

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: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulations to permit state nonmember banks to participate or assist in certain 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 in order for the exemption to apply.

DATES: The final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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 17th 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 other members of the community to deliver financial education.

On June 23, 2008, the FDIC published in the Federal Register an interim final rule and request for comment titled, *Financial Education Programs that Include the Provision of Bank Products and Services* (the “Interim Rule”).¹ The FDIC issued the Interim Rule in response to 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 other students, faculty, and parents 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.²

¹ See 73 FR 35337.

² Note that this paragraph 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) generally provides that no state nonmember bank shall establish or operate a new domestic branch without the prior written consent of the FDIC.³ Under the FDI Act, the term domestic branch generally is defined to include any branch bank, branch office, branch agency, additional office or any branch place of business located in any State or U.S. territory at which deposits are received or checks paid or money lent (each a core-banking function).⁴ The FDIC has determined by regulation that a messenger service that is established and operated by a state nonmember bank, which performs one of the core-banking functions, is a branch and requires a prior approval pursuant to these statutory provisions.⁵ However, under certain circumstances, 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) not provided to the general public; and (iii) conducted and designed primarily for financial education purposes. Moreover, participating in a financial education program differs from establishing a branch because, generally, with respect to such a program, the facility where banking services are provided is established by the school.

The Interim Rule generally exempts from the definition of branch any participation by a state nonmember bank in a financial education program that is operated on school premises or a

³ See 12 U.S.C. 1828(d)(1).

⁴ See 12 U.S.C. 1813(o).

⁵ 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).

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. 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. Finally, the program must be conducted in a safe and sound manner and comply with applicable law.

The FDIC received three comments on the Interim Rule from trade- and research-based organizations. Generally, the commenters supported the Interim Rule, and lauded the FDIC for recognizing the importance of financial education programs, particularly for those individuals with little or no experience using bank-provided services. The commenters expressed no concerns regarding the Interim Rule, and they proposed no substantive or technical revisions. However, the FDIC has made a technical, nonsubstantive change to paragraph (a) of 12 C.F.R. 303.41, which involved moving the reference to the financial education program exception provided in 12 C.F.R. 303.46 to the sentence that lists the other exceptions to the definition of branch. Except for this change, the final rule is identical to the Interim Rule.

2. Final Rule

The final rule excludes 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.⁶ As provided in this rule, the principal purpose of the program must be financial education, and not 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

⁶ 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.

services would be limited in nature; available only to students, parents, and faculty; and accessible on a part-time basis or designated school days. The program must be conducted in a safe and sound manner and comply with applicable law.

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.⁷ This final rule establishes an exemption from 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 final rule in the Federal Register at least 30 days before its effective date.

B. 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.⁸ 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.⁹

C. Paperwork Reduction Act

⁷ See 5 U.S.C. 553(d).

⁸ See 5 U.S.C. 603(a).

⁹ See 5 U.S.C. 604.

The FDIC has determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995.¹⁰

List of Subjects

12 CFR Part 303

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 this paragraph, 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,

¹⁰ 44 U.S.C. 3501 et seq.

an automated loan machine, a remote service unit, or a facility described in section 303.46. The term branch also includes the following:

* * * * *

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.

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:

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

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

(c) 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

(d) Each program is conducted in a manner that is consistent with safe and sound banking practices and 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)