preempted, the OCC will employ the preemption principles derived from the Supremacy Clause of the U.S. Constitution and judicial precedent. Generally, state laws apply to national banks unless the state law expressly or impliedly conflicts with Federal law, Federal law is so comprehensive as to evidence a congressional intent to occupy a given field, or the state law stands as an obstacle to the accomplishment of the full purposes and objectives of the Federal law.

Licensing; Request for Comments

The OCC has not proposed a specific interpretive ruling addressing the applicability of state licensing requirements to national banks, but is considering whether it would be advisable to do so in order to clarify its position on various issues that have recently arisen in this area. For example, the OCC has consistently taken the position that a state may not require a national bank to obtain a state license to exercise the powers authorized for national banks under Federal law. This position is consistent with judicial precedent that establishes the parameters of preemption of state law by Federal banking law.² The OCC's position also is supported by Bank of America v. Lima, 103 F. Supp. 916 (D. Mass. 1952), which stated that as Federal government instrumentalities, national banks are not required to obtain state approval for the exercise of the powers granted to them by Congress.

Some state laws apply to national banks. However, as a general principle, a national bank need not conform to state laws that conflict with Federal law. In *Davis* v. *Elmira Savings Bank*, 161 U.S. 275 (1896), for example, the Supreme Court drew upon constitutional principles to define the ability of the states to regulate national banks:

National banks are instrumentalities of the Federal government, created for a public purpose and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the Federal government

to discharge the duties for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.

161 U.S. 275, 283. The Davis decision captures the essential elements of Federal banking preemption analysis and is frequently cited by the OCC and reviewing courts. However, it is not always simple to apply these preemption principles because of the valid role of state law in certain aspects of national bank operations. Moreover, the manner in which the national bank's activities may be conducted may be subject to certain types of state laws, and the OCC often encourages national banks to comply with certain types of state law requirements as a matter of sound business practices.

Commenters are specifically asked to address whether these principles should be included in a new interpretive ruling and if any additional or alternative provisions would also be appropriate.

Sections Removed From Part 7

The OCC is proposing to remove current §§ 7.3000, 7.4005, 7.4015, 7.4100, 7.4200, 7.4205, 7.4400, 7.4410, 7.7400, 7.7410, 7505, 7.7519, 7.7590, 7.7000, and 7.7015 as generally unnecessary, outdated or repetitive. The OCC proposes to remove the following additional sections for the reasons stated below.

Section 7.4010—Quorum for shareholders' meeting. The issues are covered sufficiently by proposed cross-references to the MBCA, § 7.25 (1984) (amended 1993).

Section 7.5210—Same person holding offices of president and cashier. There is no legal impediment to one person serving as both president and cashier. Further, proposed § 7.2015, discusses the assignment of the cashier's duties and clarifies that the duties of cashier may be delegated to the president, chief executive officer, or other officer.

Section 7.5220—Contracts of employment. Any employment contract that is excessive or unreasonable is unsafe and unsound. Therefore, the current "reasonable" standard is necessarily in effect, so it is unnecessary to reiterate the standard in this interpretive ruling. Moreover, section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) and regulations to be issued by the OCC and other agencies under section 132 will deal with excessive or unreasonable contracts. See 12 U.S.C. 1831p–1 (c), and (d).

Section 7.7012—Foreign operations. This section has been removed and will be incorporated into 12 CFR part 28 as part of the overall revision of that part.

Section 7.7112—Insuring lives of bank officers. Banking Circular 249 covers the relevant issues in more detail, and § 7.7112 is therefore unnecessary.

Sections 7.7355—Debts of affiliates, 7.7360—Loans secured by stock or obligation of an affiliate, 7.7365—Federal funds transactions between affiliates, and 7.7370—Deposits between affiliated banks. These sections have been transferred to § 31.100 of this chapter.

Sections 7.7378—Issuance of credit cards, and 7.7379—Servicing of mortgage and other loans as agent. These sections have been incorporated into proposed revisions of part 5 of this chapter. See proposed § 5.34(e)(2)(ii)(F) of this chapter, 59 FR 61034, Nov. 29, 1994.

Section 7.7540—Reports of condition: Waiver of affiliate reports. Section 308 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (Sept. 23, 1994), eliminated the requirement that national banks and their affiliates periodically publish the reports of condition in a newspaper. See 12 U.S.C. 161.

The OCC's proposed removal or transfer of these sections does not imply any alteration of the underlying authority for national bank activity. The interpretive rulings the OCC proposes to remove or transfer are grounded in statutory authority that remains unchanged. Unless otherwise noted, these proposed changes to part 7 are not intended to effect any change in the substance or influence of the interpretive rulings beyond that described in this preamble.

The OCC requests comments on whether it should retain any of the sections proposed to be removed, and if so, why.

Sections That Remain Substantively Unchanged

The OCC proposes stylistic changes and redesignates the following sections. The OCC does not intend to affect the substance of these sections.

Current § 7.7380 to proposed § 7.1004—Loans originating at other than banking offices;

than banking offices; Current § 7.4110 to proposed § 7.2004—Honorary directors or advisory board:

Current § 7.4415 to proposed § 7.2008—Oath of directors;

Current § 7.4420 to proposed § 7.2009—Quorum of board of directors; proxies not permissible;

Current § 7.5215 to proposed § 7.2013—Fidelity bonds covering officers and employees;

² See McClellan v. Chipman, 164 U.S. 347, 356–57 (1896) (National banks are instrumentalities of the Federal government and are necessarily subject to the paramount authority of the United States); see also Flood v. City Nat'l Bank of Clinton, 220 Iowa 935, 263 N.W. 321 (1935), cert. denied, 298 U.S. 666 (1936) (National banks derive their powers and authority under Federal law, and thus are not subject to conflicting state law).