

CaliforniaBanker

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Association Update



Bank Presidents Seminar and the 2025 Annual Conference & Directors Forum – These events promise to offer enriching content and networking opportunities for our members.

I am pleased to provide an update on the Association's ongoing efforts to represent and advocate for our members. As always, ensuring that your voices are heard and your interests are protected across the financial industry remain our top priority.

Advocacy Efforts

On the advocacy front, the Governor had until September 30 to sign or veto over 600 measures reaching his desk, several of which hold significant implications for our industry.

He signed several measures that contain substantive CBA drafted language, thereby reflecting our direct lobbying efforts, including: AB 2424 (non-judicial foreclosure procedures); AB 3100 (loan assumption); AB 3108 (mortgage fraud); and, AB 3279 (client trust account reporting) along with our two sponsored measures, AB 2618 (reciprocal deposits), and SB 1127 (trust administration).

One of the vetoed bills, SB 278 (elder financial abuse), established an emergency financial contact program, allowing senior account holders to designate a third party to receive alerts on suspicious transactions, with banks required to hold transactions of \$5,000 or more, for three days when fraud was suspected. While the Governor expressed support for the intent of the bill, his veto message emphasized concerns about unintended consequences arising from transaction holds.

A detailed summary prepared by CBA of legislative outcomes will be published in the coming weeks. In the meantime, please check out an article in this issue authored by Jason Lane, CBA's Senior Vice President and Director of Government Relations, providing additional detail on key legislation.

In September, we traveled to Washington, D.C., with a dedicated group of members for our annual joint visit with the Florida Bankers Association. It was an extraordinary visit, and I am deeply grateful to the members who took the time to join us and share their insights.

We had a full day of meetings on the Hill where we met with the following Congressional Representatives serv-

ing on the House Financial Services Committee: Young Kim (CA); Andy Barr (KY); French Hill (AR); Byron Donalds (FL); Frank Lucas (OK); Roger Williams (TX); Bill Huizenga (MI); and, Juan Vargas (CA). We also had a chance to catch up with Representatives Ami Bera (CA) and Lou Correa (CA), and received an update from committee staff for Chair Patrick McHenry (NC).

On the regulatory side, we met with the Acting Comptroller of the Currency, Michael Hsu; FDIC Vice Chair, Travis Hill, and Joshua Stallings, Deputy Director at the FHFA, and we received a briefing from a senior advisor for the Small Business Administration. We also heard from Mick Mulvaney, White House Chief of Staff and CFPB Director under President Trump, and Aaron Klein from the Brookings Institution.

We covered a wide range of topics during our meetings with Congressional Representatives and regulators, including, but not limited to: artificial intelligence; Basel III; credit unions; *de novo* formations, and mergers and acquisitions; deposit reform and brokered deposits; FHLB @ 100; interchange; preemption; regulatory tsunami; SAFE/SAFER Banking Act; and, trigger leads.

In November, our Government Relations team will host our **Annual Legislative Forum**. This important event offers members the opportunity to hear directly from legislators and political experts about the 2023-2024 legislative session, election results, and what to anticipate in 2025. I hope you will join us.

Education & Events

In August, we had the pleasure of hosting a successful **Women in Banking Mixer** in Sacramento, generously sponsored by the Federal Home Loan Bank of San Francisco. We've also organized several **virtual membership updates**, featuring speakers such as Finli CEO Lori Shao, FDIC Regional Director Paul Worthing, and R&T Deposit Solutions. These updates are informative, free to all California bankers, and designed to keep our members current on critical industry trends.

We recently hosted a **Women in Banking Forum** in Las Vegas! We were thrilled to have women from the Central Valley, Southern California, Bay Area, and Northern California attend this event. Our Board Chair, Krista Snelling, and President & CEO of Santa Cruz

County Bank, served as our emcee and moderated a panel discussion with four other California bank CEOs: Janet Garufis, Chairman & CEO of Montecito Bank & Trust; Bonnie Lee, President & CEO of Hanmi Bank; Janet Silveria, President & CEO of Community Bank of Santa Maria, and Stacey Starkey, President & CEO of Savings Bank of Mendocino County.

The Bankers Summit, which was also held in Las Vegas, featured lecturers from the Pacific Coast Banking School and three education tracks, including risk management, regulatory compliance, and lending and credit. The program also included general sessions that covered generative AI, the economy, regulatory updates, third-party risk management, and a legislative update. The event was a success, and we look forward to bringing programs like the Bankers Summit back to California.

Looking ahead, registration is now open for the **Bank Presidents Seminar**, and we are excited to announce that the **2025 Annual Conference & Directors Forum** will be held in La Quinta, California. These events promise to offer enriching content and networking opportunities for our members. For more details and updates on upcoming events and education programs, please visit our website or refer to the CBA Weekly newsletter.

Bank Visits and Peer Meetings

I have had the privilege of making several bank visits. I deeply appreciate the time and feedback you have shared with me. We have also been on the road attending meetings with our state banking association peers at the ABA Summer Leadership meeting in San Diego, the National Association of Bank Advocates meeting in Austin, and the ABA State Issues Summit in Chicago.

I am so proud of the incredible work that you do to support your customers, communities and the economy. Please let us know what more we can do to support you. Thank you for your continued support and engagement in the California Bankers Association. >>

Bringing members together. Making our banks better.

Kevin Gould
President & CEO, California Bankers Association



A CONVERSATION WITH BRIAN ARGRETT

Q: Can you tell us about your journey to becoming the CEO of City First Bank? What inspired you to pursue a career in banking?

My path to CEO of City First Bank was not traditional (if there is such a thing) and in many ways, I consider myself to be an accidental banker. I came to banking specifically with a passion and desire for using finance and capital to help individuals pursue their dreams and fully participate in the advantages of our society and country.

Professionally, I started as a transactional real estate attorney in Los Angeles and then spent the next 20 years there leading a private equity investment fund focused on financing and partnering with entrepreneurs of color and women in growing their lower middle-market businesses.

The use of leverage and the participation of traditional banks was always a key element to the success of their growing businesses, and as their equity and debt partners, we took part in bridging that process and those relationships. It was powerful and great fun.

I also had the wonderful opportunity during that time to sit on the board of directors of two different southern California-based community banks and participate in their leadership, growth and ultimate sale.

So, my path from a professional standpoint was entering the field from a finance and bank governance perspective, and from a personal perspective, from a deep belief that capital was an essential tool to helping individuals realize their full potential for themselves, their businesses, their communities, and their families. Leading alongside at City First Bank was a natural and powerful convergence of those professional experiences and personal drivers.

City First Bank has a strong commitment to community development. How did your personal values align with the bank's mission?

Full overlap and complete alignment! Both sides of my family have a multigenerational legacy of driving for ed-

ucation, community empowerment, political awareness, entrepreneurialism, and personal faith in action in their histories and purpose.

I wanted to also find my lane to live up to my purpose and leadership in a way that really makes a difference in people's lives. At City First Bank, we exist and operate with intention. Our singular purpose on the ground is serving and empowering those communities, organizations and individuals who might otherwise have diminished access to the traditional banking system. We do that in a powerful way of providing great expertise, beneficial products, personal service, and trusted partnering, but with a targeted and intentional focus on those communities where we believe we can have the greatest impact and, quite frankly, where as a society we also have the greatest amount of catching up to do. It's banking with values, clear intention, and unquestionably on purpose.

What is your leadership philosophy, and how does it influence the bank's culture and operations?

My leadership philosophy extends directly from the core purpose and intention of my institution. None of us can achieve in a vacuum, it takes deep partnering, great collaboration, and the smartest and most dedicated people and partners to be successful in serving our community and supporting real progress. In this instance, this intentionality requires urgency, initiative, low ego, and creativity because we really are trying to do something different and hard, while relying on the honed and successful practices of community banking. In partnering, we must break down barriers to achieve real trust, accountability, and high expectations of each other to move the business, our customers, and our higher purpose forward and we simply cannot compromise on that.

Unquestioned individual excellence and commitment, and deep teaming -- it is an interesting paradox! I think it translates into a culture of smart, really hard-working, dedicated colleagues with a passion for excellence in executing the Bank's critical mission.

CONTINUED ON PAGE 8

What advice do you have for aspiring leaders in the banking and finance industry?

Community banking is an amazing field where you have a very direct and high impact on the institution where you work and the customer base that your bank serves. In that way, regardless of your role, you can draw direct lines from what you're doing every day to why it matters for your customers.

More broadly speaking, I have always believed that if you discover your natural individual gifts (qualities and skills) and combine it with what you love doing and then chase that, you will excel. This could apply to several dissimilar roles and positions ...so keep yourself open and always deliver. Then find ways to lean into your strengths, shore up your weaker areas, and find positive and encouraging people to surround yourself with to help guide you (and check you) along the way.

What is City First Bank's core mission, and how does it differentiate itself from other banks in the industry?

City First Bank's core mission is to provide access to capital in underserved communities. Our history and legacy provides capital where traditional finance does not easily flow. Our deposit and cash management solutions allow those institutions and individuals who align with our purpose to partner with us for greater impact without compromise on safety, yield, or access. Our lending solutions address the needs of urban low- and moderate-income communities that require financing that supports the creation of quality affordable housing, access to quality education, access to

quality and affordable healthcare, and the ability for businesses and communities to create good jobs and grow.

What strategies does the bank employ to support underserved communities and promote economic equity?

Partnerships are at the core of how City First Bank supports underserved communities and promotes economic equity. As a Community Development Financial Institution (CDFI) and a Minority Depository Institution (MDI) at \$1.4 billion in assets with a vision to transform access to finance in the communities we serve in California and Mid-Atlantic, it is a mandate that we partner with other mission aligned banks, corporations, CDFIs, government, foundations, associations, and businesses. One key focus today is driving mission aligned deposits to City First Bank to enable us to enable our team to continue to expand our lending into the community.

How does City First Bank leverage technology to enhance customer experiences and streamline operations while maintaining a strong community focus?

City First Bank is driving technology to improve our ability to provide efficient credit and offer a suite of cash management products and services for our corporate and business customers. Our commercial lending is still very relationship-based and rooted in meeting the specific needs of each customer and project. However, our investments in data and systems enable us to make real-time decisions on where to drive the business and which customers require future service. >>

Meet Brian E. Argrett

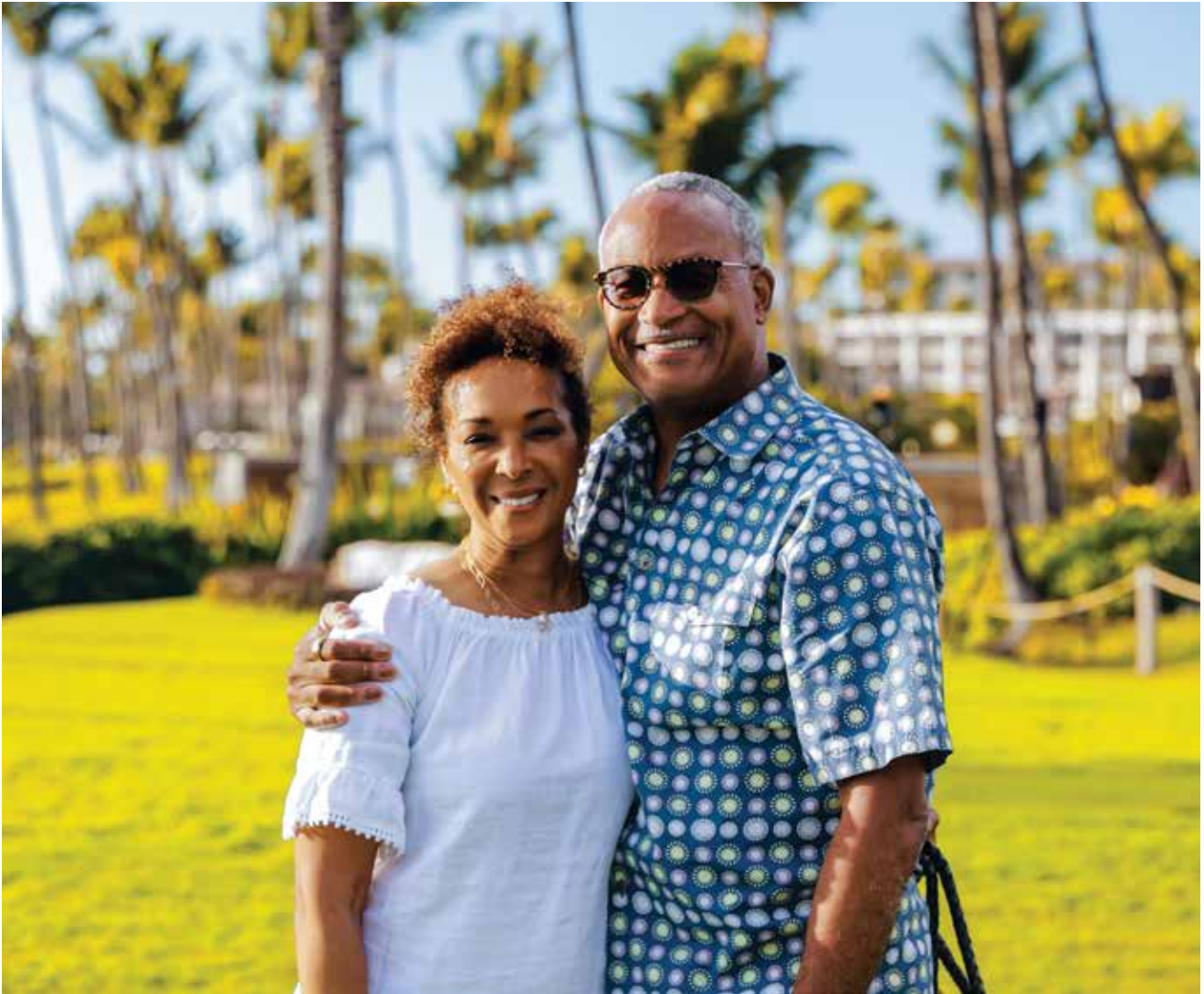
Brian E. Argrett has been a director and CEO of City First Bank since 2011. He became chair of the company and the bank in April, 2023.

Formerly, Argrett was founder and managing partner of both Fulcrum Capital Group, an investment manager, and Fulcrum Capital Partners, L.P., an institutionally-backed private equity limited partnership. He also served as president, CEO and director of Fulcrum

Venture Capital Corporation, a federally licensed and regulated Small Business Investment Company. Prior to joining the Fulcrum entities, Argrett was an attorney with the real estate law firm of Pircher, Nichols & Meeks in Los Angeles. Argrett has served as chair, been a member, or held observer rights on numerous Fulcrum portfolio company boards, as well as having served on the boards of directors of other financial industry companies. Argrett was a presidential

appointee to the Community Development Advisory Board of the U.S. Treasury Department during the Obama administration. Argrett has held leadership positions at the National Association of Investment Companies and the National Conference for Community and Justice and has been an elder at the Knox Presbyterian Church.

Currently, Argrett serves as chair of the board of directors of City First Enterprises, a CDFI Loan Fund. Ar-



argrett is a recent appointee to the board of IntraFi Network, and he also serves on the board of the California Bankers Association. Argrett is a past chair and continues to serve on the board of directors of the Community Development Bankers Association. He also serves as a member of the Global Alliance on Banking on Values, and is a member of the board of the Expanding Black Business Credit Initiative.

Argrett served as a director of the board of directors of the Federal Home Loan Bank of Atlanta from

2016 through 2021, during which time he served as the vice chair of the board, chair of its Enterprise Risk and Operations Committee, as well as a member of its Finance Committee and its Audit and Compliance Committee.

Argrett is a member of The Economic Club of Washington, D.C., the Federal City Council, and the Leadership Greater Washington Class of 2014. In addition, Argrett is a 2014 recipient of the Washington Business Journal Minority Business Leader Award. Argrett holds J.D. and M.B.A. degrees

from the University of California, Berkeley, and a bachelor's degree from the McIntire School of Commerce at the University of Virginia.

Mr. Argrett's extensive experience in the financial services and banking industries, public and private company board experience, knowledge and experience in the Washington D.C. and Southern California markets, and knowledge of the Bank's business, history, organization, and mission, and executive management experience qualify him to serve as a member of the Board. >>

Governor Acts on Financial Services Related Legislation

The California Legislature has adjourned for the year, sending just over 1,200 bills to the Governor for his consideration. This year, Governor Newsom vetoed nearly 16 percent of those bills. As we wrap up the legislative session, we thought it would be helpful to highlight the Governor's recent action on several key financial services related measures.

Mortgage and Foreclosure

The Governor signed AB 3100 (Low) which requires a conventional home mortgage loan originated on or after January 1, 2027, to include provisions to allow for any of the existing borrowers to purchase the property interest of another borrower on the loan by assuming the seller's portion of the mortgage in a divorce proceeding if the assuming borrower qualifies for the underlying loan, as determined by the lender. The measure applies to property secured by owner-occupied residential real property containing four or fewer dwelling units with multiple borrowers. Also signed, was AB 2424 (Schiavo) which aims to protect owner equity in foreclosure proceedings by imposing additional requirements that must be satisfied before exercising a sale. These include additional notification requirements, additional time before a foreclosure auction may begin and a require-

ment that prohibits trustees from selling the property at the initially scheduled date of sale for less than 67 percent of the fair market value.

Debt Collection

The Governor signed three debt collection measures into law:

AB 2837 (Bauer-Kahan) places a number of new timelines and specific parameters on bank levies, wage garnishment, and claims of exemption. For example, among other provisions, AB 2837 requires a judgment creditor to take additional steps to verify a judgment debtor's address and provide notice of enforcement to a judgment debtor, by requiring a court to order the return of exempt property that has been levied upon, and limiting the time period during which an earnings withholding order may be enforced and the frequency with which such an order may be sought.

SB 1061 (Limón) prohibits reporting of medical debt to consumer credit reporting agencies, those agencies from including it in their reports, and others from relying on medical debt that appears on a report when making an underwriting decision. Finally, in the debt collection space, SB 1286 (Min) proposes to add commercial debts of up to \$500,000 that are entered into, renewed, sold or

assigned on or after July 1, 2025 to the Rosenthal Fair Debt Collection Practices Act.

Fees

The Governor signed into law two measures related to the regulation of fees imposed by financial institutions. SB 1075 (Bradford) applies only to credit unions and limits fees for insufficient funds to \$14, unless the federal Consumer Financial Protection Bureau lowers the limit further. AB 2017 (Grayson) prohibits banks and credit unions from charging a consumer a nonsufficient funds fee when the consumer's attempt to initiate a transaction is declined instantaneously or near instantaneously due to nonsufficient funds. The measure comports with CFPB's proposed rules issued in January of this year for federally chartered banks.

Elder Financial Abuse

The Governor vetoed SB 278 (Dodd) which required financial institutions to establish an emergency financial contact program, whereby senior account holders can designate a third-party to receive an alert about a suspicious transaction flagged by the account holders' bank. The measure also required banks to hold certain transactions when there is a reasonable suspicion of fraud. ➤

Your Deposit Impacts the Community

Listen to Brian Argrett, Chair and CEO of City First Bank and member of the CBA Board, discuss the ACT Deposit Program and how you can have further impact in California.



[Click to Listen](#)



cityfirstbank

The Advancing Communities TogetherSM or ACTSM Deposit Program is a safe and convenient way to significantly impact underserved communities across California.

City First Bank is California's only CDFI, MDI, and certified BCorp lending to underserved communities.

Contact our Team at ImpactDeposit@cityfirstbank.com





Changes to California HOBR

The ‘Big’ Guys, the ‘Little’ Guys, and Those Lost in Between

By T. Robert Finlay, Esq. of Wright, Finlay & Zak, LLP

During the height of the Financial Crisis, California passed its landmark legislation intended to help homeowners facing foreclosure – the Home Owner Bill of Rights (“HOBR”). In short, HOBR required loan servicers to follow certain procedures when putting defaulted borrowers on notice of foreclosure prevention alternatives and prevented servicers from “dual tracking,” i.e., simultaneously proceeding with foreclosure while the homeowner is being reviewed for a loan modification. The law was limited to owner-occupied consumer loans in first position.¹

HOBR intended to put loan servicers into two buckets for compliance purposes – the “Big Guys” who annually handle 175 or more annual qualifying foreclosures and certain “Little Guys” who do not meet the 175 threshold. While servicers in both buckets are prohibited from dual tracking; the more detailed and onerous HOBR provisions only applied to the Big Guys, including, but, not limited to:

- Civil Code § 2923.7, requiring a Single Point of Contact; and
- Civil Code § 2923.6, mandating certain notices and procedures when

the borrower submits a complete loan modification.

The Little Guys “exception” to the more detailed requirements was limited in Civil Code § 2924.15 to:

(A) A depository institution chartered under state or federal law, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, that, during its immediately preceding annual

¹ In response to COVID’s impact on landlords, California’s Legislature amended HOBR in 2020, extending its application to certain tenant occupied properties. Those extensions have since expired.

reporting period, as established with its primary regulator, foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units, that are located in California.

But, what if you're a retired couple who occasionally invests in Trust Deeds, but are not a "depository institution" or someone "licensed" by the Financial or Business and Professions Codes? The answer – small investors must comply with the more detailed and onerous HOBR provisions intended by the Legislature to only apply to the Big Guys doing over 175 annual foreclosures! Hard to believe, but an investor who buys one loan a year, must comply with the same HOBR provisions as the largest loan servicers in the country.

Since HOBR's enactment in 2013, the private lending industry has looked for a solution to this obvious unintended oversight by the California Legislature. Unfortunately, for years, there was no appetite in Sacramento to re-open the heated discussions over HOBR. Fortunately, enough time has finally passed, which allowed the California Mortgage Association ("CMA") to sponsor Senate Bill 1146, which, among other things, puts a small investor "that makes and services seven or fewer loans" a year in the same com-

pliance bucket as loan servicers who conduct less than 175 annual foreclosures.

SB 1146 recently passed both houses and was signed by Governor Newsom. As signed, the "Really Little Guys" will still have to comply with HOBR; but, starting on January 1, 2025, only its less detailed provisions.

Note – The anticipated changes to HOBR do not exempt investors who make and service seven or less loans a year. These investors must still comply with HOBR. The new law just

reduces the HOBR provisions that need to be complied with. If you have any questions about what provisions must be complied with or need help complying with HOBR, please feel free to reach out to Robert Finlay at rfinlay@wrightlegal.net. >>

T. Robert Finlay, Esq., is a founding partner of WFZ.

Disclaimer: The above information is intended for information purposes alone and is not intended as legal advice. Please consult with counsel before taking any steps in reliance on any of the information contained herein.



California Suspends and Limits Sales and Use Tax Bad Debt Deduction

By Jon Sperring and Nausher Hoodbhoy, PWC

Budget-related tax legislation enacted in California on June 13, 2024, suspends the sales and use tax bad debt deduction beginning January 1, 2025; amends the retailer definition for purposes of the deduction to include affiliates through December 31, 2024; and reinstates the deduction on January 1, 2028, for retailers only. [S.B. 167, enacted 6/13/24]

Why is it relevant?

For credit sales, a retailer or lender often must remit sales tax before collecting the price from the purchaser. If the purchaser defaults on its obligation, the retailer recognizes the expense for the uncollectible receivable by ‘writing off’ the debt on its federal income tax return.

States uniformly provide relief by allowing the retailer to recover excess sales tax paid on the sale, commonly known as a bad debt deduction. With the enactment of S.B. 167, retailers will be unable to recover the excess sales tax paid during the bad debt deduction suspension timeframe. Lenders will be unable to recover excess sales tax paid beginning January 1, 2025.

Actions to consider

Retailers, lenders, and retailers’ affiliates can claim the bad debt deduction for accounts charged-off up to and including December 31, 2024. Taxpayers should evaluate charge-offs taking place prior to January 1, 2025, to determine eligibility for the deduction.

Background

California statute allows a retailer relief from liability for sales and use tax that became due and payable, for accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged

off in accordance with generally accepted accounting principles [California Sections 6055, 6203.5].

A retailer that previously has paid the tax may take as a deduction from sales tax the amount found worthless and charged off by the retailer. “Retailer” includes any entity affiliated with the retailer. “Lender” means any person that holds a retail account (1) which that person purchased directly from a retailer who reported the tax, (2) pursuant to that person’s contract directly with the retailer that reported the tax, or (3) an affiliated entity or assignee of such person.

For accounts held by a lender, a retailer or lender is eligible for the deduction if making an election in which the retailer that reported the tax and the lender prepare and retain an election form, signed by both parties, designating which party is entitled to claim the deduction or refund.

Observation: A lender with the right to claim a bad debt deduction, regardless of whether the lender holds a seller’s permit for sales of tangible personal property, must register with the State Board of Equalization for a Certificate of Registration—Lender no later than the date on which it first claims a deduction or refund.

To claim the bad debt deduction, a retailer or lender must meet the following conditions:

- A deduction was not previously claimed or allowed on any portion of the accounts
- The accounts have been found worthless and written off by the lender
- The contract between the retailer and the lender contains an irrevocable relinquishment of all rights to the account from the retailer to the lender
- The retailer remitted the tax on or after January 1, 2000

- The party electing to claim the deduction or refund files a claim in a manner prescribed by the department.

Observation: When a retailer assigns its rights under a financing contract to a third party, the bad debt deduction can be claimed in a limited number of states.

If an account found to be worthless and charged off includes taxable and nontaxable receipts such as interest, insurance, repair or installation labor, the deduction may be claimed only for the unpaid amount upon which tax has been paid. A pro rata method, contract method, or another method that reasonably determines the amount of taxable receipts may be applied.

No deduction is allowable for expenses incurred by the retailer in attempting to enforce collection of any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

If worthless accounts are thereafter in whole or in part collected by the retailer, the amount collected must be included in the first return filed after the collection and the tax must be paid with the return [California Regulation Section 1642].

Non-retailer lenders' deduction applies before January 1, 2025

S.B. 167 provides that before January 1, 2025, the “retailer” definition includes any entity affiliated with the retailer such as banks, credit unions, and other financial companies. When the bad debt deduction is reinstated January 1, 2028, the retailer definition no longer includes affiliates.

Observation: Starting January 1, 2025, the Governor’s Budget Sum-

mary stated that California joins most states that disallow the deduction for non-retailer lenders.

Action item: Lenders and affiliates should monitor eligible receipts and charge-offs through December 31, 2024, to deduct sales and use tax paid on worthless accounts.

Retailers' deduction suspended until January 1, 2028

The enacted legislation suspends the bad debt deduction for retailers from January 1, 2025, until January 1, 2028.

Action item: Retailers and lenders should evaluate the implications of the disallowed deduction, including whether ASC 450 reserves calculations should be reviewed and amended.

For a deeper discussion of how S.B. 167 might affect your business, please contact PWC’s Jon Sperring, jon.a.sperring@pwc.com, or Nausher Hoodbhoy, nausher.hoodbhoy@pwc.com. >>

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Looking at the Big Picture: Fair Lending Concerns on Valuations

By Jessica Lamoreux, Associate General Counsel

Recent actions by regulators indicate a growing concern about fair lending risk, specifically, as it pertains to appraisals and valuations used to make credit decisions. Based on the increased interest in this area, banks may want to ensure that their management of fair lending risk includes a detailed look at their valuation process.

The focus on this issue kicked off with the creation of the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) in 2021, but federal agencies are also taking independent actions. For example, in March 2023, the Consumer Financial Protection Bureau (CFPB) and the Department of Justice (DOJ) filed a Statement of Interest in a case alleging that the appraised value of a black consumer's home increased by nearly \$300,000 after the owners "whitewashed" their home by removing photos of themselves from the home and being absent during the second appraisal.

More recently, in July 2024, the U.S. Department of Housing and Urban Development (HUD) announced a lawsuit against an appraiser and a lender, alleging racial bias in the appraisal of another black consumer's home. In that case, HUD alleges the appraiser used comparable sales from a nearby majority-minority area rather than those from the predominantly white neighborhood where the property was located. The lender and the appraiser did not revise the appraisal when the consumer challenged the valuation.

In July 2023, the agencies proposed guidance on Reconsiderations of Value (ROV) that was finalized in July 2024. This broad guidance will apply to all situations where there may be concerns about the accuracy of an appraisal or valuation, but it specifically emphasizes fair lending concerns. "Prohibited discrimination" is the first item listed in the guidance as a possible cause of deficiencies in valuations.

The guidance states that appraisal bias, if not remedied, would be considered a violation of the Equal Credit Op-

portunity Act (ECOA) and Regulation B. The ROV Guidance also reiterates, as the agencies have asserted in other contexts, that financial institutions are responsible for monitoring the compliance of third parties, including appraisers. The agencies also recently published a final rule on the use of automated valuation models (AVMs) in credit decisions, explicitly requiring that banks ensure that the AVMs they use "comply with applicable nondiscrimination laws." While the AVM guidance expresses regulator concern about automation and artificial intelligence — another recent focus — it also is targeted at the issue of discrimination in valuations and builds on both the ROV guidance and the lawsuits in which federal agencies are participating.

Taken together, these regulator actions demonstrate that bank reviews of appraisals and valuations should be calibrated to detect discriminatory bias, and the lawsuits suggest a few items that may be worth extra scrutiny. One of these is the selection of comparable properties or "comps," as they are often called by appraisers and lenders. Lawsuits have alleged that the comps selected for an appraisal have reflected the race or ethnicity of the homeowner more than specifics of the property itself. For banks, the takeaway is that when the selected comps are not the recently sold properties closest to the appraised property, the bank should examine the reason that more distant properties were used.

The general trajectory of property values in the area may also be worth a careful look. If area property values have generally increased since the subject property was last sold or appraised, a valuation that shows a smaller increase or a decrease in value as compared to the last sale or valuation may raise eyebrows. In the lawsuits alleging valuation discrimination, plaintiffs consistently argue that a valuation showing a change in value that is not in line with the general trend for area property is an indicator that the valuation is unfairly biased. When reviewing an appraisal, it may be useful for banks to look at the last appraisal or sale of the property and the general trend for area prop-

erty values since that time, ensuring that there is a reasonable basis for any divergence from that trend.

The Reconsiderations of Value process provides an additional opportunity for the bank to mitigate risk. In the immediate transaction, there is both fair lending and safety and soundness risk to the bank if it does not fully review the valuation and ensure that the value assigned to the property is accurate. Based on the conglomeration of guidance and lawsuits on this topic, however, resolving any issues with the valuation is only the first step.

Because of the bank's obligation to oversee third party service providers and ensure that they also comply with fair lending rules and other requirements, a well-constructed ROV process should feed into the bank's vendor management program. When an appraisal or valuation is determined to be inaccurate or unreliable, that information should be sent to those responsible for vendor management to ensure that the bank does not continue to use appraisers that are not consistently providing quality appraisals. Reviewers of vendors that provide valuations

should monitor those vendors for quality, including any indicators of discriminatory bias.

Finally, even where a challenged or disputed valuation is found to have been reliable and valid, the bank's adherence to the ROV process, including a thorough (and thoroughly documented) objective review of valuations, as well as careful consideration of any issues raised about the valuation, demonstrate to regulators (and, in the event of litigation, to courts) that the bank is committed to ensuring accurate valuations. >>



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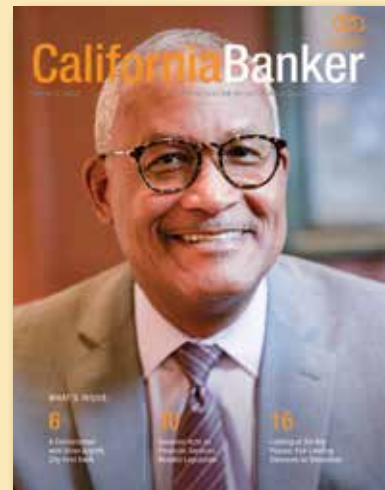
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