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February Second Half Developments

Overview

The Fed is making a technical change to the identity theft rules to redefine a "creditor" to exclude certain parties such as lawyers or doctors that may allow patients or clients to pay their bills over time. The Fed is also repealing its Truth is Savings rules now that the Bureau of Consumer Financial Protection has been created to cover such areas. The OCC has an extensive discussion of subordinated debt that goes into detail on the characteristics that such debt needs in order to qualify as capital.

Identity Theft Red Flags

On February 20, 2014, the Fed published its proposed rule to amend its identity theft red flags rule to change the definition of "creditor" as Congress defined it. The legislative intent of narrowing the definition of ``creditor'' in the Red Flags rule was to exclude from coverage those persons that sell a product or service for which the consumer can pay later, such as lawyers and doctors. The final rules require each financial institution and creditor that holds any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, to develop and implement an identity theft prevention program in connection with new and existing accounts. See the Fed's proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-20/html/2014-03264.htm

Repeal of Fed's Truth in Savings Regulation DD

On February 20, 2014, the Fed published its proposed rule to repeal its Regulation DD—Truth-in-Savings. Title X of the Dodd Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Fed to the CFPB. In December 2011, the CFPB published an interim final rule establishing its own Regulation DD. See the Fed's proposal to repeal its rule at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-20/html/2014-03266.htm

Failed Bank Resolution through the Single Point of Entry

On December 18, 2013, the FDIC published in the Federal Register for public comment the Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy. The FDIC has decided to extend the comment period until March 20, 2014. See the FDIC's notice at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-21/html/2014-03692.htm

Continuation of the National Emergency Occasioned by Libya

On February 24, 2014, the President published his Executive Order continuing the state of emergency that he declared in 2011 regarding Libya. While certain sanctions have been lifted, the President believes the state of emergency should continue for another year. See the President's order at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-24/html/2014-04133.htm

Boycotts

On February 24, 2014, the Treasury published its list of countries requiring cooperation with an international boycott. See the list of nine Arab countries at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-24/html/2014-03693.htm

Suspicious Activity Reports from Government Housing Agencies

On February 25, 2014, FinCEN published a final rule requiring certain housing government sponsored enterprises to report suspicious activities pursuant to the Bank Secrecy Act. The requirements to establish anti-money laundering programs and report suspicious activities are intended to help prevent fraud and other financial crimes. With this Final Rule, FinCEN establishes AML program and SAR requirements for the Federal National Mortgage Association (``Fannie Mae"), the Federal Home Loan Mortgage Corporation (``Freddie Mac"), and the Federal Home Loan Banks (``Banks" or ``FHL Banks," collectively, the ``Housing GSEs"). See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-25/html/2014-04125.htm
Proposed: http://www.gpo.gov:80/fdsys/pkg/FR-2011-11-08/html/2011-28820.htm

OFAC Licenses for Minimal Transactions with Iran

On February 27, 2014, OFAC published two licenses (these had been issued last September) one for services in connection with professional and amateur sports and one for services related to humanitarian projects, natural disasters, conservation projects and human rights and democracy building. These are limited to transfers of funds of $500,000 per year and require detailed quarterly reports to OFAC. See the licenses at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-27/html/2014-04035.htm

Credit Union Risk Based Capital

On February 27, 2014, the NCUA published a proposed rule to make various revisions to its capital rules for credit unions including new risk-based capital requirements for federally insured ``natural person'' credit unions; revise the risk-weights for many of NCUA's current asset classifications; eliminate several of NCUA's provisions, including provisions relating to regular reserve accounts, risk-mitigation credits, and alternative risk-weights; and set forth the process for NCUA to require an individual federally insured natural person credit union to hold higher levels of risk-based capital to address unique supervisory concerns raised by NCUA. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-27/html/2014-01702.htm

Capital Rules re Subordinated Debt for National Banks

On February 28, 2014, the OCC published its interim final rule making technical amendments to its regulations governing national banks to conform to Basel III. In addition, the OCC is revising its regulations covering subordinated debt. On October 11, 2013, the OCC published in the Federal Register the Basel III final rule (Basel III Capital Framework) that revised the OCC's regulatory capital rules for national banks. The OCC expects that most subordinated debt generally would qualify as tier 2 capital. A list of the criteria for an instrument to qualify as tier 2 capital can be found at 12 CFR 3.20(d): The instrument is issued and paid-in; The instrument is subordinated to depositors and general creditors; The instrument is not secured, not covered by a guarantee of the national bank or any other arrangement that legally or economically enhances the seniority of the instrument; The instrument has a minimum original maturity of at least Five years; no contractual right to accelerate payment of principal or interest; Redemption of the instrument prior to maturity or repurchase requires the prior approval of the OCC. See the interim final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-28/html/2014-04331.htm