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**Issue 3, 2021**

## Welcome!

Welcome to our third issue of *Promissory Notes* -- our e-newsletter focused on banking and finance insights. We hope you are enjoying our monthly publication.

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Thank you for reading.

[F. B. Webster Day](#), Chair, Banking and Finance Practice Group, and Co-Editor, *Promissory Notes*

and

[Elizabeth A. Benedetto](#), Chair, Bond Counsel Practice Group, and Co-Editor, *Promissory Notes*

*"I'll gladly pay you Tuesday for a hamburger today." - J. Wellington Wimpy*

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## **House Passes Cannabis Banking Bill**

*"The House passed the same bill in 2019 by a similar margin, but it stalled in what was then the GOP-controlled Senate."*

**Why this is important:** The Safe Banking Act, if passed, will legalize proceeds from legitimate cannabis businesses. Because cannabis is still federally listed as a schedule one drug, many banks and credit unions have refused to allow cannabis businesses to open accounts or store money, even if the business is located in a state where cannabis is legalized. This usually means the businesses must hold onto cash from all of their sales — a risky practice that has led to an increase in crime. Senate Majority Leader Schumer has indicated that the bill will be voted on in the Senate. --- [Joseph C. Unger](#)

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## **OCC Grants Crypto Firm Paxos 'Conditional Approval' for US Bank Charter**

*"The U.S. Office of the Comptroller of the Currency issued a preliminary conditional approval which means the regulating entity still has to authorize the firm's future banking plans."*

**Why this is important:** According to the OCC, it granted a national trust bank charter to Paxos after a "thorough review of the company and its current operations." Becoming an OCC-regulated trust is one way crypto exchanges can operate nationwide without needing to secure state-level licenses in each of the 49 different U.S. states (Montana does not have a licensing requirement.).

The conditional approval announcement sends another signal that the global cryptocurrency ecosystem is becoming increasingly acceptable to regulators that have traditionally been wary of the nascent industry. In particular, the preliminary approval indicates that the OCC is comfortable with Paxos as a custodian, which is significant for an industry prone to hacks or exchange crises. --- [Bryce J. Hunter](#)

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## **Paycheck Protection Program has Run Out of Money for Most Borrowers**

*"Going forward, the program will only accept new applications from community financial institutions, which typically serve minority borrowers, as about \$8 billion in funding was set aside for such businesses."*

**Why this is important:** The PPP program, created by the CARES Act, makes loans to small businesses suffering economically from the pandemic. According to the *New York Times*, \$780 billion already has been disbursed to fund 10.7 million applications. The last round of funding, appropriated with the American Rescue Plan in March, was expected to carry the program through May 31, 2021. However, within weeks, reports forecast that funding would run out before the deadline. There is no certainty as to future funding, and it could be tied to proposals for further changes to the program. This is a first-come, first-serve program, so many lenders are encouraging businesses to apply, despite the lack of funding, in order to have their application already in queue if further funding becomes available. In addition, lenders might explore other lending sources that focus on certain types of small businesses and proprietorships. --- [Debra Lee Allen](#)

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## **FDIC Zeroes in on the Unbanked with Its GetBanked Checking Account Initiative**

*"The #GetBanked initiative began early on in the Covid-19 pandemic as a resource to encourage more Americans to enter the banking system in order to be able to receive economic stimulus payments."*

**Why this is important:** Even before the onset of the COVID-19 pandemic and its attendant financial pressures, the FDIC recognized the problems associated with the significant number of households that are "unbanked." Those are households in which no one has a checking or savings account with a bank or credit union. As of 2019, more than 7 million households were unbanked, concentrated in Black and Hispanic populations and disproportionately higher in low-income households. Those already-economically stressed populations end up using more expensive and less secure services for their financial transactions, such as payday lenders and check cashing services. And, the pandemic has raised the awareness level of the problem because of the greater difficulties in getting stimulus payments to unbanked people. The FDIC now has started campaigns in Houston and Atlanta to get the word out about its #GetBanked initiative to target and educate unbanked households about the advantages of having a traditional banking relationship and providing information about how and where to open low-cost checking accounts. Unbanked individuals can access resources and information provided by the FDIC on its website. In addition, nonprofits, such as The Cities for Financial Empowerment Fund, also are partnering with local governments to encourage and facilitate the establishment of banking relationships for the unbanked. The CFE Fund has started its Bank On platform to support those efforts in selected cities. --- [Rayford K. \(Trip\) Adams III](#)

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## **SBA Must Address Backlog of PPP Loan Forgiveness**

### **Applications**

*"End-of-year appropriations legislation in December contained CUNA-supported forgiveness language for PPP loans under \$50,000, but there is a large backlog of forgiveness applications that have not received a response from the SBA."*

**Why this is important:** Despite an SBA interim final rule requiring it to issue a decision within 90 days after a forgiveness application has been received, many of the 183,000 pending applications have gone well past the 90-day deadline. This has severely affected small financial institutions and businesses, giving rise to the Credit Union National Association calling for adequate staffing of the SBA. --- [Joseph C. Unger](#)

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## **'Outrageous': Bank Regulator Lobbies for Trump-Era Rule, Angering Democrats**

*"Consumer watchdogs have warned that it could unleash predatory loans by enabling 'payday' lenders to evade state interest rate caps."*

**Why this is important:** Blake Paulson, the acting head of the Office of the Comptroller of the Currency ("OCC"), has advocated to maintain the so-called "True Lender" rule, which addresses a third-party company issuance of a loan in partnership with a national bank. The current regulation states that the national bank is the "true lender" and retains related legal obligations if the national bank is named as the lender in the loan agreement or funds the loan. The OCC has said it is trying to resolve legal uncertainty about which entity is considered to be making the loan and which laws apply and establish the OCC's ability to review future lending partnerships. Interestingly, the Federal Deposit Insurance Corporation did not issue a similar rule addressing when a state chartered bank under a bank partner program would be considered a "true lender." The concern among critics, including state banking regulators and state attorneys general, is that the True Lender rule undercuts state consumer protection laws by promoting "rent-a-charter" arrangements involving short-term, high-interest loans. --- [Bryce J. Hunter](#)

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## **California Bill Would Create Free Banking Services for State's Residents**

*"California lawmakers are backing a bill to create BankCal, a government program that would offer a 'zero-fee, zero-penalty' consumer banking option to the state's residents."*

**Why this is important:** California proposes to establish its own bank, presumably in competition with more traditional financial institutions and "nonbanks" (e.g., payday lenders) in the state. This responds to concerns with allegedly predatory payday lenders and lack of bank services. This also responds to years of research indicating that a large percentage of the poor, disproportionately people of color, are underbanked or have no access to banking services at all.

Many other states have trod this ground. Most closed state-sponsored banks decades ago. Why? State governments typically are bad at some things, good at others, but not good at banking. Community banks and credit unions often fill these needs. The article mentions that only North Dakota still has a state bank. Formed in 1919 to address small farm communities with no access to banking, and farmers paying high rates each year to unscrupulous lenders in Chicago and elsewhere for crop loans, The Bank of North Dakota ("BND") was formed to solve those problems. If you have seen Fargo -- movie or TV show -- you know that North Dakota still has a lot of open space and small family farms. The weather can be drastic. The people are resilient. Many small towns have no commercial banks or branches. BND limits its products and the customers it markets, continuing to fulfill a niche particularly in the rural market. It also still works with commercial financial institutions on projects that are outside BND's sweet spot. California is not North Dakota. California may create this bank to serve the poor, urban and rural. Why does it make sense to create a state-sponsored bank, rather than providing incentives for existing banks to do this? A California bank with suggested zero late charges, low loan rates, higher deposit rates, no minimum balances, etc.? Will anyone care if they write a check with insufficient funds? Will everyone want an account with zero cost and potentially higher return? Will this move traditional financial

institutions further from consumer banking? What will California do in the next recession, when it has billions in bad loans? Who pays for that? Finally, does anyone (outside of CA government) believe that California will operate an efficient or effective bank? Institutions with 100-year histories and employees trained in banking find that a challenge. Those institutions are mostly free of the politics and bloat that will plague California. Interesting article about an interesting experiment. --- [Hugh B. Wellons](#)

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## **FDIC Seeks Views on Bank Advertising**

*"Public's input sought on potential modernization of advertising and signage rules to better reflect how banks operate."*

**Why this is important:** The FDIC is seeking comments regarding a potential modernization of its sign and advertising rules. The rules, which were last updated in 2006, currently require banks to continuously display the FDIC sign where insured deposits are usually and normally received in the bank's principal place of business and at all of its branches and to use an official advertising statement, such as "Member FDIC," when advertising deposit products and services. The rules do not reflect changes in deposit-taking via physical branch, digital and mobile banking channels. The FDIC also is seeking comments on how to help consumers better distinguish FDIC-insured banks and savings associations from nonbanks, particularly across digital and mobile channels. The comment period closes May 24, 2021. --- [Brienne T. Marco](#)

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