

conditions that govern the conduct of such activities by national banks.”⁹⁸ Courts have consistently treated operating subsidiaries and their parent banks as equivalents, unless Federal law requires otherwise, in considering whether a particular activity is permissible.⁹⁹

In accordance with the longstanding regulatory and judicial recognition of operating subsidiaries as corporate extensions of the parent bank, OCC regulations specifically provide that “[u]nless otherwise provided by Federal law or OCC regulation, State laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank.”¹⁰⁰ The only court to have considered the application of state law to an operating subsidiary after § 7.4006 was promulgated agreed with our position.¹⁰¹ We also note that the OTS takes the same approach with respect to operating subsidiaries of Federal thrifts. 12 CFR 559.3(n) of the OTS regulations provides that state law applies to Federal savings associations’ operating subsidiaries to the extent that the law applies to the parent thrift. This OTS regulation was upheld by a Federal district court.¹⁰²

Accordingly, the proposed amendments to parts 7 and 34 apply equally to operating subsidiaries of national banks.

Request for Comments

In addition to the specific issues noted previously on which comment is specifically invited, the OCC invites comment on all aspects of the proposed regulation.

⁹⁸ Pub. L. 106–102, § 121, 113 Stat. 1338, 1373 (1999), codified at 12 U.S.C. 24a(g)(3)(A).

⁹⁹ See, e.g., *NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251 (sale of annuities by operating subsidiary); *Clarke v. Securities Industry Ass’n*, 479 U.S. 388 (1987) (securities brokerage operating subsidiary); *Marquette Nat’l Bank*, 439 U.S. 299 (credit card subsidiary); *American Ins. Ass’n v. Clarke*, 865 F.2d 278 (D.C. Cir. 1988) (bond insurance subsidiary); *M & M Leasing Corp. v. Seattle First Nat’l Bank*, 563 F.2d 1377 (9th Cir. 1977) (auto leasing subsidiary); and *Valley Nat’l Bank v. Lavecchia*, 59 F. Supp. 2d 432 (D.N.J. 1999) (title insurance subsidiary).

¹⁰⁰ 12 CFR 7.4006.

¹⁰¹ See *Wells Fargo Bank I*, 252 F. Supp. 2d 1065, and *Wells Fargo Bank II*, 2003 WL 21277203, granting plaintiff’s motion for preliminary and permanent injunction on Supremacy Clause preemption claims, respectively. See also *Nat’l City Bank of Indiana v. Boutsris*, Civ. No. S–03–0655 GEB JFM (E.D. Cal. May 7, 2003), and *Nat’l City Bank of Indiana v. Boutsris*, 2003 WL 21536818 (E.D. Cal. July 2, 2003).

¹⁰² See *WFS Financial, Inc. v. Dean*, 79 F. Supp. 2d 1024 (W.D. Wis. 1999); see also *Chaires v. Chevy Chase Bank, F.S.B.*, 748 A.2d 34, 44 (Md. App. 2000).

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks’ current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed. The amendments address the applicability of state law to national banks’ deposit-taking, lending, and

other authorized activities. These amendments simply provide the OCC’s analysis and do not impose any new requirements or burdens. As such, they will not result in any adverse economic impact.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Executive Order 13132

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” In the case of a regulation that has Federalism implications and that preempts state law, the Order imposes certain consultation requirements with state and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted by state and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be