

the non-real estate lending activities of national banks or are otherwise consistent with national banks' Federal lending authority:

- (1) Contracts;
- (2) Torts;
- (3) Criminal law;⁷
- (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 non-real estate lending operations of national banks or is otherwise consistent with the purposes set out in paragraph (a) of this section.

4. A new § 7.4009 is added to read as follows:

§ 7.4009 Applicability of state law to other authorized national bank activities.

(a) *Authority of national banks.* A national bank may exercise all powers authorized to it under Federal law, including conducting any activity that is part of, or incidental to, the business of banking, subject to such terms, conditions, and limitations as are imposed by the OCC or by any other applicable Federal law.

(b) *Applicability of state law generally.* Except where made applicable by Federal law, state laws that obstruct, in whole or in part, or condition, a national bank's exercise of powers granted under Federal law do not apply to national banks.

(c) *Applicability of state law to particular national bank activities.* (1) The provisions of this section govern with respect to any national bank power or aspect of a national bank's activities that is not covered by another OCC regulation specifically addressing the applicability of state law.

(2) 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 exercise of national bank powers:

- (i) Contracts;
- (ii) Torts;
- (iii) Criminal law;
- (iv) Debt collection;
- (v) Acquisition and transfer of

property;

- (vi) Taxation;
- (vii) Zoning; and

(viii) Any other law that the OCC, upon review, determines to have only

an incidental effect on the exercise of national bank powers or is otherwise consistent with purposes set out in paragraph (a) of this section.

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

5. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

6. In § 34.3, the existing text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 34.3 General rule.

* * * * *

(b) A national bank shall not make a loan described in this part 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.

7. Section 34.4 is revised to read as follows:

§ 34.4 Applicability of State law.

(a) Except where State law is made applicable by Federal law, a national bank may make real estate loans under 12 U.S.C. 371 and § 34.3, without regard to State law limitations concerning:

- (1) Licensing, registration, filings, or reports by creditors;
- (2) The ability of a creditor to require or obtain private mortgage insurance, insurance for other 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 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) The aggregate amount of funds that may be loaned upon the security of real estate;
- (6) Escrow accounts, impound accounts, and similar accounts;
- (7) Security property, including leaseholds;
- (8) Access to, and use of, credit reports;
- (9) 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;

(10) Processing, origination, servicing, sale or purchase of, or investment or participation in, mortgages;

(11) Disbursements and repayments;

(12) Rates of interest on loans;¹

(13) Due-on-sale clauses except to the extent provided in 12 U.S.C. 1701j–3 and 12 CFR part 591; and

(14) Covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

(b) 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 real estate lending powers of national banks:

(1) Contracts;

(2) Torts;

(3) Criminal law;²

(4) Homestead laws specified in 12 U.S.C. 1462a(f);

(5) Debt collection;

(6) Acquisition and transfer of real property;

(7) Taxation;

(8) Zoning; and

(9) Any other law that the OCC, upon review, determines to have only an incidental effect on the real estate lending powers of national banks or is otherwise consistent with the purposes set out in § 34.3(a).

Dated: July 30, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

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¹ The limitations on charges that comprise rates of interest on loans by national banks are determined under Federal law. See 12 U.S.C. 85 and 1735f–7a; 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.

² 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).

⁷ See note 5 in 12 CFR 7.4007 regarding 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.”