



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Corporate Decision #97-76
August 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION OF
UNION COUNTY NATIONAL BANK OF LIBERTY, LIBERTY, INDIANA,
TO ESTABLISH A BRANCH IN OXFORD, OHIO**

August 7, 1997

I. INTRODUCTION

On June 26, 1997, Union County National Bank of Liberty, Liberty, Indiana, ("Bank") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to establish a branch in Oxford, Ohio ("the Oxford Branch") under 12 U.S.C. § 36(g) (the "Branch Application"). The Bank's main office is in Liberty, Indiana, and all its existing branches are in Indiana.

II. LEGAL AUTHORITY

The Bank has applied for approval to establish an initial *de novo* branch in another state under 12 U.S.C. § 36(g). Under 12 U.S.C. § 36(g), an out-of-state national bank may establish an initial *de novo* branch in a host state if the host state has a law that meets the provisions of section 36(g)(1) and the bank meets the conditions of section 36(g)(2). These requirements are met here, and so the Bank's proposed Oxford Branch is authorized. Section 36(g) authorizes a national bank to establish such a branch, subject to the requirements of the section:

Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national bank to establish and operate a *de novo* branch in a State (other than the bank's home State) in which the bank does not maintain a branch if --

- (A) there is in effect in the host State a law that --
 - (i) applies equally to all banks; and
 - (ii) expressly permits all out-of-State banks to establish *de novo* branches in such State; and

(B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.

12 U.S.C. § 36(g)(1) (Revised Statutes § 5155(g)(1), as added by section 103(a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338, 2352 (enacted September 29, 1994) (the "Riegle-Neal Act")). In this Branch Application, Indiana is the Bank's home state, and Ohio is the host state.¹

The availability of the authority for a national bank to establish an initial *de novo* branch in a host state under section 36(g) therefore is triggered by host state law. The federal authority in section 36(g) is available only if the host state has a law that meets the features specified in paragraph 36(g)(1)(A). However, section 36(g) appears to structure the relationship between federal authority and host state law differently than some other federal banking statutes that refer to state law. Although the federal authority in section 36(g) is triggered only if the host state has a law that meets the features specified in paragraph 36(g)(1)(A), section 36(g), once triggered, singles out and specifically incorporates into the federal authority and makes applicable to national banks only those aspects of state law referenced in section 36(g)(2).

Thus, in evaluating an application for a *de novo* branch in a host state under section 36(g), the OCC must determine, first, whether the host state (here, Ohio) has a law that meets the provisions of paragraph 36(g)(1)(A), and second, whether the applicant bank has met the conditions in section 36(g)(2). We now address these requirements in turn.

The Bank applied to establish a *de novo* branch in Oxford, Ohio. Ohio law permits an out-of-state bank that does not operate a branch in the state to establish and maintain a branch in Ohio. See Ohio Rev. Code § 1117.01(A) (as amended by Act of May 21, 1997, 1997 Ohio Laws Amended Substitute Senate Bill No. 40).² Accordingly, Ohio has a law that meets the provisions

¹ For purposes of section 36(g), the following definitions apply: The term "home State" means "the State in which the main office of a national bank is located." 12 U.S.C. § 36(g)(3)(B). The term "host state" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." 12 U.S.C. § 36(g)(3)(C). The term "de novo branch" means a "branch of a national bank which (i) is originally established by the national bank as a branch, and (ii) does not become a branch of such bank as a result of (I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution or (II) the conversion, merger, or consolidation of any such institution or branch." 12 U.S.C. § 36(g)(3)(A). Moreover, section 36(g) applies only to a national bank's initial *de novo* branch in a host state. Once the bank has a branch or branches in the state, then that state is not one "in which the bank does not maintain a branch." In such states, subsequent branching by a national bank is governed by the other subsections of section 36, as appropriate.

² Section 1117.01(A) provides:

Subject to section 1115.05 and Chapter 1119. of the Revised Code, a bank, regardless of the location of its principal place of business, may establish or acquire and maintain a banking office in this state.

of paragraph 36(g)(1)(A). The federal authority in section 36(g) for national banks to establish *de novo* interstate branches is triggered for Ohio.

An application by a national bank to establish an interstate *de novo* branch under section 36(g) is also subject to certain conditions set forth in 12 U.S.C. § 36(g)(2)(A). These conditions are incorporated from the provisions for approval of an interstate merger transaction by the appropriate federal banking agency under section 44 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u. Specifically, the conditions are those contained in paragraphs (1), (3), and (4) of 12 U.S.C. § 1831u(b). These conditions are: (1) compliance with state filing requirements, (2) community reinvestment compliance, and (3) adequacy of capital and management skills.

The Bank's Branch Application satisfies all these conditions to the extent applicable. First, the proposal complies with applicable filing requirements. A bank applying for an interstate branch must (1) comply with the filing requirements of the host state as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 36(g)(2)(A) (incorporating section 1831u(b)(1)). Ohio law requires that a bank that transacts business in Ohio, the main office of which is located in a state other than Ohio, must file as a foreign corporation with the secretary of state. See Act of May 21, 1997, 1997 Ohio Laws Amended Substitute Senate Bill No. 40 (amending several sections in Ohio Rev. Code §§ 1703.01 *et seq.*). These amendments make out-of-state banks subject to the same foreign corporation filing requirements as out-of-state nonbanking corporations. The Bank sent a copy of its OCC Branch Application to the Ohio state bank supervisor, as required by section 1831u(b)(1)(A)(ii), and will file the required notice under Ohio law. Thus, this Branch Application satisfies the Riegle-Neal Act's filing requirements.

Second, the proposal satisfies all requirements relating to community reinvestment compliance. In determining whether to approve an application under section 36(g), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), (2) take into account the CRA evaluations of any affiliated banks of the applicant bank, and (3) take into account the applicant's record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3) (as incorporated by section 36(g)(2)(A)). The CRA requires the OCC to take into account the Bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods. See 12 U.S.C. § 2903. Based on the OCC's most recent examination, the Bank has a satisfactory rating with respect to CRA performance. The Bank has one national bank affiliate and three state bank affiliates: First Merchants Bank, National Association, Muncie, Indiana; First United Bank of Middletown, Middletown, Indiana; Pendleton Banking Co., Pendleton, Indiana; and Randolph County Bank, Winchester, Indiana. The OCC has rated the CRA performance of First Merchants Bank, National Association as satisfactory. Based on the most recent Federal Deposit Insurance Corporation examinations, each of the three state bank affiliates has a satisfactory CRA performance rating. Finally, Indiana does not have community reinvestment laws applicable to the Bank.

