



RESCINDED

OCC 2004-37

**Subject: Fundamental Change in Asset
Composition of a Bank
Date: August 19, 2004**

**To: Chief Executive Officers of All National
Banks, Department and Division Heads, All
Examining Personnel and Other Interested
Parties**

Description: Final Rule

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having sold or disposed of all, or substantially all, of its assets, subsequently purchasing or otherwise acquiring assets or otherwise expanding its operations. The preamble to the final rule indicates that a national bank that has disposed of all or substantially all of its assets before the effective date of this regulation must comply with the prior approval requirement before it purchases or otherwise acquires new assets or expands its operations after this regulation takes effect. The rule was published in the *Federal Register* on August 16, 2004. The effective date of this new rule is October 1, 2004.

The final rule contains three exceptions to this application requirement. First, the requirement does not apply to a bank that changes its asset composition as part of a voluntary liquidation pursuant to 12 USC 181 and 182 and 12 CFR 5.48, if the liquidating bank has stipulated in its notice of liquidation to the OCC that its liquidation will be completed, the bank dissolved, and its charter returned to the OCC. Second, national banks that change the composition of all, or substantially all, of their assets in response to direction from the OCC (e.g., in an enforcement action pursuant to 12 USC 1818) are not required to file an application pursuant to section 5.53. Third, the requirement does not apply to changes in asset composition that occur as a result of a bank's ordinary and ongoing business of originating and securitizing loans.

The procedural rules in subpart A of part 5, "Rules of General Applicability," generally govern all application requirements in part 5 "unless otherwise stated."¹ Among other things, subpart A provides for a public notice and comment process, and, as part of that process, permits "any person" to submit a written request for a hearing. Section 5.53(d) of the final rule provides that those procedures do not apply to this new application requirement unless the OCC determines otherwise on account of the significance or novelty of the issues raised by a particular application.

Section 5.53(c)(2) of the final rule provides that when reviewing an application filed under this section the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers; further, we may deny the application if the transaction would have a negative effect in any of these respects. In addition, section 5.53(c)(2) provides that our review of any change in asset composition of a dormant bank through purchase or other acquisition or other expansions of its operations under paragraph 5.53(c)(1)(ii) includes, in addition to the foregoing factors, the factors governing the organization of a *de novo* bank under 12 CFR 5.20.²

The preamble to the final rule states that the reasons for the proposed decrease in asset size, future plans for the bank charter (including any plans for liquidation), future asset growth, future plans to market or sell the charter, and future business plans, as applicable, will be relevant to our review of an application to dispose of all or substantially all of a bank's assets. In addition, depending on the circumstances presented in the bank's application, our approval of the bank's disposition of all or substantially all of its

assets will address how long the dormant bank charter may continue, and could include a requirement that the bank submit a plan of liquidation. In reviewing an application in connection with an increase in the assets of a stripped charter, we also will consider the bank's future business plan and whether this plan involves activities that significantly deviate from the bank's original business plan or operations prior to its stripped status. Furthermore, we will consider the applicant's staffing plans, plans for oversight of the activity within the bank, and accountability to the board of directors, along with the applicant's plans to acquire, develop, or modify internal control systems adequate to monitor the new activity.

The final rule also makes a conforming change to section 5.20 to provide that any use of the term "operating plan" or "operating plans" will be changed to "business plan or operating plan" or "business plans or operating plans" as appropriate.

For further information, contact Heidi M. Thomas, special counsel, Legislative and Regulatory Activities Division, (202) 874-5300; Richard O'Leary, senior counsel, Bank Activities and Structure Division, at 202-874-5300; or Stephen Lybarger, director for Licensing Activities, at (202) 874-5060.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

¹ 12 CFR 5.2(a).

² When evaluating an application to establish a de novo bank, section 5.10 of our regulations provides that we consider whether the proposed bank (1) has organizers who are familiar with national bank laws and regulations; (2) has competent management, including a board of directors, with ability and experience relevant to the type of services to be provided; (3) has capital that is sufficient to support the projected volume and type of business; (4) can reasonably be expected to achieve and maintain profitability; and (5) will be operated in a safe and sound manner. In addition, section 5.10(f) provides that we also may consider additional factors listed in section 6 of the Federal Deposit Insurance Act, 12 USC 1816, including the risk to the federal deposit insurance fund, and whether the proposed bank's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act and the National Bank Act.

Related Links

- [69 FR 50293](#)

stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

An interim final rule concerning this action was published in the **Federal Register** on April 22, 2004 (69 FR 21695). Copies of the rule were mailed to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on June 21, 2004. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation

submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 69 FR 21695 on April 22, 2004, is adopted as a final rule without change.

Dated: August 10, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-18613 Filed 8-13-04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 04-20]

RIN 1557-AC11

Fundamental Change in Asset Composition of a Bank

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulations to require a national bank to obtain the approval of the OCC before changing the composition of all, or substantially all, of its assets (1) through sales or other dispositions, or (2) after having sold or disposed of all, or substantially all, of its assets, through subsequent purchases or other acquisitions or other expansions of its operations. The final rule provides that, in the second case, the OCC will apply, among other factors, the same factors as it applies to the establishment of a *de novo* bank. This new approval requirement will enable the OCC to better assess the bank's compliance with applicable law and whether the proposed change comports with safe and sound banking practices.

DATES: Effective Date: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: For questions concerning the final rule,

contact Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities, at (202) 874-5090; Richard Cleva, Senior Counsel, Bank Activities and Structure Division, at (202) 874-5300; or Jan Kalmus, NBE/Licensing Expert, Licensing Activities, at (202) 874-5060, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OCC's current regulations at 12 CFR part 5 do not require the approval of the OCC before a national bank substantially changes the composition of its assets through sale or other disposition, nor do they require prior OCC review or approval before a national bank charter becomes a "stripped" or "dormant" bank charter. Likewise, our regulations do not address a dormant national bank's increase in asset size through purchases or acquisitions to engage again in the business of banking. On January 7, 2004, we proposed to add to our regulations a prior approval requirement for these fundamental changes in a bank's asset composition in order to address the supervisory concerns raised by these types of transactions. See 69 FR 892 (Jan. 7, 2004).

As described in the preamble to the proposed rule, these concerns may include increased operations risk, increased concentration risk (especially where asset composition changes as a result of divestiture), and the ability of bank management to implement the new strategy successfully. In addition, a dormant bank being revived may propose to engage in activities that significantly deviate or are a change from the bank's original business plan or operations. If ill conceived, poorly planned, or inadequately executed, these new activities can expose the bank to imprudent levels of risk, with the potential for adverse consequences for the bank's financial condition and, in the extreme situation, for its viability. Even entry into lines of business that are traditional for national banks may present elevated levels of risk to a particular bank if the bank expands substantially or too quickly from a dormant status, misjudges its markets, or fails to ensure that bank management and internal control systems keep pace with the change. The preamble to the proposal also noted that concerns raised by the acquisition of a dormant bank by a third party necessitates the need for the OCC to thoroughly review the nature of the services and products that might be initiated by an acquiring entity.

For the reasons discussed in this preamble, we are adopting in final form

a rule that is substantially the same as the proposal with a few modifications described later in this preamble discussion.

II. Description of the Proposed Rule

We proposed to add a new § 5.53 to subpart D of 12 CFR part 5 to require a national bank to obtain the OCC's prior written approval before undertaking either of two types of fundamental changes in the composition of the bank's assets: (1) Changing the composition of all, or substantially all, of its assets through sales or other dispositions, or (2) after having sold or disposed of all, or substantially all, of its assets, subsequently purchasing or otherwise acquiring assets. Proposed § 5.53(d) specified that this approval requirement would not apply to a change in composition of all, or substantially all, of a bank's assets if the bank undertakes the change in response to direction from the OCC (*e.g.*, in an enforcement action pursuant to 12 U.S.C. 1818) or pursuant to a statute or regulation that requires OCC review or approval (*e.g.*, a voluntary liquidation pursuant to 12 U.S.C. 181 and 12 CFR 5.48).

The proposed rule stated that, in reviewing applications filed under § 5.53, we would consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. It further stated that we may deny the application if the transaction would have a negative effect in any such respect.

This proposed rule also provided that if a national bank has sold or otherwise disposed of its assets in a transaction requiring approval pursuant to proposed § 5.53, our review of any subsequent change in asset composition through purchase or other acquisition would include, in addition to the forgoing factors, the factors governing the organization of a *de novo* bank under 12 CFR 5.20.

Finally, the proposed rule made a conforming change to § 5.20 to provide that any use of the term "operating plan" or "operating plans" would be changed to "business plan or operating plan" or "business plans or operating plans," as appropriate. As explained in the preamble, current § 5.20 only uses the term "operating plan" when referring to the document that describes a national bank's management goals, earnings objectives, and lines of business. However, the banking industry more commonly uses the term "business plan" to refer to this document. The term "business plan" also typically is used by the OCC and

the other Federal banking agencies in policy statements, applications, and internal documents. The OCC proposed this change to eliminate any confusion about whether a substantive difference between the two terms is intended. No such difference was intended, and the two terms may be used interchangeably.

III. Discussion of Comments

The OCC received four comments on the proposed rule. Two comments were submitted by trade associations, one by a national bank, and one by an individual. One commenter, a trade association, supported the proposal in full, with no recommended changes. Specifically, this commenter stated that recent examples of troubled banks that have markedly changed their business operations make this rule appropriate. Furthermore, this commenter noted that because extremely large shifts in the composition of a bank's assets may be made rapidly in today's market, the OCC should review management control and capability issues before such changes take place, rather than at the next examination. Finally, this commenter stated that because such an asset change occurs rarely, the rule should not pose significant new burdens on community or other national banks.

Another commenter proposed a technical drafting amendment. The two remaining commenters raised a number of issues with the proposed rule, which we address in the following discussion.

Scope of Applicability of Proposed Rule. One commenter, a national bank, suggested that large banks, their domestic operating subsidiaries, and their foreign subsidiaries should be exempt from the proposed rule. It stated that a formal application process was unnecessary because these large institutions are supervised by resident OCC examiners who are familiar with the bank's operations and management. Therefore, they concluded, a large bank could not undertake a fundamental change in the composition of assets without the full knowledge, and approval, of OCC staff.

We have declined to make this change. While, as the commenter observes, our large bank resident examiners are very familiar with the operations and management of the banks they supervise, the types of fundamental changes covered by this rule also have legal and policy implications that warrant an interdisciplinary review by other OCC staff, as well as input from the supervisory staff with immediate responsibility for the bank. The formal application process prescribed by this final rule provides the OCC with the

best opportunity both to review the safety and soundness of the transaction and to assess the bank's compliance with applicable law. This is consistent with our current rules, which similarly do not exempt large banks from other types of application requirements.

This same commenter requested clarification about how the new approval requirement would apply when there are multiple national bank charters within a single bank holding company structure. We note in response that the final rule applies to each individual national bank, whether or not the bank is part of a holding company. Therefore, a separate application is required of each bank in a holding company structure that proposes to change its asset composition in one of the ways covered by the final rule.

In addition, this commenter requested that the final rule exclude the sales of assets under asset securitization programs where the selling bank continues to have contractual obligations with respect to the securitization, such as acting as servicer of the loans involved. The commenter indicated that securitization strategies and activities do not represent a fundamental change in banking activities. We decline to exempt all asset securitizations from the scope of the final rule because we believe there may be certain scenarios where securitization transactions would fall under this application requirement. For example, we believe that a stripped charter subject to the new approval requirement would result where a bank proposes to make a one-time transfer of all, or substantially all, of its assets into a trust for securitization purposes while retaining only the business of servicing the loans. If, on the other hand, a bank is in the ongoing business of originating loans and securitizing them in order to fund new originations, and it does fund those new originations so that it continually is replenishing the assets it has securitized, then we agree that the ongoing securitization activity does not subject the bank to the requirements of the final rule. This distinction between securitizations that are part of a bank's ordinary and ongoing business and those that are not is consistent with the description of what constitutes a "dormant bank" that appears later in this preamble discussion. We have amended the final rule to clarify the application of this requirement to securitizations.

Another commenter, a trade association, asked us to explain how the new rule would apply in cases covered by the OCC's Significant Deviation

Policy.¹ The OCC imposes the “significant deviation condition” on certain charter and conversion applications. Under this condition, a bank must provide the OCC at least 60 days’ prior written notice of its intent to significantly deviate or change from its business plan or operations and must obtain the OCC’s written determination of no objection before the bank engages in any significant deviation or change from its business plan or operations. The significant deviation condition expressly states that “[i]f such deviation is the subject of an application filed with the OCC, the OCC does not require any further notice to the supervisory office.” Therefore, as a general matter, a bank that is covered both by § 5.53 and by the condition imposed pursuant to the Significant Deviation Policy only would need to file an application under § 5.53.

This same commenter thought that it was redundant, and therefore unnecessary; to apply the new approval requirement to transactions that also would require a notice under the Change in Bank Control Act (CBCA).² However, the CBCA requires the purchaser of the bank, and not the bank itself, to file a notice with the OCC. Furthermore, the statutory factors that the OCC considers in deciding whether to disapprove a CBCA notice are different and more limited than those we will consider in reviewing an application under the final rule.

The CBCA factors include considerations such as the effect of the proposed acquisition on competition; the financial condition, competence, experience, and integrity of the proposed acquirers; the competence, experience, and integrity of the proposed managers of the bank; and the effect of the transaction on the Federal deposit insurance funds. Like the proposal, this final rule provides that, in reviewing a bank’s application to make a fundamental change in its asset composition, the OCC will consider the purpose of the transaction, the safety and soundness of the bank, and any effect on the bank’s customers. None of these considerations is specifically captured by the CBCA factors. Accordingly, the application required by new § 5.53 is not redundant of the CBCA notice, and we decline to make an exception in the final rule for

transactions involving a change in bank control.

Application Process. A trade association commenter requested that the final rule provide guidance on the specific application process of proposed § 5.53, and asked whether and how the public notice and comment provision in part 5 applies to applications under the proposed rule. The procedural rules in subpart A of part 5, Rules of General Applicability, generally govern all application requirements in part 5 “unless otherwise stated.”³ Among other things, subpart A provides for a public notice and comment process, and, as part of that process, permits “any person” to submit a written request for a hearing.⁴

Part 5 states that the public notice and comment procedures and the opportunity for a hearing do not apply to most filings pertaining to a change in a national bank’s activities.⁵ The issues presented by such filings typically concern the safety and soundness of, or the legal authority for, the proposed activity. Since the application requirement imposed by this final rule similarly pertains to a change in a bank’s activities in certain circumstances, and since the principal issues presented are likely to be safety and soundness or legal issues, we conclude that the public procedures otherwise required by part 5 are not necessary in connection with all applications under § 5.53. We recognize, however, that they may be appropriate in particular cases. Accordingly, the final rule provides that those procedures do not apply unless the OCC determines otherwise due to the significance or novelty of the issues raised by a particular application.

However, we note that a change in composition of assets subject to § 5.53 may be part of a bank’s implementation of a new business strategy that subjects the bank to other filing requirements that require public procedures (such as the branch closure notice requirement found in 12 U.S.C. 1831r-1). Nothing in this final rule excepts or excuses the bank from compliance with public procedures imposed in connection with those other filing requirements.

³ 12 CFR 5.2(a).

⁴ Procedural information that is not included in part 5 is provided in the “General Policies and Procedures” booklet of the *Comptroller’s Licensing Manual*, which contains sections that address the expansion and contraction of activities. This booklet is available on the OCC’s Web site at <http://www.occ.treas.gov/corpbook/group1/public/pdf/gpp.pdf>.

⁵ See, e.g., 12 CFR 5.26(e)(6) (fiduciary powers), 5.36(f) (other equity investments), and 5.37(d)(4) (investment in bank premises).

This same commenter also requested that expedited procedures be available for an “eligible bank,” *i.e.*, a bank that is well capitalized, well managed, and that has a satisfactory or better CRA rating, as they are under OCC rules for applications and notices covering other changes to activities and operations. The OCC does not agree that an expedited process is warranted for these types of applications. By definition, the changes covered by § 5.53 constitute a fundamental shift in activities and operations that may have serious safety and soundness implications unique to each bank that proposes these changes. The OCC’s evaluation of such a significant departure from the bank’s existing activities and operations requires an evaluation that does not lend itself to the type of expedited consideration available in the other types of filings to which the commenter refers. Accordingly, we decline to accept the commenter’s suggestion. However, we expect that, at most, only a few banks a year would be subject to this requirement, and that it will therefore not have a broad or burdensome effect on the national banking system as a whole.

The final rule does not prescribe time frames or other procedural details with respect to the applications covered by § 5.53, which are matters typically addressed in the *Comptroller’s Licensing Manual*.⁶ We expect the procedures governing this new application requirement would be generally consistent with those that we use for the processing of other, similar types of applications.

Definition of “all, or substantially all” of assets. The proposed rule applied the prior approval requirement when a national bank changes the composition of “all, or substantially all,” of its assets, or, after having sold or disposed of all, or substantially all, of its assets, subsequently purchases or acquires new assets. One commenter asked that we quantify the phrase “substantially all” by establishing that the “sales or other dispositions” must affect at least 95% of the bank’s assets. We decline to make this change because a bright-line standard could encourage the structuring of asset dispositions or acquisitions with a view toward avoiding the requirements of § 5.53. The approach taken in the final rule also is consistent with our rules implementing the Bank Merger Act (BMA), 12 U.S.C. 1828(c)(2), where we similarly use and apply the phrase “all, or substantially

⁶ The Comptroller’s Licensing Manual is available at <http://www.occ.treas.gov/corpapps/corpapplic.htm>.

¹ See OCC’s Significant Deviation Policy, as posted as a supplemental policy document to the Charters Booklet of the Comptroller’s Licensing Manual, <http://www.occ.treas.gov/corpbook/forms/SigDevPolicy8-03.pdf>.

² 12 U.S.C. 1817(j). See also 12 CFR 5.50 (OCC regulation implementing the CBCA).

all” of the assets without relying on a bright-line, quantitative definition.⁷

Definition of “dormant bank”. In the proposal, we described a bank that has divested all, or substantially all, of its assets as a “dormant bank.” One commenter suggested that we define this term. By “dormant bank,” we mean a bank that is no longer engaged in core banking activities other than on a *de minimis* basis. This definition includes, for example, a bank that has significantly reduced its activities and services or that has contracted out significant portions of its operations to third-party service providers, other than in the ordinary course of the bank’s ongoing business. This same definition applies to the references to a “stripped charter” in the preamble. We have not included this definition in the text of the regulation, since the term is not used there, but we will include this clarification in future revisions to the *Comptroller’s Licensing Manual* that discuss the requirements of § 5.53.

Conforming change to the term “operating plan”. We received no comments on the proposed rule’s conforming change to § 5.20 that provides that any use of the term “operating plan” will be changed to “business plan or operating plan”. Therefore, we adopt this change as proposed.

IV. Description of the Final Rule

Authority

New § 5.53(a) sets out the OCC’s authority for adopting this regulation.⁸

Scope

Section 5.53(b) describes the scope of applicability of the regulation. We have moved to this Scope provision the statement (which appeared in the proposal at § 5.53(d)) that this approval requirement does not apply to a change in asset composition that the bank undertakes in response to direction from the OCC (e.g., in an enforcement action pursuant to 12 U.S.C. 1818).

The proposal also excepted from the § 5.53 approval requirement changes in asset composition undertaken pursuant to a statute or regulation that requires prior OCC review or approval. The

proposal cited voluntary liquidations undertaken pursuant to 12 U.S.C. 181 and 12 CFR 5.48 as an example illustrating when this exception would apply. For the following reasons, we have removed this language and substituted a narrower exception that clarifies when the final rule applies to voluntary liquidations.

First, the proposal would have exempted stripped charters that are part of a BMA transaction⁹ from the application requirement of § 5.53. BMA transactions are the ones that most commonly present the situation where a bank changes asset composition pursuant to a statute or regulation that requires OCC review or approval. However, the BMA process focuses on acquiring entities and does not address the concerns that may arise when the target bank is a stripped or dormant charter. Because the acquisition of a dormant bank charter in a BMA transaction likely will result in the revival of business in the dormant charter, the transaction presents the same concerns that support adoption of the final rule. Accordingly, we have determined that they are appropriately covered by new § 5.53.

Second, we have clarified the application of the new approval requirement to voluntary liquidations by adding an express exemption for a bank that changes its asset composition as part of a voluntary liquidation pursuant to 12 U.S.C. 181 and 182 and 12 CFR 5.48, but only if the liquidating bank has stipulated in its notice of liquidation to the OCC that its liquidation will be completed, the bank dissolved, and its charter returned to the OCC within one year of the date it filed this notice, unless the OCC extends the time period. This change eliminates the § 5.53 application process for those voluntary liquidations that will not result in a dormant bank charter of indefinite duration, while retaining OCC review for those liquidations that are most likely to pose safety and soundness concerns.

Thus, we have concluded that the most common transactions involving a stripped or dormant bank charter should be subject to the § 5.53 application requirement because they are likely to present the concerns that have prompted this rulemaking. So do voluntary liquidations, unless it is clear that the liquidating bank will give up its charter by a date certain. We think it is unlikely that changes in asset composition will be undertaken pursuant to statutes or regulations other than the BMA (and our implementing

regulation) or the voluntary liquidation statute (and our implementing regulation). Accordingly, we have determined that it is unnecessary to retain the exemption as originally proposed.

For reasons described in our discussion of the comments, we have also changed this scope provision to clarify that the new application requirement does not apply to a change in composition of assets that is part of a bank’s ordinary and ongoing business of originating and securitizing loans.

Application Requirement

Section 5.53(c) contains the new application requirement. It requires a national bank to obtain the OCC’s prior written approval before changing the composition of all, or substantially all, of its assets: (1) Through sales or other dispositions, or (2) after having sold or disposed of all, or substantially all, of its assets, through subsequent purchases or other acquisitions or other expansions of its operations.

The final rule adds the reference to “other expansions” of a national bank’s operations. The proposal provided that a national bank with a dormant charter must file an application and obtain the prior written approval of the OCC “before changing the composition of all, or substantially all, of its assets, through subsequent purchases or other acquisitions.” This language could have been misread to cover only acquisitions of assets from third parties. We intended the word “acquisitions” to be read broadly, however. A national bank with a dormant charter could restart operations by obtaining—“acquiring”—assets through any means, including generating new assets through the bank’s own efforts. For example, we intended that a national bank with a dormant charter that restarts business by first taking new deposits and then using those deposits to fund new assets would be covered by the application requirement in § 5.53. The language in the final rule more clearly indicates this result.

Section 5.53(c)(2) provides that when reviewing an application filed under this section, the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank’s customers, and that we may deny the application if the transaction would have a negative effect in any such respect. In addition, § 5.53(c)(2) provides that our review of any changes in the asset composition of a dormant bank, through purchase or other acquisition or other expansions of its operations under § 5.53(c)(1)(ii), will include, in addition to the foregoing

⁷ See 12 CFR 5.33(d). See also the Change in Bank Control Booklet of the Comptroller’s Licensing Manual, <http://www.occ.treas.gov/corpbook/group3/public/pdf/cbca.pdf>.

⁸ One commenter suggested that we remove this paragraph, noting that it repeats information already provided at the beginning of part 5. We have not adopted this suggestion because the placement of this authority paragraph within § 5.53 is consistent with the structure of other sections contained in part 5, and assists the reader in determining exactly where our authority for this new application requirement is found.

⁹ See 12 U.S.C. 1828(c)(2); 12 CFR 5.33.

factors, the factors governing the organization of a *de novo* bank under § 5.20.¹⁰

As we indicated in the preamble to the proposed rule, a national bank that has disposed of all or substantially all of its assets before the effective date of this regulation must comply with the prior approval requirement before it purchases or otherwise acquires new assets or expands its operations after this regulation takes effect. We have reworded the second sentence in § 5.53(c)(2) slightly to make it clear that the applicability of the *de novo* factors for renewed asset activity is unaffected by whether the bank had previously obtained the OCC's approval to dispose of its assets.

As indicated in the preamble to the proposed rule, the reasons for the proposed decrease in asset size, future plans for the bank charter (including any plans for liquidation), future asset growth, future plans to market or sell the charter, and future business plans, as applicable, will be relevant to our review of an application to dispose of all, or substantially all, of a bank's assets. In addition, depending on the circumstances presented in the bank's application, our approval of the bank's disposition of all, or substantially all, of its assets will address how long the dormant charter may continue, and could include a requirement that the bank submit a plan of liquidation.

In reviewing an application in connection with an increase in the assets of a stripped charter, we also will consider the bank's future business plan and whether this plan involves activities that significantly deviate from the bank's original business plan or operations prior to its stripped status. Furthermore, we will consider the applicant's staffing plans, plans for oversight of the activity within the bank, and accountability to the board of directors, along with the applicant's plans to acquire, develop, or modify

¹⁰ See 12 CFR 5.20. When evaluating an application to establish a *de novo* bank, we consider whether the proposed bank: (1) Has organizers who are familiar with national banking laws and regulations; (2) Has competent management, including a board of directors, with ability and experience relevant to the types of services to be provided; (3) Has capital that is sufficient to support the projected volume and type of business; (4) Can reasonably be expected to achieve and maintain profitability; and (5) Will be operated in a safe and sound manner. In addition, § 5.20(f) provides that we also may consider additional factors listed in section 6 of the Federal Deposit Insurance Act, 12 U.S.C. 1816, including the risk to the Federal deposit insurance fund, and whether the proposed bank's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act and the National Bank Act (12 U.S.C. 1 *et seq.*).

internal control systems adequate to monitor the new activity.

Public Procedures

Section 5.53(d) provides that the public procedures otherwise prescribed by subpart A of part 5 do not apply to applications filed pursuant to § 5.53, unless the OCC determines that some or all of those procedures should apply because of the significance or novelty of the issues presented by a particular application.

Conforming Change in Terminology

The final rule also makes a conforming change to § 5.20 to provide that any use of the term "operating plan" or "operating plans" will be changed to "business plan or operating plan" or "business plans or operating plans," as appropriate.

V. Regulatory Analysis

A. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will impose minimum burden on only a small number of national banks, regardless of asset size.

B. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in 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 this final rule will not result in expenditures by State, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

C. Executive Order 12866

The Comptroller of the Currency has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

D. Paperwork Reduction Act of 1995

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this final rule have been reviewed and approved by the OMB under OMB Control Number 1557-0014.

The information collection requirements are contained in § 5.53. Section 5.53 requires a national bank to submit an application to the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions or, having sold or disposed of all or substantially all of its assets, through subsequent purchases or other acquisitions. The time per response to complete an application is estimated to be five hours and the number of respondents is estimated to be five national banks. The OMB approved burden as follows:

The likely respondents are national banks.

Estimated number of respondents: 5.

Estimated number of responses: 5.

Estimated total burden hours per response: 5 hours.

Estimated total annual burden hours: 25 hours.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 1. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 24 (Seventh), 93a, 1818, and 3101 *et seq.*

§ 5.20 [Amended]

■ 2. In § 5.20, revise all references to "operating plan" or "operating plans" to read "business plan or operating plan" or "business plans or operating plans," as appropriate.

■ 3. In Subpart D—Other Changes in Activities and Operations, a new § 5.53 is added to read as follows:

§ 5.53 Change in asset composition.

(a) *Authority.* 12 U.S.C. 93a, 1818.

(b) *Scope.* This section requires a national bank to obtain the approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions, or, having sold or disposed of all, or substantially all, of its assets, through subsequent purchases or other acquisitions or other expansions of its operations. This section does not apply to a change in composition of all, or substantially all, of a bank's assets that the bank undertakes in response to direction from the OCC (*e.g.*, in an enforcement action pursuant to 12 U.S.C. 1818) or as part of a voluntary liquidation pursuant to 12 U.S.C. 181 and 182 and 12 CFR 5.48, if the liquidating bank has stipulated in its notice of liquidation to the OCC that its liquidation will be completed, the bank dissolved and its charter returned to the OCC within one year of the date it filed this notice, unless the OCC extends the time period. This section does not apply to changes in asset composition that occur as a result of a bank's ordinary and ongoing business of originating and securitizing loans.

(c) *Approval requirement.* (1) A national bank must file an application and obtain the prior written approval of the OCC before changing the composition of all, or substantially all, of its assets (i) through sales or other dispositions, or, (ii) having sold or disposed of all or substantially all of its assets, through subsequent purchases or other acquisitions or other expansions of its operations.

(2) In determining whether to approve an application under paragraph (c)(1) of this section, the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the application if the transaction would have a negative effect in any of these respects. The OCC's review of any change in asset composition through purchase or other acquisition or other expansions of its operations under paragraph (c)(1)(ii) of this section will include, in addition to the foregoing factors, the factors governing the organization of a bank under § 5.20.

(d) *Exceptions to Rules of General Applicability.* Sections 5.8, 5.10, and 5.11 do not apply with respect to applications filed pursuant 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 some or all of the provisions of §§ 5.8, 5.10, and 5.11 apply.

Dated: August 4, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 04-18681 Filed 8-13-04; 8:45 am]

BILLING CODE 4810-33-P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

Regulation Z; Docket No. R-1208J

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of \$400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the \$400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. The adjusted dollar amount for 2005 is \$510.

EFFECTIVE DATE: January 1, 2005.

FOR FURTHER INFORMATION CONTACT:

Minh-Duc T. Le, Senior Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667. For the users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601-1666j) requires creditors to disclose credit terms and the cost of consumer credit as a dollar amount and as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

The Home Ownership and Equity Protection Act amendments to TILA were enacted in 1994 as part of the RiegleCommunity Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160. In 1995, the Board published amendments to Regulation Z implementing HOEPA (60 FR 15463). These amendments, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed-end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA rules if the total points and fees payable by the consumer at or before loan consummation exceed the greater of \$400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the \$400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (*See* 15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The Board adjusted the \$400 amount to \$499 for the year 2004.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not "report" a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI-U index, which is based on all urban consumers and represents approximately 87 percent of the U.S. population, as the index for adjusting the \$400 dollar figure. The adjustment to the CPI-U index reported by the Bureau of Labor Statistics on May 15, 2004, was the CPI-U index "in effect" on June 1, and reflects the percentage increase from April 2003 to April 2004. The adjustment to the \$400 figure below reflects a 2.29 percent increase in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

Effective January 1, 2005, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of \$510 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)-2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2005. Because the timing and method of the adjustment is set by statute, the Board finds that notice and public comment on the change are unnecessary.