

Comptroller of the Currency, Treasury

§ 7.1011

customarily delivers loan proceeds directly from bank funds under accepted industry practice, such as an attorney or escrow agent at a real estate closing.

§ 7.1004 Loans originating at other than banking offices.

(a) *General.* A national bank may use the services of, and compensate persons not employed by, the bank for originating loans.

(b) *Approval.* An employee or agent of a national bank or of its operating subsidiary may originate a loan at a site other than the main office or a branch office of the bank. This action does not violate 12 U.S.C. 36 and 12 U.S.C. 81 if the loan is approved and made at the main office or a branch office of the bank or at an office of the operating subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank.

§ 7.1005 Credit decisions at other than banking offices.

A national bank and its operating subsidiary may make a credit decision regarding a loan application at a site other than the main office or a branch office of the bank without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that "money" is not deemed to be "lent" at those other sites within the meaning of § 7.1003.

§ 7.1006 Loan agreement providing for a share in profits, income, or earnings or for stock warrants.

A national bank may take as consideration for a loan a share in the profit, income, or earnings from a business enterprise of a borrower. A national bank also may take as consideration for a loan a stock warrant issued by a business enterprise of a borrower, provided that the bank does not exercise the warrant. The share or stock warrant may be taken in addition to, or in lieu of, interest. The borrower's obligation to repay principal, however, may not be conditioned upon the value of the profit, income, or earnings of the business enterprise or upon the value of the warrant received.

§ 7.1007 Acceptances.

A national bank is not limited in the character of acceptances it may make in financing credit transactions. Bankers' acceptances may be used for such purpose, since the making of acceptances is an essential part of banking authorized by 12 U.S.C. 24.

§ 7.1008 Preparing income tax returns for customers or public.

A national bank may assist its customers in preparing their tax returns, either gratuitously or for a fee.

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§ 7.1009 National bank holding collateral stock as nominee.

A national bank that accepts stock as collateral for a loan may have such stock transferred to the bank's name as nominee.

§ 7.1010 Postal service by national bank.

(a) *General.* A national bank may maintain and operate a postal substation on banking premises and receive income from it. The services performed by the substation are those permitted under applicable rules of the United States Postal Service and may include meter stamping of letters and packages, and the sale of related insurance. The bank may advertise, develop, and extend the services of the substation for the purpose of attracting customers to the bank.

(b) *Postal regulations.* A national bank operating a postal substation shall do so in accordance with the rules and regulations of the United States Postal Service. The national bank shall keep the books and records of the substation separate from those of other banking operations. Under 39 U.S.C. 404 and any regulations issued pursuant thereto, the United States Postal Service may inspect the books and records of the substation.

§ 7.1011 National bank acting as payroll issuer.

A national bank may disburse to an employee of a customer payroll funds deposited with the bank by that customer. The bank may disburse those

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funds by direct payment to the employee, by crediting an account in the employee's name at the disbursing bank, or by forwarding funds to another institution in which an employee maintains an account.

§ 7.1012 Messenger service.

(a) *Definition.* For purposes of this section, a "messenger service" means any service, such as a courier service or armored car service, used by a national bank and its customers to pick up from, and deliver to, specific customers at locations such as their homes or offices, items relating to transactions between the bank and those customers.

(b) *Pick-up and delivery of items constituting nonbranching activities.* Pursuant to 12 U.S.C. 24 (Seventh), a national bank may establish and operate a messenger service, or use, with its customers, a third party messenger service. The bank may use the messenger service to transport items relevant to the bank's transactions with its customers without regard to the branching limitations set forth in 12 U.S.C. 36, provided the service does not engage in branching functions within the meaning of 12 U.S.C. 36(j). In establishing or using such a facility, the national bank may establish terms, conditions, and limitations consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(c) *Pick-up and delivery of items constituting branching functions by a messenger service established by a third party.* (1) Pursuant to 12 U.S.C. 24 (Seventh), a national bank and its customers may use a messenger service to pick up from, and deliver to customers items that relate to branching functions within the meaning of 12 U.S.C. 36, provided the messenger service is established and operated by a third party. In using such a facility, a national bank may establish terms, conditions, and limitations, consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(2) The OCC reviews whether a messenger service is established by a third party on a case-by-case basis, considering all of the circumstances. How-

ever, a messenger service is clearly established by a third party if:

(i) A party other than the national bank owns or rents the messenger service and its facilities and employs the persons who provide the service;

(ii)(A) The messenger service retains the discretion to determine in its own business judgment which customers and geographic areas it will serve; or

(B) If the messenger service and the bank are under common ownership or control, the messenger service actually provides its services to the general public, including other depository institutions, and retains the discretion to determine in its own business judgment which customers and geographic areas it will serve;

(iii) The messenger service maintains ultimate responsibility for scheduling, movement, and routing;

(iv) The messenger service does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is providing the service, although the bank may advertise that its customers may use one or more third party messenger services to transact business with the bank;

(v) The messenger service assumes responsibility for the items during transit and for maintaining adequate insurance covering thefts, employee fidelity, and other in-transit losses; and

(vi) The messenger service acts as the agent for the customer when the items are in transit. The bank deems items intended for deposit to be deposited when credited to the customer's account at the bank's main office, one of its branches, or another permissible facility, such as a back office facility that is not a branch. The bank deems items representing withdrawals to be paid when the items are given to the messenger service.

(3) A national bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service. Payment of those costs may only cover expenses associated with each transaction involving the customer and the messenger service. The national bank may impose terms, conditions, and limitations that it deems appropriate with respect to the payment of such costs.