

Mark Yecies
Vice President Mortgage Lending, Guaranteed Rate Affinity
18958
16 Arcadian Ave, Unit C-6 Paramus, NJ 07652

Office: 973-713-7964
Mobile: 9737137964
mark.yecies@grarate.com
View My Website

# Many Dodd-Frank Provisions May Be on House Chopping Block Next Week

House Majority Leader Kevin McCarthy (R-CA) has told reporters he expects a full House vote next week on H.R. 10, The Financial Choice Act which was voted out of the Financial Services Committee (FSC) on May 4. The Act, sponsored by FSC Chairman Jeb Hensarling (R-TX) would repeal or modify many of the changes made by the Dodd-Frank Wall Street Reform and Consumer Protection Act, including **broad changes in financial regulations**, revising the structure of the Consumer Financial Protection Bureau, and **limiting much of its authority**. It also includes provisions that will affect the home mortgage industry. In the latter area, the bill would incorporate more than two dozen proposed regulatory relief bills for community financial institutions, which we include for reader's reference; H.R. 2896, H.R. 1210, and H.R. 766.

Information provided by associates at the Ballard and Spahr law firm, Richard J. Andreano and Pavitra Bacon has been used to explain some of the impact passage of the law could bring to the mortgage industry. Barbara Mishkin, another Ballard & Spahr attorney, has also written to clarify the impact on CFPB, and other regulatory agencies.

H.R. 10 would create a safe harbor under the Regulation Z ability to repay requirements if a depository institution holds a loan in portfolio from the time of origination and complies with a limitation on prepayment penalties. Originators working for depository institutions would have a safe harbor from a related anti-steering provision if they informed the consumer that the institution intended to hold the loan in portfolio for the life of the loan.

Another provision would affect the definition of points and fees under Regulation Z and high-cost mortgage loan requirements to exclude charges for title insurance and/or title examinations and similar purposes. Under current rules such exclusions were only allowed if the vendor was not affiliated with the lender. Escrowed funds for taxes are currently excluded from points and fees and H.R. 10 would also include insurance escrows in that exclusion. Certain small lenders, those with consolidated assets of $10 billion or less, would be excluded from Regulation Z escrow requirements for higher priced mortgages if the creditor portfolios the loan for a **minimum of three years.**

The Act would also create, under the S.A.F.E. Mortgage Licensing Act, a temporary authority for a loan originator to continue to originate loans while licensing issues are resolved if he or she moves from a depository to a non-

## National Average Mortgage Rates




| Mortgage News Daily | Rate | Change | Points |
|---|---|---|---|
| 30YR Fixed | 7.29% | +0.03 | 0.00 |
| 15YR Fixed | 6.93% | +0.11 | 0.00 |
| 30YR FHA | 6.97% | +0.02 | 0.00 |
| 30YR Jumbo | 7.40% | 0.00 | 0.00 |
| 7/6 SOFR | 6.68% | +0.08 | 0.00 |
| 30YR VA | 6.99% | +0.03 | 0.00 |

Rates as of: 11/27

## MBS and Treasury

| | Price / Yield | Change |
|---|---|---|
| MBS UMBS 6.0 | 99.65 | -0.24 |
| 10 YR Treasury | 4.9345 | +0.0755 |
| 30 YR Treasury | 5.3271 | +0.0792 |

Pricing as of: 11/27 5:59PM EST

## Recent Housing Data

| | | Value | Change |
|---|---|---|---|
| Mortgage Apps | Nov 18 | 212 | +6.11% |
| Building Permits | Oct | 1.3M | -7.5% |
| Housing Starts | Oct | 1.31M | +7.21% |
| New Home Sales | Oct | 701K | +3.7% |
| Pending Home Sales | Oct | 63 | -4.69% |
| Existing Home Sales | Oct | 3.99M | +0.25% |
| Builder Confidence | Nov | 25 | -13.79% |

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depository lender or from a non-depository lender in one state to another non-depository lender in a different state.

Several changes will affect reporting under CFPB's revised Home Mortgage Disclosure Act (HMDA) rule. The volume threshold for a reporting institution would change to 100 closed-end mortgage loans or 200 open-end lines of credit in each of the prior two years from the CFPB threshold of 25 closed-end and 100 open-end loans. The Act would also compel the Comptroller General to study the issue surrounding the privacy of consumers that has arisen from the proposed expansion of consumer and loan level data to be collected and report his or her findings to Congress. It would also **roll back requirements for information reporting institutions** must make available to the public to those that existed under HMDA immediately prior to adoption of Dodd-Frank.

The Act would also increase the threshold for exemption of small servicers from some servicing requirements. The current minimum is 5,000 loans annually and the servicers and its affiliates must be the creditor or assignee of all of them. This would be expanded to 20,000 loans and the bill makes no reference to ownership or assignment.

Passage of H.R. 10 would have a profound impact on CFPB. First, its name would change to the "Consumer Law Enforcement Agency" (CLEA) and, while its single director format would not change, that director would no longer serve a set term, but at the pleasure of the President. The agency would also be brought into the Congressional appropriations process (as would the Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA,) and Office of Comptroller of the Currency (OCC), have its own Inspector General, and be subject to the same oversight by the Office of Information and Regulatory Affairs (OIRA) as other non-independent regulatory agencies. The Deputy Director would also be a presidential appointee.

The CLEA would have no supervisory authority, no authority to make or enforce rules under Unfair, Deceptive and Abusive Acts and Practices (UDAAP) that affect payday, vehicle title or similar loans, and no authority over arbitration agreements concerning consumer financial products or services.

CLEA could not use an administrative proceeding in a case that could result in a cease and desist (CID) order or penalty and must instead bring a civil action. The recipient of a CID could file a petition with a federal district court to modify or set it aside. The CLEA would be required to maintain a segregated Civil Penalty Fund for all penalties it receives, with any undistributed funds reverting to the U.S. Treasury after two years.

CLEA would have to establish an Office of Economic Analysis to conduct an impact analysis of all proposed rules, review them at regular intervals, and conduct a cost-benefit analysis of proposed administrative actions, civil lawsuits, or consent order.

The law would also significantly interject Congress into the rulemaking process, not only of CFPB, but also other regulators including the Federal Reserve, FDIC, OCC, and NCUA. It creates categories of major and non-major rules and requires a joint resolution of Congress for the former to take effect and allows joint resolutions of disapproval of the latter.

The act would also **repeal the amendment** to the Equal Opportunity Act made through Dodd-Frank that requires financial institutions to collect and maintain certain data in connection with credit applications made by women- or minority-owned businesses and small businesses.

The Act also proports to provide an "off-ramp" from Dodd-Frank's supervision requirements and Basel II capital and liquidity standards. A bank can elect to be "a strongly capitalized, well managed financial institution," and thus receive certain levels of regulatory relief. This includes exemption from any federal limitation on mergers, consolidations, or acquisitions of assets or control, "to the extent the limitations relate to capital or liquidity standards or concentrations of deposits or assets," and disallows a banking agency to consider risk "to the stability of the United States banking or financial system," when reviewing an application to consummate a transaction or commence an activity.

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It also retroactively repeals the authority of the Financial Stability Oversight Council (FSOC) to designate firms as systematically important financial institutions (SIFIs) and replaces Title II of Dodd-Frank with a new chapter of the Bankruptcy code designed to accommodate the failure of a large, complex financial institution.

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