codify recent OCC interpretations relating to loan production offices (LPOs) and the use of back offices. These sections, taken together, provide guidance on what types of facilities constitute a branch in the lending context, and the circumstances under which a bank may conduct lending-related activities at nonbranch locations.

Proposed § 7.1003 incorporates case law relating to where a loan is "made" for purposes of branching. Under § 7.1003, a loan is made where the customer, in person, receives loan funds from the bank. Thus, if funds are received by a customer from a bank employee or at bank premises, branching limitations apply and OCC approval is required. If, however, funds are received by the customer from an independent third party, including a messenger service described in current § 7.7490 (proposed § 7.1012), at the customer's home, office, or at another nonbank facility, branching limitations do not apply and OCC approval is not needed. Proposed § 7.1003 also codifies OCC interpretations that branching requirements do not encompass industry practices with respect to loan disbursal such as when an attorney or escrow agent disburses funds at a real estate closing.

Proposed § 7.1004 clarifies the language in current § 7.7380. It addresses what does and does not constitute a branch in the lending context but makes no substantive change to current § 7.7380.

Proposed § 7.1005 codifies OCC interpretations that offices at which loan approvals occur are not branches if the public has no in-person access to such offices. This clarifies that loans may be approved at locations other than the bank's main office or branches, and that loans originated at LPOs may be approved at such back offices.

Messenger Service (§ 7.1012)

Proposed § 7.1012 modifies current § 7.7490. Proposed § 7.1012 clarifies factors regarding: (1) the responsibility of the messenger for items during transit; (2) the relationship between the messenger and the bank customer; and (3) the permissibility of transporting items by the messenger between a bank customer and a back office facility that processes deposits and withdrawals. Proposed § 7.1012 retains the safe harbor in current § 7.7490 and also allows OCC to evaluate, on a case-bycase basis, whether messenger services that do not precisely fit the terms of the safe harbor need to be considered as bank branches.

Debt Cancellation Contracts (§ 7.1013)

Proposed § 7.1013 revises current § 7.7495 to provide that a national bank may enter into a contract to provide for the cancellation of a loan upon disability or unemployment as well as upon death of the borrower.

Sale of Money Orders at Nonbanking Outlets (§ 7.1014)

Proposed § 7.1014 modifies current § 7.7500 by removing unnecessary descriptive language. However, these changes do not represent any change in OCC policy.

Independent Undertakings To Pay Against Documents (§ 7.1016)

Proposed § 7.1016 revises current § 7.1016 to make its provisions current and relevant to modern market standards and industry usage. Last revised in 1977, current § 7.7016 has served as the basis for, an expansion of services beyond typical letters of credit. The term "letters of credit" is no longer adequate to describe the type of services that banks are offering pursuant to the conditions in the regulation. Therefore, proposed § 7.1016 uses the term "independent undertakings" to describe all such unilateral commitments under which the bank's obligation to honor its commitment is dependent solely on the proper presentation of specified documents.

The term "independent undertakings" is used by the United Nations Commission on International Trade Law (UNCITRAL) to cover a broad array of transactions including commercial letters of credit, standby letters of credit, and other undertakings that are functionally identical or equivalent to letters of credit. The common characteristic of these transactions is that a bank's obligation to pay is conditioned solely on the proper presentation of specified documents regardless of extrinsic factors (except fraud, forgery, or an overriding public policy issue).

Proposed § 7.1016(a) states that a national bank may issue and commit to issue a letter of credit or other independent undertaking within the scope of the laws or rules of practice recognized by law under which the bank's obligation to honor depends upon the presentation of specified documents. Proposed § 7.1016(a) provides a nonexclusive list of sample laws and rules of practice and explains that non-documentary conditions on the bank's undertaking are not relevant to the bank's obligation to honor its commitment. Because the obligation of the issuer of an independent

undertaking is restricted to determining matters of documentary character, the issuer can act without regard to other circumstantial matters of dispute, such as breach of an implied warranty or the terms of delivery. Such matters are settled between the parties to the underlying transactions.

Independent undertakings encompass not only letters of credit and standby letters of credit but similar types of commitments that are used widely in international trade. These include (but are not limited to): independent guarantees, authorized confirmations, commitments to purchase documents, irrevocable reimbursement undertakings, and preliminary advices. All of these independent undertakings are in common use domestically and worldwide, and national banks currently are engaged in providing these services. In fact, the variation has developed, at least in part, in reliance upon the terms and conditions required for letters of credit by current Proposed § 7.7016.

Proposed § 7.1016 recognizes that the scope of current § 7.7016 is too limited and does not reflect the scope of independent undertakings permissible for national banks. Proposed § 7.1016 also extends the same safety and soundness principles in current § 7.7016 to this broader class of activities. Although more specific and more dependent on industry terminology, the revised interpretive ruling is a clearer statement of regulatory standards directed to the segment of the banking industry that engages in these activities.

National Bank as Guarantor or Surety on Indemnity Bond (§ 7.1017)

Proposed § 7.1017 modifies § 7.7010 by removing § 7.7010(b). Paragraph (b) states the "[u]nder appropriate circumstances, foreign branches may exercise additional powers pursuant to 12 U.S.C. 604a." The OCC expects to incorporate that provision into part 28 through a later Federal Register document revision of part 28.

Use of Data Processing Equipment and Furnishing of Data Processing Services (§ 7.1019)

Proposed § 7.1019 revises current § 7.3500. Under proposed § 7.1019 a national bank that uses data processing equipment or technology to perform authorized services may market and sell any legitimate excess capacity in that equipment or technology. Current § 7.3500 states the Comptroller's opinion on the data processing services that a national bank may perform for itself and others. It sets forth a general analytical framework for deciding