

Enforceability of OCC Reserve Based Lending Guidelines

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Two years ago, right after crude oil prices hit rock bottom in the middle of the worst downturn for U.S. producers since the 1980's, the Office of the Comptroller of the Currency ("OCC") revised its Handbook for Examination of Oil and Gas Exploration and Production Lending ("E&P Handbook"). The E&P Handbook introduced new metrics by which bank examiners were supposed to evaluate the repayment risks on banks' loans secured by oil and gas reserves ("RBLs"). The changes announced by the OCC added to the angst and consternation among energy lenders and their oil and gas borrowers.

A few years before the E&P Handbook was issued, the OCC, along with other agencies responsible for oversight of national banks, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Program (collectively the "Agencies"), issued a similar guidance for the evaluation of leveraged loans under the Interagency Guidance on Leveraged Lending ("Leveraged Lending Guidance"). The Agencies issued their guidance without first submitting it to Congress for review and approval under the Congressional Review Act ("CRA").

Last fall, following an inquiry by Sen. Toomey, the General Accounting Office ("GAO") reviewed whether the Agencies' action complied with the CRA and concluded that it did not. Following the GAO's decision, officials at the Fed and the OCC have publically stepped back from enforceability of the Leverage Lending Guidelines. Although the GAO's decision related to the Leveraged Lending Guidance, the same analysis should apply to the E&P Handbook because it is similar in scope, purpose and effect on banks as the Leveraged Lending Guidance. Because the OCC also failed to submit the E&P Handbook for review under the CRA, it would appear that, if properly challenged, the binding nature of the E&P Handbook should be similarly questioned.

This alert was also published in [Practical Law](#).

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