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BANK PARTNERSHIP PROGRAMS AND THE REGULATORY RESPONSE

Bank partnership programs with FinTech companies are growing in popularity and have attracted the attention of both federal and state regulators. On the federal side, the OCC has proposed to issue a FinTech charter (now challenged by lawsuits) and clarified the vendor management obligations of depository institutions. On the state side, responses have been varied, with some states ignoring the programs while others have brought enforcement actions to preclude them. The author describes these developments.

By Robert Savoie *

The rise of financial technology (“FinTech”) companies has brought bank partnership programs into the regulatory spotlight.¹ Federal and state regulators have reacted to this change in a variety of ways that impact bank partnership program operations moving forward. This article analyzes the various structures being used on the federal and state level to regulate bank partnership programs.

A bank partnership program is a cooperative venture between a Federal Deposit Insurance Corporation insured depository institution and a non-depository entity. In the context of marketplace lenders, the Marketplace Lenders Association (“MLA”) describes a bank partnership program as one where a non-depository entity “partners with a traditional FDIC-insured bank, the FDIC-insured bank originates and funds the loan, the [non-depository entity] then purchases the loan from the bank, and the [non-depository entity] holds the loan in

its portfolio or sells it to an investor.”² The MLA explained that the bank partnership program allows a non-bank entity to partner with an FDIC-insured bank “whereby the FDIC-insured bank originates and funds the loans in all 50 states, and the [non-depository entity] then purchases those loans from the bank.”³ In addition, these programs typically do not require the consumer to make any payments to the FinTech company as part of the loan origination process. The value to a FinTech company of partnering with a bank is the ability to pair a modern, user-friendly, technology-driven experience with the lawful uniformity of credit terms that depository institutions routinely offer consumers in every state using their rate exportation authority. This benefit is so significant that it has led many FinTech companies to utilize a bank partnership program while also obtaining

¹ While the term “FinTech” covers a number of companies that use technology to provide a variety of financial services, this article is limited to a consideration of FinTech companies that are engaged in consumer loan programs.

² Brief of Amicus Curiae the Marketplace Lending Association in Support of Plaintiff WebBank at 4, *WebBank v. Julie Ann Meade, as Administrator of the Uniform Consumer Credit Code for Colorado*, No. 1:17-cv-00786-PAB-CBS (D. Col. June 2, 2017), ECF No. 30.

³ *Id.*

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