The President on May 24 signed Public Law 115-174 [1] that amends the Dodd-Frank Act to provide many depositories relief from federal supervision and regulation. The Act also makes a number of changes to legislation providing consumer rights. While many of the changes relate to the Truth in Lending Act or the Fair Credit Reporting Act, at least eight consumer statutes are implicated, affecting consumer rights involving:

- Tenants in foreclosed property;
- Former military personnel facing foreclosures;
- Private student loan borrowers and their co-signers;
- Manufactured home credit;
- Mortgage loan originations;
- Refinancing of VA mortgage loans;
- Security freezes, fraud alerts and credit monitoring;
- Credit reporting of veterans’ medical debt;
- PACE loans;
- HMDA disclosures.

While titled the “Economic Growth, Regulatory Relief, and Consumer Protection Act,” the Act is generally called “the Crapo bill” after its lead sponsor, Republican Senator Mike Crapo of Idaho. With a few exceptions discussed below, the changes either carve out exceptions from compliance with consumer statutes or codify consumer protections that at least certain industry players are already following on their own.

## Tenant Protections After Foreclosure of Landlord’s Property

Effective June 23, 2018, section 304 of Public Law No. 115-174 restores and revives the Protecting Tenants at Foreclosure Act, Public Law No. 111-22 [2], that had sunset at the end of 2014. The 2018 legislation once again gives tenants legal protection when the landlord’s building is foreclosed.

Tenants can remain in their units for the remainder of their leases despite the building’s foreclosure, unless the buyer at the foreclosure sale intends to occupy the unit as a primary residence. All tenants including those without leases have a right to 90 days’ notice before eviction. For a more detailed discussion of the Protecting Tenants at Foreclosure Act that has now been restored, see NCLC’s Foreclosures and Mortgage Servicing § 12.7.1.1 [3].

## Servicemembers’ Protection from Foreclosure

The Servicemembers Civil Relief Act, 50 U.S.C. § 3953(c), provides protections from foreclosure for covered personnel where their residential mortgage loans were extended prior to their active duty. Originally this protection extended for only 90 days after the person left military service, but this period was extended to nine months and later to one year, but with a sunset at the end of 2017. Section 313 of Public Law No. 115-174 restores the one-year period and eliminates the sunset, making the one-year period permanent. See NCLC’s Foreclosures and Mortgage Servicing § 8.11 [4] for a general discussion of protections from foreclosure under the Servicemembers Civil Relief Act.

## Credit Reporting Security Freezes and Fraud Alerts

Section 301 of Public Law No. 115-174 amends the Fair Credit Reporting Act, effective September 21, 2018, to establish a new federal right for consumers to implement a security freeze of their credit file. (A security freeze prevents users from accessing a credit file, with a number of exceptions.) The legislation also preempts state security freeze laws and extends initial fraud alerts from 90 days to one year. (A fraud alert notifies the users that the consumer has been or may become a victim of fraud or identity theft.)

The legislation adds new 15 U.S.C. § 1681c-1(i), which establishes standards for the creation, temporary lifting or “thaw,” and permanent removal of security freezes from the nationwide consumer reporting agencies as defined in section 1681a(p). The freezes are free of charge. They are essentially limited to parties seeking the consumer’s information for credit purposes.

The freeze does not apply to parties who want the report for employment, insurance, or tenant-screening purposes. It also does
not apply to existing creditors or their agents or assignees conducting an account review, collecting on a financial obligation owed them, or seeking to extend a “firm offer of credit” (i.e., prescreening).

New section 1681c-1(i) also governs notices and disclosures concerning security freezes. Finally, the legislation adds new section 1681c-1(j), which sets standards where a representative of a minor or incapacitated individual seeks to freeze the individual’s consumer report.

The legislation’s preemption extends to any state requirement or prohibition with respect to subject matter regulated by the above provisions relating to security freezes. For example, some state statutes are stronger than the new federal standards by allowing consumers to freeze access to credit reports for employment or insurance purposes. For more on security freezes and state laws that are now preempted, see NCLC’s *Fair Credit Reporting* § 9.4.4 [5] and Appendix H [6].

**Credit Reporting of Veterans’ Medical Debt**

Section 302 of Public Law No. 115-174 amends the Fair Credit Reporting Act, effective May 24, 2019, to provide credit reporting protections for veterans regarding certain medical debts. These include debts owed to a non-VA medical provider for medical care authorized by the VA and where the provider sought payment from the VA, as well as medical debt for bills wrongfully charged by the VA.

In general, a nationwide consumer reporting agency shall not report this type of veterans’ medical debt until the debt is over one year old. The legislation also sets out a process whereby the veteran can dispute medical debt in the veteran’s credit report and requires the VA to establish a database to enable the CRAs to verify veteran’s medical debt. For more on restrictions involving the credit reporting of medical debt, see NCLC’s *Fair Credit Reporting* § 5.4 [7].

**Free Credit Monitoring to Consumers on Active Duty or the National Guard**

Section 302 of Public Law No. 115-174 amends the Fair Credit Reporting Act, effective May 24, 2019, to provide free “credit monitoring” to any military personnel on active duty or in the national guard. The credit monitoring as defined by section 302 is much more limited than the commercial products currently available, in that it only requires electronic notifications of additions or modifications to a consumer’s file, i.e., “alerts.” There is no private remedy for violation of this requirement. For a discussion of other credit monitoring products, see NCLC’s *Fair Credit Reporting* § 3.3.3.1 [8].

**Protections for Borrowers of Private Student Loans**

Section 601 of Public Law No. 115-174 amends the Truth in Lending Act by prohibiting a private student loan lender from declaring a default or accelerating a debt against a student loan borrower on the basis of the co-signer’s bankruptcy or death. A second provision releases the co-signer’s obligation upon the student’s death.

These protections only apply to loans extended after November 20, 2018. In addition, the protections do not apply to private student loans consolidating other private student loans or to spouse co-signers where the spouse’s signature is needed to perfect the security interest in a loan. For more on private student loans, see NCLC’s *Student Loan Law Ch. 12* [9].

Section 602 of Public Law No. 115-174 amends the Fair Credit Reporting Act to allow a student, when successfully completing a loan rehabilitation program, to request that negative credit reporting information about a private student loan be excluded from the consumer’s report. A loan rehabilitation program is one where the student makes a number of consecutive on-time payments on the loan.

A private student loan lender is not required to offer a loan rehabilitation program, the legislation does not provide specific standards for such a program, and the lender apparently is not even required to help remove the default in the student’s credit file even when the student completes the program and requests the changes in the student’s credit report.

The rehabilitation program adds an additional risk for students. Where the student begins making payments under such a program after the statute of limitations has run on the private student loan, the payments may revive the limitations period, suddenly subjecting the student to a collection lawsuit. For a discussion of loan rehabilitation for Federal Direct Loans, see NCLC’s *Student Loan Law § 7.3* [10].
Exemption for Manufactured Home Dealers from Loan Originator Compensation Protections

Section 107 of Public Law No. 115-174 amends the Truth in Lending Act by excluding most manufactured home dealers from TILA’s definition of a “mortgage originator.” As a result, the dealers do not have to comply with the Truth in Lending Act’s loan originator compensation provisions, including a prohibition on receiving compensation based on the terms of a loan (other than the loan’s size). See NCLC’s Truth in Lending § 9.3.2 [11].

To be excluded from the definition of a mortgage originator, the manufactured home dealer must not receive direct compensation in an amount greater than the dealer would have received in a cash transaction. The dealer must also disclose its affiliation with a lender and must not directly negotiate loan terms. Nevertheless, because of the complex interrelationship between manufactured home dealers and financers, this provision significantly weakens consumer protections.

Exemption from the Truth in Lending Act’s Ability-to-Pay Requirements

Section 101 of Public Law No. 115-174 expands the presumption of compliance (known as the “Qualified Mortgage”) with the Truth in Lending Act’s requirement that a creditor make a reasonable and good faith determination that the consumer has a reasonable ability to repay the mortgage loan, including taxes and insurance. See 15 U.S.C. § 1639c(a). The specifics of the ability-to-pay requirement are delineated by CFPB regulations. See generally NCLC’s Truth in Lending § 9.3.3 [12]. The provision codifies aspects of the existing regulation while increasing the asset threshold for eligible institutions to those with assets below $10 billion.

To qualify for the exclusion, the creditor must comply with limitations on prepayment penalties and the size of points and fees, not include negative amortization or interest-only features, and must verify the debt, income, and financial resources of the consumer (although no specific debt-to-income ratio must be met). Even then, there are restrictions on the subsequent sale of that mortgage loan.

Exemptions from the Truth in Lending Act’s Escrow Requirements

Section 108 of Public Law No. 115-174 creates new exemptions from the Truth in Lending Act’s escrow provisions for higher priced mortgage loans. The Truth in Lending Act requires creditors to establish escrow accounts for most such higher priced mortgages. See 15 U.S.C. § 1639d(a). The new Act requires the CFPB to exempt by regulation from this requirement any insured depository institutions or credit union with assets of $10 billion or less, that has extended fewer than 1000 first mortgages on a principle residence, and that meets three additional requirements, including having made at least one mortgage loan in a rural area. Apparently, this exemption will not go into effect until the CFPB issues the required final regulations. For more on escrow requirements for higher priced mortgages, see generally NCLC’s Truth in Lending § 9.5.4.5 [13].

Limit on the Truth in Lending Act’s Timing Requirement for Additional High-Cost Mortgage Disclosures

Section 109 of Public Law No. 115-174 limits the Truth in Lending Act’s timing requirement for certain additional high-cost mortgage disclosures. 15 U.S.C. § 1639(b) requires the disclosures be made at least three business days prior to the mortgage loan consummation. The new Act provides that where the creditor makes a second offer of a mortgage loan, there is no longer a requirement that there be a three-day waiting period after the additional high-cost mortgage disclosures for the second offer if the second offer has a lower APR than the first offer. The timing rule still applies to the first offer, whatever the APR of the second offer. The disclosures for high cost mortgages are discussed at NCLC’s Truth in Lending § 9.6.6 [14].

Limits on Abusive Refinancing of Loans to Veterans

Section 309 of Public Law No. 115-174 amends the veterans’ housing benefit legislation to address abuses dealing with creditors flipping veterans into refinanced loans that may not benefit the veteran. A specified time period must have elapsed since the prior loan before there can be a refinancing, and there are various requirements as to fee recoupment, interest rates,
and net tangible benefit tests. This provision applies to VA loans.

**Exemption from Real Estate Appraisal Requirement**

Section 103 of Public Law No. 115-174 amends Title XI of the Financial Institutions, Reform, Recovery and Enforcement Act (FIRREA), 12 U.S.C. § 3331, to exempt mortgage loans in rural areas with a balance of under $400,000 from the requirement that there be an appraisal of the real estate collateral before most mortgage loans can be extended. The new exemption applies to mortgages where no appraiser is reasonably available, and certain other conditions are met. Even then, the exclusion does not apply to HOEPA loans and there are limits on the sale of mortgages covered by the exclusion.

**Softening SAFE Mortgage Licensing Act Requirements**

Section 106 of Public Law No. 115-174 amends the SAFE Mortgage Licensing Act, effective November 24, 2019, by loosening licensing, registration, and similar requirements on loan originators. Originators that meet specified requirements can continue temporarily to originate loans under their old authority after moving from a depository institution to a non-depository institution or from one state to another. The new Act also widens the conduct by state officials and officers of the Nationwide Mortgage Licensing System and Registry that is immune from monetary liability

**PACE Loans**

Recent years have witnessed extensive abuses involving Property Assessed Clean Energy (PACE) Financing. (Extensive material on PACE loans is found at [www.nclc.org/issues/pace-loans.html](http://www.nclc.org/issues/pace-loans.html) [15].) PACE loans are extended to homeowners to pay for private, largely unregulated companies to make home repairs to the homeowners’ residences, with the promise that the repairs will increase the homes’ energy efficiency. The loans are repaid via a local property tax assessment whose non-payment can result in the home’s foreclosure or tax sale.

Section 307 of Public Law No. 115-174 amends the Truth in Lending Act to require the CFPB to issue regulations to apply the existing TILA ability-to-pay standards found in 15 U.S.C. § 1639c(a) to PACE loans, and to require that any violations of the regulations are privately enforceable under the Truth in Lending Act remedy provision, 15 U.S.C. § 1640. The specifics of the TILA ability-to-pay requirement are delineated at NCLC’s *Truth in Lending § 9.3.3* [12].

**Exemption from HMDA Reporting**

Section 104 of Public Law No. 115-174 amends the Home Mortgage Disclosure Act (HMDA). The amendment exempts certain entities from specified public disclosure requirements. Insured depository institutions and credit unions that extended fewer than 500 closed-end mortgage loans in each of the prior two years are exempted from specified closed-end disclosure requirements. Insured depository institutions and credit unions that extended fewer than 500 open-end mortgage loans in each of the prior two years are exempted from specified open-end disclosure requirements. Neither exemption applies if during the last two years, the institution received “a needs to improve” record for meeting community needs.

These institutions must still make public all the HMDA required information except for disclosures specified in 12 U.S.C. § 2803(b)(5) and (6) having to do with the number and dollar amount of loans itemized according to: origination points and fees, APRs, prepayment penalties, property values, term of introductory rates, negative amortization, the loan term, use of a broker, the loan originator, applicant credit scores, and identifiers relating to the loan and parcel. HMDA disclosures are examined at NCLC’s *Credit Discrimination § 4.4.5.2* [16].

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**About Author:**
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