

# Rules and Regulations

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 303

#### RIN 3064–AD28

#### 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.

**DATES:** Effective date: June 23, 2008.

Comment date: Comments on this interim final rule must be received by July 23, 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 a.m. and 5 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 a.m. and 5 p.m. on business days.

**Instructions:** Comments submitted must include “FDIC” and “RIN 3064–AD28”. 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 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.

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

## Federal Register

Vol. 73, No. 121

Monday, June 23, 2008

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 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)

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

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

<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 (DC Cir. 1976). See also *First National Bank in Plant City v. Dickinson*, 396 U.S. 122, 137 n. 10 (1970).

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 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 CFR part 303, subpart C, which has the

<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.

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

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

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

#### 12 CFR Part 303

Banks, banking, State nonmember banks.

#### 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:

<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.*

### 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(l), 3104, 3105, 3108, 3207, 15 U.S.C. 1601-1607.2.

■ 2. In § 303.41, the introductory text of paragraph (a) is revised to read as follows:

#### § 303.41 Definitions.

\* \* \* \* \*

(a) **Branch**, except as provided in § 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:

\* \* \* \* \*

■ 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.

Dated at Washington, DC, the 17th day of June, 2008.

By order of the Board of Directors

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E8-14076 Filed 6-20-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

#### 19 CFR Part 122

[CBP Dec. 08-23]

#### List of User Fee Airports: Additions of Capital City Airport, Lansing, MI and Kelly Field Annex, San Antonio, TX

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations by revising the list of user fee airports to reflect the recent user fee airport designations for Capital City Airport in Lansing, Michigan, and Kelly Field Annex in San Antonio, Texas.

User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

**DATES:** Effective Date: June 23, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Michael Captain, Office of Field Operations, 703-261-8516.

#### SUPPLEMENTARY INFORMATION:

##### Background

Title 19, Code of Federal Regulations (CFR), sets forth at Part 122 regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport, and, if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Public Law 98-573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international

airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security<sup>1</sup> as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. See 19 CFR 122.15. If the Commissioner decides that the

<sup>1</sup> Sections 403(1) and 411 of the Homeland Security Act of 2002 ("the Act," Pub. L. 107-296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the "Customs Service" as the "Bureau of Customs and Border Protection." Effective on March 31, 2007, DHS changed the name of "Bureau of Customs and Border Protection" to "U.S. Customs and Border Protection (CBP)" (See 72 FR 20131, April 23, 2007).

conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the local responsible official signing on behalf of the state, city or municipality in which the airport is located. In this manner, user fee airports are designated on a case-by-case basis. Section 19 CFR 122.15 sets forth the grounds for withdrawal of a user fee designation and sets forth the list of designated user fee airports. Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been currently designated by the Commissioner. This document updates that list of user fee airports by adding Capital City Airport, in Lansing, Michigan, and Kelly Field Annex, in San Antonio, Texas, to the list. On January 22, 2008, and February 8, 2008, respectively, the Commissioner signed MOA's approving the designation of user fee status for Capital City Airport and Kelly Field Annex.

#### Inapplicability of Public Notice and Delayed Effective Date Requirements

Because these amendments merely update the list of user fee airports to include airports already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither impose additional burdens on, nor take away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

#### The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. These amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

#### Signing Authority

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

#### List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

#### Amendments to Regulations

■ Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below: