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October Second Half Developments

Overview

OFAC has republished its Iranian Transactions rules and added some sanctions as well. The parts of the rule that are applicable to banks are largely the same and do not add much to the impact of the rules. The BCFP has added large debt collection companies to the roster of regulated entities and the number of companies under their supervision will surely grow as time goes on. Consumer Credit Reporting companies were picked up early this year. As provided for in Dodd-Frank, the FDIC has published its final rules regarding how it will enforce subsidiary or affiliate contracts of failed nonbank companies where the FDIC has been appointed receiver

Enforcement of Affiliate Contracts of a Failed Significant Financial Company

On October 16, 2012, the FDIC published its final rule which permits the Corporation, as receiver for a financial company whose failure would pose a significant risk to the financial stability of the United States (a "covered financial company"), to enforce contracts of subsidiaries or affiliates of the covered financial company despite contract clauses that purport to terminate, accelerate or provide for other remedies based on the insolvency, financial condition or receivership of the covered financial company. Any collateral would have to support the contracts or the FDIC would have to provide assurances to the contractual counterparties. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-16/html/2012-25315.htm>

Proposed Rule: <http://www.gpo.gov/fdsys/pkg/FR-2012-03-27/html/2012-7051.htm>

Regulatory Capital Flexibility Analysis

In August, the banking agencies published a NPR on regulatory capital. The agencies are proposing to revise their capital requirements to promote safe and sound banking practices, implement Basel II (as later revised), and harmonize capital requirements across charter type. The FDIC is publishing its regulatory flexibility analysis of the impact of the proposed rule on small entities. The FDIC wants comments on this aspect of the proposal. See the request at: C:\Users\WFC\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\0QPXCKBY\October Second Half Developments (11-1-12).docx

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-17/html/2012-25495.htm>

Iranian Transactions Regulations

On October 22, 2012, OFAC published its final rule regarding the Iranian Transactions and Sanctions Regulations by amending them and reissuing them in their entirety. OFAC also is adding several new general licenses to the ITSR, removing a few general licenses, and incorporating into the ITSR a general license and a statement of licensing policy that, until now, have appeared only on OFAC's Web site on the Iran sanctions page. Finally, OFAC is updating certain provisions of the ITSR and making other technical and conforming changes. See the reprinted regulations at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-22/html/2012-25770.htm>

Interpretation on Confidentiality and Indemnification in Commodities Laws

On October 25, 2012, the CFTC published its interpretation to provide guidance on the applicability of the confidentiality and indemnification provisions set forth in new section 21(d) of the Commodity Exchange Act ("CEA") added by section 728 of the Dodd-Frank Act. This Statement clarifies that the provisions of CEA section 21(d) should not operate to inhibit or prevent foreign regulatory authorities from accessing data in which they have an independent and sufficient regulatory interest, even if that data also has been reported pursuant to the CEA and Commission regulations. See the interpretation at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-25/html/2012-26298.htm>

Credit Union Low-Income Status

On October 25, 2012, the NCUA published a proposed rule to amend its low-income credit unions regulation by extending the time credit unions have to accept a low-income designation. Under the current rule, an FCU that has received notification from NCUA that it qualifies for a low-income designation has 30 days to notify NCUA that it wishes to receive the designation. Some FCUs may find it difficult to respond this quickly, so the proposed rule extends the response period to 90 days. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-25/html/2012-26129.htm>

Regulation of Larger Debt Collection Companies

On October 31, 2012, the BCFP published its final rule on defining larger participants of a market for consumer debt collection. The final rule thereby facilitates the supervision of nonbank covered persons active in that market. Dodd-Frank granted the Bureau authority to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-31/html/2012-26467.htm>

Proposed rule: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-17/html/2012-3775.htm>

FDIC Assessments for Large Banks

On October 31, 2012, the FDIC published its final rule amending its regulations by revising some of the definitions used to determine assessment rates for large and highly complex insured depository institutions. The FDIC has adopted this final rule to amend the assessment system for large and highly complex institutions by: (1) Revising the definitions of certain higher-risk assets, specifically leveraged loans, which are renamed "higher-risk C&I loans and securities," and subprime consumer loans, which are renamed "higher-risk consumer loans"; (2) clarifying when an asset must be classified as higher risk; (3) clarifying the way securitizations are identified as higher risk; and (4) further defining terms that are used in the large bank pricing formulas. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-31/html/2012-25943.htm>

Reserves Exemptions and Low Tranche for Transaction Accounts

On October 31, 2012, the Fed published notice that it is amending Regulation D to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2013. The amount of total reservable liabilities that is subject to a zero percent reserve requirement in 2013 is \$12.4 million (up from \$11.5 million in 2012). The amount of net transaction accounts at each depository institution that is subject to a three percent reserve requirement in 2013 is \$79.5 million (up from \$71.0 million in 2012). Effective Date: November 30, 2012. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-31/html/2012-26662.htm>

This advisory is a service of Connell & Andersen LLP for our clients and friends. It is not a full recitation of all developments. The descriptions are summaries of complex and detailed laws and regulations and may be incomplete or misleading. We invite any of our readers to contact us to discuss any items contained herein for further elaboration.