



March 22, 2021

Submitted Electronically

Chief Counsel's Office,
Attention: Comment Processing,
Office of the Comptroller of the Currency,
400 7th Street SW,
Suit 3E-218,
Washington, DC 20219

Re: National Bank and Federal Savings Association Premises, RIN 1557-AF07

Dear Ladies and Gentlemen,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 220 state and nationally chartered banks, savings and loan associations, and savings banks. WBA appreciates the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) proposed rule to modify the requirements for national bank and Federal savings association premises (proposal).

The proposal would, among other things, set a minimum percentage for bank occupied premises, by which more than 50% must be occupied by bank persons. This represents a significant change from current regulation, which would create considerable burden due to the difficulties of managing, acquiring, and improving bank properties. WBA requests that OCC withdraw the proposal, and presents the following comments in contemplation of this request.

Background

12 U.S.C. 29 generally prohibits national banks from purchasing, holding, or conveying real estate. An exception to this requirement covers the authority of a national bank to hold real property "...as shall be necessary for its accommodation in the transaction of its business." A national bank investing in property should be doing so "in good faith, solely with a view of obtaining an eligible location" and not for the purpose of speculating or investing in real estate as a landlord.

Federal savings association ownership of premises is governed by the Home Owners Loan Act (HOLA). Agencies, including OCC, have interpreted the HOLA to permit Federal savings associations to hold real estate only for their offices and related facilities with permission to rent or sell excess space in their offices and facilities and the OCC has issued regulations governing a Federal savings association's investment in banking premises pursuant to general supervisory and rulemaking authority under the HOLA. After Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred to the OCC all functions of the former Office of Thrift Supervision (OTS) and the Director of the OTS relating to Federal savings associations, the OCC began reviewing its rules governing national banks and Federal savings associations to determine which rules were appropriate to integrate into a single set of rules for both national

banks and savings associations. After this review, the OCC did not find substantive differences between the then-banking premises rules and related OTS guidance governing national banks and Federal savings associations and determined that, as a supervisory matter, it was appropriate to apply the rule governing national banks to both national banks and Federal savings associations.

The OCC implemented 12 CFR 7.1024 to cover national bank and Federal savings association ownership of real estate for their own use. However, 12 CFR 7.1024 does not provide a full set of standards implementing the requirements of 12 U.S.C. 29 and the HOLA regarding national bank and Federal savings association premises. Rather, 12 CFR 7.1024 is an interpretive rule that codifies specific OCC interpretations of 12 U.S.C. 29. Thus, although the rule contains a list of types of real estate that the OCC has found permissible for national bank and Federal savings association ownership, that list is not exhaustive. Moreover, significant standards relating to the permissibility of real estate ownership, such as the minimum percentage of bank occupancy required for a building to qualify as premises, are not addressed anywhere in OCC regulation.

For these reasons, the OCC issued the proposal, which codify and clarify a set of principles for national bank and Federal savings association premises.

Discussion

The proposal would provide general standards for determining whether the acquisition and holding of real estate is necessary for the transaction of a national bank's or Federal savings association's business. This includes implementing an occupancy test, excess capacity standards, and transition provisions.

Occupancy Test

Bank occupied premises is defined in the proposal as real estate acquired and held in good faith in which more than 50 percent of each building or severable piece of land is used by bank persons, including facilities that may be operated by third parties to provide amenities and services to bank persons or otherwise facilitate bank business operations. Impermissible premises would mean real estate that is not bank occupied premises or that otherwise does not conform with the requirements of the proposal. Under the proposal generally, a national bank or Federal savings association may not acquire, hold, or convey impermissible premises. WBA is concerned with the requirement that more than 50 percent of each building be used by bank persons, or to otherwise facilitate bank business operations.

Question two of the proposal requests comment on whether 50 percent is the appropriate percentage. As discussed above, WBA requests that OCC withdraw the proposal in its entirety. However, if OCC decides to move forward with a final rule, WBA believes that a lower percentage, such as 25 percent, would be more appropriate. As proposed, the rule would hinder and, in some cases, outright eliminate the possibility of plans for expansion, including expansion to additional space, as well as modifying, expanding, or improving additional buildings. As banking, commerce, and the way business is conducted evolves, so do the spaces used to accommodate it. For example, smaller branches and branches with limited services utilize creative methods of providing for their communities. Mobile banking and other technological offerings are quickly becoming increasingly common. The 50 percent usage threshold would severely limit the way newly unused spaces could be utilized, limit innovation, and the general usage of these premises to their communities. As such, if the proposal is finalized, WBA

believes a percentage of at most 25 percent would be more appropriate. Furthermore, WBA does not believe the 50 percent occupancy standard is appropriate in any context, as discussed further below. While current OCC evaluation of bank premises is conducted on a case-by-case basis, as indicated through various guidance documents and interpretive letters, the 50 percent standard is frequently applied. For the reasons outlined later in these comments, WBA does not believe this threshold to be appropriate.

Transition Provisions

The proposal would grandfather national banks or Federal savings associations that currently have permissible real estate investments that would no longer be permissible under the proposed revisions. If the proposal is finalized, WBA requests clarification regarding this provision. More specifically, question ten of the proposal requests comment on the appropriate parameters of a national bank or Federal savings association's ability to hold real estate subject to the transition rule in § 7.1024(g). WBA is concerned that without further clarification, certain limitations of the transition rule would pose significant problems. For example, WBA has heard from members who recently installed additional air filtering systems, to prevent the spread of airborne contaminants. Some have even installed ultraviolet sterilizing devices to help cleanse the air. These steps were taken for the health benefits of customers and employees. However, the transition rule provides that a national bank or Federal savings association holding grandfathered investments cannot modify, expand, or improve the investment, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office. WBA is concerned that steps to improve property in a way that is healthy for its occupants, and for the environment, would be punished by causing the improvement to jeopardize the building's grandfathering under the transition rule. As such, WBA again requests that OCC withdraw its rule. If the rule is finalized, further clarification is needed so that banks are able to make decisions to improve their properties in ways that are beneficial for the community, their employees, and the environment, are not punished.

General Comments

The timing of the proposal is not ideal. As a result of the COVID-19 pandemic, uncertainty exists as to what office space needs will be going forward. Wisconsin banks are adjusting to the needs of their communities, and going forward, it is unclear what will be comfortable, and appropriate, long term. If the proposal is finalized, these institutions would be required to make additional considerations, including the 50 percent occupancy and use threshold, when they may not even know what their occupancy will be by end of year.

As mentioned above, WBA is also concerned that the proposal will halt attempts to develop spaces into creative, meaningful areas that benefit their communities. For example, WBA is aware of one bank-space which hosts a community café run by a group for developmentally disabled students. WBA is concerned that if the proposal were finalized, such opportunities would be lost in the burdens of compliance. For example, this institution would now need to track how this space is used by its employees. Further difficulties include use of these spaces after hours, spaces and rooms that are created for use by the community including gift shops and drycleaners, areas created for small businesses to have access to certain services, and technologies, and in many instances, spaces created for purposes aligned with Community Reinvestment Act objectives.

Conclusion

WBA appreciates the opportunity to comment on OCC's proposal to modify the requirements for national bank and Federal savings association premises. While we appreciate OCC's review of its regulations in light of statutory resignations and policy considerations, we request that OCC withdraw the proposal in consideration of the above comments.

We appreciate your consideration of these comments.

A handwritten signature in black ink, reading "Rose Oswald Poels". The signature is written in a cursive, flowing style.

Rose Oswald Poels
President/CEO