
Legal Updates & News

Legal Updates

Beltway Report

March 2007

Sharpen Pencils and Sit Up Straight

Congress has been busier than Anna Nicole Smith's probate attorney. It has decided to make college more affordable and wants lenders to contribute. As part of its "100 hours" agenda, the House passed the College Student Relief bill. It would reduce interest on need-based subsidized Stafford loans from 6.8% to 3.4% over five years and set a new rate in 2012. To offset the estimated \$6 billion cost of the rate reduction, the bill will increase fees paid by loan providers. Senator Kennedy is spearheading similar legislation in the Senate.

For further information, contact Mark Gillett at mgillett@mofo.com.

Pushing Out the "Push-Out" Rules

Last December, the SEC and the Federal Reserve Board agreed to propose new rules implementing the "push-out" provisions of the Gramm-Leach-Bliley Act ("GLBA"). Under the jointly proposed Regulation R, bank employees would be permitted to receive incentive fees for referring bank customers to bank brokers, subject to certain requirements. The long-delayed rules would implement the statutory exceptions that allow a bank to continue to conduct securities transactions for its customers as part of its trust and fiduciary, custodial, and deposit "sweep" functions, and to refer customers to a securities broker-dealer pursuant to a networking arrangement with the broker-dealer. The new Regulation R would allow larger payments for referring institutional or high-net-worth business. Push back your "push out" comments by March 26, 2007.

For more information, contact Barbara Mendelson at bmendelson@mofo.com.

Cash Cows

The House adopted legislation aimed at helping banks reduce the amount of cash transaction reports sought by financial law enforcement authorities as part of their anti-money-laundering efforts. The bill creates a mechanism that would exempt customers that routinely deal with large volumes of cash and are well-known customers of financial institutions. The bill would also require the Treasury Department to adopt a regulation exempting transactions between banks and customers that have maintained a deposit account for at least 12 months. The depository institution would have to file a one-time notice with the U.S. Treasury Department for each qualified customer.

For further information, contact Henry Fields at hfields@mofo.com.

Gift Card Guidance

Personally, we would have chosen Miss Manners to offer guidance on gift cards, but the OTS elbowed her aside. In early March, the OTS issued gift card guidance intended to help savings associations ensure adequate account administration and sound consumer disclosures. Like the OCC's guidance applicable to banks, reported in our Fall 2006 issue, the OTS expects savings associations to provide consumers with information on the terms, fees, and basic features of their

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gift cards in a readily available format. They also should avoid using promotional materials that could mislead consumers about the terms, conditions or limitations of gift card programs.

For further information, contact Rick Fischer at rfischer@mofa.com.

First Bank of Wal-Mart . . . Not

The Wal-Mart rhumba continues. House Financial Services Committee Chairman Barney Frank introduced a bill with bipartisan sponsorship that would bar commercial companies from being the parent of an industrial loan company ("ILC"). The bill prohibits a company from acquiring or establishing an ILC if 15% of the annual gross revenues are derived from activities that are not financial or incidental to a financial activity. The FDIC responded the next day by extending for one year its existing moratorium on applications for deposit insurance and change in control notices for ILCs owned by commercial companies. However, the FDIC's moratorium does not apply to ILCs owned by financial companies.

Expressing "public policy concerns" with the risks presented by commercial company ownership of ILCs, the FDIC also proposed a rule for public comment that would require a financial parent of an ILC to agree to maintain the capital of the ILC at specified minimum levels and to permit the FDIC to examine or obtain reports from the parent company and its subsidiaries in order to safeguard the continued safety and soundness of the institution.

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