

Legislative Highlights

Consumer Financial Products Agency Bill Introduced, Debated; Industry Opposed

Rep. Barney Frank (D-Mass.) introduced H.R. 3126 on July 8. Similar bills have been introduced by Sen. Dick Durbin (D-Ill.) and Rep. William Delahunt (D-Mass.) (S. 566 and H.R. 1705). The administration-supported bills are designed to create a new federal agency to prescribe rules and issue orders to protect consumers from certain financial products and practices deemed unfair, deceptive or otherwise harmful. Separate hearings on the issue were held on July 14 by both the Senate Banking Committee and Senate Commerce Committee. Banking Chairman Chris Dodd (D-Conn.) and Ranking Member Richard Shelby (R-Ala.) differ sharply on whether a new agency is needed. (See the Legislative Update on page 10 in this issue for more information and background on the legislation).

Payment Card Interchange Fee Bills Proposed

Several bills have been introduced to limit and reform interchange fee practices in the processing of credit and debit cards. An interchange fee is paid by the merchant's bank to a cardholder's bank after the cardholder purchases goods or services with a payment card. The fee percentage is set by the credit card companies, generally Visa or MasterCard, and averages 1.75 percent of the total purchase. In 2008, interchange fees from these two companies totaled approximately \$48 billion, an increase of 189 percent since 2001. Visa and MasterCard control more than 73 percent of the volume of transactions on general-purpose cards in the United States and approximately 90 percent of the cards issued. Merchants are forced to deal within this system because it is not an option to refuse or accept Visa or MasterCard from their customers. Retailers are generally presented with "take-it-or-leave-it" options and are not part of the process by which the fees are set. Bills include H.R. 2695, S. 1212 and H.R. 2382. H.R. 2695 would allow merchants to collectively negotiate with banks for the cost of certain credit card fees.

Auto Dealer Bills Introduced

A number of bills have been introduced to protect the economic rights of hundreds of auto dealers eliminated by the restructurings of Chrysler and General Motors (H.R. 2743, H.R. 2750, H.R. 2796, S. 1304). In general, the bills are designed to prohibit any automobile manufacturer in which the federal government has an economic interest from depriving a dealer of its economic rights as they existed prior to the commencement of a bankruptcy case by the manufacturer, including the dealer's rights to recourse under state law. The bills variously require manufacturers to restore the franchise agreements with dealers that were in effect prior to the bankruptcy case. The House Committee on the Judiciary held a series of hearings on the ramifications of auto industry bankruptcies on July 21-22. The Obama administration opposes a provision in a House spending bill that would restore franchise agreements on the grounds that it intervenes "into a closed bankruptcy proceeding."

Voluntary Home Mortgage Modification Won't Help

The House Committee on the Judiciary heard testimony on July 9 that the Obama administration's current voluntary, incentive-based mortgage relief program will not and cannot achieve the necessary degree of foreclosure prevention and mortgage debt reduction that are the essential prerequisites to an economic recovery, according to Prof. Alan White, a Valparaiso University School of Law professor who has studied the issue. He supports allowing bankruptcy judges to modify the principal amounts owed by using chapter 13. Dr. Mark Calabrio of the Cato Institute offered a competing view that the administration's plans are not working because they have misidentified the underlying causes of mortgage default. "It is not exploding ARMs or predatory lending that drives the current wave of foreclosures, but negative equity driven by house prices declines coupled with adverse income shocks that are the main driver of defaults on primary residences," Calabrio testified. "Even significant payment reductions may not offer long-

term solutions. According to the most recent OTS/OCC mortgage reports, of those delinquent borrowers seeing a payment reduction of 20 percent or more, 37.6 percent were again delinquent 12 months later. Continually remodifying the same loan is not a solution for the borrower, investor or lender."

Derivatives, CDS Scrutinized

The Obama administration will propose writing broad principles on the regulation of over-the-counter derivatives into law but leave the details up to regulators, Treasury Secretary Geithner told a House committee in mid-July. The principles would require that all standardized derivatives contracts be cleared through regulated exchanges or regulated electronic trade execution systems. The plan would also increase capital requirements on customized derivatives so that market participants do not attempt to use those instruments to evade regulation. As to whether credit default swaps are so dangerous that they should be prohibited, Geithner responded that they "do provide an important economic function in hedging against risk," and that their proper regulation is a challenge that Congress and the administration can handle. The Senate Banking Committee held a hearing on regulating hedge funds and other private investment pools on July 15.

Financial Conditions Deteriorate for PBGC

The Government Accountability Office, in a report released on May 20, identified mounting financial challenges to the agency as a result of the financial market's downturn and other developments, including recent legislation that grants funding relief to certain sponsors, developments with Pension Benefit Guaranty Corporation's (PBGC) investment policy, and a concern that a wide array of industry sectors—including the automotive sector—are under financial distress and may expose PBGC to future claims. As a result, the potential for automaker pension plan terminations could dramatically increase not only PBGC's deficit, but also its administrative workload. The agency insures the

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pensions of about 33.8 million workers and retirees in 28,000 private-sector defined-benefit plans under its single employer insurance program and about 10.1 million participants in 1,500 plans under its multiemployer insurance program. For the single-employer program, the liability consists of (1) about \$67 billion for the 3,850 plans that have terminated; and (2) \$23.61 billion for 27 probable terminations.

Time-deadlines Changed, Effective Dec. 1

H.R. 1626, the Statutory Time-Periods Technical Amendments Act became Public Law 11-16 on May 12, 2009. It amends Title 11 to extend from five to seven days, and from 10 to 14 days, counting holidays and weekends,

specified deadlines affecting court proceedings to harmonize them with recent amendments to the federal time-computation rules intended to provide predictability and uniformity to the current process of calculating court deadlines. The amendments to the Code (which take effect on Dec. 1) are as follows:

Title 11, United States Code, is amended—

(1) in §109(h)(3)(A)(ii), by striking ‘five-day’ and inserting ‘seven-day;’

(2) in §322(a), by striking ‘five days’ and inserting ‘seven days;’

(3) in §332(a), by striking ‘five days’ and

inserting ‘seven days;’
(4) in §342(e)(2), by striking ‘five days’ and inserting ‘seven days;’
(5) in §521(e)(3)(B), by striking ‘five days’ and inserting ‘seven days;’
(6) in §521(i)(2), by striking ‘five days’ and inserting ‘seven days;’
(7) in §704(b)(1)(B), by striking ‘five days’ and inserting ‘seven days;’
(8) in §749(b), by striking ‘five days’ and inserting ‘seven days;’
and
(9) in §764(b), by striking ‘five days’ and inserting ‘seven days.’ ■

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