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January 13, 2014

Financial Services Legislative and Regulatory Update

Leading the Past Week

Last week closed with the long anticipated ability-to-repay and qualified mortgage rules coming into full effect. The rules, meant to ensure that borrowers will be able to repay their mortgage, are intended to prevent businesses from lending abuses and other deceptive practices. These rules mark the beginning of even more changes to the housing market as Mel Watt takes the reins at the Federal Housing Finance Agency (FHFA), the Senate Banking Committee continues to debate housing finance reform, and more rules from the Consumer Financial Protection Bureau (CFPB) are expected to make changes to the mortgage market. Even as the rules took effect, minutes from last month's Federal Open Markets Committee (FOMC) meeting indicated that though members agreed that the taper was appropriate, it is possible the housing recovery could be impacted.

Also closing out the week was far lower than expected job estimates for December. Although analysts were largely predicted a month of strong job growth, with the consensus estimate hovering around 193,000 jobs, the Bureau of Labor Statistics (BLS) found that the economy added only 74,000 jobs. The Administration and Wall Street have both downplayed the low number and the expectation is that the BLS will revise the numbers up in coming months.

Legislative Branch

Senate

Senator Warner Introduces Legislation to Strengthen Prepaid Card Disclosures

On January 9th, Senator Mark Warner (D-VA) introduced the Prepaid Disclosure Act of 2014. The bill would, among other things, require standard disclosures for prepaid cards that are easily understood, displayed to the consumer before purchase, and which describe the amount of any fees that may be charged. In addition, the bill requires disclosures through a QR code and toll free number so that consumers could see fees in real-time. In a statement, Senator Warner said that, though this is a fast growing market, "These cards aren't subject to the same kinds of consumer protections as other types of credit cards and gift cards."

Senators Ask SEC to Move Forward on Credit Ratings
On January 8th, a bipartisan group of thirteen Senators wrote to the SEC, urging the agency to address conflicts of interest in the credit ratings industry so as to increase transparency and competition. The letter stresses that there is "ample evidence to suggest that the public interest conflicts present in the credit ratings agency business model that played a key role in the financial collapse five years ago persist."

Senate Banking Examines GAO report on Bank Holding Companies
On January 8th, the Senate Banking Subcommittee on Financial Institutions and Consumer Protection met for a hearing titled "Examining the GAO Report on Government Support for Bank Holding Companies." The GAO report is the first of two reports analyzing the economic benefits that large bank holding companies have received as a result of an actual or perceived government backstop. Witnesses included: Lawrance Evans, Director, Financial Markets and Community Investment, GAO; Dr. Luigi Zingales, Robert C. McCormack Professor of Entrepreneurship and Finance, University of Chicago Booth School of Business; Dr. Simon Johnson, Ronald A. Kurtz Professor of Entrepreneurship, MIT Sloan School of Management; Dr. Harvey Rosenblum, Adjunct Professor of Finance, Cox School of Business, Southern Methodist University and Retired Director of Research, Federal Reserve Bank of Dallas; and Dr. Allan Meltzer, Allan H. Meltzer University Professor of Political Economy, Carnegie Mellon University Tepper School of Business.

Senate Banking Committee to Hold Target Breach Hearing
Last week, the Senate Banking Committee announced that it will be holding a hearing on data security in the wake of a Target data breach affecting up to 110 million customers. Related to the Senate Banking announcement, seventeen House Democrats led by House Financial Services Ranking Member Maxine Waters (D-CA) called on Chairman Hensarling (R-TX) to hold a hearing on the data breach. The letter says the Target breach "raises important questions about what merchants who suspect a data breach must disclose, when they must disclose it, and who has the right to be notified." The Target breach could serve to prompt breach notification laws that Congress has been casually considering for a number of years as breaches of retailers and financial institutions continue.

House
House Financial Services Subcommittee Examines Fed Quantitative Easing
On January 9th, the House Financial Services Subcommittee on Monetary Policy and Trade held a hearing on the effects of the Federal Reserve's (Fed) quantitative easing on international financial system and the economies of other countries. Witnesses at the hearing included: Dr. Benn Steil of the Council on Foreign Relations; Dr. Allan Meltzer with Carnegie Mellon University; Dr. Desmond Lachman of the American Enterprise Institute; and Dr. Arvind Subramanian of the Peterson Institute for International Economics and Center for Global Development.

<u>Executive Branch</u>
Federal Reserve
Agencies Receive Congressional Pushback on Volcker Rule
Following a legal challenge from the American Bankers Association (ABA) requesting a judge block the Volcker Rule's restrictions on collateralized debt obligations (CDOs) backed by trust-preferred securities (TruPS). While the ABA dropped the temporary restraining order following an announcement that regulators are reviewing this portion of the rule, both chambers have introduced

legislation to exempt CDOs backed by TruPS from the Volcker Rule. After a December letter from Senator Joe Manchin (D-WV) to regulators, stating that they could rely on existing authority to create a carve out pools of owned by community banks, a spokesperson for Senator Joe Manchin (D-WV) said that the Senator is working on his own a bill to create such an exemption for community banks. Meanwhile, Senate Republicans Mark Kirk (R-IL), Mike Crapo (R-ID), Pat Toomey (R-PA), Mike Enzi (R-WY), Jerry Moran (R-KS), and Roger Wicker (R-MS) introduced legislation on January 9th to grandfather certain securities under the Volcker Rule for banks with less than $15 billion in assets. Senator Manchin had been working with Senator Kirk on a bipartisan proposal, but split from the effort following revelations that Kirk would apply the exemptions to not just small community banks but also those with under $15 billion in assets.

On the House side, House Financial Services Committee Chairman Jeb Hensarling (R-TX) and Representative Shelley Moore Capito (R-WV) introduced legislation to exempt certain securities including those "predominately" backed by TruPS from the Volcker Rule. Unlike the Senate bill, Hensarling's legislation would apply to all banks, not just those under $15 billion. While there is bipartisan support for providing relief to community banks, Democrats and Republicans have split on how broadly to apply these exemptions. Twenty-one House Democrats, led by House Financial Services Committee Ranking Member Maxine Waters (D-CA), wrote to the five regulators responsible for promulgating the Volcker Rule on January 8th, requesting agencies use their authority to exempt small banks from the requirement to divest CDOs backed by TruPS. Regulators have until January 15th to issue any potential changes.

Yellen Nomination Cleared by the Senate

On January 6th, the Senate confirmed Janet Yellen as the first female Chairman of the Federal Reserve in a 56 to 26 vote. Yellen's term is expected to begin on February 1st, following the expiration of Chairman Bernanke's term on January 31st. In addition to Yellen, the Fed may see some other new faces in coming months. President Obama announced last week that Stanley Fischer, the former head of the central bank of Israel, to replace Yellen as Vice Chair. The President has also indicated his intent to nominate Lael Brainard, former Treasury Undersecretary for international affairs, to the Fed Board and current Fed Governor Jerome Powell to serve a full term.

Fed and FDIC Release Public Portions of Resolution Plans

On January 10th, the Fed and the FDIC made the public portions of the resolution plans submitted by 116 financial institutions available. The Dodd-Frank Act requires bank holding companies with assets greater than $50 billion designated for additional oversight to submit plans for orderly resolution to the agencies.

FSOC Holds Closed Meeting with New Members

On January 9th, the Treasury announced that the Financial Stability Oversight Council met in a closed meeting with its three new members. These new members include: Federal Housing Finance Agency (FHFA) Director Mel Watt, soon to be Federal Reserve Chairman Janet Yellen, and acting CFTC Chairman Mark Wetjen. During the meeting, the FSOC received a presentation from staff on strengthened prudential standards and began to prepare its next annual report to Congress.

CFPB

Bureau Releases Consumer Guide to New Mortgage Rule

In advance of the January 10th effective date for the ability-to-repay and qualified mortgage rules, the CFPB released a consumer guide with additional resources to educate the public about the new protections. The guide includes sample letters consumers can use to confront various problems with their mortgage servicers, mortgage tips, answers to common questions, consumer tools, and a rule factsheet.

CFTC

CFTC Provides Temporary Relief to Regulation of Overseas Swap Dealers

On January 3rd, the CFTC issued a no-action letter giving temporary relief from overseas regulation of derivatives to swap dealers registered with the agency. The no-action letter follows a November staff memo that made clear that foreign banks, no matter their affiliation with a U.S. company, must meet with the rules and regulations prescribed by the Dodd-Frank Act if the swaps trades in questions are being facilitated by someone in the U.S. The delay could be a response to a lawsuit brought by Securities Industry and Financial Markets Association (SIFMA), the International Swaps and Derivatives Association (ISDA), and the Institute of International Bankers (IIB) alleging that, as the policy was put forth in a staff memo, there was no opportunity for public comment. The CFTC will give the public 60 days to comment on the proposal. The no-action letter provides relief until September 15, 2014.

SEC

SEC Releases Staff Guidance on Municipal Advisors

In advance of a rule requiring the registration of advisors to state and local governments that takes effect on January 13th, the SEC released staff guidance in the form of frequently asked questions (FAQ). The guidance came in response to a request from SIFMA to delay enforcement of the municipal advisor registration rule for at least 30 days so as to resolve confusion.

FHFA

Watt Delays G-Fee Increase

Shortly after taking the reins at the Federal Housing Finance Agency (FHFA), Director Mel Watt told the government sponsored entities (GSEs) Fannie Mae and Freddie Mac to delay implementation of increases to the fees charged on home loans. In a release from January 8th, Watt announced the agency will evaluate the impact of increased fees and how such increases would interplay with CFPB mortgage rules that took effect last Friday. The goal of this analysis would be to fully "understand these implications before deciding whether to move forward with any adjustments to g-fee pricing," according to Watt.

International

Basel Releases Leverage Ratio Plan

On January 12th, the Basel Committee on Banking Supervision announced an agreement following a meeting of global central bankers and finance officials on new bank leverage ratios standards. Although the capital requirement of 3 percent of total assets remains the same, the regulators focused changes on how the calculation is made. For example, banks will now be allowed to use the accounting tool 'netting' that can reduce the total amount of assets considered when calculating leverage ratios.

FSB-IOSCO Release Methodology for Determining Global Systemic Importance

On January 8th, the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO) published for public review a methodology for designating non-banks and noninsurers as global systemically important financial institutions (G-SIFIs). Under the methodology, investment funds managing over $100 billion in assets could be tagged as G-SIFIs and hedge funds with trading activities greater than $400 to $600 billion or more would be assessed by national regulators to gauge whether they merit additional oversight. Comment on the methodology is open through April 7th.

Upcoming Hearings

On Tuesday, January 14th at 10 am, in 2128 Rayburn, the House Financial Services Subcommittee on Financial Institutions and Consumer Credit will hold a hearing on Dodd-Frank Act's Qualified Mortgage Rule and how it could affect home buyers.

On Wednesday, January 15th at 10 am, in 2128 Rayburn, the House Financial Services Committee will hold a hearing on the finalized Volcker Rule.

On Wednesday, January 15th at 2pm, in 538 Dirksen, the Senate Banking, Housing and Urban Affairs Subcommittee on Financial Institutions and Consumer Protection will hold a hearing titled “Regulating Financial Holding Companies and Physical Commodities.”

On Thursday, January 16th at 10 am, in 538 Dirksen, the Senate Banking, Housing and Urban Affairs Committee will hold a hearing titled “Progress Report on Public Transportation Under MAP-21.”

On Thursday, January 16th at 10am, in 2360 Rayburn, the House Small Business Subcommittee on Investigations, Oversight and Regulations will hold a hearing titled “The SEC’s Crowdfunding Proposal: Will it Work for Small Businesses?”