

# Investment in Bank Premises

## Comptroller's Licensing Manual

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Introduction..... 1  
    Multiple Transactions ..... 1  
Key Policies..... 2  
    Decision Criteria..... 2  
    Special Conditions..... 2  
Application and Notice..... 3  
    After-the-Fact Notice..... 3  
    Standard Processing..... 4  
    Timing Considerations ..... 4  
Specific Requirements ..... 4  
    Investment in Real Estate ..... 4  
    Transactions with Insiders ..... 5  
    Accounting ..... 6  
    Appraisal ..... 6  
    Options to Purchase ..... 6  
Procedures..... 8  
    After-the-Fact Notice..... 8  
    Application ..... 9  
Glossary ..... 11  
References..... 13

# Investment in Bank Premises

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## Introduction

A national bank may hold property directly or invest in bank premises indirectly through a subsidiary, such as a bank premises corporation (that is, by owning the stock, bonds, or debentures of such a corporation). Loans to a bank premises corporation or upon the security of its stock also are considered to be investments in bank premises.

A bank premises corporation is a statutory subsidiary under 12 USC 371d, not an operating subsidiary. Accordingly, a national bank may establish a subsidiary to hold bank premises in another corporate entity without seeking the Comptroller of the Currency's (OCC's) prior approval, subject to capital limitations. Any bank having a composite CAMELS rating of 1 or 2 that also is well capitalized, as defined in 12 CFR 6.4(b)(1), may make an aggregate investment in bank premises of up to 150 percent of its capital and surplus without OCC's prior approval. However, the OCC does require an after-the-fact notice in certain circumstances (see After-the-Fact Notice section for complete discussion).

A bank that intends to invest an amount greater than its capital stock in its bank premises, directly or indirectly, must file and obtain the OCC's prior approval, unless it satisfies certain requirements (see the Exception section). This booklet contains policies and procedures to guide a bank in requesting an additional investment in bank premises.

Investments in real estate necessary for the transaction of the bank's banking business must comply with 12 USC 29 and 12 CFR 7.100. A bank should contact the appropriate supervisory office or district counsel if it has questions whether or not an investment in real estate would comply. (Refer to Investment in Real Estate section for details.)

This booklet should be used together with other booklets of the *Comptroller's Licensing Manual*; for example, the "General Policies and Procedures" booklet for a discussion of general filing instructions. Users also should refer to the "Business Combinations" and "Branches and Relocations" booklets for additional discussion of filing instructions and procedures, if an investment in bank premises is related to one of those filings. There is also a step-by-step procedures section for applicants and the OCC to follow and a glossary of the terms used in this booklet. The reference section includes applicable laws, regulations, and OCC issuances to assist applicants in completing the filing process. Throughout the booklet, there are hyperlinks to other related booklets and to filing samples.

## Multiple Transactions

A bank may submit a request for an investment in bank premises with an application for a business combination (12 CFR 5.33), branch or branch relocation (12 CFR 5.30), change in main office location (12 CFR 5.40), or another corporate application filed with the OCC. The processing review period for the investment in bank premises runs concurrently with the OCC's processing of the principal

application. The OCC will include the approval for the investment and any appropriate conditions in its decision letter for the principal application.

## Key Policies

A bank may acquire and hold bank premises by any reasonable and prudent means, including ownership in fee (refer to the Glossary), a leasehold estate, or an interest in a cooperative. The bank may hold such property directly or through one or more subsidiaries. A bank premises subsidiary may be organized as a corporation, a partnership, or similar entity; for example, a limited liability company.

The amount invested in bank premises and fixed assets generally is considered to be a matter within the discretion of bank management. Fixed assets include furniture, fixtures, data processing, and other equipment necessary for the transaction of the bank's business.

## Decision Criteria

When analyzing an application for an excess investment in bank premises, the OCC will consider:

- Consistency with safe and sound banking practices and OCC policy.
- Whether any transaction involves bank insiders, and if so, whether the terms are the same as those prevailing at the time for comparable transactions with independent parties.
- The reasonableness of the amount of bank premises and the annual expenditures required to carry them relative to the bank's total capital structure and the nature and volume of operations.
- The effect of the investment on future earnings.

The OCC will consider denying a request for an additional investment in bank premises when:

- The additional investment would have a material negative effect on the bank's earnings, capital, or liquidity.
- The board of directors and management have not demonstrated a reasonable need for the additional investment.
- The additional investment involves an unsafe and unsound transaction with a bank insider.

## Special Conditions

The OCC may impose appropriate special conditions for an approval of an additional bank premises investment, if it determines that they are necessary or appropriate to protect the safety and soundness of the bank; to prevent conflicts of

interest; or to further other supervisory or policy considerations. Such conditions include, but are not limited to:

- Maintenance of adequate capital levels.
- Development of specific plans to improve earnings.
- Development of specific plans to improve liquidity.
- A statement that the investment in bank premises may not be increased further without prior OCC approval if the resulting total exceeds the bank's capital stock.
- Submission of an appraisal to support the transaction.

The OCC may apply these conditions as "conditions imposed in writing" within the meaning of 12 USC 1818. The conditions remain in effect after the effective date or consummation date of an approved transaction or activity and continue until the OCC removes them.

## **Application and Notice**

Generally, a bank need not obtain OCC's prior approval to invest in: (1) bank premises; (2) the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank; or (3) loans to or on the security of the stock of any such corporation. However, prior approval is required if the aggregate of all such investments and loans, together with any indebtedness incurred by any such corporation that is an affiliate (see Glossary) of the bank, exceeds the amount of the bank's capital stock. The OCC's approval for a specified amount remains valid up to that amount until the OCC notifies the bank otherwise.

The bank will file with the appropriate supervisory office, unless the investment in bank premises is combined with a corporate application for another transaction. (See Procedures section of this booklet for specific guidance.) Also a bank that meets certain criteria as discussed below may file an after-the-fact notice with the appropriate supervisory office rather than obtain prior approval.

## **After-the-Fact Notice**

In certain instances, a bank that wishes to invest an amount in excess of its capital stock in its bank premises may proceed without seeking prior OCC approval. A bank that has a composite CAMELS 1 or 2 rating may notify the appropriate supervisory office in writing within 30 days following any transaction that increases its aggregate bank premises investment to an amount that is in excess of its capital stock, but is not more than 150 percent of its capital and surplus. The bank must be well capitalized as defined at 12 CFR 6.4(b)(1) and continue to be well capitalized, after the investment or loan is made to qualify for the after-the-fact notice process. The bank must include in its notice a description of the bank's investment or loan.

A bank must notify the OCC each time a purchase raises the bank premises investment above the capital stock amount but is within the 150 percent safe harbor amount.

## Standard Processing

A bank that does not qualify for an after-the-fact notice must submit a written application to the appropriate supervisory office to request approval to exceed the amount of its capital stock. If the filing is combined with a corporate application and received in Licensing, Licensing will forward the bank premises portion to the appropriate supervisory office for a decision.

A bank may choose to apply on either a transaction-by-transaction or a specified amount basis that is designed to accommodate future transactions. The bank must provide:

- A description of the present bank premises investment.
- The amount of the investment that the bank intends to make and whether it involves a transaction with an insider.
- The amount by which the investment or the specified amount will exceed its capital stock.
- The business reason for the requested level of investment.

The bank also may wish to discuss its present annual and projected future earnings in the application. A bank's request for a higher specified amount should relate to its business reason or strategic plan. A bank may file a single application for a specified amount that will establish an approved amount of bank premises and eliminate the need to file repeated after-the-fact notices for a series of premises investments. This specified amount remains valid until the OCC notifies the bank otherwise.

## Timing Considerations

The OCC considers an application approved as of the 30th day after it receives the filing, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern or raises a significant legal or policy issue.

## Specific Requirements

### Investment in Real Estate

A national bank may invest in real estate necessary for the transaction of its business. This real estate includes:

- Premises that are owned or occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries.
- Real estate acquired and intended, in good faith, for use in future expansion.

- Parking facilities used by customers or employees of the bank, its branches, and its consolidated subsidiaries.
- Residential property for the use of bank officers or employees who are: (1) located in remote areas in which suitable housing at a reasonable price is often unavailable; or (2) temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States.
- Property for the use of bank officers, employees, or customers, or for the temporary lodging of such persons in areas in which suitable commercial lodging is often unavailable, provided that the purchase and operation of the property qualifies as a deductible business expense for federal tax purposes.

In addition, to facilitate the efficient use of bank personnel, a bank may purchase the residence of an employee who has been transferred to another area to spare the employee a loss in the prevailing real estate market. The bank must arrange for early divestment of the property's title (12 CFR 7.1000(d)(2)).

## Transactions with Insiders

Examples of bank insider (see Glossary) transactions include: (1) a direct purchase of real estate from an insider; (2) leasing property that is owned, directly or indirectly, by an insider; (3) transactions in which the proceeds benefit, or are transferred to, an insider; and, (4) situations in which an insider will benefit from the transaction (for example, an insider owns an adjacent parking facility or provides janitorial or other services to the property). The OCC expects full disclosure to all directors of any material arrangement with an insider.

If the investment involves a bank insider, the bank must provide additional information about the terms of the transaction; for example:

- The name of the bank insider and his/her relationship to the bank.
- A description of how the bank determined the fairness of the terms, which may include providing a copy of an independent appraisal or other evidence of the fairness of the transaction.
- A copy of the board of directors' resolution approving the transaction that reflects the bank insider's abstention from the discussion and voting.
- A copy of the executed lease or purchase agreement (contingent upon OCC approval).
- An accounting determination of whether a lease should be capitalized.
- A justification of the expenditure.

## Accounting

### Depreciation

The OCC calculates a bank's total investment in bank premises using net book value. The bank must deduct accumulated depreciation when calculating the total investment for 12 USC 371d purposes.

### Capitalized Leases

FASB Statement No. 13 states that a bank must account for a lease as a capital lease, if the lease meets any one of the following conditions:

- Ownership of the property is transferred automatically to the lessee at the end of the lease term.
- The lease contains a bargain purchase option.
- The lease term represents at least 75 percent of the estimated economic life of the lease property.
- The present value of the minimum lease payments at the beginning of the lease term is 90 percent or more of the fair value of the leased property to the lessor at the inception of the lease, less any related investment tax credit that the lessor retains and expects to realize.

In a capitalized lease situation, the bank would account for the capital lease as an asset financed with a debt obligation. If none of the conditions listed above are present, the lease is accounted for as an operating lease, and the bank would normally expense the lease payments when incurred. The call report instructions include detailed information on lease accounting.

### Municipal Parking Lots

Expenditures toward the acquisition and operation of municipal parking lots ordinarily represent a business expense that the bank should charge off rather than treat as an investment in bank premises.

## Appraisal

The OCC considers the sale, lease, purchase, investment in, or exchange of bank premises involving real property a real estate-related transaction under 12 CFR 34.42(i). Unless specifically exempted in 12 CFR 34.43(a), the OCC requires a conforming appraisal for such transactions.

## Options to Purchase

The OCC does not consider an unexercised option to purchase bank premises or stock in a corporation holding bank premises as an investment in bank premises. However, a bank must receive OCC approval to exercise the option, if its price plus



other existing investments in bank premises would exceed the amount of the bank's capital stock.

## Procedures – After-the-Fact Notice

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### Supervisory Staff

1. Refers a bank that requests instructions to this booklet and any related specialty booklet of the *Comptroller's Licensing Manual*.

### Filing the Notice

#### Bank

2. Completes and submits an after-the-fact notice to the appropriate supervisory office. The notice contains:
  - A description of the bank's investment or loan in bank premises.
  - A verification of well-capitalized status before and after the investment.

### Review

#### Supervisory Staff

3. Reviews the notice and any other relevant information about the bank and verifies that:
  - It has a composite CAMELS rating of 1 or 2.
  - It contains the information stated in step 2.
  - The transaction is consistent with safe and sound banking practices and OCC policy.
  - The transaction does not involve a bank insider.
4. If the notice is insufficient or the bank is not qualified, requests the necessary or missing information from the bank and includes a specific due date, or requests the bank to file an application.
5. Reviews any additional information. Enters an Other Significant Event (OSE) comment in the appropriate supervisory information system.

### Close Out

6. Forwards the notice to the bank's examiner-in-charge and national filing system file no. 5.

## Procedures – Application

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### **Inquiry**

#### Licensing or Supervisory Staff

1. Refers a bank that requests instructions about bank premises to this booklet and any related specialty booklet of the *Comptroller's Licensing Manual*.

### **Filing the Application**

#### Bank

2. Completes and submits an “application for increase” to the appropriate supervisory office. The application contains:
  - A description of the present bank premises investment.
  - The amount by which the aggregate investment or specified amount will exceed the bank’s capital stock.
  - The investment in bank premises that it intends to make and the business reason for the level of investment or loan requested.
  - Any specified dollar amount requested and its reasonableness to the business reason or strategy.
  - If applicable, information about any bank insiders involved in the transaction.
3. If the transaction is combined with a corporate application, such as branch or business combination filing, files the bank premises portion with the appropriate supervisory office.

#### Licensing Staff

4. If a bank premises transaction is included in a corporate filing, refers the bank premises request to the supervisory staff for decision.

### **Review**

#### Supervisory Staff

5. Determines if the application will be considered with a related corporate filing, such as business combination or branch.

- If so, verifies with the Licensing staff the application's time frame for decision.
  - If not, supervisory staff begins review.
6. Sends an acknowledgment letter within five business days of receipt.
  7. Reviews the application and any other relevant information about the bank and verifies that:
    - It contains the required application criteria described in step 2.
    - The proposal is feasible for the bank's size, services, projected earnings, and target market.
    - The proposal is consistent with safe and sound banking practices and OCC policy.
    - Any arrangements or transactions involving bank insiders are made on substantially the same terms as those prevailing at the time for comparable transactions with independent parties (review appraisal or appraiser's statement of fairness).
  8. If related to a corporate application, within five business days of receipt, solicits comments from the Licensing staff.
  9. If the application is insufficient, requests the necessary or missing information from the bank and includes a specific due date.
  10. Reviews any additional information.

## **Decision**

11. Prepares the decision letter and decides the application under delegated authority.
12. Documents the analysis and decision in an Other Significant Event (OSE) comment in the appropriate supervisory information system.
13. If combined with a corporate application, notifies the Licensing staff of the decision and provides a copy of the decision letter.
14. Sends the bank the decision letter.

## **Close Out**

15. Forwards the bank's request and the decision letter to the national filing system file no. 5

## Glossary

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An **affiliate**, in this booklet, includes a bank's subsidiaries. However, any company engaged exclusively in holding a bank's premises is not an affiliate for purposes of sections 23A and 23B of the Federal Reserve Act (12 USC 371c, 371c-1).

**Bank premises** includes: (1) premises that are owned and occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries; (2) capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment; (3) remodeling costs to existing premises; (4) real estate acquired and intended, in good faith, for use in future expansion; or (5) parking facilities or lots that are used by bank customers or employees, its branches, and its consolidated subsidiaries.

A **bank premises subsidiary** includes a corporation, partnership, limited liability company, or similar entity that owns a bank's premises.

A **branch** includes any branch bank, branch office, branch agency, additional office, or any branch place of business established by a bank in the United States or its territories at which deposits are received, checks paid, or money lent.

A **business combination** is any merger or consolidation between a bank and one or more depository institutions in which the resulting institution is a bank; acquisition by a bank of all, or substantially all, of the assets of another depository institution; or the assumption by a bank of deposit liabilities of another depository institution.

**Capital and surplus** means the sum of: (1) a bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards in Appendix A to 12 CFR 3; plus (2) the balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital to calculate risk-based capital described in (1), as reported in the bank's Consolidated Report of Condition and Income filed under 12 USC 161.

**Capital stock** means common and preferred stock.

**Fee**, in real property law, means an estate of complete ownership, which can be sold by the owner.

A bank **insider** is a director, executive officer, employee, or principal shareholder (owning 10 percent or more of any class of voting stock).

**Investments in bank premises** means: (1) any direct or indirect expenditure of funds upon bank premises; (2) the purchase of stock, bonds, or debentures of a bank premises subsidiary; (3) loans to a bank premises subsidiary; or (4) loans upon the security of the stock of a corporation that owns the investing bank's premises.

**Leasehold improvements** include: (1) construction of a building on leased property and capitalization of disbursements for vaults, alterations, and fixed machinery and equipment directly related to leased quarters; and (2) the costs of resurfacing or other improvements directly related to leased parking lots, all of which will become an integral part of the property and revert to the lessor upon expiration of the lease.

## References

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|------------------------------------|---|
| <b>Appraisal</b>                   |   |
| Regulation                         | 12 CFR 34   |
| <b>Bank Ownership of Property</b>  |   |
| Law                                | 12 USC 29   |
| Regulation                         | 12 CFR 7.1000   |
| <b>Branches</b>                    |   |
| Law                                | 12 USC 36   |
| Regulation                         | 12 CFR 5.30   |
| <b>Business Combinations</b>       |   |
| Laws                               | 12 USC 24(Seventh), 214a, 215, 215a, 215c, 1828(c), 1831o |
| Regulation                         | 12 CFR 5.33   |
| <b>Capital Requirements</b>        |   |
| Laws                               | 12 USC 3907, 3909   |
| Regulations                        | 12 CFR 3, 5.46  |
| <b>Decisions</b>                   |   |
| Regulation                         | 12 CFR 5.13   |
| <b>Insider Activities</b>          |   |
| Laws                               | 12 USC 375, 375a, 375b, 376                               |
| Regulations                        | 12 CFR 31, 215  |
| Publication                        | <i>Comptroller's Handbook, "Insider Activities"</i>       |
| <b>Investment in Bank Premises</b> |   |
| Law                                | 12 USC 371d   |
| Regulation                         | 12 CFR 5.37   |
| <b>Sharing Space and Employees</b> |   |
| Regulation                         | 12 CFR 7.3001   |