



NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

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OCC Issues Final Rule on Electronic Banking

WASHINGTON -- The Office of the Comptroller of the Currency published a final rule today that will facilitate the use of electronic technologies by national banks, consistent with safety and soundness.

“The OCC has long recognized that technology is reshaping the financial services industry in profound ways, and we have responded over the years by addressing individual issues through interpretive letters and rulings,” said Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel.

“This rule represents a comprehensive effort to codify those rulings, and provides additional guidance on several other issues that are becoming important to national banks,” Ms. Williams added.

One key principle incorporated in the rule is the OCC’s “transparency doctrine.” Instead of evaluating the electronic means of delivery, the OCC looks through the transmission system and asks if the underlying product is one that national banks can lawfully offer.

For example, finder authority – bringing together buyers and sellers, without taking a part in negotiating the transaction – is a long-standing permissible bank activity. Recently, based upon the transparency doctrine, the OCC has allowed national banks to use finder authority to operate “virtual malls” on the Internet.

The rule also updates the OCC’s general rule authorizing national banks to act as finders as part of the business of banking. Among other things, the amended general finder provision provides examples that illustrate the range of finder activities that the OCC has authorized without regard to the technology used.

The rule also notes the importance of national bank preemption in the age of the Internet and electronic banking.

“When you are offering financial products electronically, your customers may come from all over the country. The application of multiple state standards to an activity conducted via the Internet can, in itself, be an obstacle to national banks engaging in permissible activities through

electronic means,” Ms. Williams stated. “Uniform standards of operation benefit both national banks and their customers through increased efficiency.”

The final rule establishes a new subpart 7 of OCC regulations that addresses the authority of national banks to conduct activities by electronic means and codifies many of the OCC’s prior interpretations on electronic banking. For example, the new section codifies a national bank’s authority to:

- act as a digital certification authority, including the ability to issue financial capacity certificates with appropriate disclaimers;
- engage in data processing activities and provide limited amounts of nonfinancial information processing for customers in conjunction with financial data processing; and
- market and sell legitimate excess electronic capacity and electronic by-products.

The rule offers guidance to national banks seeking to conduct new activities electronically by describing the factors the OCC uses to determine if an electronic activity is part of, or incidental to, the business of banking. It also clarifies that a national bank electronic activity will not be exempt from general OCC guidance applicable to the underlying activity conducted through conventional means.

The rule provides that a national bank will not be considered to be located in a state simply because it maintains a technology-based facility, such as an automated loan center or a network server, in that state or because customers in that state electronically access a bank’s products and services. This approach is consistent with the trend reflected in recent judicial rulings.

Finally, the rule requires that national banks that share electronic space (such as web pages or web sites) with other businesses take reasonable steps to clearly, conspicuously, and understandably distinguish between products and services offered by the bank and those offered by the other business.

The OCC’s electronic banking website at www.occ.treas.gov/netbank/ibi.htm contains the OCC interpretive letters on electronic banking that formed the basis for many of the provisions adopted in this rulemaking. Other OCC information on electronic banking, such as risk management guidance and research, is at www.occ.treas.gov/netbank/netbank.htm.

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The OCC charters, regulates and examines approximately 2,200 national banks and 52 federal branches of foreign banks in the U.S., accounting for more than 54 percent of the nation’s banking assets. Its mission is to ensure a safe and sound and competitive national banking system that supports the citizens, communities and economy of the United States.