Conventional Residential Lending / Financial Regulatory Reform

NAR Committee:

Conventional Financing and Policy Committee

What is the fundamental issue?

Since the passage of the Dodd-Frank Act the safety and soundness of the U.S. financial system has improved, but some believe that increased bank regulations have constricted access to affordable credit for consumers and businesses.

I am a real estate professional. What does this mean for my business?

Access to affordable mortgage capital in all markets at all times and under all economic conditions is essential for a robust economy.

NAR Policy:

NAR supports the removal of burdensome regulations on financial institutions that impede access to affordable credit for consumers and do not reduce consumer protections. Additionally, NAR recognizes that community banks have a long history of a common sense approach to underwriting and offering mortgage credit to borrowers, and that the relationship-lending model is one that should be maintained. Furthermore,NAR support policies providing targeted compliance relief to appropriately sized community banks and credit unions to ensure such institutions can continue to offer safe and affordable mortgage credit to their local consumers.

In addition, NAR blieves that restoring investor confidence and trust in the Representations and Warranties given by issuers of both GSE and private label securities is critical. As outlined in NAR's Principles for Housing Finance Reform, NAR believes that Standardization and enforceability of Representations and Warranties is imperative. Pooling and Servicing Agreements (PSAs) must be simple with clear terms and definitions so they are easily understood by investors. They must have clear disclosures of any deviations from “Federal Best Practice Standards,” clearly define “buy back” rules, and servicer operational policies must be consistent with their fiduciary duties to the investor.

Opposition Arguments:

Some believe that a financial sector with little to no regulation will result in a more robust economy. While others believe that there currently are not enough regulatory protections for consumers. Many believe the lack of consumer protections was a primary factor that caused the Great Recession.

Legislative/Regulatory Status/Outlook

In 2019, the Federal Reserve, FDIC and OCC released the final capital rule for community banks that was mandated as part of the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155), which passed the Senate in early 2018.

The rule gives small banks an "off ramp" from the burden of a more intensive capital rule and compliance regimen stipulated in Dodd-Frank if they comply with a simplified alternative. NAR supported this change. The agencies estimate that 85% of community banks will qualify for this alternative rule.

Following the collapse of a number of regional banks in the spring of 2023, Congress and the regulators have begun the process of looking at reform of the banking system and what gaps currently exist. The Federal Reserve released a study that showed flaws across the system, including lax oversight, a lack of resources for bank supervision, executive malfeasance, and the 2018 removal of Dodd-Frank legislation as causes of the collapses.

In July of 2023, the federal banking regulators released a new bank capital proposal named Basel III Endgame. While the intent was to apply new capital standards to only the largest financial institutions, the proposal has trickle down effects to small- and medium-sized banks and non-banks that rely on capital from the large banks. The proposed amendments change the risk weights for mortgages and servicing rights and would have a damaging impact on the mortgage lending markets, especially for first-time buyers, low- and middle-income borrowers, and minority communities. The changes would also affect lending for small- and medium-sized lenders who rely on warehouse funding.

NAR submitted comments to the regulators urging the joint agencies to repropose or retract the amendments, especially given the lack of statistical analysis and support for the proposed changes. NAR believes the changes go too far given the current solid state of mortgage underwriting and the performance of loans since the implementation of the Dodd-Frank Act. The mortgage market has absorbed major challenges, including the failure of a few regional banks, as well as the COVID-19 pandemic.

In September of 2024, Federal Reserve Board Vice Chair for Supervision Michael S. Barr announced significant improvements to how banks would handle low down payment mortgages under so-called Basel III endgamechanges. These changes would likely revert the mortgage lending and servicing portions of the proposal back to the current levels.

Given the change in administration, we do not believe the Basel Endgame proposal will be finalized. The Trump administration continues to emphasize a restructuring of government, including financial regulators. The CFPB and FHFA are both undergoing significant changes structurally. We await further details regarding policy changes.

Current Legislation/Regulation (bill number or regulation)

S. 2190 RECOUP Act of 2023: The Recovering Executive Compensation from Unaccountable Practices (RECOUP) Act

This bill addresses concerns surrounding executive accountability following recent bank failures by strengthening certain existing authorities regarding senior executives. The bill also requires banks to adopt forward looking, corporate governance and accountability standards to promote responsible management and provides clawback authority in the event of a bank failure.

The RECOUP Act will:
• Strengthen the banking agencies' ability to remove or prohibit senior executives who did not appropriately oversee and manage the risks and governance of their banks.
• Require banks to include governance and accountability standards in their bylaws.
• Provide the FDIC with the authority to clawback certain compensation from senior executives at failed banks, including profits made by selling the bank's stock.
• Increase and strengthen penalties against bad actors

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