

✓ 92/CS-18

November 20, 1992

MEMORANDUM (VIA E-MAIL)

TO: Deborah C. Jenkins, Regional Counsel
Midwest Regional Office

THROUGH: Julie L. Williams
Senior Deputy Chief Counsel

FROM: V. Gerard Comizio
Deputy Chief Counsel

SUBJECT: Proposal by [REDACTED]
[REDACTED] to create a "School
Partnership Program"

You have asked us to advise you whether the "School Partnership Program" (the "Program") proposed by [REDACTED] (the "Association") would constitute a branch office requiring a branching application under 12 C.F.R. § 545.92. In our view, based on the facts presented, the Association's proposal would not constitute a branch office. Therefore, the Association would not be required to file a branching application under section 545.92 in order to implement the Program.

Background

According to correspondence from Joann Corpstein of your office dated September 8, 1992, we understand that the Association proposes to establish the Program in an elementary and a middle school in [REDACTED]. Under the Program Agreement, student representatives trained by staff of the Association would act as tellers at specially designated "banks" located on the schools' premises. The student banks would accept deposits from student participants, but would not make loans or provide other services typical of branch offices. Under the supervision of teachers and parent volunteers ("supervisors"), the student representatives would assist other students in completing account forms and would accept these forms and the related deposits, and issue "receipts" to participating students, during hours designated by the schools. The supervisors would then transmit the documents and funds to an Association branch office where accounts would be established in the names of each participating student.

The Association does not intend the student banks to be branch offices of the Association. The Association's participation in the Program would be limited to initial training of student representatives, and donating to the schools cash boxes, locking cash transfer bags and forms required to establish accounts. Student participants would be permitted to withdraw funds from the student banks only at the end of the school year, or at branch offices of the Association at any time during the school year. Association employees would not be on the schools' premises to assist with the Program once commenced. Student accounts would be considered "opened" only after being accepted by an employee of the Association at one of the Association's branch offices. The Association would not be liable for any theft, loss or embezzlement of documentation or funds until they are accepted and deposited at an Association branch office. Supervisors and student representatives would not be agents of the Association.

Discussion

Under section 545.92 of the OTS's regulations, Federal savings associations are prohibited from establishing branch offices without the prior written approval of the OTS.¹ The activities that constitute a branch office of a savings association are not set forth in any of the statutes or regulations administered by the OTS, but the term "branch office" is defined in section 545.92 as "any office other than [a] home office, agency office, data processing or administrative office, or a remote service unit." Under this definition, an issue arises as to whether the Program might be considered a branch office.

The OTS and its predecessor the Federal Home Loan Bank Board ("Bank Board") have not previously opined specifically on the question of whether arrangements such as the Program constitute a branch office. However, as discussed below, similar arrangements were determined by the Bank Board, and have been found by other agencies, not to be branch offices and thus not to require branching applications.

For example, savings associations have been permitted to employ a courier service solely to pick up deposits from business customers without prior approval of a branching application because such services are not considered to be operation of a branch "office" and because they furthered the Bank Board's policy of promoting improved financial services.² For the same reasons, associations have been permitted to enter into agreements with retail chain stores, as independent contractors, to solicit deposits and money market deposit accounts from store customers. In one case, the Bank Board noted that the store's activities would be limited to distributing promotional materials, assisting customers with completing applications, receiving initial deposits and forwarding them to the association. In addition, the association in that case would not

open the accounts or issue certificates of deposit until the application forms and initial deposits were received by the association, and the store would be responsible for any loss or theft occurring up to such time.³ Associations have also been permitted to dispatch "deposit originators" to meet with prospective accountholders at their homes or other convenient locations, obtain information necessary to open accounts, and then pick up applications and initial deposits for transport to association branch offices.⁴

In addition, the Program and the arrangements described above are significantly different from typical branch offices approved by the Bank Board and the OTS. Branch offices of federal associations generally offer a full range of services in permanent offices managed by association employees. For example, in one recent application to establish a branch office in a high school, an association proposed to engage one full-time employee of the association to assist teachers and students with daily operations, and agreed to make substantial leasehold improvements on the school's premises to create a separate area dedicated to the program.⁵ The high school branch office provided students with a full range of services including personal loans and checking, IRA and money market accounts. In contrast, the Program would not establish separate offices owned, leased or operated by the Association, nor would it create separate, physical spaces where deposits, withdrawals and other retail banking transactions occur under the control or direction of the Association. Moreover, the student accounts would not be established until applications and funds are received at an Association branch office.

In a similar situation involving a national bank, the Office of the Comptroller of the Currency ("OCC") concluded that the arrangement was analogous to certain messenger services that are permitted under OCC policy without a branching application, as long as the messenger is the agent of the customer, not the bank.⁶ The OCC concluded that the program was not a branch for purposes of the McFadden Act amendments to the National Bank Act,⁷ and therefore that no branching application was required. We also note that the Federal Deposit Insurance Corporation ("FDIC") for several years has allowed state banks to establish savings programs in public schools without prior approval of a branching application, although the FDIC has not formally authorized these arrangements in any regulation or advisory opinion.

Finally, because we conclude that the Program does not require OTS review of a branching or other "application for a deposit facility," as that term is defined in the Community Reinvestment Act ("CRA") and the OTS's regulations thereunder,⁸ the OTS is not required to consider the CRA record of the Association before the Association implements the Program. However, the absence of a formal application requirement does not preclude the OTS from reviewing the CRA record of the Association

as part of the Association's compliance examination and requiring the Association to correct CRA deficiencies, whether or not any such deficiencies are linked to the Program.

If you have any questions on the foregoing, please contact Mike Vallely, Senior Attorney at (202) 906-6241.

cc: Diana Garmus
Dave Sjogren
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1. 12 C.F.R. § 545.92(a).

2. Op. G.C. November 20, 1986.

3. Op. G.C. November 21, 1983.

4. Op. G.C. November 20, 1986.

5. Op. G.C. July 3, 1989.

6. Op. OCC, April 21, 1989, Fed. Banking L. Rep. (CCH) p. 83,015, citing 12 C.F.R. 7.7490.

7. A "branch" is defined in the National Bank Act, 12 U.S.C. § 36(f), as "any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent."

8. 12 U.S.C. § 2901, et seq.; 12 C.F.R. § 563e.