1462a, 1463, 1464, 1465, 1818, 1828, 3102(b), and 5412(b)(2)(B).

SOURCE: 61 FR 4862, Feb. 9, 1996, unless otherwise noted.

Subpart A—National Bank and Federal Savings Association Powers

§ 7.1000 Activities that are part of, or incidental to, the business of banking.

(a) *Purpose.* This section identifies the criteria that the Office of the Comptroller of the Currency (OCC) uses to determine whether an activity is authorized as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh) or other statutory authority.

(b) *Restrictions and conditions on activities.* The OCC may determine that activities are permissible under 12 U.S.C. 24(Seventh) or other statutory authority only if they are subject to standards or conditions designed to provide that the activities function as intended and are conducted safely and soundly, in accordance with other applicable statutes, regulations, or supervisory policies.

(c) *Activities that are part of the business of banking.* (1) An activity is permissible for national banks as part of the business of banking if the activity is authorized under 12 U.S.C. 24(Seventh) or other statutory authority. In determining whether an activity that is not specifically included in 12 U.S.C. 24(Seventh) or other statutory authority is part of the business of banking, the OCC considers the following factors:

(i) Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;

(ii) Whether the activity strengthens the bank by benefiting its customers or its business;

(iii) Whether the activity involves risks similar in nature to those already assumed by banks; and

(iv) Whether the activity is authorized for State-chartered banks.

(2) The weight accorded each factor set out in paragraph (c)(1) of this section depends on the facts and circumstances of each case.

(d) *Activities that are incidental to the business of banking.* (1) An activity is authorized for a national bank as incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking. In determining whether an activity is convenient or useful to such activities, the OCC considers the following factors:

(i) Whether the activity facilitates the production or delivery of a bank's products or services, enhances the bank's ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank's operations, in light of risks presented, innovations, strategies, techniques and new technologies for producing and delivering financial products and services; and

(ii) Whether the activity enables the bank to use capacity acquired for its banking operations or otherwise avoid economic loss or waste.

(2) The weight accorded each factor set out in paragraph (d)(1) of this section depends on the facts and circumstances of each case.

[85 FR 83726, Dec. 22, 2020]

§ 7.1001 National bank acting as general insurance agent.

Pursuant to 12 U.S.C. 92, a national bank may act as an agent for any fire, life, or other insurance company in any place the population of which does not exceed 5,000 inhabitants. This section is applicable to any office of a national bank when the office is located in a community having a population of less than 5,000, even though the principal office of such bank is located in a community whose population exceeds 5,000.

[85 FR 35374, June 10, 2020]

§ 7.1002 National bank and Federal savings association acting as finder.

(a) *In general.* A finder may identify potential parties, make inquiries as to interest, introduce or arrange contacts or meetings of interested parties, act as an intermediary between interested

parties, and otherwise bring parties together for a transaction that the parties themselves negotiate and consummate. It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to act as a finder. A Federal savings association may act as a finder to the extent those activities are incidental to the powers expressly authorized by the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq*).

(b) *Permissible finder activities*—(1) *National banks*. The following list provides examples of permissible finder activities for national banks. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to a national bank's authority to act as a finder:

(i) Communicating information about providers of products and services, and proposed offering prices and terms to potential markets for these products and services;

(ii) Communicating to the seller an offer to purchase or a request for information, including forwarding completed applications, application fees, and requests for information to third-party providers;

(iii) Arranging for third-party providers to offer reduced rates to those customers referred by the national bank;

(iv) Providing administrative, clerical, and record keeping functions related to the national bank's finder activity, including retaining copies of documents, instructing and assisting individuals in the completion of documents, scheduling sales calls on behalf of sellers, and conducting market research to identify potential new customers for retailers;

(v) Conveying between interested parties expressions of interest, bids, offers, orders, and confirmations relating to a transaction;

(vi) Conveying other types of information between potential buyers, sellers, and other interested parties;

(vii) Establishing rules of general applicability governing the use and operation of the finder service, including rules that:

(A) Govern the submission of bids and offers by buyers, sellers, and other interested parties that use the finder service and the circumstances under which the finder service will pair bids and offers submitted by buyers, sellers, and other interested parties; and

(B) Govern the manner in which buyers, sellers, and other interested parties may bind themselves to the terms of a specific transaction; and

(viii) Acting as an electronic finder pursuant to § 7.5002(a)(1).

(2) *Federal savings associations*. The following list provides examples of finder activities that are permissible for Federal savings associations. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to a Federal savings association's incidental powers:

(i) Referring customers to a third party; and

(ii) Providing services and products to customers indirectly through a third-party discount program.

(c) *Limitation*. The authority to act as a finder does not enable a national bank or a Federal savings association to engage in brokerage activities that have not been found to be permissible for national banks or Federal savings associations, respectively.

(d) *Advertisement and fee*. Unless otherwise prohibited by Federal law, a national bank or Federal savings association may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

[85 FR 83727, Dec. 22, 2020]

§ 7.1003 Money lent by a national bank at banking offices or at facilities other than banking offices.

(a) *In general*. For purposes of what constitutes a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30, ''money'' is deemed to be ''lent'' only at the place, if any, where the borrower in-person receives loan proceeds directly from national bank funds:

(1) From the lending national bank or its operating subsidiary; or

(2) At a facility that is established by the lending national bank or its operating subsidiary.

(b) *Receipt of national bank funds representing loan proceeds*. Loan proceeds directly from national bank funds may be received by a borrower in person at a place that is not the national bank's main office and is not licensed as a

branch without violating 12 U.S.C. 36, 12 U.S.C. 81 and 12 CFR 5.30, provided that a third party is used to deliver the funds and the place is not established by the lending national bank or its operating subsidiary. A third party includes a person who satisfies the requirements of §7.1012(c)(2), or one who customarily delivers loan proceeds directly from national bank funds under accepted industry practice, such as an attorney or escrow agent at a real estate closing.

(c) *Services on equivalent terms to those offered customers of unrelated banks.* An operating subsidiary owned by a national bank may distribute loan proceeds from its own funds or bank funds directly to the borrower in person at offices the operating subsidiary has established without violating 12 U.S.C. 36, 12 U.S.C. 81 and 12 CFR 5.30 provided that the operating subsidiary provides similar services on substantially similar terms and conditions to customers of unaffiliated entities including unaffiliated banks.

[61 FR 4862, Feb. 9, 1996, as amended at 85 FR 83727, Dec. 22, 2020]

§ 7.1004 Establishment of a loan production office by a national bank.

(a) *In general.* A national bank or its operating subsidiary may engage in loan production activities at a site other than the main office or a branch of the bank. A national bank or its operating subsidiary may solicit loan customers, market loan products, assist persons in completing application forms and related documents to obtain a loan, originate and approve loans, make credit decisions regarding a loan application, and offer other lending-related services such as loan information and applications at a loan production office without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that ''money'' is not deemed to be ''lent'' at that site within the meaning of §7.1003 and the site does not accept deposits or pay withdrawals.

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

[85 FR 83727, Dec. 22, 2020]

§ 7.1005 [Reserved]

§ 7.1006 Loan agreement providing for a national bank or Federal savings association share in profits, income, or earnings or for stock warrants.

A national bank or Federal savings association may take as consideration for a loan a share in the profit, income, or earnings from a business enterprise of a borrower. A national bank or Federal savings association also may take as consideration for a loan a stock warrant issued by a business enterprise of a borrower, provided that the bank or savings association does not exercise the warrant. The share or stock warrant may be taken in addition to, or in lieu of, interest. The borrower's obligation to repay principal, however, may not be conditioned upon the value of the profit, income, or earnings of the business enterprise or upon the value of the warrant received.

[61 FR 4862, Feb. 9, 1996, as amended at 85 FR 83728, Dec. 22, 2020]

§ 7.1007 National Bank Acceptances.

A national bank is not limited in the character of acceptances it may make in financing credit transactions. Bankers' acceptances may be used for such purpose, since the making of acceptances is an essential part of banking authorized by 12 U.S.C. 24.

§ 7.1008 Preparation by a national bank of income tax returns for customers or public.

A national bank may assist its customers in preparing their tax returns, either gratuitously or for a fee.

[68 FR 70131, Dec. 17, 2003]

§ 7.1009 [Reserved]

§ 7.1010 Postal services by national banks and Federal savings associations.

(a) *In general.* A national bank or Federal savings association may provide postal services and receive income from those services. The services performed are those permitted under applicable rules of the United States Postal Service and may include meter stamping of letters and packages and

the sale of related insurance. The national bank or Federal savings association may advertise, develop, and extend the services to attract customers to the institution.

(b) *Postal regulations.* A national bank or Federal savings association providing postal services must do so in accordance with the rules and regulations of the United States Postal Service. The national bank or Federal savings association must keep the books and records of the postal services separate from those of other banking operations. Under 39 U.S.C. 404 and regulations issued under that statute (*see* 39 CFR chapter I), the United States Postal Service may inspect the books and records pertaining to the postal services.

[85 FR 83728, Dec. 22, 2020]

§ 7.1011 National bank acting as payroll issuer.

A national bank may disburse to an employee of a customer payroll funds deposited with the bank by that customer. The bank may disburse those funds by direct payment to the employee, by crediting an account in the employee's name at the disbursing bank, or by forwarding funds to another institution in which an employee maintains an account.

§ 7.1012 Establishment, operation, or use of a messenger service by a national bank.

(a) *Definition.* For purposes of this section, a ''messenger service'' means any service, such as a courier service or armored car service, used by a national bank and its customers to pick up from, and deliver to, specific customers at locations such as their homes or offices, items relating to transactions between the bank and those customers.

(b) *Pick-up and delivery of items constituting nonbranching activities.* Pursuant to 12 U.S.C. 24 (Seventh), a national bank may establish and operate a messenger service, or use, with its customers, a third party messenger service. The bank may use the messenger service to transport items relevant to the bank's transactions with its customers without regard to the branching limitations set forth in 12 U.S.C. 36, provided the service does not engage in branching functions within the meaning of 12 U.S.C. 36(j). In establishing or using such a facility, the national bank may establish terms, conditions, and limitations consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(c) *Pick-up and delivery of items constituting branching functions by a messenger service established by a third party.* (1) Pursuant to 12 U.S.C. 24 (Seventh), a national bank and its customers may use a messenger service to pick up from and deliver to customers items that relate to branching functions within the meaning of 12 U.S.C. 36, provided the messenger service is established and operated by a third party. In using such a facility, a national bank may establish terms, conditions, and limitations, consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(2) The OCC reviews whether a messenger service is established by a third party on a case-by-case basis, considering all of the circumstances. However, a messenger service is clearly established by a third party if:

(i) A party other than the national bank owns or rents the messenger service and its facilities and employs the persons who provide the service;

(ii)(A) The messenger service retains the discretion to determine in its own business judgment which customers and geographic areas it will serve; or

(B) If the messenger service and the bank are under common ownership or control, the messenger service actually provides its services to the general public, including other depository institutions, and retains the discretion to determine in its own business judgment which customers and geographic areas it will serve;

(iii) The messenger service maintains ultimate responsibility for scheduling, movement, and routing;

(iv) The messenger service does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is providing the service, although the bank may advertise that its customers may use one

or more third party messenger services to transact business with the bank;

(v) The messenger service assumes responsibility for the items during transit and for maintaining adequate insurance covering thefts, employee fidelity, and other in-transit losses; and

(vi) The messenger service acts as the agent for the customer when the items are in transit. The bank deems items intended for deposit to be deposited when credited to the customer's account at the bank's main office, one of its branches, or another permissible facility, such as a back-office facility that is not a branch. The bank deems items representing withdrawals to be paid when the items are given to the messenger service.

(3) A national bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service. Payment of those costs may only cover expenses associated with each transaction involving the customer and the messenger service. The national bank may impose terms, conditions, and limitations that it deems appropriate with respect to the payment of such costs.

(d) *Pickup and delivery of items pertaining to branching activities where the messenger service is established by the national bank.* A national bank may establish and operate a messenger service to transport items relevant to the bank's transactions with its customers if such transactions constitute one or more branching functions within the meaning of 12 U.S.C. 36(j), provided the bank receives approval to establish a branch pursuant to 12 CFR 5.30.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60098, Nov. 4, 1999; 85 FR 83728, Dec. 22, 2020]

§ 7.1014 Sale of money orders at nonbanking outlets by a national bank.

A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent. The bank's agents need not report on sales and transmit funds from the nonbanking outlets more frequently than at the end of the third business day following receipt of the funds.

§ 7.1015 National bank and Federal savings association investments in small business investment companies.

(a) *National banks.* A national bank may invest in a small business investment company (SBIC) or in any entity established solely to invest in SBICs, including purchasing the stock of a SBIC, subject to appropriate capital limitations (*see e.g.*, 15 U.S.C. 682(b)), and may receive the benefits of such stock ownership (*e.g.*, stock dividends). The receipt and retention of a dividend by a national bank from a SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24(Seventh).

(b) *Federal savings associations.* Federal savings associations may invest in a SBIC or in any entity established solely to invest in SBICs as provided in 12 CFR 160.30.

(c) *Qualifying SBIC.* A national bank or Federal savings association may invest in a SBIC that is either:

(1) Already organized and has obtained a license from the Small Business Administration; or

(2) In the process of being organized.

(d) *SBIC wind-down.* A national bank or Federal savings association may retain an interest in a SBIC that has voluntarily surrendered its license to operate as a SBIC in accordance with 13 CFR 107.1900 and does not make any new investments (other than investments in cash equivalents, which, for the purposes of this paragraph (d), means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to the issuer's assets) after such voluntary surrender.

[85 FR 83728, Dec. 22, 2020]

§ 7.1016 Independent undertakings issued by a national bank or Federal savings association to pay against documents.

(a) *In general.* A national bank or Federal savings association may issue and commit to issue letters of credit and other independent undertakings

within the scope of applicable laws or rules of practice recognized by law.[1] Under such independent undertakings, the national bank's or Federal savings association's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank or Federal savings association also may confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) *Safety and soundness considerations*—(1) *Terms.* As a matter of safe and sound banking practice, national banks and Federal savings associations that issue independent undertakings should not be exposed to undue risk. At a minimum, national banks and Federal savings associations should consider the following:

(i) The independent character of the undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character);

(ii) The undertaking should be limited in amount;

(iii) The undertaking should:

(A) Be limited in duration; or

(B) Permit the national bank or Federal savings association to terminate the undertaking either on a periodic basis (consistent with the bank's or savings association's ability to make any necessary credit assessments) or at will upon either notice or payment to the beneficiary; or

(C) Entitle the national bank or Federal savings association to cash collateral from the applicant on demand (with a right to accelerate the applicant's obligations, as appropriate); and

(iv) The national bank or Federal savings association either should be fully collateralized or have a post-honor right of reimbursement from the applicant or from another issuer of an independent undertaking. Alternatively, if the national bank's or Federal savings association's undertaking is to purchase documents of title, securities, or other valuable documents, the bank or savings association should obtain a first priority right to realize on the documents if the bank or savings association is not otherwise to be reimbursed.

(2) *Additional considerations in special circumstances.* Certain undertakings require particular protections against credit, operational, and market risk:

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the national bank or Federal savings association should ensure that market fluctuations that affect the value of the item will not cause the bank or savings association to assume undue market risk;

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should be consistent with the national bank's or Federal savings association's ability to make any necessary credit assessments prior to renewal;

(iii) In the event that a national bank or Federal savings association issues an undertaking for its own account, the underlying transaction for which it is issued must be within the bank's or savings association's authority and comply with any safety and soundness requirements applicable to that transaction.

(3) *Operational expertise.* The national bank or Federal savings association should possess operational expertise that is commensurate with the sophistication of its independent undertaking activities.

[1] Examples of such laws or rules of practice include: The applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 600 or any applicable prior version); the Supplements to UCP 500 & 600 for Electronic Presentation (eUCP v. 1.0, 1.1, & 2.0) (Supplements to the Uniform Customs and Practices for Documentary Credits for Electronic Presentation); International Standby Practices (ISP98) (ICC Publication No. 590); the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 725).

(4) *Documentation.* The national bank or Federal savings association must accurately reflect the bank's or savings association's undertakings in its records, including any acceptance or deferred payment or other absolute obligation arising out of its contingent undertaking.

(c) *Coverage.* An independent undertaking within the meaning of this section is not subject to the provisions of § 7.1017.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999; 68 FR 70131, Dec. 17, 2003; 73 FR 22241, Apr. 24, 2008; 85 FR 83728, Dec. 22, 2020]

§ 7.1017 National bank as guarantor or surety on indemnity bond.

(a) A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor (including, pursuant to 12 CFR 28.4, guaranteeing the deposits and other liabilities of its Edge corporations and Agreement corporations and of its corporate instrumentalities in foreign countries), if:

(1) The bank has a substantial interest in the performance of the transaction involved (for example, a bank, as fiduciary, has a sufficient interest in the faithful performance by a cofiduciary of its duties to act as surety on the bond of such cofiduciary); or

(2) The transaction is for the benefit of a customer and the bank obtains from the customer a segregated deposit that is sufficient in amount to cover the bank's total potential liability. A segregated deposit under this section includes collateral:

(i) In which the bank has perfected its security interest (for example, if the collateral is a printed security, the bank must have obtained physical control of the security, and, if the collateral is a book entry security, the bank must have properly recorded its security interest); and

(ii) That has a market value, at the close of each business day, equal to the bank's total potential liability and is composed of:

(A) Cash;

(B) Obligations of the United States or its agencies;

(C) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(D) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(iii) That has a market value, at the close of each business day, equal to 110 percent of the bank's total potential liability and is composed of obligations of a State or political subdivision of a State.

(b) In addition to paragraph (a) of this section, a national bank may guarantee obligations of a customer, subsidiary or affiliate that are financial in character, provided the amount of the bank's financial obligation is reasonably ascertainable and otherwise consistent with applicable law.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999; 73 FR 22241, Apr. 24, 2008]

§ 7.1018 National bank automatic payment plan accounts.

A national bank may, for the benefit and convenience of its savings depositors, adopt an automatic payment plan under which a savings account will earn dividends at the current rate paid on regular savings accounts. The depositor, upon reaching a previously designated age, receives his or her accumulated savings and earned interest in installments of equal amounts over a specified period.

§ 7.1020 Purchase of open accounts by a national bank.

(a) *General.* The purchase of open accounts is a part of the business of banking and within the power of a national bank.

(b) *Export transactions.* A national bank may purchase open accounts in connection with export transactions; the accounts should be protected by insurance such as that provided by the Foreign Credit Insurance Association and the Export-Import Bank.

§ 7.1021 Financial literacy programs not branches of national banks.

A financial literacy program is a program the principal purpose of which is to be educational for members of the

community. The premises of, or a facility used by, a school or other organization at which a national bank participates in a financial literacy program is not a branch for purposes of 12 U.S.C. 36 provided the bank does not establish and operate the premises or facility. The OCC considers establishment and operation in this context on a case by case basis, considering the facts and circumstances. However, the premises or facility is not a branch of the national bank if the safe harbor test in § 7.1012(c)(2) applicable to messenger services established by third parties is satisfied. The factor discussed in § 7.1012(c)(2)(i) can be met if bank employee participation in the financial literacy program consists of managing the program or conducting or engaging in financial education activities provided the school or other organization retains control over the program and over the premises or facilities at which the program is held.

[85 FR 83729, Dec. 22, 2020]

§ 7.1022 National banks' authority to buy and sell exchange, coin, and bullion.

(a) In this section, *industrial or commercial metal* means metal (including an alloy) in a physical form primarily suited to industrial or commercial use, for example, copper cathodes.

(b) *Scope of authorization.* Section 24(Seventh) of the National Bank Act authorizes national banks to buy and sell exchange, coin, and bullion. Industrial or commercial metal is not exchange, coin, and bullion within the meaning of this authorization.

(c) *Buying and selling metal as part of or incidental to the business of banking.* Section 24(Seventh) authorizes national banks to engage in activities that are part of, or incidental to, the business of banking. Buying and selling industrial or commercial metal for the purpose of dealing or investing in that metal is not part of or incidental to the business of banking pursuant to section 24(Seventh). Accordingly, national banks may not acquire industrial or commercial metal for purposes of dealing or investing.

(d) *Other authorities not affected.* This section may not be construed to preclude a national bank from acquiring or selling metal in connection with its incidental authority to foreclose on loan collateral, compromise doubtful claims, or avoid loss in connection with a debt previously contracted. This section also may not be construed to preclude a national bank from buying and selling physical metal to hedge a derivative for which that metal is the reference asset so long as the amount of the physical metal used for hedging purposes is nominal.

(e) *Nonconforming holdings.* National banks that hold industrial or commercial metal as a result of dealing or investing in that metal must dispose of such metal as soon as practicable, but not later than one year from April 1, 2018. The OCC may grant up to four separate one-year extensions to dispose of industrial or commercial metal if a national bank makes a good faith effort to dispose of the metal and retention of the metal for an additional year is not inconsistent with the safe and sound operation of the bank.

[81 FR 96360, Dec. 30, 2016, as amended at 85 FR 83729, Dec. 22, 2020]

§ 7.1023 Federal savings associations, prohibition on industrial or commercial metal dealing or investing.

(a) In this section, *industrial or commercial metal* means metal (including an alloy) in a physical form primarily suited to industrial or commercial use, for example, copper cathodes.

(b) Federal savings associations may not deal or invest in industrial or commercial metal.

(c) *Other authorities not affected.* This section may not be construed to preclude a Federal savings association from acquiring or selling metal in connection with its authority to foreclose on loan collateral, compromise doubtful claims, or avoid loss in connection with a debt previously contracted.

(d) *Nonconforming holdings.* Federal savings associations that hold industrial or commercial metal as a result of dealing or investing in that metal must dispose of such metal as soon as practicable, but not later than one year from April 1, 2018. The OCC may grant up to four separate one-year extensions to dispose of industrial or commercial metal if a Federal savings association makes a good faith effort

to dispose of the metal and retention of the metal for an additional year is not inconsistent with safe and sound operation of the association.

[81 FR 96360, Dec. 30, 2016, as amended at 85 FR 83729, Dec. 22, 2020]

§ 7.1024 National bank or Federal savings association ownership of property.

(a) *Investment in real estate necessary for the transaction of business*—(1) *In general.* A national bank or Federal savings association may invest in real estate that is necessary for the transaction of its business.

(2) *Type of real estate.* Real estate investments permissible under this section include:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(ii) Real estate acquired and intended, in good faith, for use in future expansion;

(iii) Parking facilities that are used by customers or employees of the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(iv) Residential property for the use of officers or employees of the national bank or Federal savings association who are:

(A) Located in remote areas where suitable housing at a reasonable price is not readily available; or

(B) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(v) Property for the use of national bank or Federal savings association officers, employees, or customers, or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, provided that the purchase and operation of the property qualifies as a deductible business expense for Federal tax purposes.

(3) *Permissible means of holding.* (i) A national bank or Federal savings association may acquire and hold real estate under this paragraph (a) by any reasonable and prudent means, including ownership in fee, a leasehold estate, or in an interest in a cooperative. The national bank or Federal savings association may hold this real estate directly or through one or more subsidiaries. The national bank or Federal savings association may organize a banking premises subsidiary as a corporation, partnership, or similar entity (*e.g.*, a limited liability company).

(ii) A Federal savings association also may acquire and hold banking premises through a service corporation in accordance with 12 CFR 5.59.

(b) *Fixed assets.* A national bank or Federal savings association may own fixed assets necessary for the transaction of its business, such as fixtures, furniture, and data processing equipment.

(c) *Investment in banking premises*—(1) *Investment limitation.* Twelve CFR 5.37(d)(1)(i) and (d)(3)(i) provide quantitative investment limitations that govern when OCC approval is required for a national bank or Federal savings association to invest in banking premises.

(2) *Premises approval.* (i) A national bank or Federal savings association must seek approval from the OCC in accordance with 12 CFR 5.37(d).

(ii) A Federal savings association that invests in banking premises through a service corporation must comply with the quantitative limitations in 12 CFR 5.37(d) and, to the extent applicable, 12 CFR 5.59.

(3) *Option to purchase.* An unexercised option to purchase banking premises or stock in a corporation holding banking premises is not an investment in banking premises. However, a national bank or Federal savings association seeking to exercise such an option must comply with the requirements in 12 CFR 5.37(d).

(d) *Future national bank or Federal savings association expansion.* A national bank or Federal savings association normally should use real estate acquired for future national bank or Federal savings association expansion within five years. After holding such real estate for one year, the national bank or Federal savings association must state, by resolution of its board

of directors or an appropriately authorized bank or savings association official or subcommittee of the board, definite plans for its use. The resolution or other official action must be available for inspection by OCC examiners.

(e) *Transition.* If, on May 18, 2015, a Federal savings association holds an investment in real estate, fixed assets, banking premises, or other real property that complies with the legal requirements in effect prior to May 18, 2015, but would violate any provision of this section or § 5.37, the savings association may continue to hold such investment in accordance with the prior legal requirements. However, a Federal savings association that holds such an investment may not modify, expand or improve this investment, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office.

[80 FR 28470, May 18, 2015. Redesignated and amended at 85 FR 83726, 83729, Dec. 22, 2020]

§ 7.1025 Tax equity finance transactions by national banks and Federal savings associations.

(a) *Tax equity finance transactions.* A national bank or Federal savings association may engage in a tax equity finance transaction pursuant to 12 U.S.C. 24(Seventh) and 1464 only if the transaction is the functional equivalent of a loan, as provided in paragraph (c) of this section, and the transaction satisfies applicable conditions in paragraph (d) of this section. The authority to engage in tax equity finance transactions under this section is pursuant to 12 U.S.C. 24(Seventh) and 1464 lending authority and is separate from, and does not limit, other investment authorities available to national banks and Federal savings associations.

(b) *Definitions.* For purposes of this section:

(1) *Appropriate OCC supervisory office* means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4;

(2) *Capital and surplus* has the same meaning that this term has in 12 CFR 32.2.

(3) *Tax equity finance transaction* means a transaction in which a national bank or Federal savings association provides equity financing to fund a project or projects that generate tax credits or other tax benefits and the use of an equity-based structure allows the transfer of those credits and other tax benefits to the national bank or Federal savings association.

(c) *Functional equivalent of a loan.* A tax equity finance transaction is the functional equivalent of a loan if:

(1) The structure of the transaction is necessary for making the tax credits or other tax benefits available to the national bank or Federal savings association;

(2) The transaction is of limited tenure and is not indefinite, including retaining a limited investment interest that is required by law to obtain continuing tax benefits or needed to obtain the expected rate of return;

(3) The tax benefits and other payments received by the national bank or Federal savings association from the transaction repay the investment and provide the expected rate of return at the time of underwriting;

(4) Consistent with paragraph (c)(3) of this section, the national bank or Federal savings association does not rely on appreciation of value in the project or property rights underlying the project for repayment;

(5) The national bank or Federal savings association uses underwriting and credit approval criteria and standards that are substantially equivalent to the underwriting and credit approval criteria and standards used for a traditional commercial loan;

(6) The national bank or Federal savings association is a passive investor in the transaction and is unable to direct the affairs of the project company; and

(7) The national bank or Federal savings association appropriately accounts for the transaction initially and on an ongoing basis and has documented contemporaneously its accounting assessment and conclusion.

(d) *Conditions on tax equity finance transactions.* A national bank or Federal savings association may engage in tax equity finance transactions only if:

(1) The national bank or Federal savings association cannot control the sale of energy, if any, from the project;

(2) The national bank or Federal savings association limits the total dollar

amount of tax equity finance transactions undertaken pursuant to this section to no more than five percent of its capital and surplus, unless the OCC determines, by written approval of a written request by the national bank or Federal savings association to exceed the five percent limit, that a higher aggregate limit will not pose an unreasonable risk to the national bank or Federal savings association and that the tax equity finance transactions in the national bank's or Federal savings association's portfolio will not be conducted in an unsafe or unsound manner; provided, however, that in no case may a national bank or Federal savings association's total dollar amount of tax equity finance transactions undertaken pursuant to this section exceed 15 percent of its capital and surplus;

(3) The national bank or Federal savings association has provided written notification to the appropriate OCC supervisory office, prior to engaging in each tax equity finance transaction that includes its evaluation of the risks posed by the transaction;

(4) The national bank or Federal savings association can identify, measure, monitor, and control the associated risks of its tax equity finance transaction activities individually and as a whole on an ongoing basis to ensure that such activities are conducted in a safe and sound manner; and

(5) The national bank or Federal savings association obtains a legal opinion or has other good faith, reasoned bases for making a determination that tax credits or other tax benefits are available before engaging in a tax equity finance transaction.

(e) *Applicable legal requirements.* The transaction is subject to the substantive legal requirements of a loan, including the lending limits prescribed by 12 U.S.C. 84 and 12 U.S.C. 1464(u), as appropriate, as implemented by 12 CFR part 32, and if the active investor or project sponsor of the transaction is an affiliate of the bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1, as implemented by 12 CFR part 223.

[85 FR 83729, Dec. 22, 2020]

§ 7.1026 National bank and Federal savings association payment system memberships.

(a) *In general.* National banks and Federal savings associations may become members of payment systems, subject to the requirements of this section.

(b) *Definitions.* As used in this section:

(1) *Appropriate OCC supervisory office* means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4;

(2) *Member* includes a national bank or Federal savings association designated as a ''member,'' or ''participant,'' or other similar role by a payment system, including by a payment system that requires the national bank or Federal savings association to share in operational losses or maintain a reserve with the payment system to offset potential liability for operational losses. This definition includes indirect members only if they agree to be bound by the rules of the payment system and the rules of the payment system indicate indirect members are covered;

(3) *Open-ended liability* refers to liability for operational losses that is not capped under the rules of the payment system and includes indemnifications of third parties provided as a condition of membership in the payment system;

(4) *Operational loss* means a charge resulting from sources other than defaults by other members of the payment system. Examples of operational losses include losses that are due to: Employee misconduct, fraud, misjudgment, or human error; management failure; information systems failures; disruptions from internal or external events that result in the degradation or failure of services provided by the payment system; security breaches or cybersecurity events; or payment or settlement delays, constrained liquidity, contagious disruptions, and resulting litigation; and

(5) *Payment system* means ''financial market utility'' as defined in 12 U.S.C. 5462(6), wherever operating, and includes both retail and wholesale payment systems. Payment system does

not include a derivatives clearing organization registered under the Commodity Exchange Act, a clearing agency registered under the Securities Exchange Act of 1934, or foreign organization that would be considered a derivatives clearing organization or clearing agency were it operating in the United States.

(c) *Notice requirements*—(1) *Prior notice required.* A national bank or Federal savings association must provide written notice to its appropriate OCC supervisory office at least 30 days prior to joining a payment system that exposes it to open-ended liability.

(2) *After-the-fact notice.* A national bank or Federal savings association must provide written notice to its appropriate OCC supervisory office within 30 days of joining a payment system that does not expose it to open-ended liability.

(d) *Content of notice*—(1) *In general.* A notice required by paragraph (c) of this section must include representations that the national bank or Federal savings association:

(i) Has complied with the safety and soundness review requirements in paragraph (e)(1) of this section; and

(ii) Will comply with the safety and soundness review and notification requirements in paragraphs (e)(2) and (3) of this section.

(2) *Payment system with limits on liability or no liability.* A notice filed under paragraph (c)(2) of this section also must include a representation that either:

(i) The rules of the payment system do not impose liability for operational losses on members; or

(ii) The national bank's or Federal savings association's liability for operational losses is limited by the rules of the payment system to specific and appropriate limits that do not exceed the lower of:

(A) The legal lending limit under 12 CFR part 32; or

(B) The limit set for the bank or savings association by the OCC.

(e) *Safety and soundness procedures.* (1) Prior to joining a payment system, a national bank or Federal savings association must:

(i) Identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability of the bank or savings association is limited; and

(ii) Ensure that it can measure, monitor, and control the risks identified pursuant to paragraph (e)(1)(i) of this section.

(2) After joining a payment system, a national bank or Federal savings association must manage the risks of the payment system on an ongoing basis. This ongoing risk management must:

(i) Identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability of the bank or savings association is limited; and

(ii) Measure, monitor, and control the risks identified pursuant to paragraph (e)(2)(i) of this section.

(3) If the national bank or Federal savings association identifies risks during the ongoing risk management required by paragraph (e)(2) of this section that raise safety and soundness concerns, such as a material change to the bank's or savings association's liability or indemnification responsibilities, the national bank or Federal savings association must:

(i) Notify the appropriate OCC supervisory office as soon as the safety and soundness concern is identified; and

(ii) Take appropriate actions to remediate the risk.

(4) A national bank or Federal savings association that believes its open-ended liability is otherwise limited (*e.g.*, by negotiated agreements or laws of an appropriate jurisdiction) may consider its liability to be limited for purposes of the reviews required by paragraphs (e)(1) and (2) of this section so long as:

(i) Prior to joining the payment system, the bank or savings association obtains a written legal opinion that:

(A) Describes how the payment system allocates liability for operational losses; and

(B) Concludes the potential liability for operational losses for the national bank or Federal savings association is in fact limited to specific and appropriate limits that do not exceed the lower of:

(*1*) The legal lending limit under 12 CFR part 32; or

(*2*) The limit set for the bank or savings association by the OCC; and

(ii) There are no material changes to the liability or indemnification requirements applicable to the bank or savings association since the issuance of the written legal opinion.

(f) *Safety and soundness considerations.* (1) A national bank or Federal savings association should evaluate, at a minimum, the following payment system characteristics when conducting an analysis required by paragraph (e) of this section:

(i) Does the processing occur on a real-time gross settlement basis or provide reasonable assurance (*e.g.*, prefunding, etc.) that members will meet settlement obligations?

(ii) How does the payment system's rules limit its liability to members?

(iii) Does the payment system have insurance coverage and/or self-insurance arrangements to cover operational losses?

(iv) Do the payment system's rules provide an unambiguous pro-rata loss allocation methodology under its indemnity provisions and does the methodology provide members the opportunity to reduce or eliminate liability exposure by decreasing or ceasing use of the payment system?

(v) Do the payment system's rules provide for unambiguous membership withdrawal procedures that do not require the prior approval of the system?

(vi) Does the payment system have appropriate admission and continuing participation requirements for system participants? Such requirements should address, among other things:

(A) The participants' access to sufficient financial resources to meet obligations arising from participation;

(B) The adequacy of participants' operational capacities to meet obligations arising from participation; and

(C) The adequacy of the participants' own risk management processes.

(vii) Does the payment system have processes and controls in place to verify and monitor on an ongoing basis the compliance of each participant with admission and participation requirements?

(viii) Does the payment system have written policies and procedures for addressing participant failures to meet ongoing participation requirements?

(ix) Are the payment system's rules relating to the system's emergency authorities unambiguous and may they be amended or otherwise altered without prior notification to all members and an opportunity to withdraw?

(x) Is the payment system governed by uniform, comprehensive and clear legal standards in its operating jurisdiction that address payment and/or settlement activities?

(xi) Is the payment system subject to and in compliance (or observance) with the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (CPSS—IOSCO) Principles for Financial Market Infrastructures?

(xii) Is the payment system designated as a systemically important financial market utility (SIFMU) by the Financial Stability Oversight Counsel (FSOC) or is it the international or foreign equivalent?

(xiii) Does the payment system provide members with information relevant to governance, risk management practices, and operations in a timely manner and with sufficient transparency and particularity for the bank to ascertain with reasonable certainty the bank's level of risk exposure to the system?

(xiv) Is the payment system operated by or subject to oversight of a central bank or regulatory authority?

(xv) Is the payment system legally organized as a not-for-profit enterprise or is it owned and operated by a government entity?

(xvi) Does the payment system have appropriate systems and controls for communicating to members in a timely manner about material events that relate to or could result in potential operational losses, *e.g.* fraud, system failures, natural disasters, etc.?

(xvii) Has the payment system ever exercised its authority under indemnification provisions?

(2) A national bank or Federal savings association should consider, at a minimum, the following characteristics of its risk management program when conducting an analysis required by paragraph (e) of this section:

(i) Does the bank or savings association have appropriate board supervision and managerial and staff expertise?

(ii) Does the bank or savings association have comprehensive policies and operating procedures with respect to its risk identification, measurement and management information systems that are routinely reviewed?

(iii) Does the bank or savings association have effective risk controls and processes to oversee and ensure the continuing effectiveness of the risk management process? The program should include a formal process for approval of payment system memberships as well as ongoing monitoring and measurement of activity against predetermined risk limits.

(iv) Does the bank or savings association's membership evaluation process include assessments and analyses of:

(A) The credit quality of the entity;

(B) The entity's risk management practices;

(C) Settlement and default procedures of the entity;

(D) Any default or loss-sharing precedents and any other applicable limits or restrictions of the entity;

(E) Key risks associated with joining the entity; and

(F) The incremental effect of additional memberships in aggregate exposure to payment system risk?

(v) Does the bank or savings association's risk management program include policies and procedures that identify and estimate the level of potential operational risks, at both inception of membership and on an ongoing basis?

(vi) Does the bank or savings association have auditing procedures to ensure the integrity of risk measurement, control and reporting systems?

(vii) Does the program include mechanisms to monitor, estimate, and maintain control over the bank or savings association's potential liabilities for operational losses on an ongoing basis. This should include:

(A) Limits and other controls with respect to each identified risk factor;

(B) Reports generated throughout the processes that accurately present the nature and level(s) of risk taken and demonstrate compliance with approved polices and limits; and

(C) Identification of the business unit and/or individuals responsible for measuring and monitoring risk exposures, as well as those individuals responsible for monitoring compliance with policies and risk exposure limits.

(viii) Does a bank or savings association with memberships in multiple payment systems have the ability to monitor and report aggregate risk exposures and measurement against risk limits both at the sponsoring business line level and the total exposure organizationally?

[85 FR 83730, Dec. 22, 2020]

§ 7.1027 Establishment and operation of a remote service unit by a national bank.

A remote service unit (RSU) is an automated or unstaffed facility, operated by a customer of a bank with at most delimited assistance from bank personnel, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money. A national bank may establish and operate an RSU pursuant to 12 U.S.C. 24(Seventh). An RSU includes an automated teller machine, automated loan machine, automated device for receiving deposits, personal computer, telephone, other similar electronic devices, and drop boxes. An RSU may be equipped with a telephone or tele-video device that allows contact with bank personnel. An RSU is not a ''branch'' within the meaning of 12 U.S.C. 36(j), and is not subject to State geographic or operational restrictions or licensing laws.

[85 FR 83731, Dec. 22, 2020]

§ 7.1028 Establishment and operation of a deposit production office by a national bank.

(a) *In general.* A national bank or its operating subsidiary may engage in deposit production activities at a site other than the main office or a branch of the bank. A national bank or its operating subsidiary may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account at a deposit production office (DPO). 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.

[85 FR 83732, Dec. 22, 2020]

§ 7.1029 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. The RSU at such a combined location must be primarily operated by the customer with at most delimited assistance from bank personnel.

[85 FR 83732, Dec. 22, 2020]

§ 7.1030 Permissible derivatives activities for national banks.

(a) *Authority.* This section is issued pursuant to 12 U.S.C. 24(Seventh). A national bank may only engage in derivatives transactions in accordance with the requirements of this section.

(b) *Definitions.* For purposes of this section:

(1) *Customer-driven* means a transaction is entered into for a customer's valid and independent business purpose (and a customer-driven transaction does not include a transaction the principal purpose of which is to deliver to a national bank assets that the national bank could not invest in directly);

(2) *Perfectly-matched* means two back-to-back derivatives transactions that offset risk with respect to all economic terms (*e.g.*, amount, maturity, duration, and underlying);

(3) *Portfolio-hedged* means a portfolio of derivatives transactions that are hedged based on net unmatched positions or exposures in the portfolio;

(4) *Physical hedging* or *physically-hedged* means holding title to or acquiring ownership of an asset (for example, by warehouse receipt or book-entry) solely to manage the risks arising out of permissible customer-driven derivatives transactions;

(5) *Physical settlement* or *physically-settled* means accepting title to or acquiring ownership of an asset;

(6) *Transitory title transfer* means accepting and immediately relinquishing title to an asset; and

(7) *Underlying* means the reference asset, rate, obligation, or index on which the payment obligation(s) between counterparties to a derivative transaction is based.

(c) *In general.* A national bank may engage in the following derivatives transactions after notice in accordance with paragraph (d) of this section, as applicable:

(1) Derivatives transactions with payments based on underlyings a national bank is permitted to purchase directly as an investment;

(2) Derivatives transactions with any underlying to hedge the risks arising from bank-permissible activities;

(3) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, cash-settled, and either perfectly-matched or portfolio-hedged;

(4) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, physically-settled by transitory title transfer, and either perfectly-matched or portfolio-hedged; and

(5) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, physically-hedged, and either portfolio-hedged or hedged on a transaction-by-transaction basis, and provided that:

(i) The national bank does not take physical delivery of any commodity by receipt of physical quantities of the commodity on bank premises; and

(ii) Physical hedging activities meet the requirements of paragraph (e) of this section.

(d) *Notice procedure.* (1) A national bank must provide notice to its Examiner-in-Charge prior to engaging in any of the following with respect to derivatives transactions with payments based on underlyings that a national bank is not permitted to purchase directly as an investment:

(i) Engaging in derivatives hedging activities pursuant to paragraph (c)(2) of this section;

(ii) Expanding the bank's derivatives hedging activities pursuant to paragraph (c)(2) of this section to include a new category of underlying for derivatives transactions;

(iii) Engaging in customer-driven financial intermediation derivatives activities pursuant to paragraph (c)(3), (4), or (5) of this section; and

(iv) Expanding the bank's customer-driven financial intermediation derivatives activities pursuant to paragraph (c)(3), (4), or (5) of this section to include any new category of underlyings.

(2) The notice pursuant to paragraph (d)(1) of this section must be submitted in writing at least 30 days before the national bank commences the activity and include the following information:

(i) A detailed description of the proposed activity, including the relevant underlyings;

(ii) The anticipated start date of the activity; and

(iii) A detailed description of the bank's risk management system (policies, processes, personnel, and control systems) for identifying, measuring, monitoring, and controlling the risks of the activity.

(e) *Additional requirements for physical hedging activities.* (1) A national bank engaging in physical hedging activities pursuant to paragraph (c)(5) of this section must hold the underlying solely to hedge risks arising from derivatives transactions originated by customers for the customers' valid and independent business purposes.

(2) The physical hedging activities must offer a cost-effective means to hedge risks arising from permissible banking activities.

(3) The national bank must not take anticipatory or maintain residual positions in the underlying except as necessary for the orderly establishment or unwinding of a hedging position.

(4) The national bank must not acquire equity securities for hedging purposes that constitute more than 5 percent of a class of voting securities of any issuer.

(5) With respect to physical hedging involving commodities:

(i) A national bank's physical position in a particular physical commodity (including, as applicable, delivery point, purity, grade, chemical composition, weight, and size) must not be more than 5 percent of the gross notional value of the bank's derivatives that are in that particular physical commodity and allow for physical settlement within 30 days. Title to commodities acquired and immediately sold by a transitory title transfer does not count against the 5 percent limit;

(ii) The physical position must more effectively reduce risk than a cash-settled hedge referencing the same commodity; and

(iii) The physical position hedges a physically-settled customer-driven commodity derivative transaction(s).

(f) *Safe and sound banking practices.* A national bank must adhere to safe and sound banking practices in conducting the activities described in this section. The bank must have a risk management system (policies, processes, personnel, and control system) that effectively manages (identifies, measures, monitors, and controls) these activities' interest rate, credit, liquidity, price, operational, compliance, and strategic risks.

[85 FR 83732, Dec. 22, 2020]

Subpart B—Corporate Practices

§ 7.2000 National bank corporate governance.

(a) *In general.* The corporate governance provisions in a national bank's articles of association and bylaws and the bank's conduct of its corporate governance affairs must comply with applicable Federal banking statutes and regulations and safe and sound banking practices.

(b) *Other sources of guidance.* To the extent not inconsistent with applicable