reporting responsibilities, including disclosures about investment objectives, financial condition, structure, operation, and product offerings. In addition, registered investment companies are obligated to safeguard investor assets and act in the best interest of investors,

[132] 15 U.S.C. §77r(b)

[133] House Financial Services Committee, "House Passes Bill to Create an Equal Market Playing Field," press release, at July 12, 2016, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400925.

[134] Minority Views on H.R. 5421: The "National Securities Exchange Regulatory Parity Act of 2016", at https://democrats-financialservices.house.gov/uploadedfiles/mv_hr_5421_signed.pdf.

among other requirements. Investment company registration and compliance are intended to (among other things) mitigate certain conflicts of interest that may arise, but impose compliance costs on funds. Under the ICA, an investment pool generally must register if it has more than 100 beneficial shareholders,[135] unless it otherwise qualifies for an exemption.[136] Section 504 allows a venture capital fund to qualify as a QVCF and avoid registration requirements if it has no more than 250 beneficial investors (up from 100 beneficial investors), provided it had no more than $10 million in invested capital (no size threshold is currently in place) before triggering the ICA registration requirement.

Some observers argue capital access for small businesses could be improved by allowing venture capital funds to have a broader shareholder base before they are subjected to registration requirements.[137] However, others are concerned that limiting federal regulatory oversight of investment funds of larger size unnecessarily weaken protections for the underlying venture fund investors.[138]

For more information on venture capital fund threshold proposals, see CRS Insight IN10681, *Venture Capital Funds: Proposals to Expand Investor Thresholds Required for Registration (Section 504 of P.L. 115-174, Section 471 of H.R. 10, H.R. 1219, S. 444, and Section 914 of H.R. 3280)*, by Gary Shorter.

Section 506—U.S. Territories Investor Protection

Provision

Section 506 repeals the exemption available to mutual funds organized in domestic territories—including Puerto Rico, the Virgin Islands, and Guam—from compliance with the Investment Company Act of 1940 (P.L. 76-768; ICA). The ICA generally requires investment pools—including mutual funds—to register with the SEC. Registration subjects investment pools to SEC enforcement and regulatory oversight and triggers certain reporting responsibilities, including disclosures about the fund's investment objectives, financial condition, structure, operation, and product offerings. According to a congressional report,[139] when the ICA was enacted in 1940, Congress determined that it would be too costly for the SEC to travel to and inspect investment companies located beyond the continental United States. Subsequently, some areas lost the exemption (e.g., Alaska and Hawaii), but others (e.g., Puerto Rico, the Virgin Islands, and Guam) still retained it prior to the enactment of P.L. 115-174.[140] A general argument for Section 506 is

[135] A beneficial shareholder is a shareholder in the investment pool who enjoys the benefits of ownership in the pool, even though the titular shareholder may be another entity such as a broker-dealer who is acting on behalf of the beneficial shareholder.

[136] 15 U.S. Code §80a–3(c)

[137] Representative Patrick McHenry, "McHenry Introduces Bipartisan, Bicameral Bill to Promote Investments in Businesses and Startups," press release, March 6, 2017, at https://mchenry.house.gov/news/documentsingle.aspx?DocumentID=398484.

[138] Letter from Americans for Financial Reform and Consumer Federation of America to Chairman Jeb Hensarling, Ranking Member Maxine Waters, and Members of the House Financial Services Committee, June 14, 2016, at https://www.ourfinancialsecurity.org/wp-content/uploads/ ... /HFSC-Markup-AFR-CFA-Letter.pdf.

[139] U.S. Congress, House Committee on Financial Services, *U.S. Territories Investor Protection Act of 2017*, Report to accompany H.R. 1366, 115th Cong., 1st sess., May 1, 2017, H.Rept. 115-103, pp. 1-2.

[140] Senator Bob Menendez, "Senate, House Committees Advance Menendez Bipartisan Bill Protecting Investors in Puerto Rico, U.S. Territories," press release, March 9, 2017, at https://www.menendez.senate.gov/news-and-events/press/senate-house-committees-advance-menendez-bipartisan-bill-protecting-investors-in-puerto-rico-us-territories.

that the earlier logistical challenges presented by noncontinental territories have diminished over time.

Section 507—Disclosure Requirements for Companies Paying Personnel in Stock

Provision

Section 507 requires the SEC to increase the threshold amount of stock a company can sell to its corporate personnel without becoming subject to additional disclosure requirements from $5 million over any 12-month period to $10 million over any 12-month period. A company that offers or sells its securities to the public is required to register them with the SEC, a process that requires the company to make certain disclosures about its business. This process imposes certain compliance costs, which potentially could be disproportionately burdensome to small- and medium-sized businesses and startups.[141] In 1988, the SEC adopted Rule 701 under the Securities Act of 1933. The rule created an exemption from certain registration requirements to nonpublic companies, including startups that offer their own securities (such as stock options and restricted stock) as part of formal written compensatory benefit agreements to employees, directors, general partners, trustees, officers, specified advisers, and consultants. Certain conditions must be met for eligibility, including a limit on the issuance of stock to the aforementioned corporate personnel during a 12-month period not to exceed the greater of $1 million, or 15% of the issuer's total assets, or 15% of all the outstanding securities of the class of securities being offered. In addition, prior to the enactment of P.L. 115-174, if the issuance of securities to corporate personnel exceeded $5 million during any 12-month period, the company was required to provide investors with additional disclosures on a recurring basis, including information on risk factors, the plans under which the offerings have been made, and certain financial statements.[142] Section 507 raises the $5 million threshold, which could result from one of the two aforementioned 15% asset or securities scenarios being triggered, to $10 million.

For more information on proposed changes to regulation related to employee ownership of company securities, see CRS Insight IN10680, *Employee Ownership of Registration-Exempt Company Securities: Proposals to Reform Required Corporate Disclosures (Section 507 of P.L. 115-174, S. 488, H.R. 1343, and Section 406 of H.R. 10)*, by Gary Shorter.

Section 508—Expanding Regulation A+ Access to Reporting Companies

Provisions

Section 508 expands the SEC's Regulation A+ to allow certain "fully reporting" companies to be eligible for certain exemptions from disclosure requirements.[143] The offers and sales of securities must either be registered with the SEC (as a public offering) or be undertaken with an exemption from registration (as a private offering). A fully reporting company is a company that files registration statements and other reports with the SEC, either voluntarily or through public offering requirements. Regulation A+, a type of exemption from registration, is a private offering

[141] Rep. Randy Hultgren, "Hultgren Reintroduces Encourging Employee Ownership Act," press release, May 7, 2017, at https://hultgren.house.gov/newsroom/press-releases/hultgren-reintroduces-encouraging-employee-ownership-act.

[142] 17 C.F.R. §230.701.

[143] 17 C.F.R. §230.251 through §230.263.

designed to facilitate capital access for small- to medium-sized companies by subjecting them to fewer disclosure requirements. Prior to enactment of P.L. 115-174, Regulation A+ applied to nonreporting companies only.[144] By broadening the base of eligible issuers of Regulation A+ offerings, thousands of SEC reporting companies qualify for a more streamlined registration and disclosure approach under Regulation A+. That reduced disclosure will likely reduce costs for companies but also will likely reduce the information available to investors.

For more information about Regulation A+, including a discussion about the general background and related legislative proposals, see CRS In Focus IF10848, *Capital Access: SEC Regulation A+ ("Mini-IPO")*, by Eva Su.

Section 509—Streamlined Closed-End Fund Registration

Provisions

Section 509 directs the SEC to allow closed-end funds[145] to use certain streamlined reporting procedures available through the *well-known seasoned issuer* (WKSI) status.[146] A closed-end fund is a publicly traded investment company that sells a limited number of shares to investors in an initial public offering and the shares are traded on secondary markets.[147] The WKSI status has generally been granted to operating companies that produce goods and services, rather than investment companies such as closed-end funds. Prior to enactment of P.L. 115-174, registered investment companies, including closed-end funds, generally could not be granted WKSI status even when required conditions are met. Examples of distinct WKSI benefits include (1) certain simplified registration statements filed beforehand to automatically take effect without SEC review,[148] also referred to as *shelf registration*;[149] (2) communication with potential investors before and during the offering period; and (3) deliver of electronic instead of physical prospectuses (formal legal documents describing the details of the securities offerings).[150] Section

[144] For information about private offerings in general, see CRS In Focus IF10747, *Private Securities Offerings: Background and Legislation*, by Eva Su.

[145] Closed-end funds are registered investment companies under the Investment Company Act of 1940 (15 U.S.C. §80a-5) and listed on national stock exchanges. The provision could also include issuers that makes periodic repurchase offers pursuant to 17 C.F.R. §270.23c-3—*Repurchase Offers by Closed-end Companies*. More details see *Congressional Record—Senate (S1564)*, March 8, 2018, at https://www.congress.gov/crec/2018/03/08/CREC-2018-03-08-pt1-PgS1529-7.pdf.

[146] A *well-known seasoned issuer* (WKSI) generally refers to an issuer that is eligible for Form S-3 for registration of a primary offering of securities and has at least $700 million shares available for trading, or has sold at least $1 billion in aggregate principal amount of registered debt in primary offerings for cash. For more on WKSI, see Westlaw, *Glossary: Well-known Seasoned Issuer*, at https://content.next.westlaw.com/Document/Ibb0a1321ef0511e28578f7ccc38dcbee/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true&bhcp=1.

[147] More on closed-end fund see SEC, *Closed-End Fund Information*, at https://www.sec.gov/fast-answers/answersmfclosehtm.html.

[148] For example, the provision proposes to allow eligible closed-end funds to incorporate registration statements through referencing information in other SEC shareholder reports or filings, instead of direct incorporation of information into the registration statements. As such, the simplified process is said to save time and associated costs.

[149] A primary advantage of shelf registration is that "a company fulfills all registration-related procedures beforehand, so that it can offer securities quickly when funds are needed or when market conditions are more favorable." For more details on shelf registration, see Westlaw, *Glossary: Shelf Registration*, at https://content.next.westlaw.com/Document/Ibb0a10cdef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink).

[150] Congressional Budget Office, H.R. 4279, *Expanding Investment Opportunities Act*, January 16, 2018, at https://www.cbo.gov/publication/53475; and House Financial Services Committee, *Report 115-517*, January 16, 2018,

509 enables closed-end funds that meet WKSI requirements to partake of the benefits of such status. In addition, if the SEC fails to finalize the rules within one year of enactment, closed-end funds would be subject to the Securities Offering Reform of 2005, which provide regulatory relief for noninvestment companies and are currently not applicable to closed-end funds.[151]

The number of close-end funds has decreased in recent years from 662 funds at the previous peak in 2007 to 530 funds in 2016.[152] Some argue this is the result of unduly burdensome regulation.[153] However, isolating the effects of regulations across time in a dynamic market is difficult, and no consensus exists over what role various market forces have played in this decline.

Miscellaneous Proposals in P.L. 115-174

The Economic Growth, Regulatory Relief, and Consumer Protection Act contains a number of provisions that do not necessarily pertain directly to the issue areas examined above, including the following:

- **Deposits in U.S. Territories.** Section 208 extends the applicability of Expedited Funds Availability Act (P.L. 100-86) requirements (which relate to how quickly deposits, once made, are available to account holders) to American Samoa and the North Mariana Islands.
- **Small Public Housing Agencies.** Section 209 classifies public housing agencies administering 550 housing units or fewer that predominately operate in rural areas as *small public housing agencies* (SPHAs) and reduce administrative requirements faced by such agencies, including less frequent inspections and reduced environmental review requirements. In addition, Section 209 creates a process for corrective action to be undertaken for troubled SPHAs and an incentive program for SPHAs to reduce energy consumption.[154]
- **Insurance.** Section 211 creates an "Insurance Policy Advisory Committee on International Capital Standards and Other Insurance Issues" at the Federal Reserve made up of 21 members with expertise on various aspects of insurance. It requires an annual report and testimony from the Federal Reserve and the Department of the Treasury on the ongoing discussions at the International Association of Insurance Supervisors through 2022, and a report prior to supporting any specific international insurance standards.[155]
- **National Credit Union Administration Budget.** Section 212 requires the National Credit Union Administration to publish a draft of its annual budget in the *Federal Register* and hold public hearings on the draft.

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at https://www.congress.gov/115/crpt/hrpt517/CRPT-115hrpt517.pdf.

[151] 17 C.F.R. §§200, 228, 229, 230, 239, 240, 243, 249, and 274.

[152] Investment Company Institute, *The Closed-End Fund Market, 2016*, April 2017, at https://www.ici.org/pdf/per23-02.pdf.

[153] House Financial Services Committee, *Report 115-517*, January 16, 2018, at https://www.congress.gov/115/crpt/hrpt517/CRPT-115hrpt517.pdf.

[154] For more information on public housing, see CRS Report R41654, *Introduction to Public Housing*, by Maggie McCarty.

[155] For more information on international insurance issues, see CRS Report R44820, *Selected International Insurance Issues in the 115th Congress*, by Baird Webel and Rachel F. Fefer, and CRS Report R44958, *Insurance Regulation: Legislation in the 115th Congress*, by Baird Webel.

- **Federal Reserve Surplus.** The Fed's capital comprises paid-in capital issued to member banks and retained earnings deposited in its surplus account. Section 217 reduces the statutory cap on the Fed's surplus account from $7.5 billion to $6.825 billion and requires funds in excess of that amount to be remitted to Treasury as general revenues. CBO estimated that this provision would increase revenues by $478 million on net over 10 years.[156] CBO assumed that the Fed would finance the transfer by selling Treasury securities, which otherwise would have earned $177 million in income that would have been remitted to the Treasury in the next 10 years. Thus, the provision can be thought of as shifting Fed remittances from the future to the present, as opposed to representing new economic resources available to the federal government.
- **Remediating Lead and Asbestos Hazards.** Section 305 directs the Secretary of the Treasury to use loan guarantees and credit enhancements to remediate lead and asbestos hazards in residential properties backing mortgages acquired by the Treasury.
- **Family Self Sufficiency Program**. Section 306 makes alterations to the Family Self Sufficiency Program (FSS), an asset-building program for residents of public and assisted housing. The changes are designed to harmonize separate FSS programs into one, unified program; expand the range of services that can be provided to participating residents; and make other technical changes to the program.
- **Overpayments to the SEC.** Section 505 permits national securities exchanges that have made overpayments to the SEC in excess of their required fees to offset those payments against future fees owed within 10 years of the overpayment.
- **Studies and Best Practices.** Section 216 requires a Treasury report on cyber threats to financial institutions and capital markets. Section 308 requires a Government Accountability Office (GAO) report on consumer reporting. Section 311 requires a GAO report on foreclosures in Puerto Rico. Section 312 requires a Department of Housing and Urban Development report on lead-based paint hazard prevention. Section 502 requires an SEC report on algorithmic trading in capital markets. Section 503 amends the Small Business Investment Incentive Act of 1980 (SBIIA; P.L. 96-477) by requiring the SEC to release (1) a public assessment of the findings and recommendations of the annual Government-Business Forum on Small Business Capital Formation; and (2) a public report on what actions, if any, it will be taking to address those findings and recommendations. Section 603 directs the Financial Literary and Education Commission to establish best practices for institutions of higher learning regarding methods to teach financial literacy skills and to provide information to students at those institutions to assist them when making financial decisions.

[156] Congressional Budget Office, *Estimates of the Direct Spending and Revenue Effects of Amendment Number 2151*, March 8, 2018, at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s2155amendmentnumber2151.pdf.

Appendix A. Asset Size and Other Thresholds in P.L. 115-174

Table A-1 lists provisions in P.L. 115-174 that create or change size-based threshold criteria that alter the regulatory treatment of certain institutions or activities.

Table A-1. Asset Size and Other Thresholds in P.L. 115-174

P.L. 115-174 Section Number	New Size Threshold	Former Size Threshold	Provision Description
	Asset Size Threshold		
207	$3 billion	$1 billion	BHCs below this threshold, subject to other requirements, are not subject to the same capital requirement as depository subsidiaries and are permitted to take on more debt to acquire other banks.
210	$3 billion	$1 billion	Banks below this threshold, subject to other requirements, are eligible for less frequent examination.
205	$5 billion	None	Banks below this threshold are eligible for reduced reporting requirements to federal regulators.
101	$10 billion	$2 billion	Mortgages originated and retained by banks or credit unions below this threshold, subject to other requirements, are considered "qualified mortgages" for the purposes of the Ability-to-Repay Rule.
109	$10 billion	$2 billion	Banks or credit unions below this threshold, subject to other requirements, are exempt from certain escrow requirements.
201	$10 billion	None	Banks below this threshold, possibly subject to other regulatory requirements, are considered as meeting all capital and leverage requirements if they maintain at least a minimum Community Bank Leverage Ratio.
203	$10 billion	None	Banking organizations below this threshold are exempt from the Volcker Rule, provided their trading assets and liabilities are less than 5% of total assets.
206	$20 billion	None	Federal savings associations below this threshold, subject to other requirements, can opt-in to the national bank charter regulatory regime.
401	$50 billion	$10 billion	Publicly traded BHCs below this threshold are exempt from certain risk committee requirements.
401	$100 billion	$50 billion	BHCs below this threshold are exempt from Dodd-Frank enhanced prudential regulation (except for the risk committee requirement).
401	$100 billion - $250 billion	$50 billion	Regulatory discretion to apply Dodd-Frank enhanced prudential regulation to BHCs in this range, except supervisory stress testing requirements to which these BHCs would still be subject.
401	$250 billion or G-SIB	$10 billion for company-run stress tests; $50 billion for others	BHCs above this threshold would be automatically subject to Dodd-Frank enhanced prudential regulation.

P.L. 115-174 Section Number	New Size Threshold	Former Size Threshold	Provision Description
	Other Institution Threshold		
209	550-unit public housing agency	None	An agency of small size is subject to less frequent inspection, provided it predominately operates in a rural area.
504	$10 million in invested capital and 250 beneficial owners	100 beneficial owners	The new threshold applies to when a qualifying venture capital fund must register with the Securities and Exchange Commission as an investment company.
507	$10 million in aggregate sales of company securities to employees	$5 million in aggregate sales of company securities to employees.	Certain companies that are exempt from registering their securities with the SEC are subject to a higher threshold before they would be required to give employee-investors additional investor disclosures.
	Product/Activity Limitations		
202	Lesser of $5 billion or 20% of total liabilities	None	Reciprocal deposits below this threshold are not considered brokered deposits for the purposes of prohibitions from accepting brokered deposits facing banks that are not well capitalized.
103	$400,000 mortgage	$250,000 mortgage	Loans below this threshold, subject to other requirements, do not require an appraisal of the property in rural areas.

Source: Congressional Research Service.

Notes: BHC = bank holding company. Some existing thresholds are statutory, whereas others are applied through regulation.

Appendix B. Similar Policy Issues in Selected House Bills

P.L. 115-174 addresses a number of policy issues that are also addressed by the Financial CHOICE Act (H.R. 10), which was passed by the House on June 8, 2017, and other House bills that have seen legislative action in the 115th Congress. **Table B-1** lists such policy issues and identifies the sections of P.L. 115-174, the sections of H.R. 10, and House bills that have seen action that propose changes in those areas. It should be noted, however, that while certain issues addressed in the various pieces of legislation are similar, how the bills address them may differ to varying degrees, some quite significantly. An examination and discussion of how the various proposals differ across the each piece legislation is beyond the scope of this report.

Table B-1. Policy Issues Addressed in P.L. 115-174 and Selected House Legislation

Policy Issue	P.L. 115-174 Section	H.R. 110 Section	Other House bills (status in parentheses)
Additional criteria for mortgages to receive "Qualified Mortgage" status	101	516	H.R. 2226 (Passed by House, voice) H.R. 2133, Sec 15 (Hearings held)
Charitable donations of home appraisals	102	591	H.R. 2255, Title I (Passed by House, voice)
Appraisal requirement exemptions for rural or low value mortgages	103		H.R. 2133, Sec 3 (Hearings held) H.R. 3221 (Ord. to be Rept., 32-26)
Exemptions from certain HMDA reporting requirements	104	576	H.R. 2954 (Passed by House, 243-184) H.R. 2133, Sec 8 (Hearings held)
Loan originator grace period during license changes	106	556	H.R. 3978, Title V (Passed by House, 271-145) H.R. 2948 (Rept. by Comm., 60-0)
Mortgage rule exemptions for certain manufactured homes retailers	107	501	H.R. 1699 (Passed by House, 256-163)
Escrow requirements for mortgages exemptions	108	531	H.R. 3971 (Passed by House, 294-129) H.R. 2133, Sec 2 (Hearings held)
Mortgage waiting period requirement exemptions	109		H.R. 2133, Sec 12 (Hearings held)
Bank leverage ratio criteria for exemption from other ratios and rules	201	601-602	
Reciprocal deposits restrictions exemptions	202		H.R. 2133, Sec 14 (Hearings held)
Federal Reserve Small BHC Policy Statement asset threshold increase	203	526	H.R. 4771 (Passed by House, 280-139) H.R. 2133, Sec 4 (Hearings held)
Volcker Rule trading restriction exemptions	204	901	H.R. 4790 (Passed by House, 300-104)
Volcker Rule naming restriction exemptions	205		H.R. 3093 (Passed by House, voice) H.R. 4790 (Passed by House, 300-104)

Policy Issue	P.L. 115-174 Section	H.R. 110 Section	Other House bills (status in parentheses)
Shortened "call report" in bank financial reporting requirements	206	566	H.R. 4725 (Passed by House, voice)
Alternative to charter changes for federal thrifts seeking to increase certain loan types	207	551	H.R. 1426 (Passed by House, voice)
Deposit availability time requirements in U.S. territories	208	521	
Reduced examination frequency for certain small banks	210		H.R. 5076 (Rept. by Comm., 60-0)
International insurance standards oversight	211	1101-1102	H.R. 4537 (Rept. by Comm. 56-4)
Public disclosure of NCUA budgets	212	541	
Scanned images of ID cards and online banking	213		H.R. 1457 (Passed by House, 397-8)
High volatility commercial real estate exposures in capital requirements	214		H.R. 2148 (Passed by House, voice)
Wait period before including veterans' medical debt in credit reports	302		H.R. 2683 (Rept. by Comm., 59-0)
Whistleblower protection for identifying cases of defrauding seniors	303	491-493	H.R. 2255, Title III (Passed by House, voice) H.R. 3758 (Rept. by Comm., 60-0)
Alterations to the Family Self-Sufficiency program	306		H.R. 4258 (Passed by House, 412-5)
Enhanced prudential regulation regime alterations	401		H.R. 3312 (Passed by House, 288-130) H.R. 4292 (Passed by House, 414-0) H.R. 4293 (Passed by House, 245 -174)
SLR central bank deposit exemption for custodial banks	402		H.R. 2121 (Rept. by Comm., 60-0)
Treatment of municipal debt under LCR	403		H.R. 1624 (Passed by House, voice)
National securities exchange definition in exemption from state registration	501	496	H.R. 4546 (Rept. by Comm., 46-14) H.R. 3978, Title IV (Passed by House, 271-145)
Exemptions from certain registration and disclosure requirements for certain venture capital funds	504	471	H.R. 1219 (Passed by House, 417-3)
Future SEC assessment offset after overpayment	505	416	H.R. 1257 (Rept. by Comm., 59-0)
Application of certain securities requirements to funds located in U.S. territories	506		H.R. 1366 (Passed by House, voice)
Compensation disclosure requirement exemption	507	406	H.R. 1343 (Passed by House, 331-87)

Policy Issue	P.L. 115-174 Section	H.R. 110 Section	Other House bills (status in parentheses)
Expanded Regulation A+ access to reporting companies	508		H.R. 2864 (Passed by House, 403-3)
Streamlined closed-end fund registration	509	499A	H.R. 4279 (Passed by House, 418-2)

Source: CRS.

Notes: The table identifies bills that have passed the House or have otherwise seen legislative action as of May 14, 2018. "Rept. by Comm." refers to the House Financial Services Committee unless otherwise noted and includes bills that were ordered to be reported. The table does not include sections of the House appropriations bill (H.R. 3354) that passed the House on September 14, 2017, some sections of which do address certain policy issues listed in the table.

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