

requesting approval to exercise fiduciary powers under these circumstances.

(3) *Expedited review.* (i) An application by an eligible bank to exercise fiduciary powers is deemed approved by the OCC as of the 30th day after the application is received by the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(ii) An eligible bank applying for fiduciary powers may omit the opinion of counsel required by paragraph (e)(2)(i)(B) of this section unless such opinion is specifically requested by the OCC.

(4) *Permit.* Approval of an application under this section constitutes a permit under 12 U.S.C. 92a to conduct the fiduciary powers requested in the application.

(5) *Notice of fiduciary activities.* No further application under this section is required when a national bank with prior OCC approval to exercise fiduciary powers commences fiduciary activities in a state in addition to the state(s) described in the application for which it received OCC approval to exercise fiduciary powers. Instead, the bank shall provide written notice to the OCC within ten days after commencing fiduciary activities. The written notice must identify the state involved and describe the fiduciary activities to be conducted to the extent that they materially differ from fiduciary activities the bank was previously authorized to conduct.

(6) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(7) *Expiration of approval.* Approval expires if a national bank does not commence fiduciary activities within 18 months from the date of approval.

Subpart C—Expansion of Activities

§ 5.30 Establishment, acquisition, and relocation of a branch.

(a) *Authority.* 12 U.S.C. 1–42, and 2901–2907.

(b) *Licensing requirements.* A national bank shall submit an application and obtain prior OCC approval in order to establish or relocate a branch.

(c) *Scope.* This section describes the procedures and standards governing OCC review and approval of a national bank's application to establish a new branch or to relocate a branch. The standards of this section and, as applicable, 12 U.S.C. 36(b), but not the procedures set forth in this section, apply to a branch established as a result of a business combination approved under § 5.33. A branch established through a business combination is subject only to the procedures set forth in § 5.33.

(d) *Definitions—*(1) *Branch* includes any branch bank, branch office, branch agency, additional office, or any branch place of business established by a national bank in the United States or its territories at which deposits are received, checks paid, or money lent. A branch does not include an automated teller machine (ATM) or a remote service unit.

(i) A branch established by a national bank includes a mobile facility, temporary facility, drop box or a seasonal agency, as described in 12 U.S.C. 36(c).

(ii) A facility otherwise described in this paragraph (d)(1) is not a branch if:

(A) The bank establishing the facility does not permit members of the public to have physical access to the facility for purposes of making deposits, paying checks, or borrowing money (e.g., an office established by the bank that receives deposits only through the mail); or

(B) It is located at the site of, or is an extension of, an approved main or branch office of the national bank. The OCC determines whether a facility is an extension of an existing main or branch office on a case-by-case basis.

(2) *Home state* means the state in which the national bank's main office is located.

(3) *Messenger service* has the meaning set forth in 12 CFR 7.1012.

(4) *Mobile branch* is a branch, other than a messenger service branch, that does not have a single, permanent site, and includes a vehicle that travels to various public locations to enable customers to conduct their banking business. A mobile branch may provide

services at various regularly scheduled locations or it may be open at irregular times and locations such as at county fairs, sporting events, or school registration periods. A branch license is needed for each mobile unit.

(5) *Temporary branch* means a branch that is located at a fixed site and which, from the time of its opening, is scheduled to, and will, permanently close no later than a certain date (not longer than one year after the branch is first opened) specified in the branch application and the public notice.

(e) *Policy*. In determining whether to approve an application to establish or relocate a branch, the OCC is guided by the following principles:

(1) Maintaining a sound banking system;

(2) Encouraging a national bank to help meet the credit needs of its entire community;

(3) Relying on the marketplace as generally the best regulator of economic activity; and

(4) Encouraging healthy competition to promote efficiency and better service to customers.

(f) *Procedures*—(1) *General*. Except as provided in paragraph (f)(2) of this section, each national bank proposing to establish a branch shall submit to the appropriate district office a separate application for each proposed branch.

(2) *Messenger services*. A national bank may request approval, through a single application, for multiple messenger services to serve the same general geographic area. (See 12 CFR 7.1012). Unless otherwise required by law, the bank need not list the specific locations to be served.

(3) *Jointly established branches*. If a national bank proposes to establish a branch jointly with one or more national banks or depository institutions, only one of the national banks must submit a branch application. The national bank submitting the application may act as agent for all national banks in the group of depository institutions proposing to share the branch. The application must include the name and main office address of each national bank in the group.

(4) *Authorization*. The OCC authorizes operation of the branch when all re-

quirements and conditions for opening are satisfied.

(5) *Expedited review*. An application submitted by an eligible bank to establish or relocate a branch is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period, or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(g) *Interstate branches*. A national bank that seeks to establish and operate a de novo branch in any state other than the bank's home state or a state in which the bank already has a branch shall satisfy the standards and requirements of 12 U.S.C. 36(g).

(h) *Exceptions to rules of general applicability*. (1) A national bank filing an application for a mobile branch or messenger service branch shall publish a public notice, as described in § 5.8, in the communities in which the bank proposes to engage in business.

(2) The comment period on an application to engage in a short-distance branch relocation is 15 days.

(3) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the bank cannot provide services or must curtail banking services.

(4) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a national bank with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(i) *Expiration of approval*. Approval expires if a branch has not commenced business within 18 months after the date of approval.

(j) *Branch closings.* A national bank shall comply with the requirements of 12 U.S.C. 1831r-1 with respect to procedures for branch closings.

§ 5.33 Business combinations.

(a) *Authority.* 12 U.S.C. 24(Seventh), 93a, 181, 214a, 215, 215a, 215a-1, 215c, 1815(d)(3), 1828(c), 2903, and Sec. 102, Pub. L. 103-328, 108 Stat. 2338.

(b) *Licensing requirements.* A national bank shall submit an application and obtain prior OCC approval for a business combination between the national bank and another depository institution when the resulting institution is a national bank. A national bank shall give notice to the OCC prior to engaging in a combination where the resulting institution will not be a national bank.

(c) *Scope.* This section sets forth the standards for OCC review and approval of an application for a business combination resulting in a national bank and for notices and other procedures for national banks involved in all forms of combinations.

(d) *Definitions—(1) Business combination* means any merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank, the acquisition by a national bank of all, or substantially all, of the assets of another depository institution, or the assumption by a national bank of deposit liabilities of another depository institution.

(2) *Business reorganization means either:*

(i) A business combination between eligible banks, or between an eligible bank and an eligible depository institution, that are controlled by the same holding company or that will be controlled by the same holding company prior to the date of the combination; or

(ii) A business combination between an eligible bank and an interim bank chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank for shares of a newly formed holding company and receives after the transaction substantially the same proportional share interest in the holding company as it held in the eligible bank (except for changes in interests resulting from

the exercise of dissenters' rights), and the reorganization involves no other transactions involving the bank.

(3) *Home state* means, with respect to a national bank, the state in which the main office of the bank is located and, with respect to a state bank, the state by which the bank is chartered.

(4) *Interim bank* means a national bank that does not operate independently but exists solely as a vehicle to accomplish a business combination.

(e) *Policy—(1) Factors.* The OCC considers the following factors in evaluating an application for a business combination:

(i) *Competition.* (A) The OCC considers the effect of a proposed business combination on competition. The applicant shall provide a competitive analysis of the transaction, including a definition of the relevant geographic market or markets. An applicant may refer to the Manual for procedures to expedite its competitive analysis.

(B) The OCC will deny an application for a business combination if the combination would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of the United States. The OCC also will deny any proposed business combination whose effect in any section of the United States may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the probable effects of the transaction in meeting the convenience and needs of the community clearly outweigh the anticompetitive effects of the transaction. For purposes of weighing against anticompetitive effects, a business combination may have favorable effects in meeting the convenience and needs of the community if the depository institution being acquired has limited long-term prospects, or if the resulting national bank will provide significantly improved, additional, or less costly services to the community.

(ii) *Financial and managerial resources and future prospects.* The OCC considers the financial and managerial resources and future prospects of the existing or proposed institutions.