TAXPAYER FIRST ACT – DISCLOSURE TO THIRD PARTIES

I. INTRODUCTION

The Taxpayer First Act, which went into effect on December 28, 2019, requires a new written consent to be obtained from a taxpayer when tax return information obtained from the government, at the direction of the taxpayer, is provided to third parties. Instances in which banks may typically need to obtain taxpayer consent include the process of extending credit or in selling or participating out a loan.

Although additional guidance is anticipated, it appears that:

a. The new consent requirement applies only in situations where information is obtained directly from the government at the direction of the taxpayer.
b. The consent requirement applies to all taxpayers; not just individuals.
c. The consent should be used in all situations where the tax information is received directly from the government and the consent content should anticipate scenarios other than just loan sales.
d. The effective date applies to the initial disclosure of tax information at the direction of the taxpayer from the government to a third party.

II. BACKGROUND

On July 1, 2019, President Trump signed into law the “Taxpayer First Act”, Public Law 116-26. This legislation includes a number of provisions to improve and modernize the operations of the IRS and provide protections for taxpayers.

Section 2202 of the legislation limits redisclosures and uses of consent-based disclosures of tax return information, as follows:

“Persons designated by the taxpayer under this subsection to receive return information shall not use the information for any purpose other than the express purpose for which consent was granted and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.”
III. APPLICATION TO BANKING INDUSTRY

In verifying income, employment, etc., in connection with an extension of credit, borrowers may request that the IRS make information available to a lender. Currently, such a request is made by the customer completing Form 4506-T and the lender using the Income Verification Express process to actually obtain the information. This process is commonly utilized in the origination of mortgages.

The exchange of information between the IRS and the lender likely falls within the requirements of the new legislation. Suggested consent language is set forth below; however, banks should work with their own legal counsel to adopt appropriate consent language.

I understand, acknowledge, and agree that the Lender and Other Loan Participants can obtain, use and share tax return information for purposes of (i) providing an offer; (ii) originating, maintaining, managing, monitoring, servicing, selling, insuring, and securitizing a loan; (iii) marketing; or (iv) as otherwise permitted by applicable laws, including state and federal privacy and data security laws.

“The Lender” includes the Lender’s affiliates, agents, service providers and any of aforementioned parties’ successors and assigns. The “Other Loan Participants” include any actual or potential owners of a loan resulting from my loan application, or acquirers of any beneficial or other interest in the loan, any mortgage insurer, guarantor, any servicers or service providers for these parties and any of aforementioned parties’ successors and assigns.

If a bank is receiving information from the IRS at the direction of the taxpayer and subsequently shares that information with third parties for specified purposes as set forth in the consent language, the new provisions apply and the consent language should be utilized.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.