Legislative Bulletin .... April 25, 2012

Contents:

H.R. 3336 – Small Business Credit Availability
(Hartzler, R – MO)

<u>Order of Business</u>: The bill is scheduled to be considered on Wednesday, April 25, 2012, under a motion to suspend the rules and pass the legislation.

<u>Summary</u>: H.R. 3336 would ensure the exclusion of small lenders and certain financial institutions that are regulated by the Commodity Future Trading Commission (CFTC) from being classified as "swap dealers" under the Dodd-Frank Act.

The legislation exempts from the classification of swap dealer financial institutions that have an aggregate exposure to swaps below $1 billion. The legislation also exempts individuals who enter into swaps for their own personal account, and not as part of regular business activities. According to the Committee Report:

> "H.R. 3336 extends the exemption to farm credit institutions that provide similar services to their customers but that do not fall within the definition of 'insured depository institution.' In addition, the bill clarifies that the exemption is to be applied when the institutions enter into swaps in connection with an extension of credit, and that it is not limited to a swap that is provided exactly at the point of origination and only when the credit extended to the customer is a loan. This clarification is intended to accommodate common transactions between small and mid-size banks and farm credit institutions and their customers whereby the swap may be provided before or after the credit is originated, and when the credit may be in the form of a guarantee, or letter of credit, for example, rather than just a traditional loan."

Lastly, according to the bill text, the legislation "exempts from swap clearing requirements any entity whose primary business is providing financing that facilitates the sale or lease of products for a parent or affiliate company, and which uses derivatives only to hedge underlying commercial risks in a consolidated portfolio of which at least 90% is qualifying financing including loans, notes, installment sales contracts, receivables, and operating and financing leases."

Background: Derivatives are securities whose price is dependent upon, or derived from, underlying assets. A swap is a derivative in which counterparties exchange cash flows of one party's financial instrument for those of the other party's financial instrument. Companies, including financial institutions, often exchange derivatives — swap — in order to hedge their risk and financial institutions commonly use swaps to protect customer loans from sudden interest rate fluctuations.

According to the Committee Report:

> "Section 1a(49)(A)(iv) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) (the Dodd-Frank Act) provides that `in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.' It is common for banks, for example, to lend at variable rates to commercial customers, and in connection with that loan, provide an interest rate swap so that the customer is able to achieve a fixed rate on the loan. The 'swaps in connection with loans' exemption included in the swap dealer definition was intended to permit banks to continue providing this service to their customers without being designated as swap dealers. Congress recognized that the efficiency created by pairing these transactions facilitates the flow of credit.
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> "In the Commodity Futures Trading Commission's (CFTC) proposed rule 'End-User Exception to Mandatory Clearing of Swaps,' the CFTC did not propose to provide an exemption as authorized by Congress. In order to ensure that small financial institutions are afforded the relief that Congress intended, H.R. 3336 requires the CFTC to exempt small financial institutions that have exposure that is less than $1 billion in current uncollateralized exposure plus potential future exposure. Collectively, small banks engage in only a fraction of the swaps activity in the U.S. banking system. In fact, 25 of the largest bank holding companies hold 99.86% of the total notional held by all banks in the U.S., leaving only .14% of the total notional spread across the remaining 1,046 banks."
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> "This bill is necessary to ensure that small and mid-size financial institutions can continue to provide important hedging tools to small businesses, and that the banks themselves can continue to use swaps to hedge their own interest rate risk. The bill acknowledges and upholds the important relationship between risk management tools and the flow of credit in the economy. At the same time, there are important safeguards in place to prevent any small financial institution from engaging in speculative or highly risky activity, or to engaging in swaps to a level that their positions could pose a threat to the financial system."

Committee Action: H.R. 3336 was introduced on February 8, 2012 by Rep. Vicky Hartzler, and was referred to the House Agriculture Subcommittee on General Farm Commodities and Risk Management. The subcommittee discharged the legislation. The full committee held a markup on March 9, 2012, and approved the legislation, as amended.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: According to the CBO report, “the CFTC has not finalized regulations regarding swap dealers and clearing requirements for swap transactions. CBO expects that incorporating the provisions of H.R. 3336 at this point in the regulatory process would not require a significant increase in the agency's workload. Therefore, CBO estimates that any change in discretionary spending to implement the legislation, which would be subject to the availability of appropriated funds, would not be significant. Enacting H.R. 3336 would not affect direct spending or revenues.”

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 the CBO report, H.R. 3336 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on 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. 3336 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House Representatives.

Constitutional Authority: According Rep. Hartzler’s statement of constitutional authority, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3 of the Constitution of the United States.”

Organizations that Oppose H.R. 3336:

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans United for Change
- Campaign for America 's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.

- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women 's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action

- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

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