

satisfied before the OCC promulgates a final regulation.

This proposal may have Federalism implications, as that term is used in the Order. Therefore, before promulgating a final regulation based on this proposal, the OCC will, to the extent practicable and permitted by law, seek consultation with state and local officials, include a Federalism summary impact statement in the preamble to the final rule, and make available to the Director of OMB any written communications we receive from state or local officials.

List of Subjects

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, parts 7 and 34 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 7—BANK ACTIVITIES AND OPERATIONS

1. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 71, 71a, and 93a.

Subpart D—Preemption

2. A new § 7.4007 is added to read as follows:

§ 7.4007 Deposit-taking.

(a) *Authority of national banks.* A national bank may receive deposits and engage in any activity incidental to receiving deposits, including issuing evidence of accounts, subject to such terms, conditions, and limitations as the Comptroller of the Currency may prescribe by regulation or order and any other applicable Federal law.

(b) *Applicability of state law.* (1) Except where made applicable by Federal law, state laws that obstruct, in whole or in part, or condition, a national bank's exercise of its Federally-authorized deposit-taking powers are not applicable to national banks.

(2) The types of state laws referenced in paragraph (b)(1) of this section include state laws concerning—

- (i) Abandoned and dormant accounts;³
- (ii) Checking accounts;
- (iii) Mandated statements and disclosure requirements;
- (iv) Funds availability;
- (v) Savings account orders of withdrawal;
- (vi) State licensing or registration requirements; and
- (vii) Special purpose savings services.⁴

(c) Except where made applicable by Federal law, state laws on the following subjects apply to national banks to the extent that they only incidentally affect the deposit-taking activities of national banks or are otherwise consistent with the purposes set out in paragraph (a) of this section:

- (1) Contracts;
- (2) Torts;
- (3) Criminal law;⁵
- (4) Debt collection;
- (5) Acquisition and transfer of property;
- (6) Taxation;
- (7) Zoning; and
- (8) Any other law that the OCC, upon review, determines to have only an incidental effect on the deposit-taking operations of national banks or is otherwise consistent with the purposes set out in paragraph (a) of this section.

3. A new § 7.4008 is added to read as follows:

§ 7.4008 Lending.

(a) *Authority of national banks.* A national bank may make, sell, purchase, participate in, or otherwise deal in loans and interests in loans that are not secured by liens on, or interests in, real estate, subject to any terms, conditions, and limitations as the Comptroller of the Currency may prescribe by regulation or

³ This does not apply to state laws of the type upheld by the United States Supreme Court in *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233 (1944), which obligate a national bank to "pay [deposits] to the persons entitled to demand payment according to the law of the state where it does business." *Id.* at 248–249. State escheat laws are not included in this category. See also 12 CFR 557.12; 62 FR 55759, 55761 (Oct. 22, 1997).

⁴ State laws purporting to regulate national bank fees and charges are addressed in 12 CFR 7.4002.

⁵ But see the distinction drawn by the Supreme Court in *Easton v. Iowa*, 188 U.S. 220, 238 (1903) between "crimes defined and punishable at common law or by the general statutes of a State" and "crimes and offences cognizable under the authority of the United States." The Court stated that "[u]ndoubtedly a State has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction. * * * But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States." *Id.* at 239 (holding that Federal law governing the operations of national banks preempted a state criminal law prohibiting insolvent banks from accepting deposits).

order and any other applicable Federal law.

(b) *Standards for loans.* A national bank shall not make a loan described in paragraph (a) based predominantly on the foreclosure value of the borrower's collateral, without regard to the borrower's repayment ability, including the borrower's current and expected income, current obligations, employment status, and other relevant financial resources.

(c) *Applicability of state law.* (1) Except where made applicable by Federal law, state laws that obstruct, in whole or in part, or condition, a national bank's exercise of its Federally-authorized non-real estate lending powers are not applicable to national banks.

(2) The types of state laws referenced in paragraph (c)(1) of this section include state laws concerning—

- (i) Licensing, registration, filings, or reports by creditors;
- (ii) 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;
- (iii) Loan-to-value ratios;
- (iv) The terms of credit, including 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;
- (v) Escrow accounts, impound accounts, and similar accounts;
- (vi) Security property, including leaseholds;
- (vii) Access to, and use of, credit reports;
- (viii) Mandated statements, 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;

(ix) Disbursements and repayments; and

(x) Rates of interest on loans.⁶

(d) Except where made applicable by Federal law, state laws on the following subjects apply to national banks to the extent that they only incidentally affect

⁶ The limitations on charges that comprise rates of interest on loans by national banks are determined under Federal law. Federal law applies a state's limits on rates of interest to loans made by national banks located in that state. 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.