

(d) *Procedures*—(1) *National banks*. A national bank may convert to a State bank (including a State bank as defined in 12 U.S.C. 214(a)) or a State savings association in accordance with 12 U.S.C. 214a and 214c, without prior OCC approval, subject to compliance with 12 U.S.C. 214d. Termination of a national bank's status as a national bank occurs upon the bank's completion of the requirements of 12 U.S.C. 214a, and upon the OCC's receipt of the bank's national bank charter in connection with the consummation of the conversion.

(2) *Federal savings associations*. A Federal savings association may convert to a State savings association or to a State bank, without prior OCC approval, subject to compliance with 12 U.S.C. 1464(i)(6). Termination of a Federal savings association's status as a Federal savings association occurs upon receipt of the Federal savings association's charter in connection with the consummation of the conversion.

(3) *Notice of intent*. (i) A national bank that desires to convert to a State bank (including a State bank as defined in 12 U.S.C. 214(a)) or State savings association, or a Federal savings association that desires to convert to a State savings association or a State bank, must submit a notice of intent to convert to the appropriate OCC licensing office. The national bank or Federal savings association must file this notice with the OCC at the time it files a conversion application with the appropriate State authority or the prospective appropriate Federal banking agency. The national bank or Federal savings association also must transmit a copy of the conversion application to the prospective appropriate Federal banking agency if it has not already done so.

(ii) The notice must include:

(A) A copy of the conversion application; and

(B) An analysis demonstrating that the conversion is in compliance with laws of the applicable jurisdictions regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(4) *Consultation*. The OCC may consult with the appropriate State au-

thorities or the prospective appropriate Federal banking agency regarding the proposed conversion.

(5) *Termination of status*. After receipt of the notice, the appropriate OCC licensing office provides instructions to the national bank or Federal savings association for terminating its status as a national bank or Federal savings association.

(e) *Exceptions to rules of general applicability*. Sections 5.5 through 5.8 and 5.10 through 5.13 do not apply to this section.

[80 FR 28433, May 18, 2015, as amended at 85 FR 80446, Dec. 11, 2020]

§ 5.26 Fiduciary powers of national banks and Federal savings associations.

(a) *Authority*. 12 U.S.C. 92a, 1462a, 1463, 1464(n), and 5412(b)(2)(B).

(b) *Licensing requirements*. A national bank or Federal savings association must submit an application and obtain prior approval from, or in certain circumstances file a notice with, the OCC in order to exercise fiduciary powers. No approval or notice is required in the following circumstances:

(1) Where two or more national banks consolidate or merge, and any of the national banks has, prior to the consolidation or merger, received OCC approval to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting national bank may exercise fiduciary powers in the same manner and to the same extent as the national bank to which approval was originally granted;

(2) Where two or more Federal savings associations consolidate or merge, and any of the Federal savings associations has, prior to the consolidation or merger, received approval from the OCC or the OTS to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting Federal savings association may exercise fiduciary powers in the same manner and to the same extent as the Federal savings association to which approval was originally granted;

(3) Where a national bank with prior OCC approval to exercise fiduciary

powers is the resulting bank in a merger or consolidation with a State bank, State savings association, or Federal savings association and the national bank will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted; and

(4) Where a Federal savings association with prior approval from the OCC or the OTS to exercise fiduciary powers is the resulting savings association in a merger or consolidation with a State bank, State savings association, or national bank and the Federal savings association will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted.

(c) *Scope.* This section sets forth the procedures governing OCC review and approval of an application, and in certain cases the filing of a notice, by a national bank or Federal savings association to exercise fiduciary powers. Fiduciary activities of national banks are subject to the provisions of 12 CFR part 9. Fiduciary activities of Federal savings associations are subject to the provisions of 12 CFR part 150.

(d) *Policy.* The exercise of fiduciary powers is primarily a management decision of the national bank or Federal savings association. The OCC generally permits a national bank or Federal savings association to exercise fiduciary powers if the bank or savings association is operating in a satisfactory manner, the proposed activities comply with applicable statutes and regulations, and the bank or savings association retains qualified fiduciary management.

(e) *Procedure*—(1) *In general.* The following institutions must obtain approval from the OCC in order to exercise fiduciary powers:

(i) A national bank or Federal savings association without fiduciary powers:

(ii) A national bank without fiduciary powers that desires to exercise fiduciary powers as the resulting bank after merging with a State bank, State savings association, or Federal savings association with fiduciary powers or a Federal savings association without fiduciary powers that desires to exercise fiduciary powers as the resulting sav-

ings association after merging with a State bank, State savings association or national bank with fiduciary powers;

(iii) A national bank that results from the conversion of a State bank or a State or Federal savings association that was exercising fiduciary powers prior to the conversion or a Federal savings association that results from a conversion of a State or national bank or a State savings association that was exercising fiduciary powers prior to the conversion; and

(iv) A national bank or Federal savings association that has received approval from the OCC to exercise limited fiduciary powers that desires to exercise full fiduciary powers.

(2) *Application.* (i) Except as provided in paragraph (e)(2)(ii) of this section, a national bank or Federal savings association that desires to exercise fiduciary powers must submit to the OCC an application requesting approval. The application must contain:

(A) A statement requesting full or limited powers (specifying which powers);

(B) A statement that the capital and surplus of the national bank or Federal savings association is not less than the capital and surplus required by State law of State banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) Sufficient biographical information on proposed senior trust management personnel, as identified by the OCC, to enable the OCC to assess their qualifications, including, if requested by the OCC, legible fingerprints and the Interagency Biographical and Financial Report, available at www.occ.gov;

(D) A description of the locations where the national bank or Federal savings association will conduct fiduciary activities;

(E) If requested by the OCC, an opinion of counsel that the proposed activities do not violate applicable Federal or State law, including citations to applicable law; and

(F) Any other information necessary to enable the OCC to sufficiently assess the factors described in paragraph (e)(2)(iii) of this section.

(ii) If approval to exercise fiduciary powers is desired in connection with any other transaction subject to an application under this part, the filer covered under paragraph (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this section may include a request for approval of fiduciary powers, including the information required by paragraph (e)(2)(i) of this section, as part of its other application. The OCC does not require a separate application requesting approval to exercise fiduciary powers under these circumstances.

(iii) When reviewing any application filed under this section, the OCC considers factors such as the following:

(A) The financial condition of the national bank or Federal savings association;

(B) The adequacy of the national bank's or Federal savings association's capital and surplus and whether it is sufficient under the circumstances and not less than the capital and surplus required by State law or State banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) The character and ability of proposed trust management, including qualifications, experience, and competency. The OCC must approve any trust management change the bank or savings association makes prior to commencing trust activities;

(D) The adequacy of the proposed business plan, if applicable;

(E) The needs of the community to be served; and

(F) Any other factors or circumstances that the OCC considers proper.

(3) *Expedited review.* An application by an eligible bank or eligible savings association to exercise fiduciary powers is deemed approved by the OCC as of the 30th day after the application is received by the OCC, unless the OCC notifies the bank or savings association prior to that date that the filing has been removed from expedited review, or the expedited review process is extended, under §5.13(a)(2).

(4) *Permit.* Approval of an application under this section constitutes a permit under 12 U.S.C. 92a for national banks and 12 U.S.C. 1464(n) for Federal savings associations to conduct the fidu-

ciary powers requested in the application.

(5) *Notice required.* A national bank or Federal savings association that has ceased to conduct previously approved fiduciary powers for 18 consecutive months must provide the OCC with a notice describing the nature and manner of the activities proposed to be conducted and containing the information required by paragraph (e)(2)(i) of this section 60 days prior to commencing any fiduciary activity.

(6) *Notice of fiduciary activities in additional States.* (i) Except as provided in paragraphs (e)(6)(iii) through (iv) of this section, a national bank or Federal savings association with existing OCC approval to exercise fiduciary powers must provide written notice to the OCC no later than 10 days after it begins to engage in any of the activities specified in §9.7(d) of this chapter in a State in addition to the State or States described in the application for fiduciary powers that the OCC has approved.

(ii) A notice submitted pursuant to paragraph (e)(6)(i) of this section must identify the new State or States involved, identify the fiduciary activities to be conducted, and describe the extent to which the activities differ materially from the fiduciary activities the national bank or Federal savings association previously conducted.

(iii) No notice under paragraph (e)(6)(i) of this section is required if the national bank or Federal savings association provides the information required by paragraph (e)(6)(ii) of this section through other means, such as a merger application.

(iv) No notice is required if the national bank or Federal savings association is conducting only activities ancillary to its fiduciary business through a trust representative office or otherwise.

(7) *Exceptions to rules of general applicability.* Sections 5.8, 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, 5.10, and 5.11 apply.

(8) *Expiration of approval.* Approval expires if a national bank or Federal

savings association does not commence fiduciary activities within 18 months from the date of approval, unless the OCC grants an extension of time.

[80 FR 28433, May 18, 2015, as amended at 85 FR 80446, Dec. 11, 2020]

Subpart C—Expansion of Activities

§ 5.30 Establishment, acquisition, and relocation of a branch of a national bank.

(a) *Authority.* 12 U.S.C. 1-42 and 2901-2907.

(b) *Licensing requirements.* A national bank must submit an application and obtain prior OCC approval in order to establish or relocate a branch.

(c) *Scope—(1) In general.* This section describes the procedures and standards governing OCC review and approval of an application by a national bank to establish a new branch or to relocate a branch.

(2) *Branch established through a conversion or business combination.* The standards of this section governing review and approval of applications by the OCC and, as applicable, 12 U.S.C. 36(b), but not the application procedures set forth in this section, apply to branches acquired or retained in a conversion approved under § 5.24 or a business combination approved under § 5.33. A branch acquired or retained in a conversion or business combination is subject to the application procedures set forth in § 5.24 or § 5.33.

(d) *Definitions—(1) Branch* includes any branch bank, branch office, branch agency, additional office, or any branch place of business established by a national bank in the United States or its territories at which deposits are received, checks paid, or money lent.

(i) A branch established by a national bank includes a seasonal agency described in 12 U.S.C. 36(c), a mobile facility, a temporary facility, or an intermittent facility.

(ii) A facility otherwise described in this paragraph (d)(1) is not a branch if:

(A) The bank establishing the facility does not permit members of the public to have physical access to the facility for purposes of making deposits, paying checks, or borrowing money (*e.g.*, an office established by the bank that re-

ceives deposits only through the mail); or

(B) It is located at the site of, or is an extension of, an approved main office or branch office of the national bank. The OCC determines whether a facility is an extension of an existing main office or branch office on a case-by-case basis. For this purpose, the OCC will consider a drive-in or pedestrian facility located within 500 feet of a public entrance to an existing main office or branch office to be an extension of the existing main office or branch office, provided the functions performed at the drive-in or pedestrian facility are limited to functions that are ordinarily performed at a teller window.

(iii) A branch does not include a remote service unit (RSU) as described in 12 CFR 7.1027. This encompasses RSUs that are automated teller machines (ATMs), including interactive ATMs. A branch also does not include a loan production office, a deposit production office, a trust office, an administrative office, a data processing office, or any other office that does not engage in at least one of the activities in paragraph (d)(1) of this section.

(2) *Home State* means the State in which the national bank's main office is located.

(3) *Intermittent branch* means a branch that is operated by a national bank for one or more limited periods of time to provide branch banking services at a specified recurring event, on the grounds or premises where the event is held or at a fixed site adjacent to the grounds or premises where the event is held, and exclusively during the occurrence of the event. Examples of an intermittent branch include the operation of a branch on the campus of, or at a fixed site adjacent to the campus of, a specific college during school registration periods; or the operation of a branch during a State fair on State fairgrounds or at a fixed site adjacent to the fairgrounds.

(4) *Messenger service* has the meaning set forth in 12 CFR 7.1012.

(5) *Mobile branch* is a branch of a national bank, other than a messenger service branch, that does not have a single, permanent site, and includes a vehicle that travels to various public