

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 303**

**RIN -----**

**Financial Education Programs that Include the Provision of Bank Products and Services**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Interim final rule and request for comment.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is amending its regulations to permit state nonmember banks to participate or assist in financial education programs conducted on school premises where, in connection with the program, deposits are received, checks are paid, or money is lent, without the need to submit a branch application to, and receive prior approval from, the FDIC. However, any state nonmember bank that desires to engage in such financial education programs must satisfy certain conditions.

**EFFECTIVE DATE:** [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**DATES:** Comments on this interim final rule must be received by [INSERT DATE [30] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Agency Web site:** <http://www.FDIC.gov/regulations/laws/federal/propose.html>
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.
- **Hand Delivered/Courier:** The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

- **E-mail:** [comments@FDIC.gov](mailto:comments@FDIC.gov).
- **Public Inspection:** Comments may be inspected and photocopied in the FDIC Public Information Center, Room E-1002, 3502 Fairfax Drive, Arlington, VA 22226, between 9:00 a.m. and 5:00 p.m. on business days.

Instructions: Comments submitted must include “FDIC” and “RIN # \_\_\_\_\_”. Comments received will be posted generally without change to <http://www.FDIC.gov/regulations/laws/federal/propose.html>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Donald R. Hamm, Section Chief, Risk Management and Applications Section, (202) 898-3528, Division of Supervision and Consumer Protection; or Mark L. Handzlik, Senior Attorney, (202) 898-3990, or Robert C. Fick, Counsel, (202) 898-8962, Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

1. Background

The FDIC recognizes the importance of financial education programs, particularly for those individuals who have little or no experience using bank-provided services. Such programs generally contribute to the financial stability of individuals, families, and communities.

Accordingly, the FDIC supports the ongoing efforts of state nonmember banks to enhance financial literacy, and continues to encourage institutions to collaborate with others members of the community to deliver financial education.

Recently, the FDIC received a number of inquiries as to whether the definition of branch includes a school or school facility where a state nonmember bank participates or assists in a

financial education program for the benefit of students. Generally, through such programs, students are trained in various banking functions and personal financial management. A bank employee may serve as an advisor to the students and assist faculty in developing a financial education curriculum.

In some instances, students provide limited banking services to students and faculty directly at the school, on either a part-time basis or designated school days. A bank engaged in such a program could train students in bank operations and provide general supervision over the program and the provision of banking services. These services could include opening deposit accounts at the bank for students, faculty and parents, and receiving deposits for credit to such accounts. The participating bank may also pick up and deliver to its main office or a branch any funds received by the students in connection with the program. Note that this is not intended to provide an exclusive list of permissible activities for banks involved in financial education programs.

Section 18(d)(1) of the Federal Deposit Insurance Act (FDI Act) (Section 18(d)(1)) provides that no state nonmember bank shall establish or operate a new domestic branch without the prior written consent of the FDIC.<sup>1</sup> Section 3(o) of the FDI Act (Section 3(o)) generally defines a domestic branch to include any branch bank, branch office, branch agency, additional office or any branch place of business where deposits are received or checks paid or money lent (each a core-banking function).<sup>2</sup> The FDIC has determined by regulation that a messenger service that is established and operated by a state nonmember bank or its affiliate, which

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<sup>1</sup> See 12 U.S.C. 1828(d)(1).

<sup>2</sup> See 12 U.S.C. 1813(o).

performs one of the core-banking functions, is a branch and requires a prior approval pursuant to these statutory provisions.<sup>3</sup>

Under certain conditions, a bank's participation in a financial education program conducted on school premises differs from a bank messenger service in that any core-banking function provided in connection with such program is (i) provided at the discretion of the school; (ii) made available on a limited basis to a discrete group of individuals and not to the general public; and (iii) conducted and designed primarily for educational purposes. Moreover, participating in a financial education program differs from establishing a branch because, generally, with respect to such program, the facility where banking services are provided is established by the school.

## 2. Interim Final Rule

This interim final rule exempts from the definition of branch any financial education program operated on school premises or a facility used by a school, where, in connection with the program, deposits are received, checks are paid, or money is lent, subject to certain conditions.<sup>4</sup> As provided in this rule, the principal purpose of the financial education program must be educational, and not designed for the purpose of profit-making. Further, any banking services provided in connection with the program must be provided at the discretion of the school. The FDIC expects that such services would be limited in nature; available only to

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<sup>3</sup> See 12 CFR 303.41. If, however, the messenger service is established or operated by a non-affiliated third party, it generally does not constitute a branch for purposes of Section 18(d) and FDIC regulations. This interpretation is consistent with a plain reading of Section 18(d)(1), and with the decision in Cades v. H & R Block, where Justice Butzner, writing for the Fourth Circuit, explained that "courts apply a two-part test to decide whether a bank is operating a branch office. First, the court determines whether [the] branch is established and operated by the bank..." See 43 F.3d 869, 814 (4th Cir. 1994), citing Independent Bankers Ass'n of New York v. Marine Midland Bank, 757 F.2d 453, 456-63 (2d Cir 1985); Independent Bankers Ass'n of America v. Smith, 534 F.2d, 921, 951-52 (D.C. Cir. 1976). See also First National Bank in Plant City v. Dickinson, 396 U.S. 122, 137 n. 10 (1970).

<sup>4</sup> This exemption is consistent with a regulation promulgated by the Office of the Comptroller of the Currency in 2001 which exempts from the definition of branch a national bank's participation in a financial literacy program conducted on school premises. 12 CFR 7.1021.

students, parents, and faculty; and accessible on a part-time basis or designated school days. The bank must monitor the program to ensure that it is conducted in a safe and sound manner and complies with applicable law.

### **Request for Comments**

The FDIC requests comments on all aspects of this interim final rule. Specifically, the FDIC requests comment on whether specific controls are needed to ensure the safety and soundness of financial education programs conducted on school premises and covered by this regulation, for example, rules regarding data and physical security. The FDIC also requests comment on whether the scope of, or a bank's involvement in, any financial education programs extends beyond the activities described in this rule.

### **Regulatory Analysis and Procedure**

#### **A. Administrative Procedure Act**

Section 553(d) of the Administrative Procedure Act (APA) requires the FDIC to publish a substantive rule at least 30 days before its effective date, unless, under subsection (d)(1), the rule establishes or recognizes an exemption or relieves a restriction.<sup>5</sup> This interim final rule establishes an exemption to the definition of branch provided in 12 C.F.R. part 303, subpart C, which has the effect of permitting state nonmember banks to participate in certain financial education programs conducted on school premises without having to submit a branch application to, and receive prior approval from, the FDIC. Therefore, the FDIC is not required to publish this interim final rule in the Federal Register at least 30 days before its effective date.

#### **B. Solicitation of Comments on the Use of Plain Language**

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<sup>5</sup> See 5 U.S.C. 553(d).

Section 722 of the Gramm-Leach-Bliley Act requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.<sup>6</sup> We invite your comments on how to make this rule easier to understand. For example:

Is the material provided in this rule well organized? If not, how could this material be better organized?

Are the requirements in the interim final rule clearly stated? If not, how could the rule be more clearly stated?

Does the rule contain language or jargon that is not clear? If so, which language requires clarification?

#### C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.<sup>7</sup> Because this rulemaking does not involve the issuance of a notice of proposed rulemaking, the requirements of the RFA for a final regulatory flexibility analysis do not apply.<sup>8</sup>

#### D. Paperwork Reduction Act

The FDIC has determined that this interim final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995.<sup>9</sup>

### List of Subjects

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<sup>6</sup> See Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999).

<sup>7</sup> See 5 U.S.C. 603(a).

<sup>8</sup> See 5 U.S.C. 604.

<sup>9</sup> 44 U.S.C. 3501 *et seq.*

Banks, banking, state nonmember banks, filing procedures, establishment and relocation of domestic branches and offices, financial education programs.

**Authority and Issuance**

For the reasons set forth in the preamble, part 303 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

**PART 303—FILING PROCEDURES**

1. The authority citation for part 303 continues to read as follows:

**Authority:** 12 U.S.C. 378, 1813, 1815, 1817, 1818, 1823, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p-1, 1831w, 1835a, 1843(1), 3104, 3105, 3108, 3207, 15 U.S.C. 1601-1607.2.

2. In § 303.41, current paragraph (a) is revised to read as follows:

**§ 303.41 Definitions.**

For purposes of this subpart:

(a) Branch, except as provided in section 303.46, includes any branch bank, branch office, additional office, or any branch place of business located in any State of the United States or in any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands at which deposits are received or checks paid or money lent. A branch does not include an automated teller machine, an automated loan machine, or a remote service unit. The term branch also includes the following:

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3. A new § 303.46 is added to subpart C to read as follows:

**§ 303.46 Financial Education Programs that Include the Provision of Bank**

**Products and Services.**

(a) General. No branch application or prior approval is required in order for a state nonmember bank to participate in one or more financial education programs that involve receiving deposits, paying withdrawals, or lending money if:

(1) Such service or services are provided on school premises, or a facility used by the school;

(2) Such service or services are provided at the discretion of the school;

(3) The principal purpose of each program is financial education. For example, the principal purpose of a program would be considered to be financial education if the program is designed to teach students the principles of personal financial management, banking operations, or the benefits of saving for the future, and is not designed for the purpose of profit-making; and

(4) Each program is conducted in a manner that is consistent with safe and sound banking practices, complies with applicable law.

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By Order of the Board of Directors.

Dated at Washington, DC, the \_\_\_ day of \_\_\_\_\_, 2008

FEDERAL DEPOSIT INSURANCE CORPORATION

Executive Secretary  
(SEAL)