JEB HENSARLING, TX, CHAIRMAN

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

MAXINE WATERS, CA, RANKING MEMBER

Memorandum

To: Members, Subcommittee on Financial Institutions and Consumer Credit

From: Financial Services Committee Majority Staff

Date: November 27, 2013

Subject: December 4, 2013, Financial Institutions and Consumer Credit Subcommittee Hearing on "Examining Regulatory Relief Proposals for Community Financial Institutions"

The Subcommittee on Financial Institutions and Consumer Credit will hold a hearing on "Examining Regulatory Relief Proposals for Community Financial Institutions" at 10:00 a.m. on Wednesday, December 4, 2013, in room 2128 of the Rayburn House Office Building. This hearing will feature one panel of witnesses, including:

- Ms. Rose Bartolomucci, President and CEO, Towpath Credit Union, on behalf of the Credit Union National Association
- Mr. Thomas Richards, Assistant Vice President, Owingsville Banking Company, on behalf of the American Bankers Association

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

The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) 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 scheduled to become 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

[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.

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]

Introduced by Rep. Andy Barr, H.R. 2672, the CFPB Rural Designation Petition and Correction Act, would amend Section 1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) to require the CFPB within 90 days to create a petition process for interested parties to seek rural designation for counties that do not fit the Urban Influence Code definition. The CFPB would be required to publish applications 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:

- Criteria used by the Census Bureau when classifying geographical areas as rural or urban;
- Criteria used by OMB when designating counties as metropolitan or micropolitan or neither;
- Criteria used by the Department of Agriculture when determining property eligibility for rural development programs;
- The Department of Agriculture rural-urban commuting area codes;
- A written opinion of the State banking regulator; and
- Population density.

H.R. 2672 requires the CFPB to grant or deny any application within 90 days following the expiration of the comment period. The ruling must be made in the Federal Register, along with an explanation of what factors the CFPB relied upon in making the decision.

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

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[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.

FHLB membership are 130 state-chartered, privately insured credit unions, which hold over $13 billion in assets.

Introduced by Rep. Steve Stivers, H.R. 3584, the Capital Access for Small Community Financial Institutions Act, would amend the Federal Home Loan Bank Act (P.L. 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.

In the 109th Congress, Rep. Jeb Hensarling introduced a regulatory relief bill (H.R. 3505) that included a related provision, as Section 301. That bill passed the House of Representatives on suspension on March 8, 2006 by a vote of 415 – 2. A related provision was also included as Section 301 of H.R. 1375 in the 108th Congress by Rep. Shelley Moore Capito. H.R. 1375 passed the House of Representatives on March 18, 2004 by a vote of 392 – 25.

H.R. _____, to require certain financial regulators to determine whether new regulations or orders are duplicative or inconsistent with existing Federal regulations

Circulated by Subcommittee Chairman Capito and Ranking Member Meeks, this discussion draft would help ensure that conflicting, inconsistent, duplicative or outdated laws and regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens on America's financial institutions.

Before issuing a rule or order, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board, the CFPB, the NCUA, the Securities and Exchange Commission and the Commodity Futures Trading Commission ("Regulators") would be required to consider the interaction between the proposed rule or order and existing Federal regulations and orders, with a specific focus on the following:

- Whether the rule or order is in conflict with, inconsistent with, or duplicative of existing Federal regulations and orders; and
- Whether existing Federal regulations and orders are outdated.

Regulators would be required to take all available measures to resolve any duplicative or inconsistent existing regulation or order before issuing a final regulation or order. Finally, each Regulator would be required to submit to Congress, within 60 days of making a determination, a report with recommendations of any federal laws or regulations that should be repealed or amended in order to resolve conflicting, inconsistent, duplicative or outdated laws and regulations.

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