

Comptroller of the Currency, Treasury

§ 7.4010

(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.⁶

(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;⁷
- (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]

§ 7.4009 [Reserved]

§ 7.4010 Applicability of state law and visitorial powers to Federal savings associations and subsidiaries.

(a) In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), Federal savings associations and their subsidiaries shall be subject to the same laws and legal standards, including regulations of the OCC, as are applicable to national banks and their subsidiaries, regarding the preemption of state law.

⁶The 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.

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

(b) In accordance with section 1047 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1465), the provisions of section 5136C(i) of the Revised Statutes regarding visitorial powers apply to Federal savings associations and their subsidiaries to the same extent and in the same manner as if they were national banks or national bank subsidiaries.

[76 FR 43566, July 21, 2011]

Subpart E—National Bank Electronic Activities

SOURCE: 67 FR 35004, May 17, 2002, unless otherwise noted.

§ 7.5000 Scope.

This subpart applies to a national bank’s use of technology to deliver services and products consistent with safety and soundness.

§ 7.5001 Electronic activities that are incidental to the business of banking.

In addition to the electronic activities specifically permitted in § 7.5004 (sale of excess electronic capacity and by-products) and § 7.5006 (incidental non-financial data processing), the OCC has determined that the following electronic activities are incidental to the business of banking, pursuant to § 7.1000. This list of activities is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

- (a) Website development where incidental to other banking services;
- (b) Internet access and email provided on a non-profit basis as a promotional activity;
- (c) Advisory and consulting services on electronic activities where the services are incidental to customer use of electronic banking services; and
- (d) Sale of equipment that is convenient or useful to customer’s use of related electronic banking services, such as specialized terminals for scanning checks that will be deposited electronically by wholesale customers of banks under the Check Clearing for the 21st Century Act, Public Law 108–100 (12 U.S.C. 5001–5018) (the Check 21 Act).

[85 FR 83737, Dec. 22, 2020]

§ 7.5002 Furnishing of products and services by electronic means and facilities.

(a) *Use of electronic means and facilities.* A national bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver, subject to § 7.5001(b) and applicable OCC guidance. The following list provides examples of permissible activities under this authority. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

- (1) Acting as an electronic finder by:
 - (i) Establishing, registering, and hosting commercially enabled web sites in the name of sellers;
 - (ii) Establishing hyperlinks between the bank’s site and a third-party site, including acting as a “virtual mall” by providing a collection of links to web sites of third-party vendors, organized by-product type and made available to bank customers;
 - (iii) Hosting an electronic marketplace on the bank’s Internet web site by providing links to the web sites of third-party buyers or sellers through the use of hypertext or other similar means;
 - (iv) Hosting on the bank’s servers the Internet web site of:
 - (A) A buyer or seller that provides information concerning the hosted party and the products or services offered or sought and allows the submission of interest, bids, offers, orders and confirmations relating to such products or services; or
 - (B) A governmental entity that provides information concerning the services or benefits made available by the governmental entity, assists persons in completing applications to receive such services or benefits and permits persons to transmit their applications for such services or benefits;
 - (v) Operating an Internet web site that permits numerous buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counter-parties for transactions, aggregate orders for goods or services with those made by