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OCC INTERPRETIVE RULES UPDATED, MADE LESS BURDENSOME

The Office of the Comptroller of the Currency (OCC) issued today proposed revisions to its interpretive rulings to update and streamline rulings that are ineffective, inefficient or impose costly burdens on national banks. The proposed revisions in tomorrow's Federal Register clarify and reorganize existing interpretive rulings, eliminate those that are obsolete and add certain new rulings to address emerging issues of significance to the financial services community.

Today's proposal also would codify in OCC rulings interpretive letters on various issues that the OCC has issued over the years to specific banks in specific cases. By codifying these letters, banks will have the benefit of a single ruling to refer to, rather than assorted interpretive letters on an issue made over a period of years. This will give national banks a more easily accessible way to apply rulings on these issues than now exists.

Today's proposal:

Adds new provisions to clarify the circumstances under which a national bank's lending activities must be undertaken at a main office or a branch office of the bank. The proposal clarifies that because loans are considered to be made where the customer receives funds from the bank, the disbursement of loan proceeds at bank-established facilities or by bank employees to bank borrowers must generally be undertaken only at the bank's main office or at one of its authorized branch offices.

Conversely, loan origination, loan approval and disbursement of loan proceeds by third parties need not be done at a bank's main office or branch office.

The OCC has taken this position previously in interpretive letters in specific cases. For example, the OCC issued an interpretation in October 1994 that loan approval at a bank's regional processing centers in various states did not constitute branch banking.

Codifies current OCC letters and case authority on the types of charges that are included or not included in the term "interest" as used in the law. Under the proposal, "interest" includes, among other things, late fees, insufficient funds fees, annual fees and cash advance fees. These fees can be applied across state lines in the same way that interest rates on credit cards are. This provision would enable banks to recoup costs for providing services to customers who use these services or incur these charges.

The OCC notes that these charges are already applied widely by banks and that the authority for them is well established

in case law. For example, a 1992 decision by the U.S. Court of Appeals, First Circuit, ruled that fees for delinquent credit card accounts are a component of "interest" and can be applied across state lines. (Greenwood Trust Company vs. Commonwealth of Massachusetts).

Codifies current OCC letters regarding the ability of a national bank to lease excess space, share space and share employees with businesses other than financial institutions. The proposal also describes certain supervisory considerations that apply to the conduct of this activity. For example, the proposed rule stipulates that other businesses and their employees should be conspicuously and separately identified.

The OCC has taken this position in previous interpretive rulings in specific cases. For example, in 1990, the OCC issued an interpretive letter that permitted a national bank to lease space to a company conducting a securities brokerage business on bank premises. The letter also allowed the use of dual employees to provide securities brokerage services.

Updates OCC regulations to codify interpretations recognizing the authority of national banks that use data processing equipment or technology to market and sell legitimate excess capacity in that equipment or technology for uses not necessarily related to financial services.

The OCC has previously taken this position in interpretive rulings in specific cases. For example, in 1986, the OCC approved a bank that owned a computerized securities monitoring system to market the use of the system during the time when the bank did not need the system.

Today's proposed revisions also contain a request for comment on whether the OCC should codify its prior rulings that a state may not require a national bank to obtain a state license to exercise powers granted to it under federal law. Issues related to this position have been the subject of recent court cases and the OCC wants to review comments before deciding whether it should be codified.

Other interpretive rulings addressed in today's proposed rule deal with letters of credit, indemnification of individuals, bank shares held as treasury stock, and the use of the Model Business Corporation Act as a reference for bank corporate practices.

The public comment period for today's proposed rule is for 60 days after publication in the Federal Register.

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