Client Alert

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Congress Provides Long-Awaited Regulatory Relief to Certain Mortgage Lenders

On May 24, 2018, President Trump signed into law the Economic Growth, Regulatory Relief and Consumer Protection Act (the Act), which was passed by Congress on May 22, 2018. The highly anticipated Act covers a wide array of issues, aiming to promote economic growth, provide regulatory relief to certain financial institutions (particularly small- and medium-size institutions) and enhance consumer protections in the financial sector.

While the Act is far-reaching in its coverage, this alert focuses on certain key provisions that are particularly relevant to various aspects of mortgage lending, such as regulatory relief for small banks and credit unions with respect to the Home Mortgage Disclosure Act (HMDA), Ability-to-Repay/Qualified Mortgage requirements under the Truth in Lending Act (TILA) and escrow requirements under TILA. The Act provides an exemption from appraisal requirements for certain transactions, creates more flexibility for transitioning mortgage loan originators and adds consumer protections with respect to the refinancing of loans insured by the Department of Veteran Affairs (VA) and with respect to Property Assessed Clean Energy (PACE) loans.

Key Relief for Certain Financial Institutions:

The Act provides regulatory relief to insured depository institutions and insured credit unions with respect to certain requirements imposed by the Dodd-Frank Act and its accompanying regulations. As noted below, some of these relief measures only apply to insured depository institutions or insured credit unions with $10 billion or less in total consolidated assets.

<u>HMDA Relief</u>

Under the Act, insured depository institutions and insured credit unions are exempt from the expanded HMDA requirements (added by the Dodd-Frank Act and the 2015 HMDA Rule published by the Consumer Financial Protection Bureau (CFPB)) that became effective January 1, 2018, so long as the institution originated less than 500 closed-end mortgage loans or less than 500 open-end lines of credit in each of the two preceding calendar years. Importantly, the exemption does not apply to an institution that has received a rating of (1) “needs to improve” in each of its last two examinations; or (2) “substantial noncompliance” in its most recent examination under the Community Reinvestment Act.

<u>Ability-to-Repay/Qualified Mortgage Rule Relief</u>

The Act creates a new safe harbor qualified mortgage (QM) category under TILA for certain mortgage loans that are originated and retained in portfolio by an insured depository institution or insured credit union with less than $10 billion in assets. The following criteria must be satisfied in order for a loan to qualify for the new QM category: 1) the loan must be retained in portfolio by the institution (subject to limited exceptions); 2) the loan must comply with the current prepayment penalty limitations under TILA; 3) the lender must consider and document the borrower’s debt, income and financial resources (although compliance with Appendix Q of Regulation Z is not required); 4) the loan must satisfy the 3 percent limitation on points and fees; and 5) the loan may not have negative amortization or interest-only features.

Escrow Requirements Relief

The Act provides an exemption from TILA's escrow requirements for an insured depository institution or insured credit union with $10 billion or less in assets, provided certain conditions are met. Namely, the institution qualifies for the exemption if it: 1) originated no more than 1,000 first lien loans secured by a principal dwelling during the preceding calendar year; and 2) satisfied certain other criteria under TILA regarding making loans to rural or underserved areas and maintaining escrow accounts.

Key Relief for Certain Mortgage Lenders and Loan Originators

Exemption from Appraisal Requirements

The Act exempts from the mandatory appraisal requirements under the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) certain types of mortgage loan transactions valued below $400,000 if the property is located in a rural area and other requirements are met. Namely, 1) the mortgage originator must retain the loan in portfolio (subject to certain exceptions); 2) the mortgage originator must have contacted at least three state-licensed or state-certified appraisers and documented that none were available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments; and 3) the mortgage originator is subject to oversight by a federal financial institutions regulatory agency.

Transitional Licensing Relief for Loan Originators

The Act amends the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act by providing for transitional licensing authority for loan originators that move from a depository to a nondepository institution and for state-licensed originators applying for licensure in another state. A registered loan originator (i.e., a loan originator employed by a depository institution) hired by a state-licensed mortgage company has temporary authority to act as a loan originator in an application state, provided the loan originator has submitted a licensing application in the state and satisfies certain other criteria. A state licensed-loan originator applying for licensure in a different state also has temporary authority to act as a loan originator in the application state, provided the loan originator is employed by a company that is licensed in the application state and certain other criteria are met.

This transitional licensing authority is subject to certain limitations, such as that the loan originator may not have had a license application denied, revoked or suspended. The transitional authority would end on the date when the licensing application is withdrawn, denied or approved or on the date that is 120 days after the application is submitted (whichever is earlier).

Key Consumer Protection Enhancements for Certain Loans

Home Loan Refinancing Reform for Veterans

The Act requires lenders that are refinancing a mortgage loan insured by the VA to satisfy certain requirements related to fee recoupment and net tangible benefit, and imposes loan seasoning requirements. These requirements do not apply to certain cash-out refinances.

A lender refinancing a VA loan must provide the VA with a certification of the recoupment period for fees, closing costs and expenses that would be incurred by the borrower in connection with the refinance. Such fees and costs must be scheduled to be recouped on or before a date that is 36 months after the date of the refinance, and the recoupment must be calculated through lower monthly payments as a result of the refinanced loan. In addition, the lender must provide the borrower a net tangible benefit test and satisfy certain requirements regarding minimum interest rate reductions. These lower interest rates may not be produced solely from discount points unless certain conditions are met.

In addition, the Act imposes a seasoning requirement on VA loans that are being refinanced. Such loans may not be guaranteed until the date that is the later of: 1) the date that is 210 days after the date on which the first monthly payment is made on the loan; or 2) the date on which the sixth monthly payment is made on the loan.

Underwriting Standards for PACE Loans

The Act imposes underwriting standards on PACE loans, which are real property retrofit loans that allow property owners to finance the cost of energy improvements on the property. The borrower pays back the cost of the loan through a voluntary assessment tied to the property and not to the borrower. The Act subjects PACE loans to ability-to-repay standards under TILA and requires the CFPB to issue regulations to this effect.

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