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Regulatory Reform Fact Sheet

Senate Bill Provides Narrow Relief while Regulators Contemplate Critical Capital and Liquidity Rule Implementation

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Executive Summary

- **Senate Bill (S. 2155) Summary:** The Senate bill trumpeted for its impressive bipartisan origins went through nearly a year of development, negotiations, and Congressional intrigue before passage. While targeted primarily toward giving relief to community banks (less than $10 billion), the headline policy of the bill would raise the Systemically Important Financial Institution (SIFI) threshold from $50 billion to $250 billion. *It also included HVCRE relief for all adherents and limited HMDA relief for small banks and credit unions.* Please see "Additional Background & History" section below for more detail on these provisions.

- **Who Now Owns Regulatory Reform?** The Fed, OCC, FDIC, and other regulators have broad authority to interpret and implement S. 2155, but they also remain bound by Dodd-Frank, Basel and other pre-existing parameters.

- **Presidential Support:** Deregulation is a key issue for President Trump. The Treasury Department has released three reports on regulatory reform for financial services, which include proposed legislative and regulatory suggestions. Somewhat surprisingly, the proposals are more measured than prior regulatory rollback efforts.

- **Zeitgeist at the Agencies:** Even before President Trump, regulators were expressing interest in reviewing regulations and targeted reform. That attitude has been reiterated by new agency leaders, but the appetite appears to be limited to the Volcker Rule (expected rule revisions are imminent) and community bank relief.

Reg Reform Quick Facts

- S. 2155 passed the House on May 22, by a vote of 258-159 after passing the Senate months earlier by the impressive margin of 67-31. President Trump signed the bill into law May 24.

- S. 2155 addresses only a small portion of the issues raised by the Department of the Treasury in its series of reports issued under the title "A Financial System that Creates Economic Opportunities," and, despite hyperbolic headlines, it is considered by most analysts to be a modest bipartisan vehicle.

- House Financial Services Chairman Jeb Hensarling (R-TX) was adamant about inserting more provisions into S. 2155, only to be rebuffed by Senate Democrats (17 supported the bill). His CHOICE Act never earned the support of the full House and was instead broken up into pieces – some of which were included in S. 2155.

- 24 of 25 regulatory principals at 7 agencies are scheduled to turn over by 2019 or have already done so since the change in Administration.

- In order to repeal or change current regulations, agencies generally must go through a notice and comment process.

- Capital & Liquidity rules have been actively discussed as an area of possible regulatory reform, and regulators have broad authority to act without Congressional action.

- **Treatment of CRE:** Regulators have already proposed a new regulation to partially address concerns with HVCRE. As stated above, there is also general support for Volcker Rule revisions, which could help support CMBS secondary market liquidity. Reforms on capital and liquidity could ease punitive treatment of CMBS and otherwise free up bank capital for lending in depository institutions, though new regulatory leaders have not signaled an inclination for broader revisions to the Basel framework (no matter the asset class).

CREFC Resources

- CREFC Side-by-Side Comparison on HVCRE/HVADC/2155
- CREFC Analysis of S. 2155
- Procedural Pathways to Regulatory and Legislative Reform

For further Information, visit CREFC's Resource Center at: https://www.crefc.org/library

Potential Solutions

- **Regulatory Action:** Financial services regulators often have broad grants of statutory authority that allow them to impose/shape a wide variety of regulations. For example, the Federal Reserve and the OCC are empowered generally to ensure the safety and soundness of member institutions, which allows for numerous capital and liquidity regulations. Repealing or changing an existing rule almost always requires a full rulemaking process with a notice and comment period. CREFC will continue to engage with regulators to educate them about CRE issues and encourage them to avoid unnecessarily punitive treatment of CRE products as they write and/or amend their rules.

- **Anti-Gold Plating Bill:** Rep. Trey Hollingsworth (R-IN) sponsored H.R. 3179, the "anti-gold-plating" legislation in 2017 that would expedite Congressional review when US regulators implement stricter rules than BCBS requirements. CREFC supports the bill as a means to preventing potential competitive disadvantages internationally. The bill, however, is not a complete solution as it will not address situations where the international BCBS standards themselves impose out-sized regulatory burdens. In this case and others, CREFC members must work with domestic regulators to recalibrate specific requirements.

Additional Background & History

- **S. 2155 Overview:** In December 2017, the Senate Banking Committee advanced a bipartisan bill that would tweak certain banking regulations to provide relief (mostly) for smaller banks. The headline policy, however, was the change in the threshold for being tagged a "systemically important financial institution" (SIFI) from $50 billion to $250 billion. The bill also reset the SIFI threshold such that all banks with less than $100 billion in assets would be exempted from federal stress tests. Banks between $100 billion and $250 billion would be evaluated by the FSOC for "deemed designation" as a SIFI. Originally, only one provision affecting CRE was included in the bill; that provision would raise the threshold for some HMDA reporting for banks and credit unions from 25 loans to 500 (in either of the preceding two years) and thus exempt them from some additional reporting requirements under the Community Reinvestment Act. Late in the Senate process, HVCRE reform text was added to the legislation (nearly identical to H.R. 2148 and S. 2405). The entire bill passed the Senate 67-31 in March 2018 and the House 258-159 in May 2018. The President signed the bill into law on May 24, 2018.

- **HVCRE:** This provision would exempt income-producing property, allow banks to continue to use the 15% borrower contributed capital exemption, allow borrower distributions if the minimum-required capital is maintained, allow current appraised value of real property to be counted in equity contributions, and grandfather loans closed prior to January 1, 2015. The legislation does leave many important aspects up to the regulators, including the risk weight that should be applied to higher-risk construction lending. To learn more about the legislative and regulatory requirements related to construction lending, please see CREFC's side-by-side analysis of the bill, HVCRE rule and HVADC proposal. Notably, it is CREFC's position – as communicated to the regulators – that the old HVCRE rules and the HVADC proposed rule must be withdrawn because they are not consistent with the text of the new law.

- **HMDA:** This provision reduces the number of data fields collected by insured depository institutions (but not non-depository institutions) that have originated, in each of the two preceding calendar years, fewer than 500 closed-end mortgage loans and fewer than 500 open-end lines of credit.

  Earlier this year, the Consumer Financial Protection Bureau (CFPB) announced it would release a proposal to reform HMDA in the first quarter of 2019, which will provide another opportunity for CREFC members to voice their recommendation that multifamily and single-family rentals be exempt from HMDA's reporting and disclosure requirements (for all bank and non-bank entities). CREFC intends to submit a letter to the CFPB in anticipation of this move.

- **Dodd-Frank Overview:** The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) became law in July 2010 and marked the start of major financial regulatory overhaul. Industry experts have estimated the law required almost 400 unique rulemakings. Dodd-Frank comprehensively addresses the financial system including systemic risk designation, proprietary trading, swaps and derivatives, bank capital and liquidity, credit risk retention, consumer and investor protection, and numerous other areas. Even before its passage, the law was criticized by some Republicans for being too prescriptive and costly for businesses. While Democrats have largely defended the DFA, there have been concessions by some moderates that limited fixes should be pursued, particularly when they provide relief to small and community banks.

- **BCBS Overview:** The Basel Committee for Bank Supervision (BCBS) is an international coalition of bank supervisors that drafts standards and monitors implementation of disclosure, governance, and most importantly, capital and liquidity rules in member jurisdictions. During the Great Recession, the BCBS designed a comprehensive framework of capital and liquidity requirements (some of those ratios are provided below), which more than doubled capital requirements at most large banks.
  - The Supplementary Leverage Ratio, noted below, has been the subject of great controversy. Not only does it effectively act as an outer bound (the highest capital requirement) for many banks, it treats all assets equally, possibly skewing risk appetites higher. US regulators have indicated that they are nearing release of revisions, which could potentially reduce burden and free up some capital for certain institutions.
  - US regulators have also indicated that they may lighten certain aspects of the liquidity requirements.

- At the same time, the Fed, FDIC and OCC are also deliberating on technical implementing rules related to potentially costly new Basel requirements for risk-based capital. Some of the changes being contemplated are significant, such as the harmonization of the US floor (100% of Basel I/standardized approach) with the BCBS version (72.5% of standardized approach applied to each risk stripe).

- Capital reforms notwithstanding, the Federal Reserve will continue to enforce stress testing for the largest banks, which often drives capital levels. The stress tests were designed to be able to incorporate market conditions and risks at an institution in a more tailored way, giving regulators the tools to focus capital assessments on specific portfolios. In 2017, regulators began requiring liquidity stress tests.

Basel Committee on Banking Supervision
BANK FOR INTERNATIONAL SETTLEMENTS

Basel III phase-in arrangements

(All dates are as of 1 January)

	Phases	2013	2014	2015	2016	2017	2018	2019
Capital	Leverage Ratio	Parallel run 1 Jan 2013 – 1 Jan 2017 Disclosure starts 1 Jan 2015					Migration to Pillar 1	
	Minimum Common Equity Capital Ratio	3.5%	4.0%	4.5%				4.5%
	Capital Conservation Buffer				0.625%	1.25%	1.875%	2.5%
	Minimum common equity plus capital conservation buffer	3.5%	4.0%	4.5%	5.125%	5.75%	6.375%	7.0%
	Phase-in of deductions from CET1*		20%	40%	60%	80%	100%	100%
	Minimum Tier 1 Capital	4.5%	5.5%	6.0%				6.0%
	Minimum Total Capital	8.0%						8.0%
	Minimum Total Capital plus conservation buffer		8.0%		8.625%	9.25%	9.875%	10.5%
	Capital instruments that no longer qualify as non-core Tier 1 capital or Tier 2 capital	Phased out over 10 year horizon beginning 2013						