



# *FedFin Client Report*

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Thursday, September 7, 2017

## **Limited Signs of Bipartisanship Emerge on Limited-Reform Legislation**

Client Report: **REFORM142**

### **Executive Summary**

In this report, we analyze today's House FinServ Institutions and Consumer Credit Subcommittee hearing examining several legislative proposals under the general rubric of ways to get more efficient regulations. Bills discussed at the hearing – which unusually these days did not take on a combative tone – include: H.R. 2359, the Systemic Risk Designation Improvement Act; H.R. 2359, the FCRA Liability Harmonization Act; H.R. 1849, the Practice of Law Technical Clarification Act; and three soon to be introduced bills, the “Facilitating Access to Credit Act,” the “Community Institution Mortgage Relief Act,” and the “TRID Improvement Act.” Republicans generally supported all of these bills, with several (e.g., the Systemic Risk Designation Act) also backed by several Democrats. However, most Democrats stood by their long-held insistence that it is improper at this time to roll back Dodd-Frank protections. Of all of the substantive bills considered today, we think H.R. 2359 has the best chance quickly to advance on a bipartisan basis.

### **Analysis**

#### ***Opening Statements***

Chairman Luetkemeyer (R-MO) said that the six bills continue the quest to bring about a more reasonable Federal regulatory system that would allow financial companies to better serve their customers. Speaking specifically about his bill, the Systemic Designation Improvement Act, Rep. Luetkemeyer argued that tying SIFI designation to actual risk via the use several activities-based indicators rather than to an arbitrary asset threshold would eliminate inefficiencies with negative impact on markets and consumers.

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Ranking Member Clay (D-MO) argued that, while the legislative proposals before the committee today are intended to strengthen the regulatory regime, they would not in fact do so, warning not to forget the financial crisis. Conceding that improvements can always be made, he said that the bills in question would instead gut consumer protections and harm financial stability.

## **Testimony**

Anne Fortney, Partner Emerita at Hudson Cook, LLP, said that, while there is universal support for consumer protection, activist judicial bodies (particularly the 9<sup>th</sup> Circuit) have interpreted laws such as Credit Repair Organizations Act in ways that are inconsistent with Congressional intent.

Charles Tuggle, testifying on behalf of the ABA, said that the regulatory regime needs common-sense adjustments that do not compromise financial stability, citing the Luetkemeyer SIFI-designation bill as a case in point. He also supported the Community Institution Mortgage Relief Act, preferably with regulatory discretion to adjust the size threshold at which the QM rules for portfolio mortgages would not apply, as well as the TRID Improvement Act.

Thomas Quadman, testifying on behalf of the U.S. Chamber of Commerce, also supported eliminating the SIFI-designation threshold and replacing it with an activities based one. He said the threshold is harmful and pointed to studies suggesting the threshold is linked to less lending, depressed business creation, and diminished labor participation. Mr. Quadman also supported the TRID Improvement Act and the Facilitating Access to Credit Act.

Chi Chi Wu, Staff Attorney at the National Consumer Law Center, opposed all of the bills, arguing that they would be harmful to consumers. She focused in particular on the FCRA Liability Harmonization Act.

## **Q&A**

- Systemic Risk Designation Improvement Act (see FSM Report **SYSTEMIC76**; note: the bill has since been amended to make it revenue neutral): Reps. Luetkemeyer, Rothfus (R-PA), Kustoff (R-TN), Love (R-UT), Hill (R-AR), Scott (D-GA), and Sinema (D-AZ) all supported the legislation, arguing that it removes an arbitrary threshold in favor of one that instead examines individual-bank risk profile. It is also, they said, an artificial barrier to growth and credit.

- FCRA Liability Harmonization Act: Reps. Rothfus, Tipton (R-CO), Loudermilk (R-GA), and Scott supported the bill on grounds that it would eliminate frivolous class action lawsuits that in practice do more to enrich class action attorneys than compensate harmed consumers. Rep. Clay argued that the legislation would harm consumers by eliminating a channel by which they can recover damages and correct credit reporting inaccuracies.
- Practice of Law Technical Clarification Act: Rep. Trott (R-MI) said his bill would clarify that attorneys engaged in activities related to legal proceedings are not to be considered debt collectors under the Fair Debt Collection Practices Act, as per the original intent of the law.
- Facilitating Access to Credit Act: Reps. Royce (R-CA), Pittenger (R-NC), and Williams (R-TX) argued in favor of the bill, saying that it removes services such as credit education and monitoring from an inappropriate regulatory framework. Rep. Maloney (D-NY) was concerned that the legislation would prohibit the CFPB from acting on behalf of consumers in this arena.
- Community Institution Mortgage Relief Act: Rep. Tenney (R-NY) said her bill would provide regulatory relief for small institutions by exempting them from escrow requirements and other requirements that have doubled the cost of servicing.
- TRID Improvement Act: Rep. Hill said his bill would ensure that accurate information is provided in relevant mortgage disclosures, noting that currently these disclosures often do not serve their stated purpose of providing the actual charged amount for a title. Rep. Ellison (D-MN) argued that TRID disclosures have improved the process for homeowners and that the bill's extension of the timeframe – from 60 to 210 days – for lenders to correct errors in disclosures without penalty harms consumers because it is relatively close to the end of the statute of limitations for liability.