AMB America's Mutual Banks

MUTUAL ALERT

TRUMP ADMINISTRATION EXECUTES DELICATE APPOINTMENT DANCE AROUND FDIC BOARD COMPOSITION REQUIREMENTS.

DOES THE DANCE PRESAGE BIG CHANGES FOR MUTUALS?

Yesterday, the Trump Administration announced a number of unorthodox steps to take over the leadership of the CFPB and the OCC. Earlier in the week, President Trump appointed newly confirmed Treasury Secretary Bessent as Director of the CFPB which would make him, by operation of law, a Board member of the FDIC. Yesterday, on the heels of his Senate confirmation as head of OMB, Russell Vought advised CFPB staff that he was the new CFPB Acting Director, presumably replacing Secretary Bessent. On the same day Secretary Bessent announced his intention to appoint former NCUA Chair Rod Hood as First Deputy Comptroller. The Treasury press release announcing his intention offered as an explanation the following:

> The OCC is a bureau within the Department of the Treasury, and the Comptroller of the Currency is appointed by the President with the advice and consent of the Senate. By statute (12 U.S.C. § 4), the Treasury Secretary is responsible for appointing up to four Deputy Comptrollers of the Currency and designating one as the First Deputy Comptroller. During a vacancy in the position of Comptroller, the First Deputy Comptroller possesses the powers and performs the duties of the office of Comptroller.

While this explains that under the Act the First Deputy can act as Comptroller, it does not address the Federal Deposit Insurance Act requirement which states that not more than 3 of the 5 Board members can be members of the same political party. Moreover, the Act also requires at least one appointee have state bank supervisory experience. The difficulty arises with 4 Board members, two Republicans appointed by the President years ago, and two Acting Directors who serve as FDIC Board members until a successor Director is appointed by the President presumably all members of the same party. The Act states:

> (2) ACTING OFFICIALS MAY SERVE. In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Consumer Financial Protection Bureau and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency or the Director of the Consumer Financial Protection Bureau, the acting Comptroller of the Currency or the acting Director of the Consumer Financial Protection Bureau, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.

The apparent distinction in the statute is that the political party affiliation provision only applies to the members appointed by the President and not those serving by reason of holding the CFPB Director or Comptroller positions which makes them Board members by operation of law. This

Section of the Act created a precedent whereby a President by appointing an acting Comptroller or Acting Director can avoid Congressional confirmation as the Biden administration did with Acting Comptroller Hsu. While arguably, Congress did not contemplate that this provision would be used other than as an interim measure to provide for the continuation of agency operations during the pendency of confirmation proceedings, the statutory language imposes no such requirement. As a result, the statutory language would seem to permit the President to appoint an additional Republican to the open seat of the FDIC Board controlling all five seats. By Secretary Bessent appointing Rod Hood as First Deputy Comptroller, the intention could be to make that appointment permanent avoiding Congress and giving the Secretary complete control over the OCC, notwithstanding that the agency was established as an independent Bureau. How independent remains to be seen with the de facto Comptroller subject to the pleasure of the Secretary. This also leaves open the question that with DOGE recommending merger of agency functions whether the end game is to completely reorganize all four bank agency and credit union regulatory functions.

There may be an opportunity for mutuals in this shuffle, particularly with Rod Hood as First Deputy and presumably with some say so in how credit unions would be treated. No less a personage as Senator Elizabeth Warren suggested to me in a meeting several years ago that mutuals should consider being regulated by a credit union regulator rather than a bank regulator. We urge you to engage your representatives and mutual peers now in a discussion of what any reorganization should look like for mutuals. The administration is in a take no prisoners mood and will not pause for much debate over a reorganization once DOGE finalizes its recommendations.

Those of you not members of AMB should feel free to reach out to me for any input on how to meet the challenges presented by the present situation.

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