LUSE GORMAN

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The Bankers' Bulletin

*Regulatory and Enforcement Insights on **Recent Bank Industry Developments***

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INDUSTRY SNAPSHOT

month over month

- ↑ OCC Charter Applications Filed: **3**
- ↑ FDIC Insurance Applications Filed: **3**
- ↑ FDIC Insurance Applications Approved: **2**
- ↑ Bank Enforcement Actions Announced: **2**
- ↓ Bank Enforcement Actions Terminated: **6**

Check out what Luse Gorman was up to last month here:

Proposed Merger ($354.0MM) || Subordinated Debt Issuance ($80.0MM)

OCC Issues Report Detailing Preliminary Debanking Findings at Large Banks

Summary

On Dec. 10, the OCC released a report containing its "preliminary findings" from its review of debanking activities at the nine largest national banks it supervises. The agency's release noted it continues to review "thousands" of complaints.

Highlights

1) The report identified nine industry sectors that it found were subjected to "restricted access" by these banks' policies, including firearms, oil and gas, payday lending, adult entertainment, and digital assets, but not cannabis.
2) The report does not provide any examples of actual account restrictions or closures as a result of these banks' policies, though it repeats quotes from internal bank documentation indicating that the banks' personnel had a heightened awareness of potential reputational risk or considered escalating customers for further evaluation.
3) Sensitivity to environmental and social issues is the key factor drawing OCC criticism of the policies reviewed, aligning with broader Administration initiatives to eliminate companies' consideration of these types of factors.

Practical Tips

- The OCC continues to "strongly encourage" national banks to review their policies and practices to align with President Trump's executive order on debanking, suggesting those will be in-scope during future examinations.
- Because the OCC's review of its complaint database remains ongoing, banks should be vigilant in examining their own internal complaint logs and those previously referred by the OCC to stay ahead of potential agency inquiries.

Takeaway

Although the OCC's initial report provides few concrete details, the fact that it was issued while the review remains ongoing demonstrates the agency wanted to make a statement regarding the priority it is placing on this issue. While the Comptroller has publicly stated the agency is primarily focused on these large institutions, all banks should be prepared for closer scrutiny on fair access issues in 2026, especially around the nine specific industry sectors listed in this report.

FRB Issues First Supervision and Regulation Report of 2025

Summary

On Dec. 1, the FRB released its Supervision and Regulation Report, its only publication last year of the traditionally semi-annual report, and concluded that the U.S. banking system continues to maintain strong capital and liquidity levels.

Highlights

1) In the Report, the FRB noted the number of outstanding supervisory findings at community banks and regional banks fell during the first half of 2025 compared with year-end 2024, while the number of new findings in the first half of 2025 fell compared with the first half of 2024. Composite upgrades also outpaced downgrades in the first half of 2025.
2) For community banks, IT/operational risk findings remained the most cited category of outstanding issue, followed next by risk management and internal controls. Regional banks had the inverse results in terms of supervisory findings.
3) The Report also notes that the FRB recently restarted issuing non-binding supervisory observations on issues that do not meet the threshold for an MRA, in order to enhance communication and encourage earlier remediation.

Practical Tips

- FRB-supervised banks should continue to closely monitor their CRE portfolios, as the Report notes examiners are focused on CRE concentrations, and continue to review CRE underwriting practices, classifications, and loss reserves.
- Consistent with the agency's recent pledge to return examination focus to material financial risks, the Report's list of supervisory priorities for community and regional banks focuses on aspects of credit, liquidity, and interest rate risk.

Takeaway

The FRB's first formal summary of its supervisory efforts since Governor Bowman became Vice Chair for Supervision evidences the effects of the agency's new approach to supervision: the number of outstanding findings at large, regional, and small banks all have decreased, and lists of examination priorities are squarely focused on the financial elements of CAMELS (capital, liquidity, asset quality, and interest rate risk). Both IT and cyber risks also remain in focus, however.

This month's big number:

5

The number of national trust bank charter applications conditionally approved by the OCC on Dec. 12. Among the approvals, two were for de novo charters. while three were for conversions from state trust companies to national trust banks. In its announcement of the conditional approvals, the OCC stated that it applied "the same rigorous review and standards it applies to all charter applications."

OCC Proposes Simplified CRA Strategic Plan Process for Community Banks

Summary

On Dec. 17, the OCC issued proposed guidance outlining a simplified Community Reinvestment Act (CRA) strategic plan process for community banks, which it now defines as those institutions with up to $30 billion in assets.

Highlights

1) Under current regulation, any bank can have its CRA performance evaluated under a strategic plan as an alternative to being evaluated against the otherwise applicable CRA tests—but per the OCC, this option is vastly underutilized.
2) To facilitate use of this option, the guidance pledges the OCC will provide concrete examples of measurable goals that banks can elect—including quantifiable performance measures (numbers, dollar amounts) and performance levels (specific values for those measures)—which would remove some of the guesswork inherent in the current process.
3) If banks choose to use a strategic plan, the OCC generally will not expect that CRA-qualifying activities to be reduced as compared to the existing process. And the goals chosen by each bank will be periodically assessed and updated.
4) Planned process improvements include formalizing an examiner feedback procedure, and issuing a plan template.

Practical Tips

- Even if banks utilize the measures the OCC sets out, the proposal notes that banks still must engage with the public regarding their proposed strategic plan, and make adjustments to address comments before submission to the OCC.
- The proposal notes that as the OCC gains experience with this process, the agency will consider whether its use should be expanded to larger banks, signaling that regional banks too may utilize this streamlined option in the future.

Takeaway

Consistent with other recent federal agency proposals, this guidance is notable for codifying a process for effective collaboration with examiners during the plan development stage, which should meaningfully reduce after-the-fact findings of non-compliance. Given the complexities of the CRA, creation and implementation of a strategic plan could still prove challenging without outside expertise. The biggest adopter of these plans may be internet-only banks under $30B.

FDIC Proposes Rule for Bank Subsidiary Stablecoin Issuance Approvals

Summary

On Dec. 16, the FDIC issued a notice of proposed rulemaking pursuant to the GENIUS Act passed last summer to establish an application process for its supervised institutions to obtain approval to issue payment stablecoins through a subsidiary.

Highlights

1) The applicant will be the FDIC-supervised state nonmember bank or state savings association, as distinguished from the subsidiary institution that will issue the payment stablecoins (a permitted payment stablecoin issuer, or PPSI).
2) As part of the application, the bank must specify the proposed activities of the subsidiary PPSI, and "related" and "incidental" activities of the bank, and the involvement of any third parties that may participate in those activities.
3) The rule anticipates joint submission of a single application by groups of FDIC-supervised members of a consortium seeking to offer a proposed payment stablecoin, which should ease the filing burden on groups utilizing this approach.
4) The FDIC previews FDIC regulations governing capital, liquidity, reserve asset diversification, and risk management.

Practical Tips

- Consistent with other regulatory applications, the FDIC will request *pro forma* financial statements for the first three years of the subsidiary PPSI's operations. Well-developed, tailored policies and procedures must also be included.
- The rule self-imposes a 30-day clock to deem an application substantially complete. Applications can only be denied if the activities would be unsafe or unsound, based on factors set out in the GENIUS Act and replicated in the proposal.

Takeaway

First among the federal banking agencies to propose rules governing PPSIs, the FDIC's proposal closely tracks the language and requirements of the GENIUS Act, as well as its own regulations governing applications in different contexts. The proposal is fairly explicit regarding the FDIC's expectations around the substance of the policies and procedures to be submitted, especially related to reserve assets and stablecoin redemption of stablecoins, providing an effective roadmap for applicants that should reduce the period of time before an application is deemed complete.

> "My Administration must act with the Congress to ensure that there is a minimally burdensome national standard — not 50 discordant State ones. The resulting framework must forbid State laws that conflict with the policy set forth in this order. . . . Until such a national standard exists, however, it is imperative that my Administration takes action to check the most onerous and excessive laws emerging from the States that threaten to stymie innovation."
>
> **President Donald J. Trump,**
> *taking action to preempt state laws governing institutions' use of artificial intelligence,*
> in an Executive Order entitled "Ensuring a National Policy Framework for Artificial Intelligence" (Dec. 11)

OCC Seeks to Formalize Escrow Account Power for National Banks

Summary

On Dec. 23, the OCC issued a preemption determination concluding that the National Bank Act preempts the interest-on-escrow account laws of twelve states, and concurrently issued a proposed rule to codify escrow accounts power.

Highlights

1) Conducting an analysis as instructed by the 2024 Supreme Court *Cantero* decision, the OCC concluded that state interest-on-escrow laws that set a minimum interest to be paid on funds in such accounts and prohibit assessments of related service charges significantly interfere with national banks' authorized powers to establish and maintain such accounts. These same authorized powers were re-affirmed through the concurrent rule issued by the OCC.
2) State laws in NY, CA, CT, MA, MN, WI and UT, among others, will be preempted pursuant to the OCC's determination.
3) The OCC's determination seeks public input on whether there are any additional state laws that have "substantially equivalent" terms to New York's law, signaling the final iteration could sweep up laws from additional jurisdictions.

Practical Tips

- Under the twin issuances, national banks will be expressly permitted to set the terms and conditions of escrow accounts, including compensation paid to customers, and such terms will be protected against contrary state laws.
- The preamble to the determination outlines the OCC's view of when a state law will interfere with a bank's exercise of a federal power under the test outlined in the *Cantero* decision: if the state law (i) inhibits critical flexibility, (ii) hinders efficiency and effectiveness, or (iii) qualifies a federal power in an "unusual way."

Takeaway

By simultaneously codifying escrow account-related powers into existing OCC real estate lending regulations and relying on that regulation to support its preemption determination, the agency seeks to insulate its conclusion against a challenge. Several of the states affected by the determination have shown an appetite for challenging federal laws and the current Administration, signaling likely litigation ahead. The OCC's use of the *Cantero* framework will be put under the microscope.

Other Developments You May Have Missed Last Month . . .

OCC and FDIC Withdraw from Interagency Guidance on Leveraged Lending. On Dec. 5, the OCC and FDIC released an interagency statement announcing they are withdrawing from 2013 guidance related to bank participation in the leveraged lending market, labeling it "overly restrictive" on bank activities and "overly broad" in scope. The agencies also noted that the guidance should have been issued as a rule.

***Bottom Line*:** In lieu of the more prescriptive guidance, the agency statement sets an expectation that national and state nonmember banks manage leveraged lending exposures consistent with "general principles for safe and sound lending," giving them flexibility to determine the definition of leveraged loans, but reinforcing the need to incorporate a risk appetite, a risk management framework, and concentration limits. The two agencies committed to using the notice and comment process should they issue further guidance. To date, the FRB has not withdrawn.

FRB Issues Policy Statement for Banks Seeking to Engage in Innovative Activities. On Dec. 17. the FRB announced its withdrawal of a 2023 policy statement and issuance of a replacement statement related to facilitating responsible innovation at its supervised institutions. The 2023 iteration had effectively established a presumption against "novel and unprecedented" activities, especially related to crypto activities.

***Bottom Line*:** The statement codifies a principle long echoed by industry, and taken up by new leadership at the agency: same activity, same risks, same regulation. Thus, the statement puts state member banks back on equal footing with OCC- and FDIC-supervised institutions when engaging in novel activities. Uninsured banks—the ranks of which are growing quickly due to the proliferation of new charter types across the country—stand to gain from this newly-issued statement, which highlights relevant considerations to obtain FRB approval for new activities.

FRB Issues Request for Information Regarding Proposed Payment Account. On Dec. 19, the FRB issued a request for information and comment (RFI) on a special purpose Reserve Bank account prototype which it labels a "Payment Account." Per the RFI, the holder of a Payment Account would be expected to use its Account for the express purpose of clearing and settling the institution's payment activity.

***Bottom Line*:** Consistent with prior public statements made by the Payment Account's sponsor, Gov. Waller, only institutions that are legally eligible for Federal Reserve accounts or services would be eligible to request a Payment Account. The RFI notes that the review of account requests would generally be "streamlined," and the Reserve Banks would retain discretion to impose additional restrictions and controls on a case-by-case basis. The information sought by the RFI is limited, suggesting the FRB plans to proceed quickly, substantially in the form proposed.

OCC Issues Proposed Rule to Increase Asset Threshold for Heightened Standards. On Dec. 23, the OCC issued a notice of proposed rulemaking to increase the asset threshold for applying its Heightened Standards Guidelines from $50 billion to $700 billion. In the proposal, the OCC states the changes are based on its "significant experience" regarding the burdens and benefits of the Guidelines on covered banks.

***Bottom Line*:** The proposal is the latest example of the OCC eschewing prescriptive standards—the Guidelines are labeled as "extreme"—for all but the biggest banks. The proposal will give institutions now excluded by the threshold increased room to design and implement the "best suited" risk governance frameworks, and boards more space in overseeing them. The OCC will still maintain authority to apply the Guidelines, in whole or in part, to banks below the new threshold, if it determines a bank's operations are highly complex or present heightened risk.

About Us

Luse Gorman, PC is a Washington DC-based law firm that specializes in representing regional and community banks across the country. Our attorneys have served with the federal banking and securities agencies and regularly engage with these agencies on a broad range of complex and novel compliance, regulatory, enforcement, transactional, application, and licensing issues. Our firm also specializes in mergers and acquisitions, capital raising transactions, general corporate and securities issues, and tax, executive compensation and employee benefits matters.

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