JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

M E M O R A N D U M

To: Members of the Financial Services Committee

From: Committee Majority Staff

Date: March 10, 2014

Subject: March 13, 2014, Full Committee Markup

As noticed, the full committee will meet at 10:00 a.m. on March 13 to mark up the measures and matters described below.

H.R. 2672, the CFPB Rural Designation Petition and Correction Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") created a new statutory requirement that an originator of a mortgage must make a determination that the borrower has the ability to repay the mortgage. Lower-cost loans that meet certain criteria prescribed by the Consumer Financial Protection Bureau (CFPB) in regulations that became effective in January 2014 are treated as "Qualified Mortgages," and afforded a legal safe harbor. Generally mortgages with balloon payments do not qualify for this safe harbor.[1] The Dodd-Frank Act authorized the CFPB to grant an exception to this treatment of balloon mortgages for loans with certain characteristics when offered by a creditor operating in a rural or underserved area.

As part of its final Qualified Mortgage rule, the CFPB excluded balloon loans from the definition of a Qualified Mortgage unless the creditor originates fewer than 500 mortgages annually, has less than $2 billion in assets, and operates predominantly in rural or underserved areas.[2] To define the term "rural," the CFPB used the "Urban Influence Codes" developed by the Department of Agriculture's Economic Research Service, which are, in turn, derived from the definitions of "metropolitan" and "micropolitan" developed by the Office of Management and Budget (OMB). Critics of this approach are concerned that by choosing this definition of "rural," the CFPB has excluded many deserving lenders from qualifying for the balloon payment exemption, thus needlessly limiting the availability of credit for rural properties. In response to these concerns, the CFPB issued an amendment to its Qualified Mortgage rule in May 2013 that provides a two-year transition period during which balloon loans made by small "non-rural" lenders can obtain Qualified Mortgage status. During that period, the CFPB will study whether the definition of "rural" or "underserved" needs to be changed.[3]

---

[1] Balloon mortgages are generally defined as those in which a large portion of the borrowed principal is repaid in a single payment at the end of the loan term.

[2] CFPB, "Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)," Jan. 10, 2013, available at: http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/.

[3] Federal Register, "Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)," June 12, 2013, available at: https://federalregister.gov/a/2013-13173.

Introduced by Rep. Barr, H.R. 2672, the CFPB Rural Designation Petition and Correction Act, amends section 1022 of the Dodd-Frank Act to require the CFPB, within 90 days, to create a process by which counties that do not fit the Urban Influence Code definition of "rural" may petition to be so designated anyway. The CFPB would be required to publish applications for "rural" treatment in the Federal Register within 60 days and make them available for public comment for no fewer than 90 days. When evaluating the application, the CFPB would be required to take into consideration: (i) criteria used by the Census Bureau when classifying geographical areas as rural or urban; (ii) criteria used by OMB when designating counties as metropolitan or micropolitan or neither; (iii) criteria used by the Department of Agriculture when determining property eligibility for rural development programs; (iv) the Department of Agriculture rural-urban commuting area codes; (v) a written opinion of the State banking regulator; and (vi) population density. H.R. 2672 further requires the CFPB to grant or deny any application within 90 days following the expiration of the comment period. The ruling must be published in the Federal Register, along with an explanation of what factors the CFPB relied upon in making its decision.

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on H.R. 2672 on December 5, 2013.

H.R. 3584, the Capital Access for Small Community Financial Institutions Act of 2013

The Federal Home Loan Bank System (FHLB) currently limits its membership to building and loan associations, savings and loan associations, cooperative banks, homestead associations, savings banks, insurance companies, community development financial institutions, federally-insured banks and savings associations, and federally-insured credit unions. Excluded from FHLB membership are 130 state-chartered, privately insured credit unions, which hold over $13 billion in assets.

Introduced by Rep. Stivers, H.R. 3584, the Capital Access for Small Community Financial Institutions Act, amends the Federal Home Loan Bank Act (Pub. L. No. 72-304) to allow privately insured credit unions to be eligible for membership in the FHLB System. In order to be eligible for membership, a privately-insured credit union would need to receive a certification from its state supervisor stating that it is eligible to apply for Federal deposit insurance. Additionally, the private insurer of the credit union would be required to provide a copy of the credit union's annual audit report to the National Credit Union Administration (NCUA) and the Federal Housing Finance Agency. Further, a state supervisor would be required to provide to the NCUA, upon request, the results of any examination and reports concerning a private insurer of credit unions licensed in that state.

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on H.R. 2672 on December 5, 2013.

H.R. 3623, the Improving Access to Capital for Emerging Growth Companies Act

Introduced by Reps. Fincher and Delaney, H.R. 3623, the Improving Access to Capital for Emerging Growth Companies Act, makes changes in the registration process of "emerging growth companies" (EGCs), a new category of issuers created by Title I of the Jumpstart Our Business Startups ("JOBS") Act (Pub. L. No. 112-103). The bill reduces from 21 days to 15 days

the length of time an EGC must have a confidential registration statement on file with the Securities and Exchange Commission (SEC) before the EGC may conduct a road show. H.R. 3623 also clarifies that an issuer that was an EGC at the time it filed a confidential registration statement but is no longer an EGC will continue to be treated as an EGC through the date of its initial public offering (IPO). The legislation requires the SEC to revise its general instructions on Form S-1 regarding financial information of an issuer prior to its IPO, and simplifies the financial statement disclosure requirements for EGCs. Currently an EGC must include the previous two years of audited financials when it files its registration statement for review. The time required for SEC review, however, could bring the EGC into a new fiscal year before it launches its IPO, and as such the relevant two-year period may change. Lastly, the bill enables EGCs to submit a draft registration statement confidentially to the SEC for any follow-on securities offerings after its IPO.

The Subcommittee on Capital Markets and Government Sponsored Enterprises (GSEs) held a hearing on a discussion draft of this bill on October 23, 2013.

H.R. 4164, the Small Company Disclosure Simplification Act

Reps. Hurt and Sewell introduced H.R. 4164, the "Small Company Disclosure Simplification Act," to provide a voluntary exemption for all EGCs and other issuers with annual gross revenues under $250 million from the SEC's requirement to file financial statements in an interactive data format known as eXtensible Business Reporting Language (XBRL). The exemption in the bill lasts until the later of five years or the time when the SEC can establish that the benefits to issuers of XBRL outweigh the costs. H.R. 4164 directs the SEC to revise its rules in accordance with the bill's new exemption. H.R. 4164 also requires the SEC to study the costs and benefits of XBRL to issuers and to report to Congress within one year of the date of enactment.

The Subcommittee on Capital Markets and GSEs held a hearing on a discussion draft of this bill on October 23, 2013.

H.R. 4167, the Restoring Proven Financing for American Employers Act

Rep. Barr introduced H.R. 4167, the Restoring Proven Financing for American Employers Act, to amend section 13(g) of the Bank Holding Company Act (BHCA) to clarify that nothing in that section shall be construed to require the divestiture of any debt securities of collateralized loan obligations (CLOs) if such CLOs were issued before January 31, 2014. The bill also clarifies that a banking entity shall not be considered to have an ownership interest in a CLO because it acquired or retains a debt security in the CLO if such debt security has no indicia of ownership other than the right to participate in the removal for cause or in the selection of a replacement investment manager or investment adviser of the CLO. H.R. 4167 defines the term "collateralized loan obligation" as any issuing entity of an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, that is comprised primarily of commercial loans. Finally, the bill clarifies the conditions by which an investment manager or investment adviser shall be deemed to be removed "for cause."

The Subcommittee on Capital Markets and GSEs held a hearing on a discussion draft of this bill on February 26, 2014.

Committee Views and Estimates on the President's FY15 Budget Submission

Clause 4(f) of Rule X of the Rules of the House and section 301(d) of the Congressional Budget Act require each standing committee to submit to the Committee on the Budget, not later than six weeks after the president submits his budget in February: (i) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the budget for the ensuing fiscal year that are within its jurisdiction or function; and (ii) an estimate of the total amounts of new budget authority and budget outlays to be provided or authorized in all bills and resolutions within its jurisdiction that it intends to be effective during that fiscal year. Section 708(b) of the concurrent resolution on the budget for fiscal year 2014 (H. Con. Res. 25, 113th Cong.), as deemed in effect by section 113 of the Bipartisan Budget Act of 2013 (Pub. L. No. 113-67), further requires each standing committee to include in the views and estimates recommendations on programs whose funding should be reduced or eliminated.

While the president is required under federal budget law to submit his budget to Congress by the first Monday in February (February 3, 2014), President Obama did not submit his budget request to Congress until March 4. Nevertheless, the Budget Committee, in a manner consistent with Federal law and House Rules, has requested views and estimates from the standing committees, including the Committee on Financial Services, on programs, agencies, and other outlays within each committee's respective jurisdiction by March 25, 2014.

###