

“recorded investment amount” in § 34.85(a)(1)(ii).

#### Holding Period (Section 34.82)

Current § 34.82 restates those provisions of the statute that govern how long a national bank may hold OREO. It also identifies when the holding period begins, and clarifies that a statutory redemption period imposed by State law will delay the beginning of when the holding period runs.

Proposed § 34.82 is similar to current § 34.82. The proposed rule clarifies, in § 34.82(b)(2), that the holding period begins on the date that a national bank abandons former banking premises without relocating to another site (such as might happen when a branch is closed). The proposed rule also makes changes to improve clarity and to remove provisions that are redundant in light of 12 U.S.C. 29. The proposal relocates the requirement that a national bank dispose of OREO when prudent judgment dictates from § 34.83 (which addresses the *method* of disposition) to § 34.82 (which addresses *timing* of disposition). Finally, proposed § 34.82 retains a statement regarding a bank's obligation to dispose of OREO. This statement clarifies that OREO, as defined in the regulation, is subject to the divestiture provisions. Without such a statement, questions might remain concerning whether the five-year holding period (and any extension thereof) would be available for the disposition of certain types of properties (such as former banking premises that become OREO).

#### Disposition of Real Estate (Section 34.83)

Currently, § 34.83(a)(5) permits disposition of leases only through assignment or a “coterminous sublease” (i.e., a lease with the same duration as the remainder of the master lease). Many national banks hold long-term leases and are unable either to assign them or to find a coterminous sublessee, notwithstanding the bank's best efforts to do so. As industry consolidation and technological advances further reduce the need for branch office space, this problem likely will become more severe.

A bank has the option of entering into non-coterminous subleases in order to minimize financial losses stemming from a long-term lease. However, the OCC currently does not recognize the entering into a non-coterminous sublease as a “disposition” of the OREO for purposes of part 34, thus resulting in a bank being cited for a violation of law even though the bank is attempting in good faith to comply. To address this problem, proposed § 34.83(a)(3) permits

the divestiture period to be suspended for the duration of a non-coterminous sublease.

The following example illustrates how this change would work. Assume that a national bank holds a 30-year lease and, after one year from the date the lease becomes OREO, the bank finds a sublessee willing to sublease the property for ten years. At the end of that 10-year sublease, the bank, under the proposed rule, would have four years remaining in the initial 5-year divestiture period within which to assign the lease or find a sublessee. If the bank enters into another non-coterminous sublease, then, at the expiration of that sublease, the bank would have the unused portion of the divestiture period in which to dispose of the property or enter into another sublease.

The OCC believes that this proposal is consistent with 12 U.S.C. 29. The statute precludes the “possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it,” for a period exceeding five years (or ten years, if the initial period is extended by the OCC). This mandatory divestiture provision is silent with respect to leases. The OCC previously concluded that it is appropriate, for safety and soundness reasons, to treat leases as OREO and require their disposition within the same divestiture period as applies to other types of OREO property. Experience has shown, however, that implementation of 12 U.S.C. 29 can produce an unnecessarily harsh result when the property in question is a long-term lease. The OCC has reexamined its current position and has determined that when property is leased pursuant to a bona fide lease, the element of “possession” that is key to the limitations of 12 U.S.C. 29 may not be present. Therefore, the OCC believes that when a bank leases premises pursuant to a bona fide lease, 12 U.S.C. 29 provides a basis to take a more flexible approach to leaseholds that become OREO.

This option would be available, however, only if the bank in question acts in good faith in acquiring the lease. The OCC remains concerned about banks speculating in real estate, and, therefore, would retain the discretion under the proposed rule to require a bank to take immediate steps to divest a lease if the OCC determines that the bank is engaged in speculation. Thus, for instance, if a bank originates several long-term leases ostensibly for future bank use but soon thereafter converts the leases to OREO and subleases them to non-coterminous sublessees, the OCC

would have the right under the proposed rule to deem the divestiture period not to have been suspended. In such a situation, the bank also risks being cited for acquiring real estate in violation of 12 U.S.C. 29.

The OCC seeks comment on the appropriateness of permitting the suspension of the divestiture period in the manner described above.

The proposal makes numerous stylistic changes to § 34.83 that simplify the current regulation and eliminate unnecessary repetition. The proposal modifies § 34.83(b) to clarify that disposition efforts must be ongoing throughout the disposition period. Finally, as previously noted, the proposal relocates the provision in current § 34.83 (requiring disposition when prudent judgment dictates) to proposed § 34.82.

#### Future Bank Expansion (Proposed Section 34.84)

Proposed § 34.84 creates a new section for the OCC's rule on future bank expansion that currently appears as part of § 34.83. The OCC intends for this new section to make the future bank expansion rule easier to locate.

#### Appraisal Requirements (Proposed Section 34.85)

Current § 34.84 provides that a national bank should obtain either an appraisal or evaluation, as appropriate under 12 CFR part 34, subpart C, when real estate is transferred to OREO or when OREO is sold. The current rule provides an exception to this requirement if a national bank already has a valid appraisal or evaluation for the property in question. Banks are to monitor the value of each parcel of OREO in a manner consistent with prudent banking practice.

The proposal makes no substantive change to this section. As noted above in the discussion of the definition section of subpart E, the proposal removes the term “transaction value” and uses “recorded investment amount” in lieu thereof.

#### Additional Expenditures and Notification (Proposed Section 34.86)

The current rule, which is set out in § 34.85, specifies that national banks are to notify the OCC at least 30 days prior to implementing a development or improvement plan for OREO when the estimated cost of the plan exceeds a specified threshold. The rule makes exceptions to this notice requirement for re-fitting existing buildings and for normal repairs. The rule also specifies that national banks may make “prudent advances” to complete a project