Compliance Challenges

The Financial CHOICE Act: What Is on Your Wish List?

By Kris Kully

Many expect that the recent elections will mean a period of general deregulation, that Congress and the regulators will be more amenable to rolling back some of the crisis-response provisions of the Dodd-Frank Act that may be stifling mortgage lending and unduly burdening responsible credit unions. ■ But the question remains: If you were granted three wishes, which specific regulations would you eliminate?

Republicans in Washington have been carrying around a large Dodd-Frank reform bill for months. It is called the Financial Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs (CHOICE) Act. (Visit http://financialservices.house.gov/choice/ on the Internet for more information.) And while Congress has many legislative priorities (including health care and immigration reform), President Trump has demanded that lawmakers do "a big number on Dodd-Frank."

This article outlines some of the ways the Financial CHOICE Act, if enacted in its current form, could affect credit union mortgage lenders. Read on to see if your three wishes have made it onto the list of potential changes.

CFPB, NCUA IMPLICATIONS

One of the Financial CHOICE Act's main tasks would be to make changes to the Consumer Financial Protection Bureau (CFPB). The act would turn the CFPB into an independent five-member commission, renaming it the "Consumer Financial Opportunity Commission" (CFOC).

Unlike the CFPB, the CFOC would be subject to the annual congressional appropriation process, which can be a powerful oversight weapon. The agency's supervision authority over depository institutions would be pulled back, to apply only to banks, thrifts and credit unions with more than $50 billion in assets, thus releasing several large federal credit unions from its supervision.

If the National Credit Union Administration (NCUA) is on your list, you may be happy to learn that the act would also make some structural changes to it and other federal financial regulators.

The NCUA (and the CFPB/CFOC, among others) would be required to conduct a comprehensive cost-benefit analysis prior to issuing new regulations. While requiring an analysis would not itself restrict the NCUA or other agencies from issuing any particular regulation, it would shed light on the agencies' decision-making processes and allow for public input.

The act would also increase to five the number of NCUA board members, and would subject the NCUA's prudential activities (but not its insurance fund) to the appropriations process. The act would require the NCUA to open its budget to public scrutiny, and to establish a council to advise it on emerging credit union practices, trends, concerns, and other relevant information.

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MORTGAGE-RELATED IMPLICATIONS

On the mortgage front, the Financial CHOICE Act would grant a wish to lenders with affiliated title companies. The act would facilitate the exclusion from the points-and-fees calculation of title examination or insurance charges, even if those amounts are paid to an affiliate. A loan's points and fees determine not only whether the loan is subject to stiff requirements for high-cost loans, but also whether the loan constitutes a "qualified mortgage" (QM) that benefits from a presumption of compliance with the federal Ability-to-Repay requirements.

The Truth in Lending Act (TILA) and its Regulation Z generally allow the exclusion of certain charges from

the points-and-fees calculation as long as they are reasonable and paid to an unaffiliated third party. The act would clarify that certain title charges could be excluded as long as they are not retained by the mortgage originator, creditor or an affiliate of either.

Does your wish list include eliminating the Home Mortgage Disclosure Act (HMDA), with its significant new reporting obligations? If so, you may be out of luck.

However, the Financial CHOICE Act would, if enacted, allow some depository institutions, including credit unions, to escape. The act would create an exemption from HMDA's collection and reporting requirements for any depository institution that originated fewer than 100 closed-end mortgage loans and fewer than 200 open-end lines of credit in each of the two preceding calendar years. (If the institution exceeded the closed-end volume test but not the open-end test, or vice versa, the institution would only be required to report regarding the types of loans for which it exceeded the test.)

And while the CFPB has not yet announced how it will modify or aggregate data for public disclosure, the act would appear to make that decision easier. It provides that depository institutions cannot be required to disclose to the public HMDA data that was not required to be disclosed prior to the Dodd-Frank Act, and it prohibits the agencies from doing so.

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IMPLICATIONS FOR SMALL CUS

The Financial CHOICE Act also would make certain exemptions for relatively small credit unions (and other institutions) related to mortgage servicing requirements.

Specifically, the act would essentially exempt from the requirement to establish escrow accounts for first-lien, higher-priced mortgage loans, institutions with consolidated assets of $10 billion or less that hold the loans on their balance sheet for at least the first three years.

The act also would allow the CFPB/CFOC to create exemptions from (or adjustments to) other Dodd-Frank Act mortgage servicing requirements for institutions that annually service 20,000 or fewer mortgage loans.

The Financial CHOICE Act would provide other relief for well-capitalized and well-managed institutions, and it addresses many other important issues.

It is unclear when (or if) the act will be passed, or what changes it will undergo in the legislative process. However, now may be the perfect time to consider what would make your wish list for Dodd-Frank reform and let your feelings be known to the lawmakers that represent you.

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