

House Passes Legislation to Amend Dodd-Frank Act

TOPLINE: The House on Tuesday followed the Senate’s lead by finally passing legislation to clarify the Federal Reserve’s authority to recognize the distinctions between banking and insurance when implementing Section 171 of the Dodd-Frank Act (the so-called Collins Amendment). However, the House-passed bill includes three additional measures to amend Dodd-Frank in other areas, a move unlikely to garner the support of Senate Democrats. As such, the most likely outcome is eventual House passage of just the insurance-related measure, as passed by the Senate in June, during Congress’ lame duck period in November/December.

SUMMARY: On Tuesday, September 16, 2014 the House passed [H.R. 5461](#), legislation introduced by Reps. Andy Barr (R-KY) and Gary Miller (R-CA) to make several changes to the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (P.L. 111-203), by a [vote of 327-97](#). The bill contains four titles – the first is the *Insurance Capital Standards Clarification Act*, which previously passed the Senate unanimously and is an intended fix to the so-called Collins Amendment. The bill clarifies the Federal Reserve’s authority to recognize the distinctions between banking and insurance when implementing Section 171 of the Dodd-Frank Act. While many contend that the Fed already has that authority, the agency insists that it does not and that legislative clarification is required.

The remaining titles of the bill contain the texts of three bills that previously passed the House as standalone bills. Title II contains the text of the *Restoring Proven Financial for American Employers Act* (previously passed by the House on April 29, 2014 as H.R. 4167). That bill would act as a clarification to the Volcker Rule (Section 13 of the Bank Holding Company Act) by grandfathering the treatment of collateralized loan obligation (“CLO”) assets issued before January 31, 2014, protecting them from the rule’s divestiture requirement. It also makes clear that the investment manager oversight provisions inherent in most CLOs agreements do not trigger the ownership limitations of the Volcker Rule.

Title III is the *Mortgage Choice Act of 2014* (previously passed by the House on June

9, 2014 as H.R. 3211), which would modify the definition of “points and fees” in the Qualified Mortgage (QM) rule and exclude insurance and taxes held in escrow and fees paid to affiliated companies as a result of their participation in an affiliated business arrangement from the calculation of points and fees.

Title IV contains the *Business Risk Mitigation and Price Stabilization Act* (previously passed by the House on June 12, 2013 as H.R. 634), which would exempt end-users from margin and capital requirements of Dodd-Frank’s swaps provisions (Title VII).

FUTURE PROSPECTS: The question moving forward is whether the Senate will take the House-passed bill up. While the speed with which the *Insurance Capital Standards Clarification Act* passed the Senate in June shocked many observers, given that it is the first relatively major tweak to the Dodd-Frank Act, it appears unlikely that the Senate Majority Leader has any intention of making further changes to the law at this point in time. House Financial Services Committee Ranking Member Maxine Waters (D-CA) called passage of the House bill “an exercise in political theater,” noting on the House floor Monday that “it is well-known – and widely-reported – that Republican leadership has privately told insurance industry stakeholders they will bring up a ‘clean’ insurance capital standards bill after the mid-term elections.” As such, the likely outcome will be House passage of the Senate’s *Insurance Capital Standards Clarification Act* (Title I of the House-passed bill) by itself during the lame duck session.

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