



December 18, 2009

Financial Regulatory Reform Has Passed the House ----- Where Do We Go From Here?

As you all know by now, on Friday of last week, the House of Representatives passed the Wall Street Reform and Consumer Protection Act, H. R. 4173, the House version of Financial Regulatory Reform. **I thought I would try to outline for you where we are and what is ahead.**

House Passed Bill: You may recall from the CBA's December 9, 2009, Legislative Action Alert there were positive and negative things in H. R. 4173 for community banks. While some changes were made, the passed version of H. R. 4173 remains a bit of a mixed bag. The two sections of the bill of greatest interest and/or concern to community banks were the section dealing with systemic risk and the "too big to fail" issue and the section dealing with the Consumer Financial Protection Agency (CFPA). **I plan to focus our attention on those things that changed (and some things that failed to change) since the details of the original H. R. 4173 were outlined in the December 9th Legislative Action Alert.** So, I will not repeat all of those details in this update, but you may [click here](#) to reference the details of the December 9th Alert.

On a strongly positive note, the House Bill passed without the Conyers amendment on residential mortgage bankruptcy cramdown and without the Kanjorski amendment, which would have stripped language to exclude small publicly held companies (including many community banks) from the costly regulatory burden of complying with Section 404(b) of the Sarbanes-Oxley Act. It is also positive for community banks that the Systemic Risk/"Too Big to Fail" portion of the bill passed basically in tact, as outlined in the December 9th Alert.

The CFPA also passed, as outlined in the December 9th Alert, with the *addition* of the following positive amendments:

- Amendment that requires the proposed CFPA to establish a special unit dedicated to ensuring community banks are not disproportionately affected by its regulations.
- Amendment, by Rep. Jim Marshall (D-Ga.), that clarifies that CFPA provisions do not create any new private rights of action.
- Amendment which restores much of the preemption authority for the OCC and the OTS that the original CFPA proposal had taken away.

The positive community bank provisions related to CFPA outlined in the December 9th Alert remained in the bill, including the change in the FDIC assessment base which should save most community banks between 20% and 40% on their FDIC assessments. Even with those positive provisions preserved and the addition of the above positive amendments, concerns remain with the CFPA portion of the bill, including the separation of consumer compliance regulation into a separate agency from safety and soundness regulation. The CFPA still writes all the rules and the CFPA still has backup examination authority, even over community banks under \$10 billion in assets. So, there is much work yet to be done.

De Novo Interstate Branching: The **Manager's Amendment** to H. R. 4173 by Chairman of the House Financial Services Committee Barney Frank **contained a provision allowing de novo interstate branching for all banks regardless of charter.** It is our understanding that Chairman Frank included this amendment at the request of the Conference of State Bank Supervisors (CSBS). Reportedly, this amendment was pushed almost exclusively by the CSBS. CSBS has expressed concerns that, with the merger of OTS into the OCC under this legislation, the OCC would find a way to confer thrift interstate branching powers on national banks, thereby leaving state chartered banks at a competitive disadvantage. Discussions with Commissioner Rob Braswell revealed that the DBF's position on de novo interstate branching is that it is an issue which should be decided by the bankers. In essence the DBF is neutral on the issue. The CBA has a long-standing policy adopted by the CBA Board of Directors to oppose de novo interstate branching primarily due to concerns about its affect on franchise value. Unfortunately, the ICBA believes a change to allow de novo interstate branching may well make it into the Senate Regulatory Reform Bill, as well. CBA of Georgia is planning a survey to obtain updated feedback from member bankers on the issue. In the interim, **if you have concerns regarding this issue my recommendation would be to write letters to Commissioner Braswell and the CSBS expressing those concerns.**

On to the Senate: As you know, Chairman of the Senate Banking Committee Christopher Dodd issued a discussion draft financial regulatory reform bill a few weeks ago. The discussion draft includes all aspects of reform in one bill. **Chairman Dodd has tasked various committees and staff working groups and the various working groups have been re-working the various parts of the discussion draft; however, no bill has been officially introduced** and it is not expected one will be introduced until after the first of the year. The Congress comes back into session on January 19, 2010. **The mark-up of the Senate reform bill is not likely before the end of January or early February, at the soonest.**

As you know Chairman Dodd's discussion draft was considerably more onerous than the House Bill; however, the general consensus seems to be that a much more moderate bill will be needed to pass the bill through the Senate. Chairman Dodd is facing a tough re-election bid next year. Reportedly, he believes the passage of a strong reform bill would help with his re-election. So, the bottom line is he wants a bill badly. **Based upon initial discussions with the committee staff and the working groups, the ICBA is optimistic the gains in the House can be preserved and the negatives in the House bill, primarily with CFPA, can be eliminated.** The Minnick amendment in the House would have replaced the CFPA with a Consumer Financial Protection Council, a council of twelve regulators responsible for writing consumer protection rules. Although the Minnick amendment contacted some significant regulatory burdens for community banks related to compliance with consumer laws, **the concept of a council of regulators having authority for rulemaking on consumer laws, instead of an independent CFPA, is a concept that seems to be gaining support in Congress and is worth strongly pursuing.** The fact the Minnick amendment failed relatively narrowly should provide significant momentum to obtain further positive CFPA changes for community banks in the Senate.

In Summary: **While significant improvements for community banks were made in the final House Bill compared to the Administration's original proposal and the original individual House bills as introduced, there is much work yet to be done in the Senate. We have to retain the gains that we made in the House, while eliminating the remaining negatives.**

We will keep you informed as there are further developments. We still have a long way to go.

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