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: **5**
- ↑ FDIC Insurance Applications Filed: **6**
- ↓ FDIC Insurance Applications Approved: **1**
- ↓ Bank Enforcement Actions Announced: **0**
- ↓ Bank Enforcement Actions Terminated: **5**

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

Proposed Acquisition ($348.0M) || Completed Merger ($87.2M) || Conversion and Offering ($23.1M)
Subordinated Debt Issuance ($26.0M) || Subordinated Debt Issuance ($40.0M) || Private Placement ($30.0M)

Federal Banking Agencies Propose Comprehensive Capital Rule Revamp

Summary

On March 19, the FRB, FDIC, and OCC jointly issued a new Basel III endgame proposal applicable to the largest banking organizations and a proposal to revise risk-based capital treatment for other banking organizations. Concurrently, the FRB also issued a proposal to modify the methodology used to calculate risk-based capital surcharges for U.S. GSIBs.

Highlights

1) The proposals mark a dramatic shift from those issued in July 2023 under the Biden Administration, as the agencies seek to use their collective post-financial crisis experience to streamline applicable requirements and align capital with risk.
2) FRB staff estimates after all capital changes are considered, Category I and II firms will see a cumulative -4.8% change in aggregate common equity tier 1 capital, Category III and IV firms a -5.2% change, and smaller firms a -7.8% change.
3) The agencies assert that both the Basel III and risk-based capital proposals will increase incentives to engage in mortgage origination and servicing by adjusting the relative risk weights assigned and utilizing a more granular set of risk factors.

Practical Tips

- Consistent with other regulations issued by the agencies during the Trump administration, under these proposals, several static dollar-based thresholds will be adjusted—especially in the risk-based capital treatment proposal—to reflect inflation, suggesting banks should understand the methodology to be used and prepare to set up monitoring measures.
- Banks should tailor to their own circumstances the generalized estimated impacts to capital figures cited by the agencies.

Takeaway

Any development as long-awaited as capital regulation reform will be beset by intense lobbying efforts on all sides, and the final rules may vary significantly from the proposals. While it is critical for banks to be familiar with the proposals (to the extent they apply) and to start thinking through how the changes may affect ongoing operations and capital and strategic planning, boards and management should bear in mind these efforts will need to be re-evaluated. In the meantime, banks should be attuned to agency leadership commentary on the progress of the public comment review and potential impacts.

OCC Finalizes Rule to Streamline Community Bank Licensing Requirements

Summary

On March 3, the OCC announced its final rule to streamline the licensing requirements for national banks and federal savings associations under $30 billion in assets to engage in a variety of corporate activities and transactions.

Highlights

1) The final rule implements the proposal, issued in November 2025, more or less without change, despite the filing of several opposing public comments. The rule does not include a provision to adjust the asset threshold for inflation.
2) The rule continues to emphasize the agency's belief that, based on its experience, community banks generally present low levels of risk similar to "eligible banks"—i.e., those banks that are well rated, well capitalized, and well managed.
3) A "covered community bank or savings association" includes institutions with less than $30B in assets, that are well capitalized, and that are not subject to a formal enforcement action or action requiring financial condition improvement. It also cannot have an affiliated bank with $30B+ in assets, reflecting the OCC's more holistic view of organizational risk.

Practical Tips

- Community banks considering new branches, relocating main offices, trust powers, capital raises, issuing sub debt, business combinations, capital distributions, and new subsidiaries should push to utilize these new expedited procedures.
- Qualifying banks should keep in mind that, although they fit within the parameters for expedited review and decision, the OCC retains discretion to remove filings from this review channel or to adopt tailored procedures for a particular filing.

Takeaway

The streamlined procedures cover a variety of both basic and more advanced strategic objectives that banks are looking to complete in the current environment, which has proven far more receptive to growth and expansion. By allowing many banks under $30B to qualify for expedited processing even if they do not meet all the criteria for an "eligible bank," the OCC will allow institutions to not only cut down on the time, effort, and resources needed to prepare the filings. In some cases, banks may even bypass formal approval altogether, as they may now qualify to submit only a simplified notice filing to the agency.

This month's big number:

$5MM

The proposed reformed deposit insurance coverage cap for noninterest-bearing transaction accounts, in the bipartisan Main Street Depositor Protection Act. The bill was introduced in the U.S. Senate on March 25, and companion legislation was introduced in the House. The bill is primarily sponsored by Senators Hagerty (R-TN) and Alsobrooks (D-MD). It is the third attempt at an increase in the insurance cap this session. Previous iterations set at $20MM and $10MM failed to gain traction.

States Move Ahead with Interest Cap and Fee Legislation Despite Litigation

Summary

On Mar. 6, the Oregon Senate passed H.B. 4116, which allows the state to opt out of a federal law permitting out-of-state banks to lend in OR at the interest rates of their home state. The Governor signed the bill on Apr. 7. On Mar. 10, a committee in the DE General Assembly moved an interchange fee prohibition bill, H.B. 315, out of committee, and on Mar. 12, a CO Senate Committee referred to the entire state Senate a similar interchange fee prohibition bill, SB26-134.

Highlights

1) The OR law is similar to 2023 legislation in CO that remains tied up in litigation in the federal Tenth Circuit Court of Appeals. If these laws are not stayed by the courts, they would limit the interest rates charged by out-of-state state banks on loans made within the state's own borders to that state's set interest caps. The viability of the CO law is still in question: on Apr. 2, the Tenth Circuit decided it will reexamine its own earlier decision that allowed the CO law to stand.
2) The proposed DE and CO interchange fee limits—which still need to get through their respective statehouses and receive gubernatorial sign-off—follow a 2024 IL law that bars receiving and charging these fees on taxes or gratuities. After a federal district court ruled the IL law can stand, trade groups filed appeals in the Seventh Circuit, which are pending.

Practical Tips

- Banks doing business across state lines should set up tracking and monitoring tools to follow the progress of state opt-out and interchange fee limitation laws, as OR, DE, and CO have shown they are not deterred by setbacks in federal court.
- If banks have designed controls to accommodate restrictions imposed by the existing CO and IL laws, they should explore how to quickly expand them to incorporate other states, and establish triggers that are tied to any new laws' effective dates.

Takeaway

The back-and-forth nature of the developments in the ongoing lawsuits involving the CO opt-out law and the IL interchange fee law demonstrate the challenge banks face in being prepared to adapt to significant business limitations on a fluid timeline. But last month's progression of bills in other states, despite the legal headwinds at the federal level, not only creates a state by state patchwork, but introduces the potential for a federal court patchwork as well. The federal circuits that include OR and DE will not be bound by the Tenth and Seventh Circuits' decisions, even when they are evaluating substantially similar laws.

Banking Agencies Issue FAQs on Capital Treatment of Tokenized Securities

Summary

On March 5, the OCC, FDIC, and FRB issued joint frequently asked questions (FAQs) clarifying the capital treatment of tokenized securities. Securities are "tokenized" when ownership rights are represented using distributed ledger technology.

Highlights

1) The agencies confirmed that their capital rule is "technology neutral": the technologies used to issue and transact in a security do not generally impact its capital treatment. Therefore, the tokenized security should be treated in the same manner as the non-tokenized form of the security would be treated under that rule, if they confer identical legal rights.
2) According to the FAQs, if a security is tokenized through technology, its ability to meet the definition of "financial collateral" in the capital rule is not impacted. A tokenized security can still qualify to be a credit risk mitigant, and it would be subject to the same haircuts that apply to the non-tokenized form of that security when used as collateral.
3) Whether a blockchain is permissioned or permissionless does not affect a tokenized security's capital treatment.

Practical Tips

- The agencies continue to emphasize that they do not favor a single form of technology or form over another, reinforcing a message their leadership has harped on: same activity, same risks, same regulation. As many banks continue to explore different use cases for digital assets, they should expect their examiners to reflect this philosophy during examinations.
- The agencies also reiterated that banks must continue to apply sound risk management practices to tokenized securities.

Takeaway

The FAQs are notable on a few different levels, beyond confirming the capital status of securities in tokenized form. First, the issuance demonstrates the agencies' leaders' willingness to proactively provide guidance to the industry on an issue that carried some uncertainty. Second, they show that the agencies believe the use of tokenized securities has been, or shortly will be, mainstream enough that industry-wide clarification is important. Third, they continue they show the agencies continue to emphasize issuing guidance on questions related digital assets and distributed ledger technology over other traditional areas.

> "As we know, the payments landscape is actively evolving. . . . Throughout this transformation, the integrity and stability of the U.S. payments system remain our priority. . . . We will continue to work with institutions in the Tenth Federal Reserve District to help ensure that access to the payment system supports a level competitive field and reinforces the stability and resilience that has underpinned the Federal Reserve's payment system offerings throughout its history."
>
> **Federal Reserve Bank of Kansas City President Jeff Schmid,**
> *announcing the Reserve Bank's approval of a limited purpose Fed account for Wyoming-chartered special purpose depository institution Payward Financial, dba Kraken Financial* (Mar. 4)

DE and CA Legislatures Introduce Bills Governing Digital Asset Activities

Summary State lawmakers in Delaware and California introduced legislation in March to establish parameters around state-chartered banks' engagement in digital asset activities. After the July 2025 passage of the GENIUS Act, expect more states to follow.

Highlights

1) On Mar. 23, SB16, titled the Delaware Banking Modernization Act of 2026, was introduced in the Delaware Senate. The bill would include digital assets within the definition of "personal property" and therefore permit its state-chartered banks and savings banks exercising fiduciary powers to hold and administer digital assets on behalf of customers. SB19, which would create a licensing framework for payment stablecoin issuers, was introduced on the same day.
2) On Mar. 16, AB2285, titled the Digital Financial Asset Banking Act (DFAB Act), was amended and re-introduced in the California State Assembly. The bill would place state banks' provision of digital asset custody, staking, and transaction services under the examination and enforcement authority of the Department of Financial Protection and Innovation.

Practical Tips

- The Delaware Senate chose to expand the scope of general powers exercisable under the banking code to grant state-chartered banks this authority, ensuring they would not need a specific approval process or the state wildcard provision.
- California banks engaging in custody services under the DFAB Act would need to either obtain an annual independent audit or conduct a yearly board-level review. These banks would also need to stand up a specialized cybersecurity program.

Takeaway Putting the proposed Delaware and California bills side-by-side demonstrates how varied the states' approaches will be in defining the scope of authorized digital asset activities, as well as the granularity of the attending audit, disclosure, AML, and cybersecurity requirements, among others. Some states may choose Delaware's path—granting limited powers and eschewing new approval channels—which will leave large swaths of digital asset activities in a gray zone. States could instead choose California's model, featuring highly prescriptive provisions to govern both the activities and related requirements.

Other Developments You May Have Missed Last Month . . .

Group of Senators Reintroduce Bill to Clawback Executive Pay for Bank Failures. On Mar. 11, a bipartisan group of Senators led by Warren (D-Mass.) and Hawley (R-MO) reintroduced the Failed Bank Executives Clawback Act of 2026, nearly three years to the day after the failure of Silicon Valley Bank. The bill would require the FDIC to claw back all or part of the compensation received by directors, officers, controlling shareholders, and control persons of $10B+ banks during the 3 years preceding the appointment of the FDIC as receiver for that institution.

***Bottom Line*:** Given the current competing legislative priorities of the Administration and within both houses of Congress, the bill would likely need to be incorporated into another larger banking package or tacked onto must-pass legislation to see daylight before the midterms. But the number of bipartisan co-sponsors suggest the issue has staying power and could be preserved for passage in a future Administration. The direct liability assigned by the bill to individuals controlling, overseeing, and managing $10B+ banks would be a watershed change in legal exposure.

President Issues Executive Order to Reduce Mortgage-Related Regulatory Burdens. On Mar. 13, President Trump issued a wide-ranging Executive Order entitled "Promoting Access to Mortgage Credit" aimed at reducing regulatory burdens around mortgage activity for $100B or less "smaller banks." The Order directs the CFPB to consider modifying existing rules such as TILA, RESPA, and HMDA, and instructs the Bureau and the federal banking agencies to consider modifications to examiner expectations around mortgage servicing and narrow supervisory focus.

***Bottom Line*:** The Order's encouragement to the bank agencies to modify their enforcement standards for violations of consumer financial laws—to discourage CMPs except for willful or reckless conduct, consider the correction of good-faith technical errors, and allow for self-identification and remediation—could seep into revisions to the agencies' enforcement policies, either in public revisions to guidance or merely in practice.

FDIC Rescinds Policy on Qualifications for Failed Bank Acquisitions. On Mar. 19, the FDIC approved the rescission of its 2019 Statement of Policy on Qualifications for Failed Bank Acquisitions, which had established terms and conditions private capital investors were expected to satisfy before they could become eligible to bid on a failing institution. The FDIC labeled these conditions "onerous" and "highly prescriptive."

***Bottom Line*:** The rescission is borne in part out from the FDIC's experience with the 2023 bank failures, as the agency acknowledges that the Statement's restrictions might have limited private capital's involvement in the bidding—an outcome the FDIC perceives is counter-productive, given the increased speed of failures due to technological advancement. Expect private equity firms to be major players in the event of a bank failure during the current Administration, as they will now expect to only be held to the same statutory factors applicable to other bank bidders.

FRB OIG Releases Report On Agency's Processing of Merger and Control Applications. On Mar. 23, the FRB OIG issued Evaluation Report 2026-SR-B-004, which assessed the Board and the Reserve Banks' processing of merger, acquisition, and change-in-control applications acted on between Jan. 1, 2023 and Dec. 31, 2024. The report concluded that the Board should enhance its ability to monitor the efficiency and timeliness of its processing of these applications, finding that: the agency does not track sufficient information to enable it to do so; the FRB's recently-implemented tracking system, FedEZFile, does not capture key internal milestones; and delegation hurdles contribute to delays.

***Bottom Line*:** While the Report captures only applications decisioned during the prior Administration—and the new leadership has prioritized speed and efficiency—the OIG's recommendations still apply, as evidenced by agency management's agreement with proposals to train case managers and develop status reports for applications in process. With the pledged corrective action not scheduled until late 2026 or even 2027, however, any OIG-suggested improvements are not likely to make an immediate impact on pending or soon-to-be filed applications.

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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