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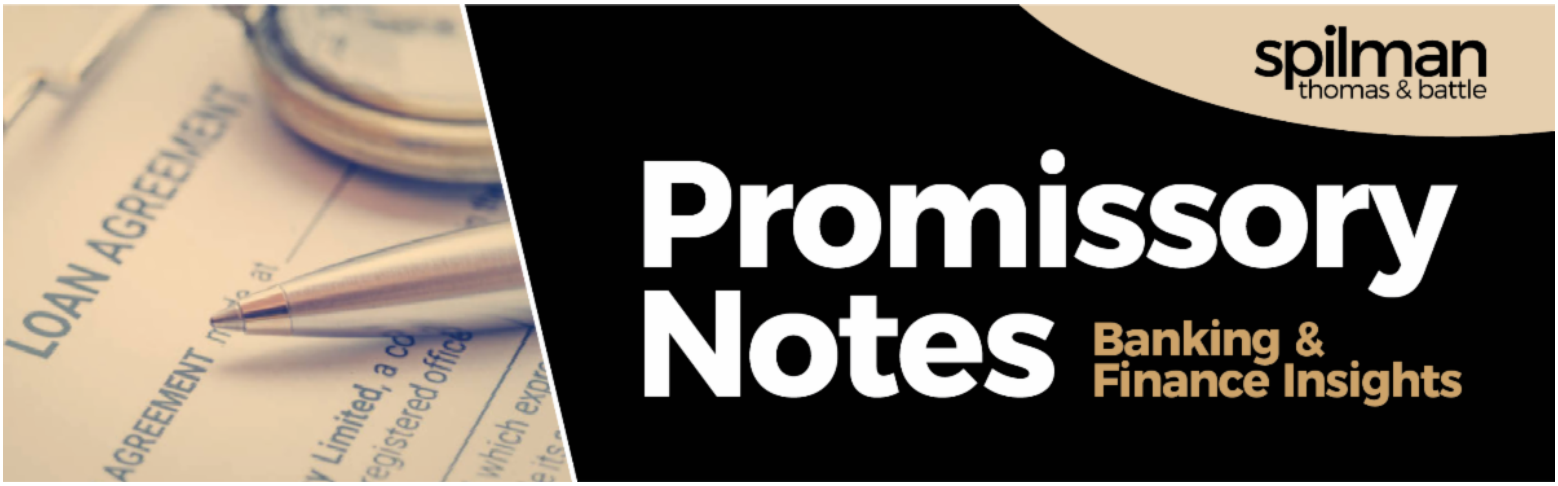

Issue 10, 2022

Welcome!

Welcome to our 10th *Promissory Notes* issue of 2022.

As we get closer to the holidays and the end of the year, are there any topics you would like us to cover? Please let us know and we will be sure to pay special attention to what you find interesting or helpful.

As always, thank you for reading.

F. B. Webster Day, Chair, Banking & Finance Practice Group, and Co-Editor, *Promissory Notes*

and

Paul G. Papadopoulos, Co-Chair, State & Local Taxation Practice Group, and Co-Editor, *Promissory Notes*

"He thought he saw a Banker's Clerk
Descending from the bus:
He looked again, and found it was
A Hippopotamus.
'If this should stay to dine,' he said,
'There won't be much for us!'" --- Lewis Carroll

Virtually All PPP Loans have been Forgiven with Limited Scrutiny

"More than two years later, the overwhelming majority of these loans have transformed into government grants, as 91% have been either fully or partially forgiven."

Why this is important: One of the most popular economic relief measures was the Paycheck Protection Program ("PPP") that authorized loans to small businesses to empower them to keep their workers employed (and paychecks funded) during the mandatory shutdowns caused by the COVID-19 pandemic. Borrowers were assured that the loans would be forgivable, as long as certain conditions were met. Approximately 11.5 million loans were issued through the PPP program, using all of the $800 billion in allocated funding. In an updated report from data released by the Small Business Administration, the program appears to have been very successful – with 91 percent of loans having completed the process to be fully (or partially) forgiven. Of the 1 million loans that remain in process, the delays stem from a variety of factors, including loans issued during the later rounds of the program, being issued through online or Fintech banking systems, rather than traditional banks, and being primarily issued to sole-proprietorships. The SBA anticipates seeing these loans also qualify for forgiveness in whole or in part in the coming months. Some critics of the PPP program argue that the initial rounds of loan issuances were rife with fraudulent qualifications. Investigations remain underway for those. These results from the SBA data certainly seem to indicate that the PPP program was administered in a prudent and efficient manner by all lenders, and responsibly received by borrowers that were in desperate need of the economic assistance. --- Brian H. Richardson

Bill would Amend FCRA to Use Current Legal Names in Consumer Reports

"In July 2022, Congresswoman Ayanna Pressley (Democrat-Massachusetts-7th District) introduced in the U.S. House of Representatives the 'Credit Reporting Accuracy After a Legal Name Change Act of 2022' (H.R. 8478)."

Why this is important: H.R. 8478 would make a single revision to the Fair Credit Reporting Act, which would prohibit a consumer credit reporting agency from showing on a consumer's credit report any prior name of the consumer after receiving from the consumer a request to use only the consumer's current legal name. The bill is co-sponsored by five Congress persons from Illinois, California, New York and Texas. It is intended to address credit reporting issues faced by transgender and gender nonconforming consumers, but could assist any consumer whose name is changed. The bill cites findings that fragmented consumer files occurring after a name change impair the consumer's access to credit, housing, and employment because the credit score decreases. In addition, the disclosure of a transgender consumer's former name can expose the consumer to unlawful discrimination based on the consumer's gender identity. As of this writing, the bill has not yet passed the House. --- Debra Lee Allen

Forbearance Rate Declines Again, but the Pressure's Coming

"In the near-term, the number of loans in forbearance will likely increase also due to the devastation caused by Hurricane Ian."

Why this is important: The Mortgage Bankers Association ("MBA") recently reported that, while servicers' forbearance rate declined marginally again in September, it expects pressure in the coming months due to the worsening economic conditions and the destruction caused by Hurricane Ian. The total number of loans in forbearance decreased three basis points from the previous month to 0.69 percent of the servicers' total portfolio volume in September. As of the end of 3rd quarter, approximately 345,000 homeowners were in forbearance plans, a decrease of 15,000 since August. From June 2020 to September 2022, MBA data found that 29.6 percent of forbearance exits resulted in a loan deferral or partial claim, while 18.3 percent of borrowers continued to pay during the forbearance period. However, about 17.3 percent were borrowers who did not make their monthly payments and did not have a loss mitigation plan.

With the COVID-19 federal health emergency still in effect, borrowers still may seek initial COVID-19 hardship forbearance as well as getting a forbearance plan due to natural disasters. --- Bryce J. Hunter

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Facing Federal PPP Fraud Investigations, Online Lender Kabbage Files for Bankruptcy

"Online lender Kabbage was one of the biggest lenders in the first year of the Paycheck Protection Program, processing more than $7 billion in loans."

Why this is important: We have previously commented in *Promissory Notes* about the ongoing investigation into Kabbage and the $7 billion in loans approved and processed through the Paycheck Protection Program ("PPP") that is being called into question. The PPP loan portfolio was spun off of the main business as part of the acquisition of certain Kabbage assets by American Express at the end of 2020, leaving KServicing as the holding entity for the portfolio. Importantly, Kabbage, Inc. is not directly affiliated with American Express. Kabbage, Inc. and five affiliates have filed for chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware, and the cases will be jointly administered under the name Kabbage, Inc. d/b/a KServicing. The bankruptcy case will allow for a centralized, and ideally more streamlined, forum to address the PPP loan investigations. Prior to the filing, the company was facing investigations in Texas, Massachusetts, and other locations nationwide. KServicing is seeking bankruptcy court approval to continue to service the PPP loans as part of its restructuring efforts. Borrowers are voicing concerns alleging that KServicing has failed to properly administer their forgiveness applications. The Meeting of Creditors in the bankruptcy case is currently scheduled for November 10, 2022. This will be an important case to monitor as additional details of the way KServicing handled the PPP loans will be fleshed out in the public bankruptcy proceedings. --- Brian H. Richardson

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Credit Unions Claim a Win in Interchange Fight

"Provisions are dropped that would have limited credit card fees for large banks and Navy Federal Credit Union."

Why this is important: Bank and credit union trade groups claimed a victory in their fight against legislation that threatened interchange revenue. The Credit Card Competition Act of 2022 would allow processors other than VISA and Mastercard to handle credit and debit card transactions, with a goal of lowering interchange fees paid by merchants. The bill's provisions recently had been attached as an amendment to the National Defense Authorization Act ("NDAA"), non-related legislation that was considered "must pass." Advocates say the legislation will create more competition in the credit card business and pressure industry fees by requiring that merchants have the choice between at least two credit networks when processing transactions.

The bill is similar in concept to rules for debit card routing which capped interchange fees on debit card transactions. Though the bill targets Visa Inc. and Mastercard Inc., several analysts have suggested that any new rules would have a greater impact on banks, which receive interchange fees that are paid by the merchant to card-issuing banks. Bank and credit union trade organizations argued against the bill claiming that it could reduce access to credit and credit card use for consumers, impose new costs on consumers and community banks, pose security risks, and end credit card rewards programs solely to bolster big-box retailers' profits. While the Senate version of the NDAA eliminated the provisions of the interchange bill, bank and credit union trade groups anticipate that lawmakers will attempt to add the bill as an amendment to other legislation later this year. --- Bryce J. Hunter

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Getting Ready for Uniform Commercial Code Reform?

"As digital assets and emerging technologies become common in commercial transactions, state commercial law must rise to the challenge . . ."

Why this is important: In October, the Uniform Law Commission approved and recommended for enactment amendments to the Uniform Commercial Code that address commercial transactions involving certain emerging technologies. The amendments focus largely on the use of virtual (non-fiat) currencies, such as Bitcoin. A class of digital assets, called "controllable electronic records" or "CERs," is defined, as well as commercial law rules regarding negotiability, the taking and perfection of a security interest in electronic money, and electronic payment rights. The amendments also address electronic chattel paper, negotiable instruments, payment systems, electronic documents of title, and sales and leases of goods.

The 2022 UCC Amendments are expected to be introduced in state legislatures in 2023 and to be widely adopted. A handful of states have already adopted earlier versions, but they are expected to update those with the final version. The changes to the UCC will be upon us in just a year. Now is the time to become familiar with the amendments. --- Debra Lee Allen

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