FinReg Round-Up
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Another Happy New Year from the FinReg Roundup! In the first issue of 2022, we spotlight the latest London Interbank Offered Rate (LIBOR) transition final rules issued by the IRS on the fair market value of amended contracts and by the Consumer Financial Protection Bureau (CFPB) to calculate rates for consumer credit products. We also look at a FinCEN final rule removing obsolete penalty language from the Bank Secrecy Act. Stay tuned for what's coming up this year on the ever-changing FinReg front.

IRS, Treasury Drop Contract Provision With Tax Consequences From LIBOR Final Rules

The IRS and the U.S. Treasury Department removed a contract provision with potentially significant tax consequences from final rules to assist in the transition from LIBOR as the international benchmark interest rate for financing agreements. The final rules issued on Dec. 30, 2021 drop the requirement that the fair market value of a contract amended to discontinue the use of LIBOR be substantially equivalent before and after the amendments.

The final rules now address the possibility that modifying a contract to replace LIBOR with a new reference rate could result in the realization of gains, losses or other federal income tax issues. Covered contract modifications generally contain certain elements, including an operative rate or fallback provision that references LIBOR or another discontinued interbank offered rate, replacement of an operative or fallback rate with a qualified rate, and changes related to those replacements.

The final rules were published in the Federal Register on Jan. 4 and take effect on March 7.

CFPB Modifies Truth-in-Lending Rules for Consumer Credit LIBOR Transition

The CFPB issued a final rule on Dec. 7, 2021, modifying its truth-in-lending regulations for creditors transitioning from using LIBOR to calculate rates for consumer credit products such as adjustable-rate mortgages and credit cards. The CFPB amended Regulation Z, which implements the Truth in Lending Act, to address LIBOR's anticipated sunset in June 2023. The 274-page final rule provides examples of indices that meet certain Regulation Z standards, which can be used in place of LIBOR indices.

The Regulation Z amendments allow creditors for home equity lines of credit (HELOCs) and credit card issuers to transition existing accounts that use a LIBOR index to a replacement index on or after April 1, under certain conditions. Additionally, the final rule sets change-in-terms notice provisions for transitioning HELOC and credit card accounts, and addresses how rate reevaluation provisions applicable to credit card accounts apply to the LIBOR transition.

The final rule, published in the Federal Register on Dec. 8, 2021, largely takes effect on April 1.

FinCEN Deletes Obsolete Bank Secrecy Act Penalty Regulations

The Financial Crimes Enforcement Network (FinCEN) amended civil penalty regulations under the Bank Secrecy Act related to reporting foreign financial accounts and transactions with foreign financial agencies. FinCEN issued a final rule to delete civil penalty language that became obsolete upon the enactment of the American Jobs Creation Act of 2004. The American Jobs Creation Act changed the way civil penalties are computed and imposes a greater maximum penalty for willful violations than authorized in the past.

FinCEN issued the final rule on Dec. 23, 2021, effective immediately because the agency determined that publishing a notice of proposed rulemaking and seeking public comment were not necessary.

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