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Issue 9, 2021

Welcome!

Welcome to our ninth issue of *Promissory Notes* -- our e-newsletter focused on banking and finance insights.

Are we covering the topics you find interesting? Do you have questions about specific issues? Let us know and we will make sure we pay close attention to those areas of interest.

Thank you for reading.

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

and

Elizabeth A. Benedetto, Chair, Public & Project Finance Practice Group, and Co-Editor, *Promissory Notes*

"People are living longer than ever before, a phenomenon undoubtedly made necessary by the 30-year mortgage." - Doug Larson

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Top IRS Official Says Marijuana Banking Reform Would Help Feds 'Get Paid'

"IRS's Cassidy Collins talked about the 'special type of collection challenge' that the agency faces when it comes to working with cannabis businesses while the product remains federally illegal."

Why this is important: This article highlights how the ability of the IRS to collect taxes from cannabis businesses is hampered because the product remains outlawed under federal law. Without getting too far in the weeds, it explains while IRS would prefer marijuana businesses to pay taxes electronically, the industry is largely cash-based. Financial institutions fear running afoul of the federal rules governing banking of growers and sellers of cannabis. Trying to facilitate tax payments, the Service has encouraged the business owners to visit IRS assistance centers equipped to accept cash payments in excess of $50,000. It has also had IRS officials accompany cannabis firms to their banks in the hope of obtaining cashier's checks for payment of taxes. Until legislation allows banks and credit unions to deal with the industry, the IRS's hope of easy tax collection may be just a pipe dream. --- F.B. Webster Day

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U.S. Treasury Amends Proposal to Track Nearly All Bank Accounts

"More than $10,000 in transfers in a given year would flag an account for reporting to the IRS."

Why this is important: The Biden administration is amending its tax compliance proposal, first introduced in May, to limit tax evasion by the wealthy. The new approach will require financial institutions and banks to track the total amount of funds deposited into an account and the total amount withdrawn over the course of the year, and report those two numbers (rounded to the nearest 1,000) to the IRS with information that the financial institutions and banks already supply to taxpayers and the IRS. Financial accounts with money flowing in and out that totals less than $10,000 annually are not subject to any additional reporting, and deposits of wages, salary, and federal program benefits are carved out of the calculation of the threshold so that only those accruing other forms of income in ways not visible to the IRS are part of the reporting regime. --- Brienne T. Marco

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Newsom Signs Fee-Free Public Banking Law Backed by 'Fight for 15'

"The law explores the 'feasibility' of zero-penalty banking services provided by the state of California."

Why this is important: We linked to an article about this a few months ago. California has created a formal commission to study the possibility of California creating a bank for the underserved communities in the state. This state-sponsored bank would provide a fee-free, zero-penalty banking option. Community banks used to fill some of this need for underserved banking, but the federal government seems determined to make it more and more difficult to be a community bank. Their numbers are dwindling. Banking is an incredibly complicated business model. What are the odds that California will get this right? --- Hugh B. Wellons

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More than 12% of Hispanic Households Don't have a Bank Account. Here's Why that can Cost Big Bucks

"The main reason people are unbanked is the belief that minimum balances are too high for them to meet, said Karyen Chu, chief of banking research at the FDIC."

Why this is important: My niece worked for a national bank in Richmond, Virginia 15 years ago. She spoke a little Spanish and started asking to deal with the Spanish-speaking customers who came into the bank. Her Spanish improved. She learned how to deal with international money transfers, helped with small business and mortgage loans, and explained how the accounts worked. Many customers were shocked that someone at a bank would take such a personal interest in their language and culture. Her account originations grew so fast that regional management took notice and created a program to address this. This article is related to the article above on California's efforts to fill a gap. Hispanic Americans are one group that is underbanked. This is improving slowly. Some Hispanics that immigrate to the U.S. come from countries where local banks often do not embrace the poor, for whatever reasons. Those immigrants often do not use banks and do not teach their children to use banks. This article explains the problem and reports a few efforts to change this. Many banks now specifically cater to this demographic, providing Spanish-speaking tellers and officers and also creating programs to encourage bank accounts. Bank regulators also are encouraging this effort. --- Hugh B. Wellons

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Senate Could Scrap Biden's OCC Choice Saule Omarova Ahead of Vote

"Biden's pick, an outspoken and often controversial critic of the U.S. banking system, has gotten pushback from financial institutions."

Why this is important: Biden's nominee, Saule Omarova, a banking law professor and an outspoken and often controversial critic of the U.S. banking system and cryptocurrencies, has received pushback from financial institutions. As a key banking regulatory authority that operates independently from the Treasury Department, the head of the OCC is the top position overseeing some 1,200 financial institutions with roughly $14 trillion in combined assets. Senators are divided in their support of Omarova and could scrap the choice ahead of a vote. They reportedly have concerns over Omarova's statements and proposals to "end banking as we know it." Of primary concern is her proposal that central bank accounts fully replace, rather than compete with, private bank deposits tied to the issuance of general purpose central bank digital currencies (CBDCs, aka "digital dollars"). CBDCs would allow private citizens, local governments, and businesses to open transactional accounts directly with the Federal Reserve, thereby bypassing private financial institutions and moving them to the sidelines. --- Bryce J. Hunter

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DOJ, CFPB and OCC Link Up to Crack Down on Redlining

"The Justice Department will crack down on redlining with the launch of a new initiative representing the department's 'most aggressive and coordinated effort' to address the discriminatory lending practice."

Why this is important: As part of the Biden administration's prioritization of enforcement of civil rights and fair housing laws, the United States Justice Department ("DOJ") has launched a new initiative to address and punish discriminatory lending practices by financial institutions. Under the new initiative, termed by the DOJ as its Combating Redlining Initiative, the DOJ will partner with the Consumer Financial Protection Bureau and the Office of the Comptroller of the Currency to try to end redlining, a term used to describe the discriminatory practice by banks or other financial institutions of denying or avoiding providing financial services to consumers because of the racial or ethnic demographics of the neighborhood in which the consumer lives. According to United States Attorney General Merrick Garland, the DOJ "will spare no resource to ensure that federal fair lending laws are vigorously enforced and that financial institutions provide equal opportunity for every American to obtain credit." As evidence of the DOJ's focus on redlining, the DOJ took action this year against Cadence Bank N.A., an Atlanta-based bank, to address allegations of redlining and, just after announcing its new initiative, the DOJ announced it has agreed to a $5 million settlement with Trustmark Bank, a Mississippi-based bank that also is alleged to have engaged in discriminatory lending practices. In both of these actions, the DOJ claimed that the banks engaged in unlawful redlining by avoiding predominantly Black and Hispanic neighborhoods because of the race, color and national origin of the people living in those neighborhoods by concentrating their branches in majority-white neighborhoods, placing their mortgage loan officers in branches located in majority-white neighborhoods and targeting their outreach and marketing to majority-white neighborhoods. It is clear that the DOJ intends to make redlining an enforcement priority under the current administration, and financial institutions should expect redlining to be a focal point of upcoming bank examinations. Banks should be ready to show their regulators they are proactively taking measures to provide equal credit access to every neighborhood in the communities in which they operate, regardless of race, color or national origin. --- Elizabeth A. Benedetto

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FDIC Finalizes Rule to Align Real Estate Lending Standards with CBLR

"The final rule was unchanged from a proposal issued in June."

Why this is important: The FDIC's final rule will allow a consistent approach for calculating the ratio of loans in excess of the supervisory loan-to-value limits at all FDIC-supervised institutions. It aligns the standards with the community bank leverage ratio, which does not require electing institutions to calculate tier 2 capital or total capital. The rule also comports with how examiners have been directed to calculate credit concentrations using tier 1 capital plus allowances for credit losses as the denominator. This is good news for institutions under the FDIC's supervision. --- F.B. Webster Day

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Treasury Goes into Damage Control on Bank Data Reporting

"A blog post on the agency's website seeks to clarify what it calls 'pernicious' misinformation disseminated by the measure's opponents."

Why this is important: Congress and the President keep floating the possibility of changing the banking rules to require mandatory disclosure of transactions over $600 or an alternative of disclosure of accounts that transfer over $10,000 in a calendar year. This article explains why this does not horrify the U.S. Department of the Treasury, as it does most Americans and community banks. --- Hugh B. Wellons

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Responsible Attorney: Michael J. Basile, 800-967-8251