

## Senate Banking Committee Markup on Bipartisan Financial Regulatory Relief Bill

### Overview

On December 5, 2017, the Senate Banking Committee held a markup on S. 2155, the Economic Growth, Regulatory Relief and Consumer Protection Act. The bipartisan bill has the support of eleven Democrat Senators that assures it can achieve the 60 vote threshold for legislation to pass the Senate. The bill passed the Banking Committee by a vote of 17-6.

*Democrats supporting the bill: Mark Warner (D-VA), Heidi Heitkamp (D-ND), Joe Donnelly (D-IN), Jon Tester (D-MT), Gary Peters (D-MI), Joe Manchin (D-WV), Claire McCaskill (D-MO), Tim Kaine (D-VA), Angus King (I-ME), Chris Coons (D-DE), and Tom Carper (D-DE).*

### Provisions of Interest:

- ❖ The bill includes a significant change to the designation of systemically important financial institutions (SIFIs) with assets of \$250 billion and less.
  - Specifically, banks between \$50 and \$100 billion in assets will no longer be considered SIFIs.
  - Institutions between \$100 and \$250 billion in assets will be exempt from the designation 18 months after the date of enactment.
    - The Federal Reserve will conduct periodic supervisory tests on these institutions, and has the authority to deem them systemic in the future.
- ❖ The bill would also require the credit bureaus to provide consumers free credit freezes and create websites for easier consumer access to freezes and credit alerts.
- ❖ In addition, the bill includes the CBA-supported Making Online Banking Initiation Legal and Easy Act of 2017 (MOBILE Act), which would simplify consumers' ability to open bank accounts online or on a mobile device from anywhere in the United States.

CBA submitted a [letter](#) to Chairman Chairman Crapo outlining these issues, among others.

### Opening Statements

In his opening statement, **Chairman Mike Crapo (R-ID)** said, "Financial regulation should promote safety and soundness while enabling a vibrant and growing economy. The bill we are marking up today is the product of a thorough, robust process, and honest, bipartisan negotiations."

**Ranking Member Brown (D-OH)** stated, "If we learned anything from the financial crisis, it is that deregulation of the banks doesn't create economic growth, instead it puts millions of Americans at risk—like the five million families who were foreclosed upon during the crisis." Additionally, Sen. Brown stated, "[L]ook at what the Administration did last week at the CFPB—the only agency devoted to protecting consumers from financial institutions. It ignored the clear language of Dodd-Frank and named Mick Mulvaney, a member of the President's cabinet, to run an independent agency. His first action at what he called a "sick, sad" joke of an agency was to block the payment of funds owed to consumers. Merry Christmas."

**Sen. Pat Toomey (R-PA)** stated that he believes this as a modest, but constructive movement to lighten excessive regulations, and it will make credit more available and at a lower cost. Sen. Toomey raised concern regarding the new SIFI threshold, stating \$250 billion is better than \$50 billion, but it still has the same flaw that it is an arbitrary asset threshold and we should consider whether the activities of the institution make it risky.

**Sen. Kennedy (R-LA)** noted that the bill is a good, solid, and modest start; however it needs to go farther with regard to the credit bureaus.

**Sen. Jon Tester (D-MT)**, a cosponsor of the bill, said the bill a product of 5-6 years of negotiation. He mentioned that not everyone got everything they wanted, but it is a good first step. Further, he described that prior to the financial crisis there were 72 banks in Montana and today there are 49. He expressed concern about access to capital and one-size-fits approaches.

**Sen. Tim Scott (R-SC)** stated that the winners of the bill are consumers and that we can provide both consumer protection and access to credit.

**Sen. Heidi Heitkamp (D-ND)** declared the bill a win for North Dakotans. She noted that only in North Dakota can you buy a \$90,000 pickup truck with a piece of paper but can't get a \$40,000 mortgage. She explained that Dodd-Frank tried to fix too big to fail, but we created too small to succeed. She drew distinction from the derision over the tax bill, noting that there have been over 20 hearings on this bill and it has bipartisan support.

## Amendment Votes:

### Manager's Amendment

Chairman Crapo offered a manager's amendment to the bill which included technical changes and amendments agreed to over the preceding weekend. The amendment was approved by a vote of 16-7, with Senators Warner, Heitkamp, Tester, and Donnelly joining all Republicans on the committee.

The committee then proceeded to vote on a number of amendments being offered by Democrats not in support of the bill. Every amendment fell with Democrats in support of the bill joining Republicans in opposition.

Below we have provided amendment highlights from the markup:

### Home Mortgage Disclosure Act

*Cortez-Masto #73:* Strikes section 104 related to Home Mortgage Disclosure Act, which exempts community banks and credit unions from the CFPB's new HMDA requirements. Sen. Cortez Masto stated that HMDA requirements are incredibly important in fair lending assessments. Sen. Rounds spoke in opposition to the amendment, stating that the CFPB requires banks to collect 50 additional data points and small institutions should be provided relief from the rule.

Not adopted by a vote of 7-16.

*Schatz #68:* The amendment would make relief afforded in sections 101, 103, and 104 contingent on the relevant entity not being subject to a regulatory enforcement action for a 5 year period. This amendment also modifies exemption thresholds in section 104 to 100 mortgage loans and 200 open-end credit lines.

Sen. Schatz expressed concern about lowering the threshold, noting that according to the CFPB limiting the reporting requirements for institutions that offer less than 500 mortgages would exempt 85 percent of all depository institutions that provide mortgages. Sen. Rounds spoke in opposition by responding that only a few institutions would qualify for this exclusion.

Not adopted by a vote of 6-17.

### **Servicemembers Civil Relief Act and the Military Lending Act**

*Reed #29:* The amendment would require consideration of Federal fines and penalties and violations of the Servicemembers Civil Relief Act (SCRA) and the Military Lending Act in preceding 24 months, and whether such violations could have been avoided.

Chairman Crapo stated, the provisions in the bill have nothing to do with SCRA and if a bank violates such act they are subject to penalties. Ranking Member Brown said financial institutions have paid out more than \$220 million in SCRA violations. Senator Kennedy expressed interest in continuing dialogue on this amendment before it reaches the floor.

Not agreed to by a vote of 7-16.

*Reed #24:* The amendment would provide the CFPB with the authority to enforce all financial related aspects of the SCRA.

Not agreed to by a vote of 7-16.

*Warren #39:* This amendment would replace the section of the bill related to credit freezes with Senator Warren's FREE Act, which would provide unlimited free credit freezes and prohibit the selling of consumer data when credit is frozen. Senators Warner and Tillis spoke in opposition, but expressed support for working together to do more to protect consumers and improve credit reporting.

Not agreed to by a vote of 7-16.

### **Arbitration**

*Cortez-Masto #70:* The amendment would invalidate the Congressional Review Act resolution of disapproval on arbitration and would create a carve out from the CFPB's arbitration rule for community banks and credit unions. Sen. Rounds spoke in opposition and responded that Congress has already spoken on this issue. Sen. Kennedy stated that he could not support the amendment at that time but wished he could.

Not agreed to by a vote of 7-16.

### **Credit Reporting**

*Schatz #65:* The amendment would seek to enhance the accuracy of credit reporting by providing consumers with error dispute resolution processes and free annual credit scores and providing regulators greater supervisory authority over credit reporting agencies.

Not agreed to by a vote of 7-16.

*Menendez #92:* This amendment would provide additional protections for servicemembers on active duty to provide consumer reporting agencies with contact information to notify the consumer with negative information report occurred while they were on active duty. Any adverse consequences shall be waived if the consumer provides proof of active service. Chairman Crapo noted, although they were not able to reach an agreement concerning this amendment and will oppose it, they did reach an agreement to discuss additional language on the floor for quality, free credit monitoring for active duty members.

Not agreed to by a vote of 7-16.

### **Student Loans**

*Brown #12:* The amendment would allow private student loans to be dischargeable in bankruptcy. Sen. Brown stated, "Students shouldn't be required to mortgage their future" in order to go to college, and there should be parity with other loan products. Chairman Crapo responded that the HELP committee is currently working on reforms to the student lending programs and is the appropriate committee to address student loan issues.

Not agreed to by a vote of 7-16.

*Menendez #91:* The amendment would require private student lenders to disclose their policies related to the obligation of a cosigner related to the death or disability of a borrower or cosigner and would prohibit the lender from accelerating a loan into default in the unfortunate circumstances of a death, disability, lack of gainful employment or bankruptcy of the borrower or cosigner. Senator Menendez highlighted an example of a constituent of his who died from a brain injury and his family was left with the bill. Chairman Crapo responded that the amendment is unnecessary as it has become industry practice to not accelerate a good standing loan based on the death or bankruptcy of a cosigner and the CFPB even acknowledged this change in a recent report.

Not agreed to by a vote of 7-16.

*Brown #11:* The amendment would limit the garnishment and offset of income for student loan debt. Chairman Crapo expressed that he was not opposed to exploring, we need further discussion with HELP.

Not agreed to by a vote of 7-16.

*Warren #56:* This amendment overhauls student loan servicing standards with consumer protections from the Truth in Lending Act and would also give student loan borrowers a private right of action against their servicers. Chairman Crapo responded that the committee should work with the HELP Committee on student loan issues.

Not agreed to by a vote of 7-16.

*Warren #57:* This amendment extends the CARD Act to cover debit cards and all financial products marketed to student by their college or university. Chairman Crapo had a concern that this would result in a reduction of students having access to financial products.

Not agreed to by a vote of 7-16.

### **SIFI-related**

*Menendez #96:* This amendment would prohibit relief under the bill for banks with over \$50 billion in total assets that use individual sales performance goals or quotas as a compensation metric employees at a branch. Senator Menendez used Wells Fargo's sales practices.

Chairman Crapo expressed his outrage with the Wells Fargo situation, however, he believes this is too blunt of an instrument to handle the issues surrounding sales practices and quotas.

Ranking Member Brown argued this is necessary to make banks and executives pay the price for misconduct.

Senator Toomey urged opposition as this has nothing to do with safety and soundness, but instead weaponizes the SIFI designation and regulation.

Senator Warren argued that regulation has failed profoundly and it is time to step up these regulations, giving them tools to hold bad actors accountable.

*Not agreed to by a vote of 7-16.*

*Warren #49:* This amendment would prohibit mergers and acquisitions for five years for any banks that receive SIFI relief in this bill. Senator Warren expressed that if the goal of this bill is to help community banks, we need to stop big banks from avoiding regulatory scrutiny and "gobbling up" other banks. Senator Reed supported the general notion of the amendment but was hesitant on what the actual remedy should be.

Chairman Crapo urged opposition of this amendment as a merger is neither illegal nor wrong, and the Dodd-Frank Act and the Bank Merger Act provide adequate protections.

Not agreed to by a vote of 5-18.

### **Stress Tests**

*Brown #13:* This amendment provides targeted relief on stress tests for certain small bank holding companies and strengthens them for large bank holding companies. Ranking Member Brown noted the current language in the bill weakens stress tests for larger banks.

Chairman Crapo stated this is an issue that was difficult for the two of them to find common ground on and would prefer the Federal Reserve to be able to tailor stress tests requirements as they deem necessary, but came to the current bipartisan compromise that can be found in the bill.

Ranking Member Brown stressed this is the most important amendment he will offer in this markup. He urged moving the threshold to \$250 billion, considering the current and soon-to-be members of the Board, could undermine the safety and soundness of the banking system, and lead to the same inaction that occurred leading to 2008.

Chairman Crapo does not share the same distrust and concerns regarding the new members of the board and the bill allows the Federal Reserve to appropriately determine what is necessary in a stress test.

Not agreed to by a vote of 7-16.

*Cortez Masto #71:* This amendment prescribes that for any bank above \$50 billion that has had an objection to their stress test in the last five years, they would not receive the deregulation provided in Title IV of this bill. Senator Cortez Masto stated these stress tests were meant to ensure bailouts never happen again and that this bill weakens these tests. She noted we do not want to deregulate banks that have had problems with stress tests in the past. Ranking Member Brown supports this amendment, especially considering these banks have abused the public's trust. Chairman Crapo opposed nothing that nothing in this bill pertains to CCAR or inhibits the Federal Reserve's ability to operate that program.

Not agreed to by a vote of 7-16.

#### **Dodd-Frank Act**

This amendment delays the effective date of Title IV of the bill until the date financial regulators have finalized all Dodd-Frank Act required rulemakings. Senator Cortez Masto stressed our economy has recovered greatly from the 2008 crisis, but there is still many key reforms that need to be completed. Chairman Crapo encouraged opposition on this amendment as this bill would have no effect in delaying those Dodd-Frank rulemakings

Not agreed to by a vote of 6-17.