

INSIGHTS

FDIC Action Encourages De Novo Bank Charter Applications

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On April 6, 2016, the FDIC rescinded its 2009 Financial Institutions Letter concerning enhanced scrutiny for newly insured FDIC-supervised depository institutions. The 2009 Financial Institution Letter, among other things, extended the de novo period for newly organized, state non-member institutions from three years to seven years for examinations, capital maintenance and other requirements. It was issued against the backdrop of an elevated number of newly chartered institutions failing or becoming problem banks during the financial crisis.

While this change is beneficial, of more significance are FDIC statements accompanying this action. FDIC Chairman Gruenberg has indicated that the FDIC welcomes applications for deposit insurance for de novo depository institutions. This, coupled with informal indications in the past two years from chartering authorities that encouraged qualified organizing groups to seek approval for de novo institutions, signals that the state and federal agencies are receptive to new bank charter applications and that the FDIC will be a cooperative partner in the process.

The OCC and state bank regulatory authorities are the chartering authorities for new banks. While the FDIC does not charter banks, all de novo banks must have FDIC deposit insurance. The application process involves an application to the federal (OCC) or state (for example, Texas Department of Banking) regulatory authorities and simultaneous application to the FDIC for insurance of accounts.

In our experience, the seven year versus three year requirements did not appear to be the most important deterrent to new bank applicants. Rather, the FDIC's informal communication that deposit insurance for de novo banks would not be considered during the financial crisis was the main regulatory deterrent to new bank organizing groups. In addition, uncertain and changing financial and economic conditions, as well as increased regulatory operating costs and burdens, played a role in stifling charter activity.

Normally, the application process can take 10 to 12 months from conception to opening the bank for well qualified organizing groups. The FDIC press release and comments seem to indicate removal of the informal moratorium and a return to the previous regulatory regime, but only time will tell. The FDIC's action is consistent with our informal discussions in the past couple of years with officials at chartering authorities, who indicated a desire to receive applications from qualified organizers.

Bracewell has been involved in chartering dozens of de novo institutions over the years. The last eight to nine years have seen that activity cease. We interpret the recent regulatory action

as a strong signal that the FDIC is once again receptive to de novo institutions.

This action opens a key regulatory door for bankers and entrepreneurs to make a business decision about starting a new bank with a more receptive regulatory environment in place. We hope the door stays open.