



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION OF
FRANKLIN NATIONAL BANK OF VIRGINIA,
ALEXANDRIA, VIRGINIA,
TO ESTABLISH A BRANCH IN BETHESDA, MARYLAND**

April 15, 1996

I. INTRODUCTION

On March 4, 1996, Franklin National Bank of Virginia, Alexandria, Virginia ("FNBV") filed an application with the Office of the Comptroller of the Currency ("OCC") to establish a branch in Bethesda, Maryland, under 12 U.S.C. § 36(g) (the "Branch Application"). FNBV's main office is in Alexandria, Virginia, and its existing branch is also in Virginia. The proposed branch would be FNBV's first branch in Maryland. No protests have been filed regarding FNBV's Application. FNBV has approximately \$ 27.5 million in assets, as of December 31, 1995.

II. LEGAL AUTHORITY

- A. The statutory framework:** 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).

FNBV has applied for approval to establish an initial de novo branch in another state under 12 U.S.C. § 36(g). 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, 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, Virginia is FNBV's home state, and Maryland 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. On the one hand, 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). But section 36(g) does not prohibit host states from having other features in their interstate branching laws beyond those needed to meet the provisions of paragraph 36(g)(1)(A). Nor does section 36(g) provide that the federal authority is ineffective if the state adds other features. That is, the state may add other features to its interstate branching law, and, as long as those features do not cause the state law to fail to meet the provisions of paragraph 36(g)(1)(A), the federal authority in section 36(g) continues to be available.²

Thus, in evaluating an application for an initial *de novo* branch in a host state under section 36(g), the OCC must determine, first, whether the host state (in FNBV's case, Maryland) 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.

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 already 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 Yet, section 36(g), once triggered, singles out and specifically incorporates into the federal authority only certain features of state law referenced in section 36(g)(2).

B. Maryland has a law that meets the provisions of 12 U.S.C. § 36(g)(1)(A).

Since FNBV is applying to establish an initial de novo branch in Maryland, the branch may be approved under section 36(g) only if Maryland has "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." 12 U.S.C. § 36(g)(1)(A). Maryland enacted legislation, effective September 29, 1995, that permits interstate branching. See MD. [Fin. Inst.] Code Ann. § 5-1001 et seq. (1995). The statute includes provisions that expressly permit de novo branches in Maryland by out-of-state banks:

A banking institution or an out-of-state bank may establish a branch in this state by:

- (1) opening a de novo branch;

MD. [Fin. Inst.] Code Ann. § 5-1003.³ See also MD. [Fin. Inst.] Code Ann. § 5-1014 (1995) (requirement of notice and other conditions for interstate branches).⁴

³ Maryland also expressly provides for the establishment of interstate branches through the acquisition of a branch. See MD. [Fin. Inst.] Code Ann. § 5-1003 (1995). Section 5-1003 applies to both a de novo interstate branch and to one acquired through acquisition. Section 5-1003 continues:

- (2) purchasing an existing branch from a bank or an insured depository institution; or
- (3) converting former headquarters or retaining former branches following:
 - (I) the purchase of all or substantially all of the assets of a bank or an insured depository institution;
 - or
 - (II) a merger or a consolidation with a bank or an insured depository institution.

For the Maryland statute, the following definitions apply: The term "bank" has the meaning set forth in 12 U.S.C. § 1841(c). MD. [Fin. Inst.] Code Ann. § 5-1001(b). The term "out-of-state bank" means "(1) a national banking association with its main office in a state other than this state; or (2) an other-state bank." MD. [Fin. Inst.] Code Ann. § 5-1001(i). An "other-state bank" means "a bank chartered and primarily regulated by another state." MD. [Fin. Inst.] Code Ann. § 5-1001(k). A bank's "home state" with respect to a national bank is "the state in which its main office is located." MD. [Fin. Inst.] Code Ann. § 5-1001(f). The term "de novo branch" means "a branch of an out-of-state bank or banking institution that: (1) is originally established by the out-of-state bank or banking institution as a branch; and (2) does not become a branch of the out-of-state bank or banking institution as a result of: (I) the acquisition by the out-of-state bank or banking institution or an insured depository institution or a branch of an insured depository institution; or (II) the conversion, merger, or consolidation of an insured depository institution or a branch of an insured depository institution." MD. [Fin. Inst.] § 5-1001(e). The term "insured depository institution" means "any financial institution the deposits of which are insured by the Federal Deposit Insurance Corporation." MD. [Fin. Inst.] Code Ann. § 5-1001(l). "Banking institution" means "an institution that is incorporated under the laws of this State as a State bank, trust company, or savings bank." MD. [Fin. Inst.] Code Ann. § 1-101(d).

⁴ For example, Maryland requires an out-of-state bank proposing to establish a branch in Maryland to qualify under § 7-203 of the Corporations and Associations Article to do business in Maryland as a foreign corporation and to provide to the Commissioner, within 15 days of filing, a copy of its branch application to its bank supervisory agency. MD. [Fin. Inst.] Code Ann. § 5-1014(a) (1995).

Thus, it would seem clear that Maryland has "opted-in" to interstate branching through de novo branches for purposes of section 103 of the Riegle-Neal Act. However, one feature of the Maryland law casts uncertainty on the conclusion that Maryland has a law that successfully meets the provisions of paragraph 36(g)(1)(A). Maryland has placed a condition of nationwide reciprocal treatment on an out-of-state bank's establishment of a de novo branch in Maryland. Until June 1, 1997, an out-of-state bank may establish a de novo branch in Maryland only if the home state of the out-of-state bank permits Maryland banks to establish de novo branches in that state under substantially the same terms and conditions as in the Maryland statute.

An out-of-state bank that does not have a branch in this state on September 29, 1995, may not establish a branch in this state before June 1, 1997, unless the laws of that bank's home state would permit a banking institution to establish a branch in that state under substantially similar conditions as those imposed by this subtitle.

MD. [Fin.Inst.] Code Ann. § 5-1014(b) (1995).⁵

The reciprocal treatment condition means that, for the time being and until all states enact suitable interstate branching laws, out-of-state banks from some states would not in fact be permitted to establish de novo branches in Maryland under the terms of the Maryland law. This raises a question whether Maryland indeed has a law that "applies equally to all banks" and "expressly permits all out-of-State banks to establish de novo branches" as set forth in paragraph 36(g)(1)(A) (emphasis added). Reciprocal treatment is a condition that limits which banks actually may enter Maryland.

However, we believe that the fact that a state's opt-in law contains conditions on entry and so some banks would in practice not be permitted to branch into a state under the state law's terms cannot itself be sufficient to make the law fail to meet the terms of paragraph 36(g)(1)(A). It is unlikely that any state would have a law that had absolutely no conditions on entry by out-of-state banks. But, if we were to adopt a strict reading of section 36(g)(1)(A), only a state law that allowed every out-of-state bank to enter without qualification would fulfill the provisions of section 36(g)(1). This could render section 103 of the Riegle-Neal Act a nullity, and so we believe Congress did not intend such a strict reading. Instead, for purposes of meeting the terms of section 36(g)(1)(A), the proper inquiry is the nature of the conditions. This means, in terms of the statutory language, the important criteria are (1) that the state law opens the state for all out-of-state banks to apply under the same standards ("applies equally to all banks"); and (2) that the state law does not discriminate among banks -- i.e., it does not by its own terms exclude a

⁵ The nationwide reciprocal treatment condition also applies to the establishment of an interstate branch in Maryland through acquisition of a branch. But the issue at hand would not arise in that context. In the Riegle-Neal Act, the acquisition of branches is treated as a type of merger transaction authorized in section 102, see 12 U.S.C. § 1831u(a)(4), and the provisions under which states may "opt-in" to interstate merger transactions in the period before June 1, 1997, specifically address state imposition of a nationwide reciprocal treatment condition. See 12 U.S.C. § 1831u(a)(3)(B)(I). By contrast, section 103 of the Riegle-Neal Act, 12 U.S.C. § 36(g), does not have a provision for nationwide reciprocal treatment.

fixed class of banks, whether by type of bank such as national bank, state commercial bank, or state savings bank or by listed state of origin ("expressly permits all out-of-state banks").

Under the Maryland statute, including its nationwide reciprocal treatment condition, all out-of-state banks would be subject to the same standard, and the entry requirements would apply to the same degree to any bank seeking to establish a branch. Nor does the Maryland law discriminate among types of banks or exclude banks from a fixed list of states. From the perspective of Maryland, the Maryland law lets in all out-of-state banks. Nothing in the Maryland law needs to be changed for out-of-state banks from every state to enter Maryland. Thus, we believe that Maryland has a law that meets the provisions of paragraph 36(g)(1)(A).⁶

C. FNBV meets the conditions in 12 U.S.C. § 36(g)(2).

An application by a national bank to establish and operate an interstate branch is also subject to certain conditions set forth in 12 U.S.C. § 36(g)(2). 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), in subsection 1831u(c), and in subsection 1831u(d)(2). These conditions are: (1) compliance with state filing requirements, (2) community reinvestment compliance, (3) adequacy of capital and management skills, (4) applicability of certain state laws, and (5) additional branching authority in the host state subsequent to the initial branch. The first three conditions apply to the establishment of the section 36(g) branch; the others apply to ongoing operations but may also have some bearing upon initial establishment.

FNBV'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)). The Maryland statute requires an out-of-state bank desiring to establish a *de novo* branch in Maryland to provide a copy of its branch application to the Commissioner of Banks for the State of Maryland ("Commissioner") within 15 days of filing its branch application with the responsible federal bank supervisory agency for approval to establish the branch and to comply with the applicable requirements of the Corporations and Associations Article. See MD. [Fin. Inst.] Code Ann. § 5-1014(a)(1) and (2). As implemented to date, these requirements do not appear to discriminate against out-of-state banks or to impose a filing requirement more burdensome than

⁶ As already noted, the structure of section 36(g) does not specifically incorporate state law or otherwise make state law applicable to national banks, except as provided in section 36(g)(2). The reciprocity condition contained in the Maryland law is met here, however, and therefore does not present a separate issue.

that imposed on nonbanking corporations. Concurrently with the OCC filing, FNBV filed a copy of its Branch Application with the Commissioner, and it intends to qualify as a foreign corporation by filing with the Department of Assessments and Taxation prior to doing business in Maryland. Therefore, FNBV has complied with the applicable state filing requirements in accordance with the provisions of sections 36(g)(2)(A) and 1831u(b)(1).

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"), 12 U.S.C. § 2903, (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 FNBV'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, FNBV has a satisfactory rating with respect to CRA performance. FNBV's District of Columbia affiliate, Franklin National Bank of Washington, D.C., has taken an active role in providing banking services in its community and has an outstanding rating with respect to CRA performance. The Commonwealth of Virginia does not have community reinvestment laws applicable to FNBV.

Third, the proposal satisfies the adequacy of capital and management skills requirements. The OCC may approve an application for a de novo branch only if the bank is adequately capitalized as of the date the application is filed and will continue to be adequately capitalized and managed after the transaction. See 12 U.S.C. § 1831u(b)(4) (as incorporated by section 36(g)(2)(A)). As of the date the application was filed, FNBV satisfied all regulatory and supervisory requirements relating to adequate capitalization, including the standards prescribed by 12 U.S.C. § 1831o(b)(1)(A) and 12 C.F.R. § 6.4. Additionally, the capital requirements of 12 U.S.C. § 51 are satisfied. The OCC has also determined that following establishment of the de novo interstate branch FNBV will continue to be adequately capitalized and adequately managed. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Finally, section 36(g)(2)(B) applies subsections (c) and (d)(2) of 12 U.S.C. § 1831u to de novo interstate branches of national banks established under section 36(g). None of the provisions of those subsections are applicable in determining the permissibility of the initial establishment of FNBV's branch in Bethesda, Maryland.

III. CONCLUSION AND APPROVAL

In conclusion, FNBV's application to establish an initial de novo interstate branch in Bethesda, Maryland, is legally authorized 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)(A) and the bank meets the conditions

of section 36(g)(2). The host state here, Maryland, has a law that meets the provisions of 12 U.S.C. § 36(g)(1)(A). FNBV meets the conditions in 12 U.S.C. § 36(g)(2). The Branch Application raises no supervisory or policy concerns. Accordingly, the Branch Application is hereby approved.



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