

(b) *Visitorial powers.* Except as otherwise expressly provided by Federal law, the exercise of visitorial powers over national banks is vested solely in the OCC, 12 U.S.C. 484. State officials have no authority to conduct examinations or to inspect or require the production of books or records of national banks, except for the limited purpose of ensuring compliance with applicable state unclaimed property and escheat laws. State authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with those laws. Federal law provides special procedures for verifying payroll records for unemployment compensation purposes, 26 U.S.C. 3305(c), for enforcing the Fair Labor Standards Act, 29 U.S.C. 211, and for ascertaining the correctness of Federal tax returns, 26 U.S.C. 7602.

(c) *Report of examination.* The report of examination made by an examiner selected by the OCC is designated solely for use in the supervision of the bank. The bank's copy of the report is the property of the OCC and is loaned to the bank and any holding company thereof solely for its confidential use. The bank's directors, in keeping with their responsibilities both to depositors and to shareholders, should thoroughly review the report. The report may be made available to other persons only in accordance with the rules on disclosure in part 4 of this chapter.

**§ 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.**

(a) *Definition.* The word "interest" as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for any extension of credit, the making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

(b) *Authority.* A national bank located in a state may charge interest at the maximum rate permitted by law of that state to any state-chartered or licensed lending institution. If state law permits

a higher interest rate on a specified class of loans, a national bank making loans at the higher rate is subject only to the provisions of state law relating to the class of loans that are material to the determination of the interest rate. For example, a national bank may lawfully charge the highest rate permitted to be charged by a state-licensed small loan company or Morris Plan bank, without being so licensed.

(c) *Usury.* A national bank located in a state the law of which denies the defense of usury to a corporate borrower may charge a corporate borrower any rate of interest agreed upon by a corporate borrower.

**§ 7.4002 National bank charges.**

(a) *Customer charges and fees.* A national bank may charge its customers deposit account service charges and loan-related fees. For example, a national bank may impose service charges, that its board of directors determines to be reasonable, on dormant accounts. A national bank may also charge a borrower reasonable fees for credit reports or investigations with respect to a borrower's credit. All charges to customers should be arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding or discussion with other banks or their officers.

(b) *Considerations.* The establishment of reasonable deposit account service charges and loan-related fees, and the amounts thereof, is a business decision to be made by each bank according to sound banking judgment and safe and sound banking principles. In establishing deposit account service charges and loan-related fees, the bank may consider, but is not limited to considering:

(1) The cost incurred by the bank, plus a profit margin, in providing the service;

(2) The enhancement of the competitive position of the bank in accord with the bank's marketing strategy; and

(3) Maintenance of the safety and soundness of the institution.

(c) *State law.* The OCC evaluates on a case-by-case basis whether a national bank may establish deposit account service charges or loan-related fees pursuant to paragraphs (a) and (b) of this section notwithstanding a contrary state law that purports to limit or prohibit such charges or fees. In issuing an opinion on whether such state laws are preempted, the OCC applies preemption principles derived from the Supremacy Clause of the United States

Constitution and applicable judicial precedent.

(d) *National bank as fiduciary.* This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by part 9 of this chapter.

Appendix A to Part 7—Corporate Governance Procedures; OCC Approved Model Business Corporation Act Provisions

The following sections of the Model Business Corporation Act (1984), as amended through 1993, are permissible corporate governance procedures for a national bank under § 7.2000(b) of this part:

- 6.24 Share Options
- 6.28 Expense of Issue
- 7.01 Annual Meeting
- 7.02 Special Meeting
- 7.04 Action Without Meeting
- 7.25 Quorum and Voting Requirements for Voting Groups
- 7.26 Action by Single and Multiple Voting Groups
- 8.05(a), (c)–(e) Terms of Directors Generally
- 8.07 Resignation of Directors
- 8.20 Meetings
- 8.21 Action Without Meeting
- 8.22 Notice of Meeting
- 8.23 Waiver of Notice
- 8.25 Committees
- 10.03 Amendment By Board of Directors and Shareholders
- 10.09 Effect of Amendment

**PART 31—EXTENSIONS OF CREDIT TO NATIONAL BANK INSIDERS**

2. The authority citation for part 31 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b(3), 1817(k), and 1972(2)(G)(ii).

3. Part 31 is amended by adding new subpart C consisting of § 31.100 to read as follows:

**Subpart C—Interpretive Rulings**

**§ 31.100 Transactions with affiliates.**

(a) *Debts of affiliates.* A national bank's bad debts do not include bad debts due to an affiliate for purposes of 12 U.S.C. 56 except to the extent of each debt of, or other claim against, the affiliate with respect to which the bank is personally liable either as obligor or guarantor. This section does not apply, however, to debts of operating subsidiaries.

(b) *Loans secured by stock or obligations of an affiliate.* Where a loan is otherwise adequately secured, additional security in the form of the capital stock, bonds, debentures, or other such obligations of an affiliate