

**§ 7.4005**

**12 CFR Ch. I (1-1-18 Edition)**

deposit production activities at a site other than the main office or a branch of the bank. A deposit production office (DPO) may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. A DPO is not a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30(d)(1) so long as it does not receive deposits, pay withdrawals, or make loans. All deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer, or a similar method of transfer.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its deposit production activities.

[64 FR 60100, Nov. 4, 1999]

**§ 7.4005 Combination of national bank loan production office, deposit production office, and remote service unit.**

A location at which a national bank operates a loan production office (LPO), a deposit production office (DPO), and a remote service unit (RSU) is not a “branch” within the meaning of 12 U.S.C. 36(j) by virtue of that combination. Since an LPO, DPO, or RSU is not, individually, a branch under 12 U.S.C. 36(j), any combination of these facilities at one location does not create a branch.

[64 FR 60100, Nov. 4, 1999]

**§ 7.4006 [Reserved]**

**§ 7.4007 Deposit-taking by national banks.**

(a) *Authority of national banks.* A national bank may receive deposits and engage in any activity incidental to receiving deposits, including issuing evidence of accounts, subject to such terms, conditions, and limitations prescribed by the Comptroller of the Currency and any other applicable Federal law.

(b) *Applicability of state law.* A national bank may exercise its deposit-taking powers without regard to state law limitations concerning:

- (1) Abandoned and dormant accounts;<sup>3</sup>
- (2) Checking accounts;
- (3) Disclosure requirements;
- (4) Funds availability;
- (5) Savings account orders of withdrawal;
- (6) State licensing or registration requirements (except for purposes of service of process); and
- (7) Special purpose savings services;<sup>4</sup>

(c) *State laws that are not preempted.* State laws on the following subjects are not inconsistent with the deposit-taking powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.* 517 U.S. 25 (1996):

- (1) Contracts;
- (2) Torts;
- (3) Criminal law;<sup>5</sup>
- (4) Rights to collect debts;
- (5) Acquisition and transfer of property;
- (6) Taxation;
- (7) Zoning; and
- (8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.* 517 U.S. 25

<sup>3</sup>This does not apply to state laws of the type upheld by the United States Supreme Court in *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233 (1944), which obligate a national bank to “pay [deposits] to the persons entitled to demand payment according to the law of the state where it does business.” *Id.* at 248-249.

<sup>4</sup>State laws purporting to regulate national bank fees and charges are addressed in 12 CFR 7.4002.

<sup>5</sup>But see the distinction drawn by the Supreme Court in *Easton v. Iowa*, 188 U.S. 220, 238 (1903), where the Court stated that “[u]ndoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction \* \* \*. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.” *Id.* at 239 (holding that Federal law governing the operations of national banks preempted a state criminal law prohibiting insolvent banks from accepting deposits).

## Comptroller of the Currency, Treasury

## § 7.4008

(1996), or that is made applicable by Federal law.

[69 FR 1916, Jan. 13, 2004, as amended at 76 FR 43565, July 21, 2011]

### § 7.4008 Lending by national banks.

(a) *Authority of national banks.* A national bank may make, sell, purchase, participate in, or otherwise deal in loans and interests in loans that are not secured by liens on, or interests in, real estate, subject to such terms, conditions, and limitations prescribed by the Comptroller of the Currency and any other applicable Federal law.

(b) *Standards for loans.* A national bank shall not make a consumer loan subject to this § 7.4008 based predominantly on the bank's realization of the foreclosure or liquidation value of the borrower's collateral, without regard to the borrower's ability to repay the loan according to its terms. A bank may use any reasonable method to determine a borrower's ability to repay, including, for example, the borrower's current and expected income, current and expected cash flows, net worth, other relevant financial resources, current financial obligations, employment status, credit history, or other relevant factors.

(c) *Unfair and deceptive practices.* A national bank shall not engage in unfair or deceptive practices within the meaning of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), and regulations promulgated thereunder in connection with loans made under this § 7.4008.

(d) *Applicability of state law.* A national bank may make non-real estate loans without regard to state law limitations concerning:

(1) Licensing, registration (except for purposes of service of process), filings, or reports by creditors;

(2) The ability of a creditor to require or obtain insurance for collateral or other credit enhancements or risk mitigants, in furtherance of safe and sound banking practices;

(3) Loan-to-value ratios;

(4) The terms of credit, including the schedule for repayment of principal and interest, amortization of loans, balance, payments due, minimum payments, or term to maturity of the loan, including the circumstances under

which a loan may be called due and payable upon the passage of time or a specified event external to the loan;

(5) Escrow accounts, impound accounts, and similar accounts;

(6) Security property, including leaseholds;

(7) Access to, and use of, credit reports;

(8) Disclosure and advertising, including laws requiring specific statements, information, or other content to be included in credit application forms, credit solicitations, billing statements, credit contracts, or other credit-related documents;

(9) Disbursements and repayments; and

(10) Rates of interest on loans.<sup>6</sup>

(e) *State laws that are not preempted.* State laws on the following subjects are not inconsistent with the non-real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996):

(1) Contracts;

(2) Torts;

(3) Criminal law;<sup>7</sup>

(4) Rights to collect debts;

(5) Acquisition and transfer of property;

(6) Taxation;

(7) Zoning; and

(8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996) or that is made applicable by Federal law.

[69 FR 1916, Jan. 13, 2004, as amended at 76 FR 43565, July 21, 2011]

<sup>6</sup>The limitations on charges that comprise rates of interest on loans by national banks are determined under Federal law. See 12 U.S.C. 85; 12 CFR 7.4001. State laws purporting to regulate national bank fees and charges that do not constitute interest are addressed in 12 CFR 7.4002.

<sup>7</sup>See *supra* note 5 regarding the distinction drawn by the Supreme Court in *Easton v. Iowa*, 188 U.S. 220, 238 (1903).