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OCC Interpretive Rules Updated, Codified in Regulation

WASHINGTON, DC -- The Office of the Comptroller of the Currency (OCC) issued a final regulation in today's Federal Register that clarifies existing interpretive rulings, eliminates those that are obsolete and adds certain new rulings to address emerging issues of significance to the financial services community. This final regulation is part of the OCC's continuing review to streamline regulations and eliminate those that are unnecessarily burdensome.

By codifying in part 7 of the OCC regulations interpretive letters that the OCC has issued over the years to specific banks in specific cases, national banks will have the benefit of a single ruling to which to refer.

Today's final rule:

Modernizes the existing data processing rule to recognize the emerging involvement of national banks in the area of electronic money and banking. The rule affirms that a national bank may perform, provide or deliver through electronic means or facilities, any activity, function, product or service that it is authorized to perform, provide or deliver.

The final rule also recognizes that a national bank may market and sell excess capacity in electronic activities to third parties for uses not necessarily related to financial services.

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 final rule clarifies that the receipt of bank loan proceeds by a borrower in-person must generally take place only at the bank's main office or at one of its authorized branch facilities.

Conversely, loan origination, loan approval and disbursal 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 several interpretive letters. 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 mean that those processing centers were branches.

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 federal banking law. Under the final rule, "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 as interest rates on credit cards. This provision will enable banks to recoup costs for providing services to customers who use these services or incur these charges.

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 final rule describes certain supervisory and legal considerations that apply to the conduct of this activity. For example, the final rule stipulates that other businesses and their employees should be conspicuously and separately identified, and must be appropriately licensed.

Provides national banks with added flexibility to structure their procedures governing board and shareholder actions by permitting national banks to rely on recognized, complete bodies of corporate law, including state laws where the bank's main office is located or where the holding company is incorporated.

Updates letter of credit provisions to reflect current industry practices and to cover a broader category of transactions that are the functional equivalent of letters of credit.

The proposed rule requested 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. Because half of the 41 commenters opposed this provision and because the OCC wants to study further the wide variety of complex state laws relevant to this issue, the OCC decided not to address the subject in the final rule.

Other interpretive rulings addressed in today's final rule deal with indemnification of individuals and bank shares held as treasury stock.

Related Link

- [2CFR7](#)

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The OCC charters, regulates and examines approximately 3,000 national banks and 70 federal branches and agencies of foreign banks in the U.S., accounting for more than half the nation's banking assets. Its mission is to ensure the safety and soundness of the national banking system.