

## Progress on Regulatory Reform

With the timing of Congressional action on bank deregulation uncertain, it is important to recognize the recent deregulation actions by federal administrative agencies that will have a positive impact on the banking industry. Here are just a few examples:

**Operation Choke Point – Terminated.** The Department of Justice recently announced the termination of Operation Choke Point, an initiative that sought to curtail legal but controversial businesses by working through bank regulators to pressure financial institutions to end customer relationships with those businesses. The DOJ’s announcement called Operation Choke Point a “misguided initiative,” and said, “the Department will not discourage the provision of financial services to lawful industries, including businesses engaged in short-term lending and firearms-related activities.”

**Overtime Pay Rule – Invalidated.** A federal district court in Texas recently invalidated the Department of Labor’s overtime pay rule in a lawsuit brought by 21 states and several business groups. The rule would have doubled the salary level used to determine whether employees are classified as exempt from overtime under the Fair Labor Standards Act. The court ruled, “The Department has exceeded its authority and gone too far with the Final Rule.” “Nothing in Fair Labor Standards Act Section 213(a)(1) allows the Department to make salary rather than an employee’s duties determinative of whether a ‘bona fide executive, administrative, or professional capacity’ employee should be exempt from overtime pay.” The DOL is unlikely to appeal the ruling, thereby saving us from months of uncertainty about the rule’s ultimate fate. Prior to the ruling, the DOL was collecting public comments on the impact of the rule, and was expected to review and possibly revise the rule.

**Prepaid Cards Rule – Delayed.** The Consumer Financial Protection Bureau recently delayed the prepaid cards rule’s effective date six months (until April 1, 2018) to give the industry more time to implement the rule, and to give the CFPB time to revisit several substantive issues. The CFPB identified two issues it would revisit: (i) the linking of credit cards to digital wallets that are capable of storing funds, and (ii) error resolution and limitations on liability for prepaid accounts that cannot be registered or have not been registered. The CFPB may address a limited number of other topics, and may consider a further extension of the effective date if needed in light of any changes they propose.

**Expanded Payroll Data Collection Form – Delayed.** The Equal Employment Opportunity Commission postponed the effective date of changes to the EEO-1 report while the Office of Management and Budget conducts a review of the revised form. OMB noted that some aspects of the revised form “lack practical utility, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues.” The EEO-1 collects data on race, ethnicity and gender by occupational category. The revisions would require employers with 100 or more employees and federal contractors with 50 or more employees to add pay data and hours worked by gender, race and ethnicity in each of the EEO-1 job categories. The revised data collection requirements would significantly increase the number of data items from 180 to 3,660.

**Fiduciary Rule – Delayed.** The DOL recently finalized an 18-month extension (until July 1, 2019) of the effective date of several burdensome exemptions to the fiduciary rule, including the Best Interest Contract exemption, thereby allowing continued reliance on simpler exemptions during the extension period. The fiduciary rule greatly expands who is a retirement account fiduciary subject to the rule. It took effect on June 9, 2017, subject to special transition rules. During the extended transition period, the cumbersome Best Interest Contract exemption can be satisfied by compliance with the simpler Impartial Conduct Standards (ICS) that require: (1) recommendations must be in the client’s best interest, (2) the advisor’s compensation must be reasonable, and (3) the advisor must not make misleading statements. IRA providers and advisors should conduct a best interest analysis and document their recommendations in order to comply with the best interest requirement of the ICS.

**Basel III Implementation – Paused.** Federal bank regulators froze in place current transitional regulatory capital requirements and risk weights for mortgage servicing assets, deferred tax assets and other assets while the agencies develop a proposal to simplify the capital rules to reduce regulatory burden, particularly for community banks. The transitional treatment for those items was scheduled to be replaced with a different treatment on January 1, 2018. The extension applies to banking organizations that are not subject to the agencies' advanced approaches capital rules, which are those with less than \$250 billion in total consolidated assets and less than \$10 billion in total foreign exposure.

Of the many deregulation efforts by federal agencies, these are just a few that will directly impact banking. There are numerous others affecting other aspects of the economy. Moreover, banking specific deregulation by the federal banking agencies should accelerate in coming months as the President appoints new leadership to the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the CFPB.

*For more information about these and other deregulation initiatives, contact Mel Tull, VBA General Counsel, at [mtull@vabankers.org](mailto:mtull@vabankers.org) or (804) 819-4710. This article has been prepared for informational purposes only and is not legal advice.*