

OCC Proposes Updated Real Estate Standards for Bank Premises

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On January 4, the Office of the Comptroller of the Currency (OCC) issued a proposed rule (Proposal) that would amend the requirements applicable to ownership of real property by national banks and federal savings associations (together, “banks”). The Proposal would modify and clarify the current requirements for bank premises. The Proposal was published in the *Federal Register* on February 3, 2021, and the deadline for comments is March 20, 2021.

Background

The National Bank Act restricts banks from owning real estate except in connection with the transaction of business, in part, to restrict ownership of real property for speculative purposes by banks. While the OCC has published rules regarding banks’ ownership of real estate, it has in many areas not defined specific limitations, instead incorporating court decisions and interpretive releases to create a flexible approach to regulation, allowing for certain ambiguities to arise in the process.

Historic speculative demand in real estate markets during the 1980s exposed banks as real estate lenders and investors and resulted in the collapse of hundreds of banks across the country, most notably savings and loans, creating massive losses for taxpayers and depositors in the process. This speculative behavior was widely acknowledged to have posed a systemic risk to the safety and soundness of the nation’s banking system and negatively impacted economic conditions throughout the country. While restrictions have been imposed to reduce speculation, some banks still benefit significantly from the income derived from operating office space.

The Proposal

Within the Proposal, the OCC notes that as part of its periodic review of national bank rules and regulations, certain changes both in the nature and use of bank premises and commercial real estate necessitate an updated approach and clarification of regulation regarding banks’ ownership of property. The Proposal would create more precise standards that the OCC will use in determining whether the acquisition and holding of real estate is necessary for the transaction of a bank’s business. Specifically, the Proposal would define “bank-occupied premises” as real estate in which more than 50% of each building or severable piece of land is used by bank personnel for bank business or operations. The Proposal would further permit banks to acquire, hold, or convey real estate for use as “bank-occupied premises,” as defined in the Proposal. The Proposal would additionally apply excess capacity standards designed to limit use of real estate not used for bank business that would permit banks to sell or lease excess space or capacity. Such excess space or capacity must have a nexus with the

transaction of the bank's business or bank operations such that it is acquired or held to provide the bank with a business location rather than as an investment in real estate.

If adopted, the Proposal would reduce uncertainty as to what purchases of real property will be acceptable to the OCC by shifting away from OCC interpretive releases to rules-based decisions. It may even reduce requests to justify real estate holdings during bank examinations. Importantly, the Proposal would supersede outstanding precedent in this area to the extent it is inconsistent with the Proposal. Banks could continue to rely on existing precedent with respect to current real estate holdings, but not future investments. Banks with existing real estate holdings that would be "grandfathered" under the Proposal may wish to consider how that grandfathering might end with a renewal, modification, or termination of a lease of bank-owned real property if the Proposal is adopted in a form similar to the form in which it was proposed.

Banks that anticipate an impact to real estate holdings as a result of the Proposal are advised to carefully consider its contents and provide comments as appropriate to influence the Proposal's final form and address the various questions posed within the Proposal.

A link to the Proposal can be found at: [Real Estate for Bank Premises: Notice of Proposed Rulemaking | OCC](#).

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