THE REPUBLICAN STUDY COMMITTEE
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Legislative Bulletin ....July 21, 2011

Contents:

H.R. 1315 - Consumer Financial Protection Safety and Soundness Improvement Act of 2011 (Duffy, R-WI)

Order of Business: The bill is scheduled to be considered on July 21, 2011, under a structured rule that provides for one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. The rule waives all points of order against consideration of the bill. The rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. The rule directs the Clerk to, in the engrossment of H.R. 1315; add the text of H.R. 830 as passed by the House as a new matter at the end of H.R. 1315. Lastly, the rule the rule provides one motion to recommit with or without instructions. The amendments made in order are summarized in a separate document.

Summary: H.R. 1315 amends the Dodd-Frank Wall Street Reform and Consumer Protection Act to strengthen the review authority of the Financial Stability Oversight Council (FSOC) of regulations issued by the Bureau of Consumer Financial Protection (CFPB). The legislation amends the Consumer Financial Protection Act of 2010 (title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act) to replace the position of Director of the Bureau of Consumer Financial Protection with a five-member Commission composed of the Vice Chairman for Supervision of the Federal Reserve System and four additional members appointed by the President, with the advice and consent of the Senate. Lastly, the legislation amends the Dodd-Frank Wall Street Reform and Consumer Protection Act to require the calendar date for the transfer of certain consumer financial protection functions from specified existing agencies to the CFPB to be the later of: (1) the date that would have been designated, but for application of this Act, and (2) the date on which the Director of the Bureau is confirmed by the Senate.

Council Voting Procedure

The bill changes the vote required to set aside a Consumer Financial Protection Bureau (CFPB) regulation from two-thirds of the Financial Stability Oversight Council (FSOC) membership to a simple majority, excluding the director of the bureau.

Review Authority of the FSOC

The bill requires the FSOC to set aside any CFPB regulations inconsistent with the safe and sound operations of U.S. financial institutions. H.R. 1315 requires the FSOC, upon the petition of a member agency of the Council, to set aside a final regulation prescribed by the CFPB if the Council decides that such regulation is inconsistent with the safe and sound operations of U.S. financial institutions. The bill requires all FSOC meetings be open to the public whenever it decides to stay, or set aside, a CFPB regulation. Lastly the legislation strikes the prohibition against Council set-aside of a regulation after expiration of a specified time period and mandatory dismissal of a petition if the Council has not issued a decision within such time period. Currently, the FSOC has a 45-day time limit in which they can review and vote on petitions against CFPB regulations, and if the FSOC does not vote on a petition within 45 days, the petition is considered dismissed.

Establishment of the CFPB Commission

The bill replaces the director of the CFPB with a five-member commission to lead the Bureau. The legislation gives the CFPB commission the authority to prescribe regulations and issue orders that the Commission determines to be necessary. Each commissioner is nominated by the president and confirmed by the Senate, and the additional members are required to be U.S. citizens, have strong competencies and experiences related to consumer financial protection, "and should want to protect service members and their families who are sacrificing their lives for this country from abusive financial practices". The members of the Commission appointed will serve staggered terms, which initially shall be established by the President for terms of 1, 2, 4, and 5 years, respectively. Each member of the Commission appointed, including the Chair, shall serve for a term of 5 years. The President may remove any member of the Commission appointed only for inefficiency, neglect of duty, or malfeasance in office.

Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term to which that member's predecessor was appointed (including the Chair) shall be appointed only for the remainder of the term. One member of the Commission shall have, as their primary responsibility, the oversight of the Bureau's activities pertaining to protecting consumers, with a focus on consumers who are older, minorities, youth, or veterans, from unfair, deceptive, and abusive lending practices. The designated commissioner will be responsible for:

- Ensuring the Bureau conducts regular outreach to consumers regarding industry lending activities;
- Researching and reporting to the full Commission, on a regular basis, the impact of new loan and credit products and services on consumers; and

- Ensuring the Bureau coordinates with State-level consumer protection agencies on enforcement measures that protect consumers from unfair, deceptive, and abusive lending practices.

With respect to members appointed, not more than 2 shall be members of any one political party. Lastly, the bill requires the board to approve any requests for appropriations made by the chairman.

Chair of the CFPB Commission Required Before Transfer of Power

The bill delays the transfer of consumer protection functions to the CFPB until the later of the following:

- July 21, 2011; or
- The date on which the director of the CFPB is confirmed by the Senate.

Background: The Dodd-Frank Wall Street Reform and Consumer Protection Act required the creation of a Consumer Financial Protection Bureau (CFPB) within the Federal Reserve (Fed) whose mandate is to look out for consumers' interests. The law also established the FSOC, which is responsible for monitoring and addressing system-wide risks to U.S. financial stability. Current law requires that the CFPB be headed by a director who is appointed by the president and confirmed by the Senate to a five-year term. The responsibility of the CFPB includes:

- Implementing and enforcing federal laws to ensure that markets for consumer financial products and services are transparent and competitive;
- Ensuring that consumers are protected from unfair, deceptive and abusive acts and practices, and from discrimination;
- Ensuring that existing consumer protection laws are comprehensive, fair and vigorously enforced; and
- Holding examination and enforcement authority over compliance with consumer protection laws by very large banks and non-bank financial institutions, as well as by all insured depository institutions and credit unions with more than $10 billion in assets.

Current law requires the CFPB to operate without interference from the Federal Reserve, including writing rules, issuing orders, appointing or removing employees, and carrying out examinations and enforcement actions. Funding for the CFPB is independent of the congressional appropriations process. According to the committee report, "section 1023 of the Dodd-Frank Act allows the FSOC to review, stay, and block CFPB regulations if two-thirds of the FSOC membership 'decides . . . that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.' The FSOC chair may stay the effectiveness of a regulation at the request of a single FSOC member for 90 days. If the FSOC chair does not stay the rule, the FSOC must vote within 45 days of the date the petition is filed. If the FSOC stays the rule, the vote must be taken before the stay elapses. If a vote is not taken within these time frames, the petition is deemed to have been dismissed." The committee report also states, "the CFPB was created under Title X of the Dodd-Frank Act. The Dodd-Frank Act effectively places the CFPB under the control of a single person--its Director. Under the statute, the CFPB's Director is appointed by the President and confirmed by the Senate. Once appointed and confirmed, the Director is given broad discretion to identify and ban financial products and services that he or she finds to be 'unfair, deceptive, or abusive.' The Director has complete authority to adopt policies for carrying out the CFPB's functions. Among other things, the Director may set policies on adopting rules and issuing orders and guidance; enter into contracts; establish the CFPB's internal organization; and hire and supervise personnel."

Lastly, currently under Title X, different authorities transfer to the CFPB on different dates: some authorities shift on July 21, 2011, while others will not move until a CFPB Director is in place. H.R. 1315 incorporates H.R. 1121 and H.R. 1667, which had been reported separately by the Financial Services Committee, into one bill by the Rules Committee. According to the sponsor, the purpose of H.R.1315 is to slow down the excessive and unnecessary regulation that would increase companies' costs and make it harder and more expensive for businesses and consumers to get credit, and implement some checks and balances to the CFPB.

Committee Action: H.R. 1315 was introduced by Rep. Sean Duffy (R-WI) on 4/1/2011 and the legislation was referred to the Committee on Financial Service. The legislation was amended on May 25, 2011 and filed in a supplemental report along with H.R. 1121 and H.R. 1167 on July 19, 2011 by the Committee on Financial Services.

Administration Position: According to the SAP, "the Administration strongly opposes House passage of the Rules Committee Print of H.R. 1315 because it would amend the Dodd-Frank Wall Street Reform and Consumer Protection Act in a manner that would expose American consumers and the Nation's economy to the same risks that led to the 2008 financial crisis."

Cost to Taxpayers: According to CBO, "enacting H.R. 1315 would not significantly affect direct spending and would not affect revenues. Because enacting H.R. 1315 could affect direct spending, pay-as-you-go procedures apply."

Does the Bill Expand the Size and Scope of the Federal Government?: No

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, "H.R. 1315 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments."

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to the committee report, "H.R. 1315 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI."

<u>Constitutional Authority</u>: According the Congressman Duffy's Statement on Constitutionality, "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3."

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