IN THE SUPREME COURT OF GUAM

BANK OF GUAM, a Guam territorial bank,
Petitioner-Appellant,

vs.

GUAM BANKING BOARD, GEORGE V. CRUZ, CLIFFORD GUZMAN, TOM MICHAELS, ROSITA OWEN, ROBERT H. KONO (IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE GUAM BANKING BOARD),
Respondents-Appellees,

vs.

FIRST HAWAIIAN BANK,
Real Party in Interest-Appellee.

Supreme Court Case No. CVA02-010
Superior Court Case No. SP0234-01

OPINION

Filed: May 12, 2003

Cite as: 2003 Guam 9

Appeal from the Superior Court of Guam
Argued and submitted on February 10, 2003
Hagåtña, Guam

Appearing for the Petitioner-Appellant:
Duncan G. McCully, *Esq.*
McCully & Beggs, P.C.
139 Murray Blvd.
Hagåtña, Guam 96910

Howard, Rice, Nemerovski, Canady, Falk & Rabkin, P.C.
Three Embarcadero Center, 7th Floor
San Francisco, California 94111

Appearing for the Real Party in Interest-Appellees:
Richard L. Johnson, *Esq.*
Klemm, Blair, Sterling & Johnson, P.C.
Suite 1008, Pacific News Bldg.
238 Archbishop F.C. Flores St.
Hagåtña, Guam 96910

BEFORE: PETER C. SIGUENZA, JR., Chief Justice, Acting; RICHARD H. BENSON and ALEXANDRO C. CASTRO, Justices *Pro Tempore*[1].

BENSON, J.:

[1] The Bank of Guam opposed First Hawaiian Bank's ("First Hawaiian") application to the Guam Banking Board ("Banking Board") for the establishment of a new First Hawaiian branch in Tamuning. Bank of Guam argues that (1) the opening of an additional branch by an out-of-state bank was prohibited by 11 GCA § 106601(c), and (2) the acquisition of a branch was prohibited by 11 GCA § 106355(b). First Hawaiian contends that section 106601(c) is preempted by the Riegle-Neal Act, and that section 106355 is inapplicable to its application. The Banking Board approved First Hawaiian's application and Bank of Guam petitioned the Superior Court for review of that decision. The Superior Court affirmed the Banking Board's decision and Bank of Guam appealed. We affirm, concluding that section 106601(c) is preempted by federal law, and that section 106355 is inapplicable to intrastate branching by an out-of-state state bank with an already existing branch in Guam.

I.

[2] In May 2001, First Hawaiian entered into two separate agreements with Union Bank of California ("Union Bank"). The first, a Purchase and Assumptions Agreement ("P&A Agreement"), involved the sale of Union Bank's assets to and the assumption of its liabilities by First Hawaiian. *See generally* Appellant's Excerpts of Record, vol. 1, pp. 68-132 (Purchase and Assumption Agreement). The second agreement was a sublease by Union Bank of its Tamuning branch premises to First Hawaiian. *See generally* Appellant's Excerpts of Record, vol. 1, pp. 119-132 (Loan Sale and Assignment Agreement).

[1] The Honorable Peter C. Siguenza, Jr. retired as Chief Justice before oral arguments. He was appointed Justice *Pro Tempore* on January 29, 2003 and designated Acting Chief Justice in this matter.

[3] The P&A Agreement was submitted to the Federal Deposit Insurance Corporation ("FDIC") for approval pursuant to the Federal Deposit Insurance Act § 18(c). *See generally* Appellant's Excerpts of Record, vol. 1, pp. 32-290 (Interagency Bank Merger Application). In its application to the FDIC, First Hawaiian stated that the P&A Agreement "does not contemplate that [First Hawaiian] will assume Union's real property leases for Union's two branches on Guam." *Id.* at 36. However, First Hawaiian stated that it did "expect to offer employment to some of [UBC's] employees . . . ." *Id.* The FDIC approved the application on October 5, 2001.

[4] Prior to receiving FDIC approval of its P&A Agreement, First Hawaiian applied to the Banking Board, seeking approval for the establishment of a First Hawaiian branch at the same location where Union Bank was operating its branch. *See generally* Appellant's Excerpts of Record, vol. 2, pp. 311-66 (Application to Establish a Branch Office). In its application, First Hawaiian acknowledged that 11 GCA § 106601(c) prohibits its opening of an additional branch, but justified its application by arguing that 12 U.S.C. § 1831a(j)(1) preempts the Guam statute and empowers First Hawaiian to open an additional branch on the same basis as territorial banks. *See id.* at 366 (Exhibit C). The Banking Board approved First Hawaiian's application on October 30, 2001, bypassing section 106601(c) and relying on the factors set forth in 11 GCA § 106601(b). *See* Appellant's Excerpts of Record, vol. 2, p. 531-32.

[5] First Hawaiian followed its application to the Banking Board with an application to the FDIC for approval to establish an additional branch. *See* Appellant's Excerpts of Record, vol. 2, pp. 534-67. The FDIC agreed with First Hawaiian's analysis of 12 U.S.C. § 1831a(j)(1), finding that it preempts 11 GCA § 106601(c) and stating that "an out-of-State, State-chartered bank with a branch in Guam, including specifically First Hawaiian, may establish additional branches in Guam to the same extent that a Guam-chartered bank may establish additional branches in Guam." Appellant's Excerpts of Record, vol. 2, p. 615.

[6] Bank of Guam petitioned the Superior Court of Guam for review of the Banking Board decision granting First Hawaiian's application to establish an additional branch. The lower court found that 11 GCA § 106601(c) was preempted by 12 U.S.C. § 36(c) and 12 U.S.C. § 1831a(j)(1). Because the Banking Board found that First Hawaiian's branch met the requirements for branching set by section 106601(b), the lower court affirmed the Banking Board's decision to grant First Hawaiian's application to establish an additional branch and dismissed BOG's petition. BOG now appeals from the lower court's judgment.

II.

[7] This court has jurisdiction over final judgments of the Superior Court pursuant to Title 7 GCA §§ 3107 and 3108 (1994).

III.

[8] The issues before us are: (1) whether federal law preempts 11 GCA § 106601(c), and (2) whether 11 GCA § 106355 applies to the establishment by First Hawaiian of an additional, intrastate branch. A question of preemption is purely a question of law, and is reviewed *de novo*. *See Ada v. Guam Tel. Auth.*, 1999 Guam 10, ¶ 10; *see also Bank of Am. v. San Francisco*, 309 F.3d 551, 557 (9th Cir. 2002). Moreover, "an agency's interpretation of a statute is a question of law reviewed de novo." *Ada*, 1999 Guam 10 at ¶ 10. Questions of statutory interpretation are questions of law reviewed de novo. *Id.*

A. Preemption

[9] Preemption arises under the Supremacy Clause of the United States Constitution, which states that "[t]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every States shall be bound thereby; any Thing in the Constitution or the Laws of any State to the

Contrary notwithstanding." U.S. CONST. art. VI, cl. 2. In other words, "state law that conflicts with federal law is 'without effect.'" *Smiley v. Citibank*, 900 P.2d 690, 695-96, (Cal. 1995) (citation omitted), *aff'd* 517 U.S. 735, 116 S.Ct. 1730 (1996).

1. Presumption Against Preemption

[10] If the state statute in question regulates an area that falls within a state's historic police powers, then a presumption arises against the preemption of state law. *Id.* at 696. This presumption can be overcome only by showing that the superceding of state power was the "clear and manifest purpose of Congress." *Id.* (citation and quotation omitted); *see also Nat'l State Bank v. Long*, 630 F.2d 981, 985 (3d Cir. 1980). Thus, this court must first determine whether banking is an area traditionally within a state's police powers.

[11] First Hawaiian, relying on *Bank of America v. San Francisco*, asserts that the presumption against preemption does not apply to the instant matter. In that case, the Ninth Circuit stated:

> [T]he presumption is not triggered when the State regulates in an area where there has been a history of significant federal presence. Congress has legislated in the field of banking from the days of *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 326-36, 426-27, 4 L. Ed. 579 (1819), creating an extensive federal statutory and regulatory scheme. . . . Indeed, since the passage of the National Bank Act in 1864, the federal presence in banking has been significant.

Bank of Am., 309 F.3d at 558 (citations omitted). The court concluded by stating that "because there has been a 'history of significant federal presence' in national banking, the presumption against preemption of state law is inapplicable." *Id.* at 559 (citations omitted).

[12] However, *Bank of America* involved the state regulation of a ***national*** bank, whereas the instant matter involves the state regulation of an out-of-state ***state*** bank. The Ninth Circuit, in concluding that the presumption would not arise, focused on a state law's interference with the exercise of a national bank's powers. *See id.* at 558-59. No parallel situation exists here.

//

//

[13] Moreover, the California Supreme Court and the Third Circuit take a position contrary to that of the Ninth Circuit. The Third Circuit, in *National State Bank v. Long*, stated that "[w]hatever may be the history of federal-state relations in other fields, regulation of banking has been one of dual control since the passage of the first National Bank Act in 1863." *National State Bank v. Long*, 630 F.2d 981, 985 (3d Cir. 1980). Relying on this language, the California Supreme Court held that the historic police powers of the state extend to banking, and therefore the presumption against preemption applies to state regulation of banks. *Smiley*, 900 P.2d at 696; *Peatros v. Bank of Am.*, 990 P.2d 539, 543 (Cal. 2000).

[14] Here, we are dealing with a state regulation as applied to a state bank. While Congress clearly regulates the area of banking, including branching by state banks, "congressional support remains for dual regulation." *Long*, 630 F.2d at 985. In passing the Riegle-Neal Act, Congress recognized the significant presence of state control in the regulation of banking, including the regulation of national banks, stating that:

> Under well-established judicial principles, national banks are subject to State law in may significant respects. The laws of the State in which a national bank is situated will apply to a national bank unless those State laws are preempted by Federal law. . . . Courts generally use a rule of construction that avoids finding a conflict between the Federal and State law where possible. *The title does not change these judicially established principles.*

H.R. REP. NO. 103-651, at 53 (1994), *reprinted in* 1994 U.S.C.C.A.N. 2068, 2074 (emphasis added).

[15] Since states traditionally possess a significant amount of authority to regulate the area of banking, and because we are dealing solely with banking at a state level, we find that the presumption against preemption does arise. Applying this standard, the issue before us is whether it was the clear and manifest purpose of Congress, in enacting the Riegle-Neal Act, to preempt laws such as 11 GCA §§ 106601(c) and 106355(b). The question is one focused on Congressional intent. *Smiley*, 900 P.2d at 696; *Bank of Am.*, 309 F.3d at 558.

2. Type of Preemption

[16] There are three general types of preemption: (1) express preemption, wherein Congress explicitly defines the extent to which its enactment preempts state law; (2) field preemption, wherein Congress' regulation of a field is so pervasive as to leave no room for a State to supplement it; and (3) conflict preemption, wherein a state law actually conflicts with federal law. *Smiley* , 900 P.2d at 696; *Bank of Am.*, 309 F.3d at 558. Because Congress has not expressed an intent to exclusively supplant state branching laws, and because we are dealing with an area subject to the dual control of federal and state authority, the first and second types of preemptions are inapplicable. We focus instead on whether an actual conflict exists between Guam's branching prohibitions and federal regulations.

[17] An actual conflict arises when "it is impossible to comply with both state and federal requirements or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives underlying federal law." *Peatros*, 990 P.2d at 543 (internal quotations and citations omitted). We must determine whether 11 GCA §§ 106601(c) and 106355(b) stand as obstacles to the fulfillment of Riegle-Neal.

B. Intrastate Branching

[18] Section 106601(c) states:

> No out-of-state bank having a branch office in Guam as of the effective date of this Act may establish any additional branches except and until it engages in an interstate merger transaction with a territorial bank.

11 GCA § 106601(c). The opening of First Hawaiian's Tamuning branch clearly violates this provision since First Hawaiian is opening an additional branch without first engaging in an interstate merger transaction with a Guam bank. However, the Banking Board bypassed this provision and approved First Hawaiian's application under the standards set forth in section 106601(b), presumably because it agreed with First Hawaiian's argument that section 106601(c) was preempted

by federal law. The lower court affirmed the Banking Board's ruling and found that 11 GCA § 106601(c) was preempted by a combined reading of Title 12 U.S.C. §§ 36(c) and 1831a(j)(1). Bank of Guam argues that the lower court erred in finding that section 36(c) can be extended to empower not only national, but also state banks through section 1831a(j)(1), to branch on an equal basis with local banks.

1. Plain Language

[19] "In cases involving statutory construction, the plain language of a statute must be the starting point." *Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 23. There are several statutory provisions before us dealing with the state regulation of out-of-state banks, each of which requires statutory construction. Thus, we must begin our analysis with a review of each provision's plain language.

a. Section 1831a(j)(1)

[20] Title 12 U.S.C. § 1831a(j)(1) is the provision of the Riegle-Neal Act that deals with the establishment of an additional branch, or *intra*state branching, by out-of-state state banks. This section reads:

> The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-state State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank.

12 U.S.C. § 1831a(j)(1). The plain language of this statute permits a host state to impose restrictions on intrastate branching by an out-of-state state bank. Thus, we agree with Bank of Guam's position that section 1831a(j)(1) recognizes a state's authority to enact statutes restricting intrastate branching by an out-of-state state bank. However, the plain language of section 1831a(j)(1) also demands equal applicability of those restrictions. Thus, a state can impose restrictions on intrastate branching by an out-of-state state bank, but only to the extent that it also imposes that restriction on an out-of-state national bank.

[21] Bank of Guam argues that in enacting the Riegle-Neal Act, "Congress did not intend to prohibit Guam from continuing to prevent out-of-state state banks with existing branches from establishing additional branches . . . ." Appellant's Brief, p. 7. We disagree. The plain language of section 1831 reflects Congress' desire to take out of a state's hands, not the power to regulate, but the power to discriminate. This reading is not a finding that the state power to regulate intrastate branching has been *rescinded*, only that it has been *restricted*. Thus, we find that Congress *did* intend to prohibit Guam from continuing to prevent out-of-state state banks with existing branches from establishing additional branches, *if* out-of-state national banks were not also prevented from doing so.

[22] Therefore, a Guam intrastate branching restriction, such as 11 GCA § 106601(c), applies to an out-of-state state bank such as First Hawaiian only if it also applies to an out-of-state national bank. However, section 106601(c) does not apply to out-of-state national banks. Although the language of section 106601(c) includes all "out-of-state" banks, two separate federal laws preclude its application to any out-of-state national bank. *See* 12 U.S.C. §§ 36(c) and 36(f)(1)(A).

b. Section 36(c)

[23] The first of these two federal statutes is 12 U.S.C. § 36(c), which states:

> A national banking association may . . . establish and operate new branches . . . (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question . . . .

12 U.S.C. § 36(c). This statute empowers national banks to establish an intrastate branch on the same basis as a host state bank. Since a local bank is not required to comply with 11 GCA § 106601(c) and engage in an interstate merger transaction before branching, then a national bank cannot be required to comply with section 106601(c) either. Thus, section 106601(c) does not apply to a national bank; it has been preempted by federal law.

[24] Because section 106601(c) does not apply to an out-of-state national bank, it cannot apply to an out-of-state state bank. *See* 12 U.S.C. § 1831a(j)(1). This interpretation is not, as argued by Bank of Guam, the equivalent of a finding that section 1831a(j)(1) "empowers" out-of-state state banks to intrastate branch, nor are we permitting out-of-state state banks to "piggyback" onto branching rights granted to national banks. Moreover, contrary to Bank of Guam's assertions, we do not need to find that Congress conveyed affirmative branching rights to state banks in order to find preemption. It is a bank's home state that empowers its banks to branch, and if a home state authorizes its chartered banks to branch within the state, our interpretation of section 1831a(j)(1) simply prohibits the host state from restricting that bank's branching in a manner different from the manner in which it restricts branching by a national bank. Applying this reading to 11 GCA § 106601(c), we find that because an out-of-state national bank cannot be required to engage in an interstate merger transaction with a local bank before intrastate branching, an out-of-state state bank cannot be required to do so either. In other words, section 106601(c), as applied to intrastate branching by an out-of-state state bank, is preempted by a combined reading of 12 U.S.C. §§1831a(j)(1) and 36(c).

c. Section 36(f)(1)(A)

[25] Preemption of 11 GCA § 106601(c) can also be found through a combined reading of 12 U.S.C. §§ 1831a(j)(1) and 36(f)(1)(A). Section 36(f)(1)(A) states:

> The laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State . . . .

12 U.S.C. § 36(f)(1)(A). As emphasized by BOG, section 36(f)(1)(A) is another example of federal law expressly authorizing a state to regulate intrastate branching. However, the plain language of the section again demands equal application in the exercise of that authority. This provision subjects an out-of-state national bank to Guam law in the area of intrastate branching, but only to the extent

that such law also applies to a host state bank. Since 11 GCA § 106601(c) does not apply to a host state bank, then it cannot be applied to an out-of-state national bank. If section 106601(c) cannot be applied to an out-of-state national bank, then 12 U.S.C. § 1831a(j)(1) prohibits its application to an out-of-state state bank.

2. Extrinsic Support

[26] We find the plain language of the above statutes to be conclusive and sufficient to decide the instant matter. However, "ascertainment of the meaning apparent on the face of a single statute need not end the inquiry. . . . [T]he plain-meaning rule is 'rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists.'" *Watt v. Alaska*, 451 U.S. 259, 266, 101 S. Ct. 1673, 1677-78 (1981) (internal citations omitted). In this instance, an examination of the legislative history of the Riegle-Neal Act, and the decisions of the agencies responsible for its implementation and enforcement, are exceedingly strong and reinforce our statutory interpretations.

a. Legislative Intent

[27] Our interpretation of the plain language of each statue is consistent with the legislative history behind Riegle-Neal. In its current form, 12 U.S.C. § 1831(a)(j)(1) was passed as part of the Riegle-Neal Clarification Act of 1997. A review of the changes made to the language of the statute and the testimony accompanying those changes reveals that a chief aim in clarifying Riegle-Neal was to provide parity between state and national banks in the face of host state intrastate branching laws.

[28] In its original form, section 1831a(j)(1) reads "[t]he laws of a host state regarding . . . establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch of a bank chartered by that State." *Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994* § 102(j), Pub. L. No. 103-328,

108 Stat. 2338 (1994). In 1997, Congress amended this section of Riegle-Neal by substituting "branch in the host State of an out-of-State national bank" for "branch of a bank chartered by that State." The effect of this change was to relieve out-of-state state banks from complying with host state laws that national banks were not similarly required to comply with.

[29] National banks are exempted from complying with host state intrastate branching laws in two circumstances: (1) when federal law preempts application of the law to national banks, and (2) when the Comptroller of the Currency determines that the host state law has a discriminatory effect on a national bank. *See* 12 U.S.C. §§ 36(f)(1)(A)(i) and (ii). The 1997 amendments to section 1831a(j)(1) clarify that in those limited circumstances where a federal law precludes application of a host state law to national banks, out-of-state state banks will similarly be exempted from the law of the host State. *See* 143 CONG. REC. H3088-02, H3089 (May 21, 1997) (statement of Honorable Marge Roukema, Chair of Subcommittee on Financial Institutions and Consumer Credit) ("Morever, [the Riegle-Neal Clarification Act] recognizes the importance of host State laws by requiring all out-of-State banks to comply with host State laws in . . . intrastate branching, unless the State law has been preempted by national banks."); *see also* 143 CONG. REC. H3088-02, H3094 (May 21, 1997) (statement of Honorable Bruce Vento, ranking member of Subcommittee on Financial Institutions and Consumer Credit). Thus, because 12 U.S.C. §§ 36(c) and 36(f)(1)(A) preempt 11 GCA § 106601(c) with respect to national banks, out-of-state state banks such as First Hawaiian are similarly exempted from complying with section 106601(c).

[30] Moreover, the policy underlying federal banking regulations has consistently been one of establishing competitive equality, s*ee First Nat'l Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252, 261, 87 S. Ct. 492, 497 (1966), and the passage of the 1997 Riegle-Neal Clarification Act was in furtherance of that policy. As stated by Ms. Roukema, floor manager and Chairwoman of Subcommittee on Financial Institutions and Consumer Credit, "The essence of this legislation is to

provide parity between State-chartered banks and national banks." 143 CONG. REC. H3088-02, H3089 (May 21, 1997) (statement of the Honorable Marge Roukema, Chairwoman of Subcommittee on Financial Institutions and Consumer Credit). Congress has progressively worked to remove incentives for banks to charter at the federal rather than state level, and vice versa, in order to ensure the health and stability of a dual banking system. *See id.*; *see also* 143 CONG. REC. H3088-02, H3094 (May 21, 1997) (statement of Honorable Bruce Vento, ranking member of Subcommittee on Financial Institutions and Consumer Credit).

[31] Bank of Guam's interpretation of 11 GCA § 106601(c) and 12 U.S.C. § 1831a(j)(1) would create a discrepancy between federal and state banks by allowing local and out-of-state national banks to intrastate branch without engaging in an interstate merger transaction, while limiting out-of-state state banks to their existing branches unless and until they engage in an interstate merger transaction. We conclude, however, from the plain language of the statutes and their intent as found in Congressional history, that the above federal statutes forbid a host state from discriminating between national and state chartered banks in the area of intrastate branching – a conclusion which furthers Congress' long standing banking policies.

[32] In addition, we find the remarks and interpretations provided by Ms. Roukema and Mr. Vento are entitled to great weight. "In the course of deliberations on a bill, legislators look to the sponsor and to the representative of the committee in charge of it, to be particularly well informed about its purpose, meaning, and intended effect." *United States v. Lane*, 883 F.2d 1484, 1491 n.12 (10th Cir. 1989) (quoting N. Singer, 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 48.15). Those congressmen that act as floor managers during debates of the bill and who are members of the congressional committee which conducted hearings and were responsible for formulating the proposed legislation are particularly qualified to comment on the meaning of the bill, and their views are entitled to great weight. *See United States v. Oates*, 560 F.2d 45, 70 n.26 (2d Cir. 1977); *see also*

Pan Am. World Airways, Inc. v. Civil Aeronautics Bd., 380 F.2d 770, 782 (2d Cir. 1967); *Mills v. United States*, 713 F.2d 1249, 1253 (7th Cir. 1983). In fact, "[t]hese statements are in the nature of supplemental committee reports and are entitled to the same weight accorded to formal committee reports." *Oates*, 560 F.2d at 71 n.26 (citation omitted). "Generally, committee reports represent the most persuasive indicia of Congressional intent (with the exception, of course, of the language of the statute itself)." *Mills*, 713 F.2d at 1252; *see also Lane*, 883 F.2d at 1490 n.9 ("Although not decisive the intent of the legislature as revealed by the committee report is highly persuasive.") (quoting N. Singer, 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 48.06).

b. Deference

[33] Part of the record before this court is a letter issued by the FDIC approving First Hawaiian's application to open a new branch. Appellant's Excerpts of Record, vol. 2, tab 5 (FDIC Approval Letters, March 29, 2002). The letter deals with the merits of the issues presently before us. Bank of Guam argues that this court should not afford the FDIC letter any deference because the FDIC failed to follow the procedures set forth in 12 U.S.C. § 43 and because the FDIC's interpretations were not based on a permissible construction of the relevant statutes.

[34] We find Bank of Guam's argument, that the FDIC exceeded its authority by rendering a finding of preemption without affording notice and opportunity for comment in accordance with section 43, to be without merit. As pointed out by First Hawaiian, the letter from the FDIC was neither an "opinion letter or interpretive rule," nor was it issued "in response to a request or upon the agency's own motion." *See* 12 U.S.C. § 43(a). The letter was an approval of a branch application. Thus, section 43 is not applicable.

[35] We note that both the FDIC and the Banking Board approved First Hawaiian's application to open a new branch, but that the decision reviewed by the lower court and this court is that of the Banking Board and not the FDIC. However, the FDIC's decision discusses and analyzes the issue

of preemption, whereas the Banking Board simply approved First Hawaiian=s application based on the standards set forth in 11 GCA § 106601(b). While we recognize that the FDIC's letter is not the decision being reviewed, its analysis should nevertheless be afforded some degree of deference. Like its Office of the Comptroller of the Currency counterpart, the FDIC is an administrative agency charged with administering the Riegle-Neal Act. *See* 12 U.S.C. § 1828(c)(2)(C). "It is settled that courts should give *great weight* to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of that statute." *Clarke v. Securities Industry Ass'n*, 479 U.S. 388, 403, 107 S. Ct. 750, 759 (1987) (quotation and citation omitted) (emphasis added). In addition, "the Riegle-Neal Act in this case . . . involves 'reconciling conflicting policies' and depends 'upon more than ordinary knowledge' about interstate banking." *TeamBank, N.A. v. McClure*, 279 F.3d 614, 619 (8th Cir. 2002).

[36] We find nothing to indicate that the FDIC's decision is based on an impermissible reading of the relevant statutes. The letter was issued only after the parties were afforded the opportunity to submit arguments on the matter, and therefore the FDIC followed relatively formal administrative procedures. Moreover, the FDIC's discussion appears to be "thorough and well reasoned" enough to merit deference. *See Teambank*, 279 F.3d at 619. Therefore, we accord it a great weight. *See Clarke*, 479 U.S. at 403-04, 107 S. Ct. at 759; *see also Bank of Am.*, 309 F.3d at 563.

[37] In its approval letter, the FDIC began its analysis by reviewing 12 U.S.C. §§ 36(c) and 36(f)(1)(A), and finding that "under either section 36(c) or section 36(f)(1)(A) the result would be the same, i.e., a national bank with a branch in Guam would be able to establish additional branches to the same extent as a Guam bank." Appellant's Excerpts of Record, vol. 2, tab 5, p. 615 (FDIC Approval letter, March 29, 2002). These statutes therefore preclude 11 GCA §§ 106601(c) and 106355 from applying to a *national* bank with a branch in Guam.

[38] The FDIC then turns to 12 U.S.C. § 1831a(j)(1), and finds that "section 1831a(j)(1) means that since the two Guam statutes that purport to prohibit additional branches by an out-of-State bank (i.e., 11 GUAM CODE ANN. §§ 106355 and 106601(c)) would not apply to a national bank, they also do not apply to FHB." Appellant's Excerpts of Record, vol. 2, tab 5, p. 615 (FDIC Approval letter, March 29, 2002). In support of its interpretation, the FDIC states, "[section 1831a(j)(1)] provides interstate, State-chartered banks parity with national banks and preserves competitive equality between national banks and State banks." Appellant's Excerpts of Record, vol. 2, tab 5, p. 615 (FDIC Approval letter, March 29, 2002). Thus, the FDIC recognizes, as we did, the intent of Congress in enacting section 1831a(j)(1), and finds the above analysis supports such congressional intent.

3. Applicable law

[39] Now that we have found 11 GCA § 106601(c) preempted, we must determine what law applies to First Hawaiian's branch application. Title 12 U.S.C. § 1831a(j)(1) states that host state law controls intrastate branching, but if host state law is inapplicable, then home state law is applied. However, a finding that 11 GCA § 106601(c) is preempted does not mean that we immediately turn to First Hawaiian's home state law. Section 106601(b) also regulates intrastate branching on Guam.

[40] Pursuant to section 106601(b), "[a] bank engaging in the banking business in Guam" may establish additional branches, subject to the approval of the Banking Board, if it shows:

> (1) there is sufficient need for such branch; (2) the proposed branch has reasonable opportunity to be economically self-sustaining; and (3) the applicant demonstrates by clear and convincing evidence that the establishment and operation of such branch will promote community reinvestment and fair lending.

11 GCA § 106601(b). In contrast to section 106601(c), the requirements of section 106601(b) are imposed upon local *and* out-of-state banks. Since its application is uniform and non-discriminatory, there is no federal preemption. Thus, section 106601(b) sets forth the appropriate standards by which to judge First Hawaiian's branch application.

[41] The Banking Board, in its October 30, 2001 decision, found that FHB's application met the requirements of section 106601(b). Specifically, the Board held:

> [T]here is sufficient need for such branch; the proposed branch has reasonable opportunity to be economically self-sustaining; and the applicant has submitted clear and convincing evidence that the establishment and operation of such branch will promote community reinvestment and fair lending.

Appellant's Excerpts of Record, vol. 2, tab 1, p. 531. These findings have not been challenged. Thus, the Banking Board's approval under section 106601(b) is affirmed.

C. Branch Acquisition

[42] We now turn to section 106355(b), which states that "[a]n out-of-state bank that does not operate a branch in Guam acquired through an interstate merger transaction under this Title may not establish and operate a branch in Guam through the acquisition of a branch." 11 GCA § 106355(b). Bank of Guam argues that First Hawaiian acquired a branch of Union Bank in violation of section 106355(b). First Hawaiian contends that section 106355(b) is inapplicable to its transactions with Union Bank for two reasons. First, the provision was intended to prohibit an initial branching entry, and not the opening of an additional branch by a bank already within the state. Second, First Hawaiian argues that it did not "acquire" a branch. It purchased Union Bank's assets and liabilities, and then in a separate and unrelated agreement, subleased premises from Union Bank to open its new branch.

1. Applicability

[43] State restrictions on branch acquisitions are expressly authorized by the Riegle-Neal Act. The Act states:

> An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

12 U.S.C. § 1831u(a)(4)(A). The transaction between First Hawaiian and Union Bank is an interstate merger transaction as referred to in section 1831u(a)(4)(A). The federal definition of an interstate merger transaction is broad and encompasses any merger transaction between insured banks with different home states. *See* 12 U.S.C.§§ 1831u(g)(6)-(g)(7). The definition of a merger transaction includes a transaction in which an insured bank "acquire[s] the assets of, or assume[s] liability to pay any deposits made in, any other insured depository institution . . . ." 12 U.S.C. § 1828(c)(2). The transaction between First Hawaiian and Union Bank, which are insured banks with different home states, involved the acquisition of assets and assumption of liabilities. Therefore, it constitutes an interstate merger transaction under the Riegle-Neal Act.

[44] Title 11 GCA § 106355(b) is Guam's application of 12 U.S.C. § 1831u(a)(4)(A). Section 106355(b) prohibits branch acquisitions, and instead requires out-of-state banks to engage in an interstate merger transaction as defined under Guam statute in order to establish a branch. First Hawaiian argues that section 1831u(a)(4)(A), and by implication section 106355(b), applies only to the initial entry of a bank into a state, and not to the establishment of an intrastate branch by a bank already in that state. Thus, since First Hawaiian is already established and operating branches on Guam, then section 106355(b) does not restrict its opening of an additional branch.

[45] Nothing in the language of 12 U.S.C. § 1831u(a)(4)(A) or 11 GCA § 106355(b) limits their applications to a bank's initial entry. However, the legislative history behind section 1831u(a)(4)(A), or more broadly, behind Riegle-Neal, indicates that Congress' intent may have been to limit the application of section 1831u(a)(4)(A) to a bank's initial entry. According to the House Report that accompanied the passage of the Riegle-Neal Act:

> A State may require that the *initial* branching entry into the State be by acquisition of an entire bank, and not just the acquisition of a branch of an existing bank. An out-of-state bank which has *established* a branch in a State, regardless of how such branch was established, may branch within that State to the same extent as any bank chartered in the State.

H.R. REP. NO. 103-448, at 23 (1994), *reprinted in* 1994 U.S.C.C.A.N. 2039, 2047 (emphasis added). Moreover, as pointed out by First Hawaiian, other provisions within Riegle-Neal specifically address intrastate branching, namely sections 1831a(j)(1) and 36(f)(1)(A), as discussed previously. These provisions and our prior analysis indicates that Congress wanted out-of-state banks to be able to branch intrastate as freely as host state banks. Once a bank obtains its initial entry into a state, restrictions based on out-of-state and in-state banks, and national and state charters, should disappear from host state intrastate branching restrictions.

[46] This interpretation would also be consistent with other federal banking provisions, such as 12 U.S.C. § 36(c). Section 36(c) permits out-of-state national banks to branch as freely as a host state bank once it obtains initial entry into a state. Bank of Guam's interpretation of 12 U.S.C. § 1831u(a)(4)(A) would restrict the branching rights conferred in section 36(c) because a state would then be able to prohibit a national bank from establishing an intrastate branch through a branch acquisition without placing the same prohibition on a host state bank. *See* Appellant's Brief, p. 23. This contradicts the plain language of section 36(c). If the application of section 1831u(a)(4)(A) is instead limited to a bank's initial entry into a state, then no conflict arises between section 1831u(a)(4)(A) and section 36(c). *See Morton v. Mancari*, 417 U.S. 535, 551, 94 S. Ct. 2474, 2483 (1974) ("[W]hen two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.").

[47] Thus, we read 12 U.S.C. § 1831u(a)(4)(A) as being limited to a bank's initial entry into a state. Given our working presumption against preemption, we interpret 11 GCA § 106355(b) in the same limited matter. Therefore, because First Hawaiian has already entered Guam, the opening of its Tamuning branch is not governed by 106355(b) and it is not required to engage in an interstate merger transaction under that section.

2. Acquisition

[48] Bank of Guam argues the lower court failed to make a factual finding with respect to whether First Hawaiian "acquired" the Union Bank branch, thereby committing reversible error. *See* Appellant's Brief, p. 22 n.14. Because we have determined as a matter of law that 11 GCA § 106355(b) is inapplicable to the opening of First Hawaiian's new branch, the question of whether First Hawaiian's opening of the Tamuning branch constituted an "acquisition" is no longer material to the disposition of this case. Therefore, we decline to further review the matter.

IV.

[49] First Hawaiian's opening of a branch in Tamuning was not precluded by either 11 GCA §§ 106601(c) or 106355(b). While the opening of an additional branch did violate section 106601(c), we find that section 106601(c) was preempted by a combined reading of 12 U.S.C. §§ 1831a(j)(1) and 36(c), and by a combined reading of 12 U.S. C. §§ 1831a(j)(1) and 36(f)(1)(A). Thus, section 106601(c) does not prohibit the First Hawaiian's intrastate branch. Section 106355(b) restricts only a bank's initial entry into Guam through branch acquisition, and does not apply to First Hawaiian's application to establish an additional, intrastate branch. Thus, we find no error by the lower court, and its decision and order is **AFFIRMED**.