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There is so much going on in the banking world right now, it seems right to release a "pressing issues" report for the membership, so that you can be sure that you haven't missed anything in the chaos. Not much of the information in this report is new, BUT it feels as if Washington is "chumming" the banking waters with so much stuff that some of it is bound to stick regardless of how crazy it may sound. The information below is how it appears TODAY…it can change!

Legislative/Political Update:

- For reasons that seem driven purely by the need to raise revenue, congressional leaders appear determined to include some version of the IRS reporting plan in the budget reconciliation bill. Both the Speaker of the House and Treasury officials made strong statements of support this past week. The good news is we know that banker advocacy is reaching the rank and file on Capitol Hill, and their messages about customer privacy, community bank impact and financial inclusion are resonating. 'It's a massive search without a search warrant' is a good perspective from former FDIC Vice Chairman Tom Hoenig on Fox Business. The latest information indicates a desire by Some members of Congress to increase the triggering amount for reporting from $600 to something in the multi thousand range, thinking that would make it more palatable. NOT. The amount does not make a difference to the underlying concerns. Thank you for your continued engagement on this and we need as many bankers and customers as possible calling Congress this week.
- President Biden this week signed a temporary increase in the debt ceiling through Dec. 3, giving Congress more time to reach a longer-term agreement. This Kabuki theater happens all the time and plays havoc with the markets but Congress will eventually agree upon a number. Personally, I don't know why we have debt ceilings if we never follow them.
- Financial Stability Board Chairman Randal Quarles yesterday said it would continue to focus on non-bank financial intermediation, along with other emerging issues that pose threats to financial stability, including climate-related financial risk, crypto assets and stablecoins. With regard to crypto, "we need to be mindful of whether our regulatory and supervisory approaches appropriately address risks while preserving the benefits that innovation can bring," Quarles noted. "As these continue to develop, we continue to explore difficult questions. Are these digital assets currencies? Or securities? Deposits? They don't fit neatly into our current ecosystem regulatory buckets, and they operate in the digital ether where they can easily cross-national borders." We hope that the Government keeps in mind that there is an entire body of laws in every state that defines how "assets" can be securitized and very few of those incorporate digital assets.
- Credit Unions have introduced another expansion bill, H.R. 5189, "Member Business Loan Expansion Act" This legislation would further erode the restrictions on credit union business lending in three important ways. First, the legislation would change the terms under which credit unions may offer business loans, making it easier for credit unions to underwrite commercial real estate projects by enabling longer repayment periods. Second, the legislation would directly undermine the asset cap on credit union business lending by doubling the exemption for small loans, despite only two-tenths of one percent of the industry approaching the current statutory limitation. Third, the legislation expands credit union access to low-cost sources of funds for, among other things, business loans. Each of these will have the effect of fueling further credit union business lending expansion, all indirectly financed by their tax-exempt status.
- The U.S. Postal Service last month quietly launched a pilot program in four U.S. cities offering expanded financial services at certain post office locations in Washington D.C., Baltimore, Falls Church, Virginia, and the Bronx, New York according to news reports. Consumers may now access check-cashing services at these locations, and USPS is contemplating piloting additional offerings such as bill paying services, ATM access, expanded money order capabilities and expanded wire transfer capabilities, according to reports. The first step towards Postal Banks!—I hope not.

Regulatory Update:

- **Fair Lending**. Fair lending has been subject to regulatory oversight since the 1960's, through laws such as the Equal Credit Opportunity Act and the Fair Housing Act of 1968. That oversight has been fleshed out by regulator guidance and by court decisions. The Federal Financial Institutions Examination Council (FFIEC), has updated its Interagency Fair Lending Examination Procedures to emphasize that that fair lending violations are not limited to mortgage lending----"The procedures emphasize racial and national origin discrimination in residential transactions, but the key principles are applicable to other prohibited bases and to nonresidential transactions." The procedures are available at https://www.ffiec.gov/PDF/fairlend.pdf. Fair lending is reviewed for "disparate treatment," which can be proven by "overt evidence" where a lender openly discriminates on a prohibited basis or "comparative evidence" where similarly situated applicants are treated differently. It is important that banks manage this risk across all business lines by utilizing standard underwriting guidelines and maintaining a robust compliance management system (CMS).
- **Small Business Lending**. In April 2020, the CFPB published a blog post entitled The Importance of Fair and Equitable Access to Credit for Minority and Women-Owned Businesses available at https://www.consumerfinance.gov/about-us/blog/fair-equitable-access-credit-minority-women-owned-businesses. While the blog post discussed a number of issues, it signaled likely future regulatory focus by emphasizing that minority and women-owned businesses are protected by Regulation B and implied that credit was not as accessible for these groups. This signal rang true as the new small business reporting requirements were released recently. Despite banks regularly reporting small business activities through call reports and CRA reports, AND despite assurances to the contrary just a few years ago, the CFPB surprised the lending industry by releasing a proposed rule over nine hundred pages in length, that would require all lenders, regardless of size, that originate more than 25 "small business loans,"(defined as loans to businesses with gross revenue of $5 million or less), to create comprehensive reporting similar to HMDA for "small businesses." While comments on this proposed rule are not due until January 6, 2022, the KBA is working diligently on a comment letter to address concerns with the proposed rule and the regulatory burden it will place on its banks. The proposed rule is available at Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B) (consumerfinance.gov)
- **Vendor Management**. In 2019, a foreign adversary initiated an advanced attack to hack government agencies, the defense industry and large technology providers In that attack, many banks became indirect victims of the attack. As a result of this attack the FFIEC substantially updated its standards for effective vendor management. The most recent of these publications is titled Authentication and Access to Financial Institution Services and Systems and states that an effective vendor management system is a key element in determining a bank's safety and soundness. https://www.ffiec.gov/press/PDF/Authentication-and-Access-to-Financial-Institution-Services-and-Systems.pdf. Each bank must conduct internal and external due diligence on all systems and vendors, appropriately manage risk associated with potential vendor loss, and, if possible, implement a comprehensive vendor management system appropriate to the size and scope of an institution. This may not seem like the place for an ad, but the KBA has a fix for that!
- **Diversity, Equity and Inclusion (DEI)**. In 2010, Section 342 of the Dodd-Frank Act established the Offices of Minority and Women Inclusion (OMWI) in many federal agencies. With a renewed emphasis on DEI, federal agencies have issued various forms of objectives and expectations for financial institutions. For example, on March 3, 2021, the FDIC released its Diversity, Equity and Inclusion 2021-23 Strategic Plan. While the plan specifically addresses the FDIC and its practices, it also encourages institutions to implement DEI hiring practices and foster financial inclusion in the banking system. https://www.fdic.gov/about/diversity/pdf/dei2021.pdf . The most important word in "encourages"—what exactly will that mean in implementation? While some banks may face challenges based on lack of diversity within their census tracts, all banks should take steps to build and enhance their DEI programs. Examples of effective programs include: internal auditing and reporting systems to ensure DEI inclusion policies and practices; diversity at the board level and reporting to the board diversity

metrics on employee workforce and retention; and procurement reporting and tracking for spending on diversity businesses. Challenge this at the risk of regulator pushback and negative PR.

Good News:

- Nine of ten Americans with a bank account say they are satisfied or very satisfied with their primary bank, according to Morning Consult survey released yesterday.
- Ninety-seven percent of consumers rated their bank’s customer service as good, very good or excellent, while 81% said innovation and technological improvements by banks are making it easier for all Americans to access financial services.
- Three in four adults are satisfied or very satisfied with their bank's response to COVID-19
- Consumers also trust banks significantly more than any other industry—including healthcare providers, nonbank payment providers and the government—to safeguard their personal data. Additionally, three-quarters of consumers said they prefer that the company that handles their finances is regulated like a bank, while only 11% said they don't care.
- A large majority of consumers, 67%, said that they prefer banks deliver their banking services in the future, as opposed to the federal government (7%) or a provider that is neither a bank nor the federal government (10%).

That may be all you can handle today! Contact us if you need anything.

Sincerely

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