Dodd-Frank Act Modifications

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CFPB Structure

The Dodd-Frank Act created the Consumer Financial Protection Bureau (CFPB) to serve as a dedicated agency tasked with ensuring consumer protection. Republicans have raised concerns that the CFPB's structure as a directorship outside of the appropriations process leaves them unaccountable to Congress. Possible legislative proposals include:

- Restructuring the CFPB as a five member commission.
- Moving the Bureau into the appropriations process.
- Lowering the threshold for the Financial Stability Oversight Council (FSOC) to override CFPB regulations.

FSOC Accountability

- The Dodd-Frank Act (DFA) created the Financial Stability Oversight Council (FSOC) which is intended to bring together the top financial regulators, with a mission of overseeing the markets for systemic risk.
- The DFA granted FSOC the authority designate systemically important financial institutions (SIFIs), which would be subject to stricter capital requirements and additional oversight by the Federal Reserve.
- House and Senate Republicans have raised concerns with the accountability of the FSOC, particularly in regards to the designation of systemically important financial institutions (SIFIs).
- MetLife is currently suing the FSOC, challenging the appropriateness of their SIFI designation.
- While FSOC has implemented some changes to its SIFI designation process in response to the MetLife suit, legislation could be introduced to further clarify the process.
- Legislation to impose a moratorium on SIFI designations was introduced in the 113th Congress and could be reintroduced this year.

FSOC Accountability, Cont.

- Concerns have also been raised with the appropriateness of applying SIFI designations to non-bank financial institutions, such as insurance companies and asset managers.
- A report on the asset management industry released by the Office of Financial Research (OFR), which serves as the research arm of the FSOC, has been heavily criticized by Members of Congress and the industry.
- The FSOC has not yet publicly stated whether they intend to designate particular asset managers or the industry more broadly.
- Congress could seek to act, depending on the actions taken by the FSOC.

Orderly Liquidation Authority

- Title II of the Dodd-Frank Act created the Orderly Liquidation Authority (OLA), also known as the resolution authority, which is intended to allow for large, systemically important financial institutions to be wound down with disrupting the economy.
- Title II also requires these firms to submit resolution plans aimed at facilitating orderly resolution in the event of a crisis.
- In the 113th Congress, the House passed legislation to allow for the liquidation of these firms through the bankruptcy process, rather than through the OLA.
- The legislation would add a subchapter V to chapter 11 of the bankruptcy code to allow for the resolution of large, multinational firms.

Volcker Rule

- Section 619 of the DFA, better known as the Volcker Rule, prohibits banks from engaging in proprietary trading and restricts investments in hedge funds and private equity funds.
- Following the adoption of regulations to enact the Volcker Rule concerns were raised that the rule would force banks to divest their holdings of Collateralized Loan Obligations (CLOs).
- While the regulators have announced a delay in implementation of these provisions, Congress could look to enact a permanent solution.
- Congress may also look at whether the effects of the Volcker Rule are trickling down from the largest financial institutions which it is directed at, to smaller community banks and credit unions.

Cross-Border Swaps

- Title VII of the DFA created a regulatory scheme for the previously unregulated swaps market, tasking the CFTC with regulating swaps and the SEC with regulating security-based swaps.
- The regulators have been criticized for a lack of coordination and failure to implement identical swaps rules, particularly in regards to cross-border applications.
- The SEC has chosen to address the cross-border issue through the rulemaking process, while the CFTC has done so through guidance.
- In the 113th Congress the House passed legislation to require the CFTC and the SEC to jointly issue rules that define the application of United States regulations to swap transactions undertaken between a U.S. entity and a foreign entity.

Fiduciary Duties

- The DFA authorized the SEC to study the appropriateness of the standards applied to investment advisers and broker-dealers, and impose fiduciary duties for broker-dealers if they see fit.
- For the past several years, the Department of Labor (DOL) has been working on a separate rule to impose fiduciary duties for advisors of ERISA retirement plans.
- In late February the White House announced that they had directed the DOL to move forward with a rule proposal.
- Representative Ann Wagner (R-MO) has introduced legislation which would bar the DOL from moving forward with a fiduciary duty rule until after the SEC acts on this issue.

Qualified Mortgage Rule

- The DFA imposed a five percent risk retention requirement on issuers selling mortgage loans into the secondary securitization market.
- The CFPB has issued its qualified mortgage (QM) rule, which allows mortgages with certain features to be exempted from the risk retention requirement.
- Republicans have raised concerns that the definition of a qualified mortgage crafted by the CFPB is overly narrow and will restrict the ability of consumers to obtain financing, particularly in relation to low dollar loans, balloon loans in rural areas, and jumbo loans.
- Community banks have also expressed concern that the QM rule will impede their ability to engage in "relationship banking" and limit their flexibility to meet the needs of their customers.

Qualified Mortgage Rule, Cont.

- Representative Andy Barr (R-KY) has introduced legislation in the 114th Congress to allow loans held on the originator's portfolio be treated as qualified mortgages.
- Barr introduced legislation in the 113th Congress to create an application process for the review of CFPB designations of "rural counties." The CFPB has created an exemption from its ban on balloon payments for originators in underserved and rural counties, but Barr has said that the CFPB's list of rural counties is not expansive enough.
- Representative Bill Huizenga (R-MI) has proposed legislation to modify the manner in which the CFPB calculates points and fees on mortgage loans. The QM rule included limits on the amount of points and fees which can be charged up front on a mortgage loan.