



Comptroller of the Currency
Administrator of National Banks

Washington, DC

**Conditional Approval #473
July 2001**

June 7, 2001

Mr. Joseph W. Barr
President and Chief Executive Officer
Proposed NetExpress Bank, N.A.
8630 Fenton Street
Suite 820
Silver Spring, MD 20910

Re: Application for De Novo Charter: NetExpress Bank, N.A., Silver Spring, MD
Application Control Number: 2000-NE-01-0010
Charter Number: 24079

Application for an Operating Subsidiary: Net Express Commercial Mortgage, Inc.
Application Control Number: 2000-NE-08-0068

Dear Mr. Barr:

The Office of the Comptroller of the Currency (OCC) has reviewed your applications to establish a new national bank with the title of NetExpress Bank, National Association ("Bank"), and an operating subsidiary entitled NetExpress Commercial Mortgage, Inc. On this date, after a thorough evaluation of all data available to the OCC, we found that the charter application met the requirements for preliminary conditional approval and the operating subsidiary met the requirements for approval.

These approvals were granted based on a thorough review of all information available, including the representations and commitments made in the application and by the proposed bank's representatives. Among other matters, the organizers' represented that the Bank will not specifically solicit deposits outside of the Bank's stated primary geographic market area using the Internet, telephone, or otherwise without the OCC's prior written non-objection pursuant to condition #3 described below. Such a deposit solicitation would be a significant change in your business plan. We also made our decision to grant preliminary conditional approval of the charter with the understanding that the proposed national bank will apply for membership in the Federal Reserve System and obtain FDIC insurance. You must furnish the OCC's Northeastern District Office with a copy of all related filings to the Federal Reserve.

In addition to the standard requirements for all new national banks included in an attachment to this letter, the following requirements must be satisfied prior to the bank's request for a pre-opening examination and before the OCC will grant final charter approval:

1. The Bank's initial Tier 1 capital, net of any and all organizational and pre-opening expenses, must be no less than \$13.0 million. You are reminded that, pursuant to 12 CFR 5.20(i)(5)(iii), this preliminary conditional approval expires if the Bank does not raise the capital funds within 12 months from the date of this letter. The preliminary conditional approval will also expire if the Bank has not commenced business within 18 months from the date of this letter.
2. The Bank must submit to the OCC for review and written non-objection a complete description of the bank's final information systems and operations architecture as well as the information systems risk assessment and management plan. This should include a schematic drawing and discussion of the following items:

Vendor due diligence and contracts; electronic banking security mechanisms and policies; information systems personnel; internal controls; audit plans; and operating policies and procedures, including, but not limited to, vendor management, weblinking, customer authentication and verification, and business resumption contingency plans.

3. The Bank must have performed an independent security review and test of its electronic banking platform. The bank must have this review performed regardless of whether the platform is operated in-house or by one or more third-party service providers. If the bank outsources the technology platform, it can rely on testing performed for the service provider to the extent that it satisfies the scope and requirements listed herein. The review must be conducted by an objective, qualified independent source (Reviewer). The scope should cover all access points, including the Internet, Intranet, or remote access. It should cover the adequacy of physical and logical protection against unauthorized access including individual penetration attempts, computer viruses, denial of service, and other forms of electronic access. By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. For additional guidance, see "The Internet and the National Bank Charter" booklet (enclosed) of the *Comptroller's Corporate Manual*, pages 37-38, 74-75.
4. The Bank must have a security program in place that complies with the minimum security guidelines specified at 12 C.F.R. 40 (effective 7/1/01).
5. As part of a comprehensive liquidity risk management program, the Bank should develop and maintain a contingency funding plan that addresses strategies for managing potential liquidity fluctuations. The degree and sophistication of the contingency funding plan should be commensurate with the Bank's complexity and risk exposure, activities, products, and organizational structure.
6. As proposed, prior to opening, the Bank shall name two additional outside directors to the Board of Directors. The OCC must review and have no objection to these individuals. As part of your effort to increase the diversity of the Board, these individuals will have previous bank board experience and will not be from the real estate industry.

7. The Bank must have privacy policies and procedures in compliance with the requirements specified at 12 C.F.R. 30 (effective 7/1/01).

The permanent main office of the Bank will be 1100 Wayne Avenue, Silver Spring, MD 20910. The organizers do not expect that the site will be appropriately configured prior to the date they expect the Bank to commence business. The organizers have requested permission to commence operations, should all other requirements for opening the Bank be met, at a nearby temporary location at 8630 Fenton Street, Silver Spring, MD 20910, opening the main office within 60 days of commencing operations. The temporary main office site does not provide as much access to the public as the permanent main office site. The use of the temporary main office site will be permitted, subject to condition #4 below.

This preliminary conditional charter approval is subject to the following “conditions imposed in writing by the agency in connection with the granting of any application or other request” within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

1. Prior to the Bank commencing business, the Bank’s Board of Directors must execute a binding written agreement with the OCC setting forth certain actions that the Bank will take, including but not limited to obtaining additional capital infusions; developing and implementing a corrective action plan or new satisfactory operating plan to remedy plan shortfalls or failures; or developing and implementing a contingency plan for sale, merger, or liquidation of the Bank, if the Bank does not achieve original operating plan results. The Board shall implement and ensure continued adherence to the terms of the agreement. The agreement shall remain in existence for the Bank’s first three years of operations, or until the Bank reports four (4) consecutive quarters of profitability, whichever is longer.
2. The Bank must notify all potential technology-related vendors in writing of the OCC’s examination and regulatory authority under 12 U.S.C. 1867(c).¹ All final technology-related vendor contracts must stipulate that the performance of services provided by the vendors to the bank is subject to the OCC’s examination and regulatory authority.
3. The Bank shall obtain the OCC’s non-objection before any significant deviation or change from the proposed operating plan occurs during the bank’s first three years of operation. The bank shall notify the OCC’s Northeastern District Office at least sixty (60) days prior to any proposed significant deviation or change and obtain the OCC's non-objection in writing for such a proposed deviation or change. The bank also must provide a copy of such notice to the FDIC’s New York Regional Office.
4. The Bank will operate from the permanent main office site beginning no later than 60 days following the Bank's beginning operations.

¹The OCC has the authority to assess the bank for the cost of examining a service provider. See 12 C.F.R. 8.6.

The OCC poses no objection to the following persons serving as executive officers and directors as proposed in the applications. The OCC's non-objection does not include other executive officer positions and directors. Such officers and directors are subject to the OCC's prior review and clearance.

<u>Name</u>	<u>Proposed Position(s)</u>
James P. Ventura	Director and COB of Bank; President of NetExpress Commercial Mortgage, Inc.
Joseph W. Barr	Director, President and Chief Executive Officer
John J. Joback	Chief Information Technology Officer, Director
Domingo Rodriquez	Chief Financial Officer
Shawn M. Brenneman	Senior Vice President, Operations
Barry R. Gosnell	Director
Steven A. Goldberg	Director

This is preliminary conditional approval only. Until final approval is granted, the OCC has the right to alter, suspend, or revoke preliminary approval should any interim development be deemed by the OCC to warrant such action.

Please refer to the *ACorporate Organization@booklet* (enclosed) of the *Comptroller's Corporate Manual* for the instructions on organizing your bank. The booklet contains all of the steps you must take to receive your charter. As detailed in the booklet, you may establish the corporate existence of and begin organizing the bank as soon as you adopt and forward acceptable Articles of Association and the Organization Certificate to this office. As a ~~A~~body corporate or legal entity, you may begin taking those steps necessary for obtaining final approval, but you may not begin the business of banking until you fulfill all requirements for a bank in organization and you are granted final approval by the OCC.

Enclosed are standard requirements that must be met before the bank will be allowed to commence business. Management must ensure that the applicable policies and procedures are established and adopted by the board of directors before the bank begins operation. The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications.

The proposed operating subsidiary will engage in purchasing, selling, servicing or warehousing commercial real estate loans or other extensions of credit, or interests therein. The proposed activities are consistent with 12 CFR 5.34(e)(v)(D) and are intended to support the safe and sound operation of the Bank.

These approvals, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express, or implied, or any other obligation binding upon the OCC, the U. S., any agency or entity of the U. S., or an officer or employee of the U. S., and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U. S.

If you have any questions, please do not hesitate to call Senior Licensing Analyst Beverly Evans or me at (202) 874-5060.

Sincerely,

-signed-

Alan Herlands
Director, Licensing Operations

Enclosures: "Corporate Organization" Booklet
"The Internet and the National Bank Charter" Booklet
Minimum Policies and Procedures