

§ 5.37 Investment in national bank or Federal savings association premises.

(a) *Authority.* 12 U.S.C. 29, 93a, 371d, 1464(c)(2), 1464(c)(4)(B), 1828(m), and 5412(b)(2)(B).

(b) *Scope.* This section addresses a national bank's or Federal savings association's investment in banking premises and other premises-related investments, loans, or indebtedness. This section also sets forth the quantitative investment limitations and procedures governing the OCC's review and approval of an application by a national bank or Federal savings association to invest in these premises.

(c) *Definitions.* The following definitions apply for purposes of this section.

(1) *Banking premises* includes:

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

(ii) Capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment;

(iii) Remodeling costs to existing premises;

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

(v) Parking facilities that are used by customers or employees of the national bank or Federal savings association.

(2) *Capital stock* means, for national banks and Federal stock savings associations, the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired. With respect to Federal mutual savings associations, "capital stock" should be read to mean the amount of the association's retained earnings.

(d) *Procedure*—(1) *Premises application*—(i) *When required.* A national bank or Federal savings association must submit an application to the appropriate OCC supervisory office to invest in banking premises, or in the stock, bonds, debentures, or other such obligations of any corporation, partnership, or similar entity (e.g., a limited liability company) holding the premises of the national bank or Federal savings association, or to make loans

to or upon the security of the stock of such corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the national bank or Federal savings association, as defined in 12 U.S.C. 221a or 12 U.S.C. 1462, respectively, will exceed the amount of the capital stock of the national bank or Federal savings association, or, in the case of a Federal mutual savings association the amount of retained earnings.

(ii) *Contents of premises application.* The application must include:

(A) A description of the national bank's or Federal savings association's present investment in banking premises;

(B) The investment in banking premises that the national bank or Federal savings association intends to make, and the business reason for making the investment; and

(C) The amount by which the national bank's or Federal savings association's aggregate investment will exceed the amount of the national bank's or Federal stock savings association's capital stock, or, in the case of a Federal mutual savings association, the amount of retained earnings.

(2) *Approval of premises application.* An application from a national bank or Federal savings association to invest in banking premises or in certain banking premises-related investments, loans or indebtedness, as described in paragraph (d)(1)(i) of this section, is deemed approved as of the 30th day after the filing is received by the OCC, unless the OCC notifies the national bank or Federal savings association prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. An approval for a specified amount under this section remains valid up to that amount until the OCC notifies the national bank or Federal savings association otherwise.

(3) *Premises notice process*—(i) *General rule.* Notwithstanding paragraph (d)(1)(i) of this section, a national bank or Federal savings association that is

rated 1 or 2 under the Uniform Financial Institutions Rating System (CAM-ELS) may make an aggregate investment in banking premises up to 150 percent of the national bank's or Federal savings association's capital and surplus without the OCC's prior approval, provided that the national bank or Federal savings association is well capitalized and will continue to be well capitalized after the investment or loan is made. However, the national bank or Federal savings association must notify the appropriate OCC supervisory office in writing of the investment within 30 days after the investment or loan is made. The written notice must include a description of the national bank's or Federal savings association's investment or loan.

(ii) *Exception.* If a Federal savings association that would otherwise be eligible for the premises notice process described in paragraph (d)(3)(i) of this section proposes to establish or acquire a subsidiary to make an investment in banking premises, or if investing in banking premises would be a new activity for such a subsidiary, the Federal savings association would not be eligible for the premises notice process and would be required to comply with the provisions of §5.59 in the case of a service corporation, or §5.38 in the case of an operating subsidiary.

(4) *Service corporation.* A Federal savings association that invests in banking premises through a service corporation is not subject to the premises application and premises notice requirements of paragraph (d) of this section; however, it must include this investment when calculating the quantitative limitations in paragraph (d) of this section, and must comply with §5.59.

(5) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§5.8, 5.9, 5.10, and 5.11 apply.

[80 FR 28449, May 18, 2015, as amended at 84 FR 4240, Feb. 14, 2019; 84 FR 61794, Nov. 13, 2019; 84 FR 69297, Dec. 18, 2019; 85 FR 80459, Dec. 11, 2020]

§5.38 Operating subsidiaries of a Federal savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1465, 1828, and 5412(b)(2)(B).

(b) *Licensing requirements.* When required by section 18(m) of the Federal Deposit Insurance Act (12 U.S.C. 1828(m)), a Federal savings association must file an application as prescribed in this section to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary.

(c) *Scope.* This section sets forth authorized activities and application procedures for Federal savings associations engaging in activities through an operating subsidiary. The OCC may, at any time, limit a Federal savings association's investment in an operating subsidiary or may limit or refuse to permit any activities in an operating subsidiary for supervisory, legal, or safety and soundness reasons.

(d) [Reserved]

(e) *Standards and requirements—(1) Authorized activities.* (i) A Federal savings association may conduct in an operating subsidiary activities that are permissible for a Federal savings association to engage in directly.

(ii) In addition to OCC authorization, before it begins business an operating subsidiary also must comply with other laws applicable to it and its proposed business, including applicable licensing or registration requirements, if any, such as registration requirements under securities laws.

(2) *Qualifying subsidiaries.* (i) An operating subsidiary in which a Federal savings association may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

(A) The savings association has the ability to control the management and operations of the subsidiary, and no other person or entity has the ability to exercise effective control or influence over the management or operations of the subsidiary to an extent equal to or greater than that of the savings association or an operating subsidiary thereof;

(B) The parent savings association owns and controls more than 50 percent