delaware banker

Winter 2023
Vol. 19 No. 1

The Credit Card Competition Act

The Start of a New Interchange Battle?

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Winter 2023
Vol. 19, No. 1

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Contents

View from the Chair 4
President's Report 6
What's New at the DBA 8
The Credit Card Competition Act 10
Unpacking the Trustee Relationship 14
New Commerical Finance Disclosure Laws 20
Accounting for Success 26
For Your Benefit 28
Lending Law Update 30

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View from the Chair

by
Dominic C. Canuso
EVP & Chief Financial Officer
WSFS Bank

Chair
Delaware Bankers Association

"Delaware banks have always had strong governance with a focus on being advocates for their employees, their customers and good stewards to the community at large."

It's hard to believe that we are coming up on three years since the onset of Covid-19. From the pandemic's beginning, banks led the way in supporting our Employees, Customers, Communities and providing stability in the economy. Similarly, banks have led the way with the ever-increasing focus and regulatory expectations on ESG, or Environment, Social, and Governance.

Briefly stated, ESG is the strategic approach to addressing a company or industry's impact on the environment, social impact, and corporate practices. Admittedly, this is a vast area of focus, containing a myriad of components. It's also an area where banks, and all public companies, will be assessed for their compliance - or lack thereof - by regulators. Let's take a closer look.

Environmental concerns, in current parlance, relate specifically to the potential impacts on climate change. In 2021 the White House issued an executive order on "Climate-Related Financial Risk." One of the components of this initiative is to promote a financial system resilient to climate-related risks. That same year, the Treasury Department's Financial Stability Oversight Council issued a report directing regulators to address these risks. The result of these regulations could be a significant administrative burden on banks; however, it is still up in the air (no pun intended). Currently, the focus is on larger banks, but as usual, the effects are likely to trickle down.

As we all know, banks have already made significant strides, without regulatory pressure, to decrease their carbon footprint and impact on the environment. For decades financial institutions have led the way with online banking, cutting down on the environmental impact of physical branches. And speaking of cutting down, fewer trees are being harvested as financial institutions increasingly lead the way in paperless statements and virtual documents. Even before the pandemic forced the issue, many of our institutions had long-standing work-from-home initiatives cutting the industry's carbon output even more.

Let's look at banking's record in the area of social concerns. Banks, through CRA, have invested significantly across communities increasing access to financial services for those in need and supporting economically challenged areas. Congruously, the DBA's official policy on diversity, equity, and inclusion (DEI) reflects the attitude of our members. This policy notes: "DBA members play a pivotal role in their communities as civic leaders, facilitators of economic growth, and agents of change. We must continue to take steps to: Enhance economic inclusion; Open doors of opportunity for all; Provide greater diversity within our workforces; Support sustainable growth for our communities; and, Ensure the fair treatment of all customers." These are noble words, but Delaware's banks prove their commitment to an equitable community through their support of minority and women-owned businesses, fair lending, community grants (over 11 million dollars last year), and volunteerism.

Delaware banks have always had strong governance with a focus on being advocates for their employees, their customers and good stewards to the community at large. The financial services industry of the First State is built on solid commitment and trust… and will continue to lead the way.

Dominic

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Photo (L to R) Scott E. Swenson, Alexis Turner Garris, Charles J. Durante, Gregory J. Weinig, Regina S. Schoenberg, Trisha W. Hall

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President's Report

by
Sarah A. Long
President, CEO & Treasurer
Delaware Bankers Association

"We need to preserve Delaware's elite standing for the continued economic development of our State and the financial well-being of its citizens through all stages of life. "

Every ten years, the Delaware State Legislature redraws district boundaries based on the results of the most recent population data from the U.S. Census Bureau. As a result of this redistricting process, new district boundaries are drawn, and the entire Legislature, both House and Senate, must run for election.

The First Session of the 152nd Delaware General Assembly convened on January 10th. The General Assembly is comprised of 21 Senators and 41 Representatives. Of those 62 seats, nine were filled by newly elected members marking a significant shift to a more diverse and progressive Assembly. Democrats retained their majority in the Legislature and gained a Senate seat. We congratulate the newly elected members of the General Assembly and thank them for taking on the responsibility of serving Delawareans across the State.

From its beginnings in 1895, the DBA has been the face and voice of the Delaware banking system. Unique to Delaware, our membership is extremely diverse, formed of tax-paying international, national, and state-chartered banks, savings banks, national and state non-deposit trust companies, state limited purpose trust companies, and banks with branches or operations in the state. According to the Office of the State Bank Commissioner, these entities account for over $4.2 trillion in total assets in the state. But that was certainly not always the case.

A bit of context. In 1978, a unanimous Supreme Court decision enabled banks to "export" the interest rate of the state in which the bank was located to customers nationwide. Banks in states with interest rate limits looked to move to states that were willing to end their usury limits. During the same period, Delaware was experiencing a lagging economy, a high unemployment rate, and a declining business population in the city of Wilmington.

An economic problem looking for an economic solution led to the enactment of The Financial Center Development Act, which was steered successfully through the Delaware General Assembly and signed into law by Governor DuPont in February 1981. The Act held many provisions, with the elimination of statutory interest ceilings at the core.

The FCDA changed the economic landscape of Delaware. It still resonates, with banking continuing to be a major industry in the state — even as the face of the industry has and continues to evolve. For over 40 years, Delaware has developed a positive reputation for its strong financial services industry.

In 1982, bank franchise taxes totaled $2.2 million. Bank Franchise taxes paid to the State over the next 40 years total a staggering $3.4 billion. Bank franchise taxes support the citizens of Delaware through various state programs and initiatives. In addition, the financial services industry employs over 46,000 individuals in the State. Annually, Delaware Banks contribute millions of dollars in grants and hundreds of thousands of hours of service to non-profits throughout the First State.

Why the history lesson? Of the 63 legislators currently serving, none were serving when the FCDA was signed into law. We need to preserve Delaware's elite standing for the continued economic development of our State and the financial well-being of its citizens through all stages of life. We invite you to join us as we meet with Legislators in Dover. Now more than ever, it's important to share the positive impact you make in your community and with your customers.

Sarah

Supporting visionaries.

With more than 200 attorneys representing financial services companies, Troutman Pepper has a long history of serving the banking industry by forging strong relationships with clients. We are proud to support the **Delaware Bankers Association** as trusted advisors assisting with bank regulation, consumer and real estate lending, M&A and capital raises, workouts and restructurings, and operational issues.

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What's New at the DBA

New Associate Member

Visa

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As a trusted network, Visa facilitates digital payments across more than 200 countries and territories among a global set of consumers, merchants, financial institutions, businesses, strategic partners, and government entities through innovative technologies. Our Company Purpose is to uplift everyone, everywhere by being the best way to pay and be paid. For our Community financial institutions, our purpose extends to strengthen and enable communities by fueling our local economies and actively participating in the communities we all serve.

DBA Welcomes David Mench as Director of Government Affairs

The Delaware Bankers Association is pleased to announce the appointment of David Mench as its Director of Government Affairs. David has extensive banking experience in Delaware, most recently as Business Development Executive at JPMorgan Chase between 2002 and 2021. David has also worked at MBNA, Anderson Consulting, and National Westminster. In his role, David will assume the State and Federal Government Relations activity for the Association from Thomas Collins following his retirement. "We're delighted to welcome David to the DBA staff," said Sarah Long, President of the DBA. "His extensive financial services experience will serve the Association well in Dover."

David earned his BS in Finance from the University of Delaware, and his MBA as a Chaplin Tyler Fellow for Leadership and Academic Excellence, also from the University of Delaware. He is active in the community serving on the Charter School of Wilmington Board of Directors, and Director of Development for Brandywine River Restoration Trust. David also coached and mentored in Wilmington Little League, the Catholic Youth sports leagues, and volunteered for Ronald McDonald House, Delaware Food Bank, and Junior Achievement. David lives in Wilmington with his wife Jen, and their three sons.

2022 DBA Regulatory Compliance School

Mark Wolfrey, Senior Manager - AML and Regulatory Compliance Consulting, RKL, conducts a class at Regulatory Compliance School

Dozens of Compliance Officers; Auditors; Lenders; and Attorneys attended the first session of the DBA Regulatory Compliance School, December 7th. The convenient format allowed participants to attend in person at Wilmington University Brandywine Campus or online via Zoom. Thank you to presenting sponsors: Troutman Pepper and RKL CPA.

Tom Collins Honored

The DBA held a reception to honor the career and celebrate the retirement of Tom Collins, EVP, Government Relations, Wednesday night, December 7, at the Columbus Inn in Wilmington. Tom was joined by his wife and children (picture above), as well as colleagues from his long and distinguished career. Tom joined the DBA in June, 2013 after an extensive banking career. Prior to joining the DBA, Tom served as Senior Vice President at JPMorgan Chase, and was Chief Counsel at Wilmington Trust Company from 1991-2000. As EVP, Government Relations, Tom assumed the State and Federal Government Relations activity for the Association.

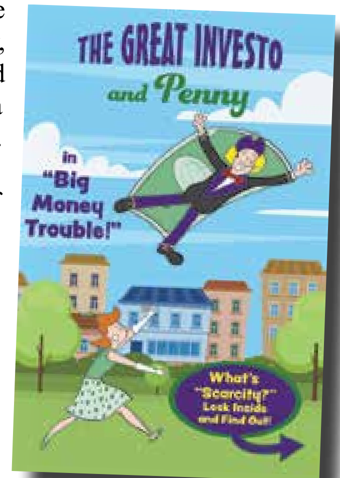
"Tom's contributions to the Delaware Bankers Association over the past nine years have been significant," said DBA President, Sarah Long. Delaware is well-known for its strong financial services industry, and Tom played a vital role in strengthening and preserving Delaware's reputation and standing in this area. We thank him for his outstanding service to the Delaware banking industry."

25th Annual Teach Children to Save Day April 24th to 28th!

2023 will mark the 25th annual Teach Children to Save Day event in Delaware. This year the event will be April 24th through the 28th. Registration for banker volunteers is now open through the DBA website: ***www.debankers.com***. Teaching is fun and easy! Complete materials and video training are provided, too!

Over the years, Delaware's bankers have taught an important lesson on saving to approximately 250,000 kids. The Delaware Financial Education Alliance (DFEA) works with the University of Delaware's Center for Economic Education and Entrepreneurship (CEEE) to administer this program in the First State. The age-appropriate curricula were developed by the CEEE to meet State economic competency standards.

This year's lesson will be on the concept of scarcity, and how developing good savings habits can help build a financially independent future. A new 20-page comic book featuring the characters of the Great Investo and Penny has been created. The book also features savings tips and activities. Every student will receive their own copy of the book. The comic book is made possible by support from DBA member banks.



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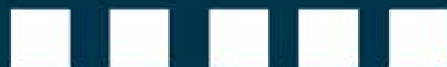

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Cover Story

The Credit Card Competition Act

A Shot in the Dark or the Start of a New Interchange Battle?

by
Glen Trudel and Thomas Tilton
Troutman Pepper

It appears that Senator Durbin has been at it again, or at least has been trying to be.

In late July, Senator Richard Durbin (D-IL) introduced the Credit Card Competition Act of 2022 (S.4674) (the "CCCA") which was co-sponsored by Senator Roger Marshall (R-KS). A companion bill was introduced in the House of Representatives in September (H.R. 8874) by former Representative (now Senator) Peter Welch (D-VT) and co-sponsored by Lance Gooden (R-TX).

Similar to the well-known "Durbin Amendment" which bears his name, Senator Durbin's CCCA is intended to increase competition and foster a reduction in interchange fees being paid by merchants, only in this case the target is interchange fees paid in connection with accepting and processing credit card transactions, rather than debit card transactions. The CCCA is, however, less ambitious in scope than the Durbin Amendment, in that there are no specific interchange rate pricing limitations or ceilings contained in the CCCA.

No Exclusive Networks

The CCCA is focused on broadening payment card network access for merchants and increasing competition in connection with processing electronic credit transactions, and in some respects is modeled on certain provisions of the Electronic Fund Transfer Act (the "EFTA")[1] pertaining to debit card transactions. For example, under the proposed CCCA, Section 1693o-2(b) of the EFTA would be amended to establish a new subsection providing that the Board of Governors of the Federal Reserve System (the "Board") would have one year from enactment to establish regulations

prohibiting certain "covered credit card issuers" or payment card networks from:

> "directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, technological specification, or otherwise, restrict[ing] the number of payment card networks on which an electronic credit transaction may be processed to—
> "(I) 1 such network;
> "(II) 2 or more such networks which are owned, controlled, or otherwise operated by—
> "(aa) affiliated persons; or
> "(bb) networks affiliated with such issuer; or
> "(III) subject to clause (ii), the 2 such networks that hold the 2 largest market shares with respect to the number of credit cards issued in the United States by licensed members of such networks (and enabled to be processed through such networks), as determined by the Board on the date on which the Board prescribes the regulations."

Whereas most of the foregoing requirement is substantially similar to the existing prohibitions on exclusive network arrangements pertaining to electronic debit transactions, the proposed CCCA adds an additional requirement that the number of payment card networks cannot be restricted to the two largest networks by market share, as determined by the Board. Presuming that such payment networks would be MasterCard and Visa, this section would seem to provide that limiting the available card payment networks to just those two networks would be impermissible under the CCCA. In other words, one of the payment processors would have to be other than Visa or Mastercard.

The CCCA provides that the Board will make a determination at least every three years after the effective date of the required regulations, as to whether the two networks it identifies under this section have changed, as compared to its most recent such determination, and that if they have changed, "clause (i)(III) shall no longer have any force or effect." It is unclear whether this is intended to remove the restriction entirely should the two identified payment networks change from the initial determination by the Board, or whether the intention was to have the restriction remain in place but the identified entities would change going forward based on the determinations by the Board.

No Routing Restrictions

Under the CCCA, credit card issuers are prohibited from imposing limitations on the routing of electronic credit transactions. Again, the CCA borrows from provisions of the current law respecting the routing of debit card transactions, then goes beyond by adding additional express prohibitions. The CCCA would require the Board to prescribe regulations not just prohibiting a covered card issuer or payment card network from inhibiting the ability of a person who accepts credit cards for payment to direct the routing of the electronic credit transactions for processing over any payment card network who can process

(Continued on p . 12)

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(continued from p. 11)

the transactions (similar to the existing statute in effect for debit card transaction routing), but also would prohibit a covered card issuer or payment card network from:

(i) requiring "any person who accepts credit cards for payments to exclusively use, for transactions associated with a particular credit card, an authentication, tokenization, or other security technology that cannot be used by all of the payment card networks that may process electronic credit transactions for that particular credit card";

(ii) inhibiting another payment card network's ability to handle or process electronic credit transactions using an authentication, tokenization[2], or other security technology for such processing; or

(iii) imposing a "penalty or disadvantage, financial or otherwise, on any person for (1) choosing to direct the routing of an electronic credit transaction over any payment card network on which the electronic credit transaction may be processed, or (2) failing to ensure that a certain number, or aggregate dollar amount, of electronic credit transactions are handled by a particular payment card network.

Applicability

The above restrictions apply only to the "covered card issuers", which are defined under the CCCA as a card issuer that, together with its affiliates, has assets in excess of one hundred billion dollars ($100,000,000,000), meaning that only the largest of the card issuers are to be affected by this statute. This group is further pared down by an exclusion contained in the CCCA providing that the new restrictions and requirements described above would not apply to a "credit card issued in a 3-party payment system model". This term refers to a credit card issued by a card issuer that is either the payment card network with respect to the credit card, or under common ownership with the payment card network with respect to the credit card. This would seem to include card issuer/networks such as Discover Financial and American Express, potentially providing such issuers a relative advantage over covered card issuers and payment networks having to contend with these restrictions.

Additionally, the Board would also be required to provide a public list of payment card networks that it determines pose a national security risk to the United States or are owned, operated, or sponsored by a foreign state entity. The CCCA prohibitions on routing restrictions do not include the payment card networks on such list.

Reaction to/Impact of the CCCA

The intention of the CCCA is to encourage price competition in the marketplace (and therefore it is posited, lower interchange rates) as merchants seek to obtain better deals for the processing of their credit card transactions, by placing restrictions on the current status quo relationships between the largest issuing banks and the payment networks. Proponents of the CCCA see this as a good way to curb what they perceive as excessive bank profits from interchange by increasing competition among the payment networks, thereby reducing interchange fees to all merchants and by extension, resulting in lower prices for goods and services overall for all consumers.

Public critics opposing this bill often take the position that the desired consumer savings promised when the Durbin Amendment was up for passage with similar restrictions (along with some actual pricing limitations) did not seem to materialize in any significant way, and conclude that this bill would simply be more of the same. Others observe that the increased costs of compliance and loss of interchange revenues to the covered card issuing banks may have unintended consequences, such as a reduction on the ability of such financial institutions to offer free or low cost banking products, or more directly, to continue to fund the often lucrative rewards programs that cardholders of such cards enjoy that are typically funded through interchange income received by the issuing banks.

It is also worth noting that passage of the CCCA may require the payment networks and merchants who may have volume incentive agreements in place to revisit and possibly have to renegotiate such agreements to reflect the new realities of the marketplace imposed by the CCCA. Passage of the CCCA could similarly affect co-branded credit card agreements in place between covered card issuers and commercial entities with material rewards programs, as the economics of these relationships may materially shift as a result of these new requirements over time, in ways that impact the agreements' provisions on revenue sharing and how the rewards programs of such co-brand programs are being supported or funded.

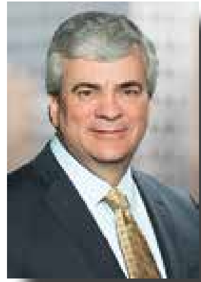
Next Steps?

With the advent of the new Congress, Senator Durbin (D-IL) must reintroduce the CCCA, and its House companion will have to find a new Democratic cosponsor with Peter Welch's (D-VT) move to the Senate. Durbin tried his best over the last two months to make the case to include the credit card interchange fee reforms in last year's must-pass National Defense Authorization Act ("NDAA") or in the annual appropriations Omnibus, but neither made it to floor consideration or into the bill. While the legislation is "bipartisan" in both chambers, it would still need to have at least ten Republicans supporting it to ensure passage in the Senate. Since this seems unlikely at the moment, Durbin will likely not find his way to a vote on the floor, nor will CCCA become law in the near-term.

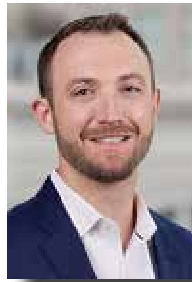
While reintroduction timing is subject to the discretion of the senator, it is more than likely Durbin will continue to seek to attach CCCA to large legislative vehicles as a rider, most of which come at the end of the year. We believe Durbin and merchant advocacy groups such as the National Retail Federation will almost assuredly continue to promote the bill. Dozens of banking and financial services trades will continue their fight alongside Visa and Mastercard, through media and on Capitol Hill to prevent CCCA from further consideration.

These advocacy campaigns may be needed on both sides since the scars from the Durbin Amendment fight in connection with the Dodd Frank Act may have faded in the face of congressional

turnover. Since the start of the 111th Congress in 2009 over 75% of the House members and over 65% of senators are new. While the affected businesses have not forgotten the fight over debit interchange, the financial services industry would be well advised to engage and inform lawmakers in the face of Senator Durbin's continued efforts.



Glen P. Trudel is a Partner in Troutman Pepper's Wilmington office. As a consumer financial services, banking, and business attorney, Glen counsels financial institutions, marketplace lenders, fintech entities, and other companies on regulatory, compliance and transactional matters. His experience includes the acquisition and divestiture of consumer and business credit card and other receivables and loan portfolios, documenting and creating marketplace lender platforms and structures, and advising state and federal financial institutions and other entities on regulatory compliance, operational and vendor outsourcing matters and agreements. Additionally, he has decades of experience in assisting clients in structuring and documenting credit card co-brand programs, new credit products and on documentation and portfolio conversion issues in Delaware. He is a member of the American Bar Association - Business Law Section and the Consumer Financial Services Committee. Glen was recently again recognized by Delaware Today as a Top Lawyer in Bank Law.



Tom Tilton serves as Director of Troutman Pepper Strategies. He has nearly a decade of policy and legislative experience through his work on and off of Capitol Hill. In his current role, Tom leads in the development of strategy, outreach, and advocacy of client initiatives before Congress and federal agencies. He has worked on a wide array of complex issues in support of public and private corporations, financial institutions and national trade associations, among others.

Notes

1- 15 U.S.C. §1693 et seq.

2- "Tokenization" generally relates to the process by which a cardholder's primary account number is replaced with a different number or "token" to protect the account number during some stages of an account transaction. When a payment network receives the token, they must have the actual account number associated with the token in order to process the transaction. On December 23, 2022, the Federal Trade Commission ordered a large payment network to end the practice of refusing to provide other payment networks with the associated account information they needed to process transactions generated by remote ecommerce debit transactions. https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-orders-end-illegal-mastercard-business-tactics-requires-it-stop-blocking-competing-debit-card

Unpacking the Trustee Relationship

A Primer for Advisors and Clients

by
Theresa L. Hughes
Individual Trustee
Pinion

The estate plan is drafted, reviewed, and signed. It has forged and strengthened relationships, assuring clients that their assets will be managed in accordance with their wishes, and everyone involved can breathe a collective sigh of relief. It's now time to engage a trustee to ensure that the trust is administered properly and carries out the client's desires.

The importance of the trustee's role is often underestimated. What does a trustee do? What are the different types of trustees? How is the selection decision made? Can a family member be a trustee? How can a trustee ameliorate long-standing family squabbles that may erupt once the client's wishes are revealed? What steps can the trustee take to avoid problems in the future? This primer plumbs the depths of this essential relationship, delving into all of its aspects. Attorneys and advisors familiar with the trustee relationship may find that it uncovers effective ways to guide their clients. This article is designed to educate clients about the vital role the trustee plays in supporting their family members for generations to come.

When is the Best Time to Name a Trustee?

Family and property issues typically arise during document drafting, so naming a trustee early in the process is ideal. But clients may not grasp the intricacies of the trustee relationship. Just as they toiled

hard and retained experienced people to guide them in creating their wealth, hiring a trustee to navigate the complexities of investment and distribution decision-making requires similar skills. The trustee becomes a trusted advisor for the client's remaining lifetime and for that of future generations, fostering clear communication and educating them to ensure the trust's smooth administration. A relationship lasting in perpetuity means building a strong bond from the outset so the trustee can learn about the family members and their dynamics, the nature of distributions, the timing of any upcoming liquidation events, and set expectations for each party.

What Are The Three Types Of Trustees, and How Do They Differ?

Trustees come in three forms: corporate, individual, and independent. Each has advantages and disadvantages that should be carefully weighed in the client's decision-making.

Corporate Trustee - A corporate trustee is usually a bank or trust company. Highly regulated and conservative in their approach, they have in-house resources such as accountants, attorneys, and investment advisors to prepare income tax returns, address legal issues, and provide asset management.

However, a corporate trustee's complex structure may appear impersonal, underscored by its rigid policies dictated by regulators. A corporate trustee usually has other lines of business (lending, credit, custody, investment management) that may affect the relationship. For example, when a corporate trustee has investment responsibility for the trust's assets, the trustee may have an incentive to sell a proprietary or affiliate investment product to a trust. This benefit to the trustee may present a conflict or possibly place the trustee in an awkward position of declining to act should sensitive family dynamics rear their head. In these situations, the corporate trustee may seek to have an Investment Direction Advisor appointed to direct the trust's investments.

Individual/Family Trustee - An individual trustee typically is not part of a larger entity (bank, trust company) and may be more accessible and have a more personal style. They also may have lower management costs and a simpler trust account set-up process.

The individual trustee knows the client and beneficiary(s) well and is aware of the family dynamics, a clear advantage if a dysfunctional family member requires special attention. Robert E. Maloney, an individual

(Continued on p . 16)

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(continued from p. 15)

trustee and founder of the New Hampshire-based fee-only planning firm, Squam Lakes Financial Advisors LLC, notes: "My client had a rocky relationship with her adult son. We inserted a personal explanation in the document to acknowledge it, justifying her decision to leave the bulk of her estate in her revocable trust to endow a scholarship at her alma mater, and granting her son a lesser share as an income beneficiary." This example illustrates why an individual trustee is often sought after for their unique skill and insight in working with challenging family members.

Sharing common values and the family's legacy, a family trustee may be preferable, as they have a trusting relationship with the beneficiary(s) and may perform the duties without charging for their services. They also may have knowledge of the family's investment preferences and have a good understanding of the best way to make distributions to the family beneficiary(s).

A family trustee could be problematic, however. If the trustee also is a beneficiary, the trust assets can be taxable in their estate. In addition, a family trustee may lack the time, experience, and skills to administer the trust, or be reluctant to refuse requests for distributions that are not in line with the trust's dispositive provisions, possibly engendering resentment from other family members. A beneficiary(s) could perceive that the family trustee is exhibiting inappropriate financial behavior or has divided loyalties. Court cases are rife with examples of family members whose greed, pride, or resentment depleted trust assets. For these reasons, a family member serving as trustee should not be allowed to serve alone. An individual trustee serving alongside them can monitor the trust to guard against potential damage from a family trustee who may not be adequately prepared to administer the trust or fails to act in the best interest(s) of the beneficiary(s).

Independent Trustee - An independent trustee can be an objective decision-maker. Picture a corporate trustee and individual trustee at opposite ends of the scale, with the independent trustee at its midpoint. Their only business is trust administration, so they are free from conflicts surfacing from other business lines. Regulated and possessing technical expertise, an independent trustee may not have a beneficial interest in the trust, barring many entities from serving. The independent trustee is experienced, yet personal, and is client centered, functioning as a family partner. Their high standards of care emanate from doing one thing well: serving as trustee.

Beneficiaries who value continuity may prefer an independent trustee over a corporate trustee. Kevin Quinn, President of the nationwide Independent Trustee Alliance, observes, "Key people may leave the company or be promoted to new roles, forcing beneficiaries to work with a different team. In contrast, when a beneficiary needs to contact an independent trustee, they will be speaking to the same person now and in the future. Also, an independent trustee can easily terminate advisors if they are not performing, because the trustee, rather than the beneficiary, is their client, and can make decisions without deferring to a trust review board. I was brought in to help with a trust after the beneficiaries succeeded in replacing a corporate trustee whose relationship with the beneficiaries deteriorated because of a complicated living situation that the trustee didn't want to address. My understanding and appreciation of the family circumstances means I can quickly make decisions in line with the terms of the trust while displaying empathy toward the family members."

Independent trustees, however, do not provide investment advice, so a trust investment direction advisor or delegation of trust investment powers by the trustee to a professional investment advisor may be desirable. If they lack in-house tax and legal resources, they may assess an extra layer of fees to consult with advisors who provide these services.

What Does The Trustee Do, and What Risks Could They Incur?

Think of a trustee as a quarterback who calls the plays for the team. Specifically, the trustee is obligated to adhere to the terms of the trust and to apply prudence and reasonableness in making decisions. The trustee provides transparency for all information and accounting. Most important, the trustee maintains objectivity, acting so as not to prefer one beneficiary over another.

However, a trustee could be subjected to risks in the form of liability claims. These claims may stem from distributing assets in favor of one beneficiary over another, failing to protect assets, mismanagement, making poor investment decisions, and improper accounting.

Occasionally, trustees are required to participate in amending or changing a trust. The Trust Protector often has the power to authorize changes to a trust. The trustee may be directed by the Trust Protector to amend a trust for administrative purposes, decant a trust to alter the trust due to changes in tax law or other circumstances, merge two similar trusts, or modify the trust's terms. An example of a reason to decant a trust is to change the place of administration to a legal jurisdiction that is more favorable to the trust.

Trustees can protect themselves through indemnity agreements, liability insurance, and by retaining the types of advisors mentioned above.

Who's who in the trust document, and what role do they play?

The parties of the trust document are the grantor, beneficiary(s), trustee, protector, designated representative, and advisors.

- **Grantor -** The grantor, sometimes called the Settlor or Trustor, is the creator of the trust, and funds it with their assets. The grantor then transfers their wealth for the benefit of heirs or for estate tax purposes.

- **Beneficiary(s) -** The beneficiary(s) is/are the individual(s) for whom the trust is created.

- **Trustee -** The trustee administers the provisions of the trust and manages its assets. They have a fiduciary duty to safeguard assets, act in the best interests of the beneficiary(s), and provide accounting and investment management.

- **Protector -** The protector monitors the trustee in a directed trust and may remove a trustee if they act dishonestly. They also can approve changes in the language of the trust document, terminate a trust, adjust distributions to the beneficiary(s), and add or remove beneficiary(s). The protector's authority is governed by the language in the trust document.

- **Designated Representative -** In states that allow a trust to be "quiet" or "silent," the designated representative, appointed by the grantor, is authorized to act on behalf of a beneficiary(s) who may not have rights to certain information in a trust.

- **Advisors -** The advisors are selected by either the grantor or trustee to perform certain trust management-specific duties. A professional trust advisor may seek the Certified Trust and Fiduciary Advisor professional designation. Offered by the American Bankers Association, the certification demonstrates prowess in general investment knowledge, financial planning, economics, taxation, and trust and fiduciary responsibilities, and also mandates work experience and continuing education requirements. Advisors also may perform accounting and legal services.

What Steps Does The Trustee Take To Administer The Trust?

The trustee must review all documents to understand not only the provisions of the trust but be familiar with the

(continued on p. 18)

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Trusts

(continued from p. 17)

rules that guide it, the powers they have (and those they are not authorized to exert), and their fiduciary responsibility to act in the best interest of the client and beneficiary(s). The trustee assembles assets, pays obligations, and makes distributions, employing a three-pronged approach: collecting information, gathering assets, and administration.

Collecting Information

Being organized ensures a smooth record-keeping process. The trustee gathers the trust assets and ensures that they are secured and accounted for in the trust's records. The trustee must provide proof of their authority to act on behalf of the trust, and may use an affidavit of trust, rather than the actual trust document, to substantiate the existence and terms of the trust without disclosing it in its entirety. Finally, the trustee obtains information for each beneficiary: photo identification, date of birth, Social Security number, address, telephone number, and email address.

Gathering Assets

Assets can include securities accounts, personal property, collectibles such as art, real property, operating businesses, and other assets held in a legal entity such as a limited partnership or a limited liability company.

Administration

The trustee will establish and maintain a separate bank account, with its own tax identification number, to facilitate the administration process. For record- keeping purposes, trustees should keep detailed records of the date and time spent administering the trust.

What Administration Responsibilities Does the Trustee Have?

Trusts often stipulate ongoing provisions for asset management and income distributions, so the trustee's responsibilities continue long after the initial onboarding is completed. The grantor may designate assets to fund education, for example, or to purchase homes for a beneficiary(s) in the future. The grantor also may specify ongoing philanthropic gifts. The trustee oversees and manages the trust to comply with the grantor's intentions for as long as it exists.

Beyond providing oversight and management, the trustee is a liaison between the beneficiary(s) and other professionals such as an accountant, attorney, and investment manager. The trustee is a sounding board, answering questions and helping resolve family conflicts, a function that the individual trustee, whose personal service and understanding of delicate family relationships may

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best equip them to perform. Finally, the trustee is a solid resource, committed to fostering ongoing communication and education for the beneficiaries on issues that may arise.

Summary/Conclusion

The grantor's wishes, and the needs of their beneficiary(s), influence their decision on whom to name as trustee. In a perfect world, the estate plan ties everything up in a neat and tidy package. But we don't live in a perfect world, and no trustee can undo years of family dysfunction.

Offering a personal touch and insight into family dynamics that a corporate trustee might not, the independent trustee also provides professional experience and oversight to a trust relationship that a family trustee may not have. They are able to provide guidance and resources to the other advisors, helping to build and maintain family wealth for generations to come.

Theresa L. Hughes is a trust professional with over 37 years of experience in the trust industry, the last five years as an Individual Delaware Trustee. Theresa is highly knowledgeable about trust administration in general and Delaware trusts in particular. She is currently accepting appointments as a professional individual Delaware directed trustee. She can be reached via email at trust@piniondelaware.com. For more information about Delaware Individual Trustee services go to: www.piniondelaware.com. You can view Theresa's LinkedIn profile at: www.linkedin.com/in/thughes-indivttee

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New Commercial Finance Disclosure Laws

More States Mandate TILA-Like Commercial Financing Disclosures for Small Business

by
**Robert W. Cardwell, Esq.
Managing Principal
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The California Commercial Financing Disclosure Law (CFDL) became effective on December 9, 2022, four years after Governor Jerry Brown signed the CDFL legislation into law in September 2018. After numerous revisions and comment periods, the Department of Financial Protection and Innovation (DFPI) had finalized rules on June 9, 2022, triggering a six-month implementation period.

Announcing the new rules, DFPI Commissioner Clothide Hewlett said: "These first-in-the-nation protections for small business borrowers are a major milestone in financial services oversight in California and a model for other states to follow."

(continued on p. 22)

(continued from p. 20)

To date, three other states have followed California's lead and enacted similar, consumer-like laws for commercial lending – New York (no firm effective date yet set), Utah (effective January 1, 2023) and Virginia (effective July 1, 2022). A handful of states, including Connecticut, Maryland, Missouri, North Carolina and New Jersey, are considering their own versions of commercial loan disclosure laws for small business borrowers.

What follows is a brief overview of the California CFDL and some of its associated complexities, along with a look at the key similarities and differences in the laws of New York, Utah, and Virginia.

California CFDL

The California CFDL applies to non-depository financial institutions that provide commercial financing to recipients whose businesses are located in or principally directed from California. Exempted from the law are federal- and state-chartered banks, credit unions and trust companies; also exempted are financial technology firms providing technology or support services to a depository institution's commercial financing program.

However, two conditions must exist for this fintech exemption to apply. The fintech must have no interest in or agreement to acquire an interest in the commercial financing, and the program must not be branded with the fintech's trademark. Note that this narrow exemption for fintechs may not apply to the type of partnerships many fintechs forge with banks to facilitate financing. It is therefore incumbent upon funding banks to ensure that each non-exempt fintech partner has a compliant program in place to provide the new California disclosures in a timely, accurate and complete manner.

The types of commercial financings covered by the California CDFL include closed- and open-end loans, general factoring, sales-based transactions (e.g. merchant cash advances), lease financing, and asset-based transactions equal to or less than $500,000. A catch-all provision applies to all other commercial financing transactions not falling with the aforementioned classifications.

The California CFDL requires lenders to disclose specific information about the major terms of commercial financing when a detailed offer of credit is made and before loan documents are presented to the borrower to enable comparison with offers from other lenders. It has exacting formatting requirements as to font size, column width, and the representation of numbers and percentages.

The following information must be disclosed in columnar format: (i) total amount of financing and the disbursement amount; (ii) finance charge; (iii) annual percentage rate (APR); (iv) term; and (v) total repayment amount; and (vi) prepayment penalties.

Calculations of APR and finance charge are similar to but not exactly like the federal Truth in Lending Act (TILA) and Regulation Z. An unresolved question exists as to whether lenders can rely on the Official Staff Commentary to Regulation Z, which provides valuable information pertaining to the calculation of finance charge.

New York CFDL

New York's CFDL was signed by Governor Andrew Cuomo on December 23, 2020. On September 14, 2022, the New York Department of Financial Services (NYDFS) issued a notice of proposed rulemaking to mandate that consumer-like disclosures be provided by commercial finance companies to business borrowers when a specific offer of financing is offered for certain commercial transactions of $2.5 million or less – a significantly higher maximum than California's $500,000.

Banks, credit unions and trust companies are exempt, but neither New York nor California exempt bank subsidiaries. Unlike California, if the lender operates out of New York, the disclosure requirements apply to all transaction nationwide regardless of where the business borrower is headquartered or principally managed.

However, an exception applies when the borrower's state also requires commercial loan disclosures, which as of now is California, Utah, and for sales-based financing transactions Virginia. In that case, the disclosures required by the borrower's home state would apply. The types of commercial financings specified parallel California's rule including the broad, catch-all category of "other." The comment period on the proposed rules closed at the end of October 2022, with the earliest possible effective date being sometime in May 2023.

The specific terms that must be disclosed under New York's CFDL parallel California but include three additional items: 1) periodic payment amounts; 2) a description of potential fees that can be avoided (e.g., late payment fees, returned payment fees, etc.); and 3) a description of collateral requirements or security interest.

Utah CFRD Act

Utah followed California and New York with its Commercial Financing Registration and Disclosure Act, which was signed into law by Governor Spencer Cox on March 23, 2022. As the law's title proclaims, there is a registration requirement for non-exempt commercial lenders, which is a significant difference from California and New York, which have no registration or licensing requirement.

As of January 1, 2023, commercial financing providers in Utah or providers outside of Utah that offer commercial financing to Utah residents must register annually with the Utah Department of Financial Institutions (DFI) and be registered with the Nationwide Multistate Licensing System and Registry (NMLS). Presumably, the Utah DFI will utilize the NMLS to administer the license application and renewal process.

Utah exempts a wider range of entities and transactions than California and New York – these include subsidiaries of banks, providers of five or fewer commercial financings in any calendar year, Utah-licensed money transmitters, real-estate secured transactions, financings of $50,000 or more to motor vehicle dealers or leasing companies, and commercial transactions over $1 million. However, the Utah law applies specifically to fintechs that make more than five commercial financing transactions in the state during any calendar year under a written agreement with a depository institution via an online platform.

Interestingly, Utah does not yet require APR or similar rate disclosure but does mandate the disclosure of (i) total funds provided; (ii) total funds disbursed (if less than funds provided); (ii) total amount to be paid to provider; (iv) total

(continued on p. 24)

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(continued from p. 23)

dollar cost of transaction; (v) payment manner, amount and frequency; (vi) prepayment penalties; and (vii) funds paid to brokers.

Virginia R&D Act

Virginia was the first state to require registration of providers and brokers of sales-based commercial financing when Governor Glenn Younkin signed the state's registration and disclosure bill into law on April 11, 2022. Mandatory registration with the State Corporation Commission began on November 1, 2022. The disclosure requirements apply to sales-based transactions entered into after July 1, 2022.

In this context, "sales-based financing" means a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient. Sales-based financing also includes a true-up mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

Virginia has a similar di minimis exemption for providers and brokers who enter into five or fewer sales-based financing transaction within a 12-month period or individual sales-based financing transactions of more than $500,000.

Nine specific items must be disclosed: (i) total amount of financing and the disbursement amount if different from the financing amount; (ii) financing charge; (iii) total repayment amount (disbursement amount plus finance change); (iv) estimated number of payments (based on projected sales volume, to equal the total repayment amount); (v) payment amounts (based on projected sales volume); (vi) description of all other potential fees and charges not included in the finance charge; (vii) prepayment information; (viii) description of collateral requirements or security interests; and (ix) declaration of whether provider will pay any compensation directly to broker and the amount of compensation. Additionally, if the recipient elects to prepay or refinance the sales-based financing, updated disclosures are required.

There's little doubt that more and more states will hop aboard the bandwagon and require commercial financing disclosures for small businesses and/or registration by

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the non-bank finance companies and fintechs that provide the financing. Even now, there is sufficient divergence of the laws among the four states discussed above to require covered financial institutions to carefully establish state-specific policies, procedures, processes and controls to ensure compliance. Effectively managing these regulatory changes, including adjustments to third-party and vendor oversight programs, will help institutions avoid unexpected, unnecessary and unwanted consequences.

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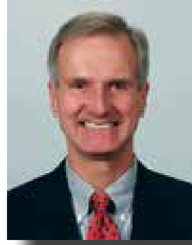

As a managing principal at Capco with over 40 years of finance, risk and compliance experience, Bob Cardwell advises financial institutions on a wide variety of regulatory matters and best practices for risk management. Since the CFPB's inception and its singular focus on the risk of harm to consumers and small businesses, Bob has guided many institutions in strengthening and enhancing their approach to fair and responsible banking with a strong focus on complaint management, ethics, UDAAP, marketing practices, overdraft programs and add-on products. Bob holds a B.S degree in accounting from Lehigh University and a J.D degree from Pepperdine University School of Law, and is a licensed attorney in California and Pennsylvania.

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Get to Know the New Clean Vehicle Credits

Amy Gordon, CPA
Supervisor – Tax & Small Business
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"While there may be greater incentive to purchase electric vehicles, the Inflation Reduction Act also brings new requirements and limitations."

As a result of the Inflation Reduction Act, there were several favorable changes to the tax credits for electric vehicles, with most changes effective January 1, 2023. The new legislation enhances the prior electric vehicle credit in addition to supporting domestic production. While there may be greater incentive to purchase electric vehicles, the Inflation Reduction Act also brings new requirements and limitations.

The Clean Vehicle Credit, previously known as the New Qualified Plug-In Electric Drive Vehicle Credit, has expanded under the new law. There are two separate credits, a $3,750 credit for the critical minerals requirement and a $3,750 credit for the battery component. Each of these credits require a minimum percentage of minerals or components used to make the battery to be extracted or processed in the U.S. or countries with which the U.S. has a free trade agreement, or components which are recycled in North America. The effective date for the battery and mineral test will be the date when the IRS issues guidance which is expected in 2023. In addition, the final assembly of the vehicle needs to be in North America which has its own set of specific criteria. This requirement was effective as of August 16, 2022.

The seller of the electric vehicles needs to furnish all required information to the buyer and the IRS. The required information includes the following: name and identification number of the taxpayer, VIN number, battery capacity, verification of original use of the vehicle, and maximum credit allowable to the taxpayer.

The credit is not allowed when modified adjusted gross income levels in the year of purchase or the preceding year (whichever is less) are above $300,000 for taxpayers filing jointly or as a surviving spouse, $225,000 for head of household, or $150,000 for single taxpayers. There are also limits on the price of the vehicles. The credit is only available for a van, SUV, and pickup with MSRP $80,000 or less or any other vehicle with MSRP $55,000 or less. The clean vehicle credit will no longer be allowed for any vehicle placed in service after December 31, 2032.

The new legislation also offers a credit for previously owned electric vehicles. A qualified buyer who acquires and places in service a previously owned clean vehicle beginning in 2023 is allowed an income tax credit equal to the lesser of $4,000 or 30% of the vehicle's sale price. For a previously owned clean vehicle to qualify, the model year needs to be at least two years earlier than the calendar year in which the taxpayer acquires it. In addition, the price of the vehicle must be $25,000 or less and be the very first transfer from the original buyer. In determining who is a qualified buyer, they cannot be an individual claimed as a dependent nor could have been claimed as a dependent. Moreover, the credit can only be taken once in a three-year period. The income thresholds are lower for this credit as compared to the purchase of a new clean vehicle. The credit is eliminated if the taxpayer's modified adjusted gross income for the year of purchase or the preceding year exceeds $150,000 for married filing jointly or as a surviving spouse, $112,500 for head of household, or $75,000 for single filers. Again, the credit expires after December 31, 2032.

Furthermore, both the new and previously owned credits allow the buyer of the new vehicle to transfer the credit to the seller, which will result in a lower purchase price to the buyer. The seller will need to disclose the amount of the advanced credit to the IRS. This is effective for vehicles placed into service beginning January 1, 2024. If you're thinking about taking advantage of this advanced credit, it's important to be aware of the income thresholds. If your modified adjusted gross income falls above the thresholds, the credit will need to be repaid by the buyer.

The expansion of the clean vehicle credit is wonderful news for taxpayers looking to go green; however, it remains quite complex so reach out to a tax advisor for further clarification before making an electric vehicle purchase.

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"Employers can replace SIMPLE IRA with SIMPLE 401(k) or other 401(k) with required employer contributions, during the plan year."

On December 29, 2022, Congress passed the Consolidated Appropriations Act of 2023, an omnibus bill that contains a large section covering retirement plans commonly referred to as SECURE Act 2.0. This portion of the bill is seen as building upon or enhancing the Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act). We've broken down and summarized a few key provisions as follows and is not intended to be exhaustive:

Expanding Coverage and Increasing Retirement Savings

• ***Expanding Automatic Enrollment in Retirement Plans*** – Requires new 401(k) and 403(b) plans to include EACA at 3% auto deferral with annual 1% auto increase to 10%. Effective plan years after December 31, 2024.

• ***Small Employer Pension Plan Startup Credit –*** Increases credit for small employers from 50% of startup costs to 100% for employers with up to 50 employees. Effective taxable years after December 31, 2022.

• ***403(b) MEPs and PEPs –*** 403(b) plans may now participate in multiple employer plans or pooled employer plans. Effective plan years after December 31, 2022.

• ***Required Minimum Distributions (RMD)*** – Age moved to 73 starting on January 1, 2023, and to 75 starting on January 1, 2033. Effective calendar years after December 31, 2023.

•***Increasing Catch Up Limits Within Plans*** – The COLA adjusted $5,000 catch up limit ($7,500 for 2023) will be raised to COLA adjusted $10,000 for participants who have attained age 60, 61, 62, and 63 but not age 65, before the close of the taxable year. Effective for taxable years after December 31, 2024.

• ***Matching Contributions for Student Loan Repayments –*** Employers can make matching contributions into their qualified retirement plans for employee repayments made on qualified student loans. Effective plan years after December 31, 2023.

• ***SIMPLE Plans –*** Employer may make additional contributions to employees that cannot exceed lesser of 10% of compensation or $5,000 (indexed). Effective for taxable years after December 31, 2023. Catch-up contribution at age 50 increased by 10% for employers with no more than 25 employees. Employers with between 26-100 employees can provide higher deferral limits but only if they provide a 4% match or a 3% nonelective contribution. Effective taxable years after December 31, 2023.

• ***Starter Plans –*** Employers that do not offer a retirement plan can offer starter 401(k) or safe harbor 403(b). Effective plan years after December 31, 2023.

• ***Long-Term Part-Time Eligibility Accelerated –*** Changes eligibility from 3 consecutive years of 500 hours worked to two consecutive years. Also extends the long-term part-time coverage rules to 403(b) plans that are subject to ERISA. Effective plan years after December 2024.

• ***529 Rollover to Roth –*** Tax- and penalty-free rollover of unused dollars (up to $35,000) from 529 accounts to Roth IRA over lifetime of beneficiaries. Effective for distributions after December 31. 2023.

• ***Emergency Savings Accounts –*** Employers may offer their non-HCEs emergency savings accounts that link to their retirement plans. No fees or penalties can be charged to the first four distributions from the account. Portable at separation from service or can be rolled into Roth plan or IRA.

Preservation of Income

• ***Qualifying Longevity Annuity Contracts (QLACs) Made More Attractive –*** QLACs are designed to begin payment towards the end of individuals' life expectancy. This helps to safeguard against running out of income later in life. The 25% limit would be removed and spouses would be allowed to share QLACs as joint and survivor annuities. Effective for contracts purchased/received on date of enactment of the Act.

• ***ETFs –*** Makes access to exchange traded funds broader on variable annuity platforms.

• ***Partial Annuitization*** – Account owners may now elect to aggregate distributions from retirement accounts and annuities for purposes of determining RMDs. Effective with enactment of Act.

Simplification and Clarification of Retirement Plan Rules

• ***Reduction in Excise Taxes*** – Excises taxes imposed for failure to take RMDs have been reduced from 50% to 25% and can be further reduced to 10% if corrected during a provided correction window. Effective for taxable years after enactment of Act.

• ***Hardship Withdrawals*** – Administrators may rely on employee certifications of hardship requirements. Effective plan years after enactment of Act. 403(b) hardship rules changed to mirror 401(k) rules. Effective plan years after December 31, 2023.

• ***Terminal Illness Distributions*** – Penalty free distributions for terminally ill individuals. Effective for distributions after enactment of Act.

• ***SIMPLE to Safe Harbor*** – Employers can replace SIMPLE IRA with SIMPLE 401(k) or other 401(k) with required employer contributions, during the plan year. Effective plan years after December 31, 2023.

• ***Long Term Care Bought with Retirement Dollars*** – Plans can make penalty free distributions up to $2,500 annually for payment of premiums for high quality coverage long term care insurance contracts. Effective 3 years after enactment of Act.

• ***Catch Up Contributions Treated as Roth*** – All catch-up contributions will be subject to Roth treatment (unless employee has compensation equal to or less than $145,000 indexed). Effective taxable years after December 31, 2023.

• ***Treatment of Matching or Contributions as Roth*** – Provides participants with the option of matching contributions on deferrals or student loan repayments to be treated as Roth contributions (including taxability). Effective on enactment of Act.

This article is not intended to be exhaustive. The summarized information comes directly from our Fiduciary Library through our RPAG partnership. Please join us for our webinar on this subject matter coming in March. If you would like to be added to our email list, get more information or sign up for our webinars, please contact our WBG Team.

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Lending Law Update

Thinking About Mortgage Loan Title Policy Endorsements

Brent C. Shaffer
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"The primary thing to think about with endorsements is that the nature of a title insurance policy is an indemnity, not a guaranty."

Banks require loan title insurance policies for nearly all credit facilities secured by real estate mortgages. These policies insure the validity and priority of the lien of the mortgage, subject to exceptions and exclusions that are either standard or are specific to the title of the mortgaged property. As with other types of insurance policies, coverage can be enhanced by endorsements if the additional premium for the endorsement is paid and the title underwriter approves their issuance.

In Delaware, permitted endorsement forms and their premiums are generated by the Delaware Title Insurance Rating Bureau and approved by the Delaware Department of Insurance. The approved forms are updated and revised from time to time; most recently, there are wording changes and seven new available endorsements effective April 1, 2023. Nearly 60 loan policy endorsements are approved; space doesn't permit discussing particular endorsements, but there are some general concepts to keep in mind that may be helpful.

The primary thing to think about with endorsements is that the nature of a title insurance policy is an indemnity, not a guaranty. Even if the defect covered by the endorsement occurs, the title insurer will not pay the bank unless the bank suffers an actual loss due to such defect, meaning the loan must not have been fully repaid, after the bank has exercised its legal remedies.

The appropriate endorsements for each mortgage loan depend on the particular circumstances of the real estate, the loan, and the state of title. Some endorsements provide very helpful and nearly essential coverage; however, the cost of the endorsements should be understood. The approved premiums are not negotiable, and vary from relatively small ones (for example, $50 for the often-issued variable rate interest, environmental protection lien, future advance-priority, direct access and entry, and single tax parcel endorsements; and $135 for the indirect access and entry and multiple tax parcel endorsements), to those charged as percentages of the entire title premium (such as the 10% surcharge for the popular restrictions, encroachments, minerals endorsement if the property is not a one-to-four family dwelling; and the 25% surcharge for the encroachments, boundaries and easements-described improvements-land under development endorsement). Interest rate swap endorsements (basically insuring that the mortgage secures additional interest for swap repayment/swap breakage fees) come in four varieties, but all have a 10% surcharge if issued at the same time as the policy and a pricey 20% surcharge if issued later after the loan policy. Zoning endorsements have an even higher 25% surcharge.

Because proper underwriting is needed for the agent to issue an endorsement (for example, the title underwriter may require a zoning certificate from the applicable municipality, or a zoning consultant report to issue a zoning endorsement), the bank already may have comfort on the matter without the endorsement. Banks and their counsel should keep this in mind and consider the relative cost and coverage of each endorsement.

“The DCF is really great at facilitating contributions from the fund quickly, and it’s nice being able to get the funds to charities that need it on fairly short notice.”

– Dr. Charles Robertson, Charles & Patricia Robertson Charitable Fund

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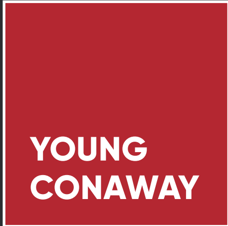

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