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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[Order No. 1156-86]

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the fee schedule of the Immigration and Naturalization Service and the Executive Office for Immigration Review. These changes are necessary to place the financial burden of providing special services and benefits, which do not accrue to the public at large, on the recipients. Charges have been adjusted to more nearly reflect the current cost of providing the benefits and services, taking into account public policy and other pertinent facts.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT:
For General Information:
Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3291
Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5203 Leesburg Pike, Falls Church, VA 22041, Telephone: (703) 756-6470
For Specific Information: Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, Telephone (202) 633-4705

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (INS) and Executive Office for Immigration Review (EOIR) published a proposed rule on January 22, 1986, at 51 FR 2895, to amend the schedule of fees charged by the INS and EOIR for processing and adjudication of applications, petitions, motions, and requests submitted by the public. Comments were received from individuals and organizations, including professional and service associations, universities, attorneys, non-profit organizations, field directors, and members of the general public. All 16 comments received on or before March 24, 1986, were fully considered before preparing this final rule. The following summary addresses the substantive comments.

The INS and the EOIR believe it is clear that 31 U.S.C. 9701 and OMB Circular A-25 require Federal agencies to establish a fee system in which a benefit or service provided to or for any person be self-sustaining to the fullest extent. We believe arguments to the contrary are wholly without merit. Fees are neither intended to replace nor to be influenced by the budgetary process and related considerations, but instead, to be governed by the total cost to the agency to provide the service. A policy of setting fees on any basis other than cost would violate this principle. The INS and the EOIR have therefore attempted as fairly and accurately as possible to ascertain the cost of providing each specific benefit or service and to set the pertinent fee accordingly.

The fee structure provides for only six basic fee amounts, while at the same time adheres to the cost principle. Several commenters were concerned about the effects of fee increases on certain segments of the student population. However, in view of the substantial financial commitment that is necessary to seek an education in the United States, it is not likely to influence educational decisions.

Upon consideration of comments that the suspension of deportation applications are burdensome to families applying in the same proceeding, it was decided in the final rule to allow for one fee cover two or more aliens in the same proceeding. Since the regulations already provide for the waiver of a fee when it is shown that the recipient is unable to pay, the new fee schedule does not prohibit applications or requests on the basis of the inability to pay as some of the commenters suggested. Furthermore, several fees for administrative appeal processes and for filing naturalization petitions are at less than full cost recovery recognizing long-standing public policy and the interest served by these processes. Accordingly, the following fee changes are adopted as proposed, with one modification. Upon consideration of the comments, it was decided that suspension of deportation applications (I-256A) could be burdensome to families applying in the same proceeding; therefore the final rule allows for one fee to cover two or more aliens in the same proceeding.

1. Decrease the fee from $50 to $35 for filing Form I-140, petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act.

2. Increase the fee from $70 to $125 for filing Form I-246, application for stay of deportation under Part 243 of this Chapter.

3. Increase the fee from $75 to $100 for filing Form I-256A, application for suspension of deportation under section 244 of the Act. (A single fee of $100 will be charged whenever suspension of deportation applications are filed by two or more aliens in the same proceeding.)

4. Increase the fee from $50 to $110 for filing Form I-290A, appeal from any decision under the immigration laws in any type of proceedings (except a bond decision) over which the Board of Immigration Appeals has appellate jurisdiction in accordance with § 3.1(b) of this chapter. (Only one fee of $110 will be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision).

5. Increase the fee from $50 to $110 for filing motion to reopen or reconsider any decision under the immigration laws (except on applications filed by exchange visitors on Form IAP-66, Cuban refugees on Form I-485A filed under the Act of November 2, 1966, or A-1, A-2 or G-4 nonimmigrations on Form I-566 for which no fee is chargeable). When the motion to reopen or reconsider is made concurrently with an application under the immigration laws, the application will be considered an integral part of the motion and only the fee for filing the motion or the fee for

filing the application, whichever is greater, is payable. (Only one fee of $110 will be charged whenever a motion is filed by or on behalf of two or more aliens and the aliens are covered by one decision).

6. Remove the $50 fee for filing request for temporary withholding of deportation under section 243(h) of the Act.

The above listed fee changes numbered 3, 4 and 5 (insofar as they relate to motions to reopen or reconsider any proceedings or decision of an immigration judge or the Board of Immigration Appeals) were provided by EOIR.

In addition, this rule includes minor technical changes to update the existing fee schedule by removing Form N–400, as no filing fee is required, and listing a $35.00 fee for filing Form N–604.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule does not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation, Fees, Forms.

Accordingly, the following amendments to Chapter I of Title 8 of the Code of Federal Regulations are adopted:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 of Title 8 is revised to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103; 31 U.S.C. 9701; OMB Cicrular A–25.

§ 103.7 [Amended]

2. In § 103.7, paragraph (b)(1) is amended as follows:

1. Decrease the fee for Form I–140 from "$50.00" to $35.00".

2. Increase the fee for Form I–246 from "$70.00" to $125.00".

3. Increase the fee for Form I–256A from "$75.00" to "$100.00" and add the following sentence: "(A single fee of $100.00 will be charged whenever suspension of deportation applications are filed by two or more aliens in the same proceeding.)"

4. Increase the fee for Form I–290A from "$50.00" to "$110.00" in both places where it appears.

5. Increase the fee for filing a Motion from "$50.00" to "$110.00" in both place where it appears.

6. Remove "Request. For filing application for temporary withholding of deportation under section 243(h) of the Act—$50.00."

7. Remove "Form N–400. For filing application for certificate of citizenship on Form N–400 by a parent, and the issuance thereof, under section 341 of the Act—$35.00."

8. Add Form N–604 in numerical sequence to read: "Form N–604. For filing application for a certificate of citizenship (made on Form N–400) under section 341 of the Act—$35.00."

Dated: October 23, 1986.

Edwin Meese III,

Attorney General.

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y; Docket No. R–0511]

Bank Holding Companies and Change in Bank Control; Expanded List of Permissible Nonbanking Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Y implementing the Bank Holding Company Act to include on the list of nonbanking activities generally permissible for bank holding companies the following activities: Personal property appraisals, commodity trading and futures commission merchant advice, consumer financial counseling, tax preparation and planning, check guaranty services, operating a collection agency, and operating a credit bureau. Certain of these activities have been previously approved by the Board by order.

EFFECTIVE DATE: December 15, 1986.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452–3430), Sara A. Kelsey, Senior Attorney (202/452–3236), or Kay E. Bondehagen, Senior Attorney (202/452–2067), Legal Division; Don E. Kline, Associate Director (202/452–3421), or Sidney M. Sussan, Assistant Director (202/452–2638), Division of Banking Supervision and Regulation; or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (202/452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Bank Holding Company Act

The Bank Holding Company Act of 1956, as amended ("BHC Act"), generally prohibits a bank holding company from engaging in nonbanking activities or acquiring voting securities of a company engaged in nonbanking activities. Section 4(c)(8) of the BHC Act provides an exception to this prohibition in the case of activities that the Board determines, after notice and opportunity for hearing, to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." (12 U.S.C. 1843(c)(8)). The Board is authorized to make this closely-related determination by order in an individual case or by regulation.

The Board has included in its Regulation Y a list of nonbanking activities that the Board has determined by regulation to be generally permissible for bank holding companies under section 4(c)(8) of the BHC Act. [12 CFR 225.25). Applications by bank holding companies to engage in activities included on the list of permissible nonbanking activities under Regulation Y generally are handled by the Reserve Banks under expedited processing procedures pursuant to delegated authority.

Proposed Nonbanking Activities.

On March 2, 1984, the Board proposed for public comment new nonbanking activities to be included on the Regulation Y list of activities that are generally permissible for bank holding companies under section 4(c)(8) of the BHC Act. The list included personal property appraisal, commodity trading and futures commission merchant advisory services, consumer financial counseling, tax preparation and planning, check guaranty services, collection agency and credit bureau activities, and armored car services. These activities were suggested by commenters in connection with the Board's revision of Regulation Y in 1984.

Public Comments

Approximately 212 comments were received on the proposal. Favorable comments were submitted by banks, bank holding companies, their trade associates, and the Department of Justice. The Federal Reserve Banks generally commented in support of the activities, subject to conditions to alleviate potential adverse effects. Businesses and professionals engaged in the proposed activities generally opposed allowing bank holding companies to engage in the activities.

Closely Related to Banking

Before the Board may authorize bank holding companies to engage in a nonbanking activity, the Board must find that the activity is closely related to banking. In *National Courier Association* v. *Board of Governors*, 516 F.2d 1229 (D.C. Cir. 1975), the court established guidelines for determining whether a particular activity is closely related to banking or managing or controlling banks. Under these guidelines, an activity may be found to be closely related to banking if it is demonstrated that:

(1) Banks generally in fact provide the proposed service;

(2) Banks generally provide services that are operationally or functionally so similar to the proposed service as to equip them particularly well to provide the proposed service; or

(3) Banks provide services that are so integrally related to the proposed service as to require their provision in a specialized form.

It is sufficient if the activity satisfies any one of these three criteria. (*ADAPSO* v. *Board of Governors*, 745 F.2d 677, 686 (D.C. Cir. 1984); *National Courier*, 516 F.2d at 1237–38.)

The courts have made it clear, however, that the Act grants the Board discretion to consider any criteria which provide a reasonable basis for a finding that a particular nonbanking activity has a close relationship to banking. *Securities Industry Ass'n.* v. *Board of Governors*, 468 U.S. 207, 210 n.5 (1984). The Board has stated that it will consider "any . . . factor that an applicant may advance to demonstrate a reasonable or close connection or relationship of the activity to banking." 49 FR 806 (1984). In considering whether a proposed activity is permissible for bank holding companies, the Board must adhere to the fundamental purpose of the BHC Act that banking be separated from commerce. S. Rep. No. 1084, 91st Sess. 2 (1970).

The Board has determined that all of the proposed activities, with the exception of armored car services, are closely related to banking under the *National Courier* guidelines, because banks engage in the activities or activities that are operationally or functionally similar. The Board has previously determined by order that certain of the activities are closely related to banking and has authorized those activities on a case-by-case basis (*i.e.*, consumer financial counseling, tax preparation, FCM advisory services, and check guaranty services). The Board is not making a finding that armored car services are closely related to banking for the reasons indicated in the discussion of armored car services below.

Proper Incident to Banking

In addition to finding that an activity is closely related to banking or managing or controlling banks, the Board must find that the activity is a proper incident thereto. In making this determination, section 4(c)(8) requires the Board to consider whether the activity will result in public benefits, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

This determination usually is made on a case-by-case basis in connection with individual applications to engage in a particular activity. However, the Board may determine not to add an activity to the list of permissible activities in Regulation Y on the basis that the activity generally would result in adverse effects that are not outweighed by public benefits. In addition, the Board may include in its regulations various conditions or limitations on which the Board may rely to alleviate possible adverse effects of particular activities.

With respect to public benefits, each of the activities being added to the list would provide greater convenience to customers and, if commenced *de novo*, increase competition. In order to minimize potential adverse effects with respect to certain of the activities, the Board is imposing certain conditions that have been previously imposed by order or that were suggested by the comments. Subject to these conditions, the Board has determined as a general matter that the public benefits of the activities outweigh possible adverse effects.

Specific Activities

Personal Property Appraisal. Personal property appraisal involves estimating or determining the value of property other than real property. In the broadest sense, the activity requires expertise regarding all types of personal and business property, including intangible property, such as corporate securities.

The Board has previously authorized by regulation real estate appraisal activities. (12 CFR 225.25(b)(13)). In addition, the Board has determined by order that the appraisal of certain types of personal property, both tangible and intangible, is closely related to banking. (*Security Pacific Corporation/Duff & Phelps, Inc.*, 71 Federal Reserve Bulletin 118 (1985)). In allowing bank holding companies to engage in the activity of providing valuations of companies, the Board noted that the commercial lending and trust departments of banks commonly make valuations of a broad range of tangible and intangible property, including the securities of closely held companies. Although the Board did not specify the exact types of personal property appraisal it determined were closely related to banking in the context of valuation services, providing valuations of companies necessarily involves the appraisal of various types of intangible personal property, such as securities of closely held corporations, as well as any tangible personal property that a company might possess.

In addition, a substantial number of the public commenters stated that banks currently engage in the appraisal of personal property through their trust departments. Several commenters stated that trust departments value private business interests for their own trust accounts and other types of personal property in a customer's estate for probate and tax purposes. In addition, many commenters noted that banks engage in property appraisal activities in connection with secured lending activities and routinely appraise property which they take as collateral on loans, including perishable commodities, durable goods, computer software, crops, livestock, machinery, and equipment.

Banks also engage in appraisal activities in connection with their leasing, activities. With regard to leasing, banks determine the residual value of leased property, such as vehicles and equipment, in order to establish the terms of a lease. Some money-center banks have appraised aircraft and locomotives, in connection with their leasing or lending transactions. Finally, banks may become involved in personal property appraising when they appraise real property, since certain types of real property, such as factories or apartment buildings, contain fixtures or other personal property that must be evaluated to determine that the value of the real property.

On the basis of the foregoing, the Board finds that personal property appraisal is closely related to banking under the *National Courier* tests. The Board's determination is without limitation as to types of personal property to be appraised. Although banks may not be involved currently in appraising every type of personal property in connection with their banking functions, it is evident that they do engage in appraisals of a variety of

both tangible and intangible property on a routine basis. In addition, as one of the commenters pointed out, there are general unifying principles and concepts that are basic to all branches of the appraisal profession. Hence, the skills that banks currently possess that enable them to evaluate one type of personal property are likely to be transferable to other types of personal property.

The comments indicate that personal property appraisal services are likely to result in public benefits in the form of increased competition in the appraisal industry due to the increased number of competitors and enhanced convenience to customers who would have the opportunity to obtain more financial services at a single location. Approval of personal property appraisal as a permissible activity would appear to involve few adverse effects. The commenters did not indicate any significant adverse effects arising from this activity.

Accordingly, the Board has determined to add this activity to the list of permissible nonbanking activities in Regulation Y without conditions.

Commodity Trading and Future Commission Merchant Advice. The Board proposed to add to the list of permissible activities furnishing investment advice, including counsel, publications, written analysis and reports, relating to the purchase and sale of those futures contracts and options on futures contracts that bank holding company FCM subsidiaries are permitted to execute and clear under § 225.25(b)(18) of Regulation Y. Such advice could be provided by a bank holding company either through a futures commission merchant ("FCM") subsidiary or as a commodity trading advisor ("CTA"). FCMs and CTAs are subject to registration with and regulation by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act, as amended. (7 U.S.C. 1 *et seq.*)

The commenters generally favored adding this activity to the list of permissible activities in Regulation Y.

The Board has previously determined that futures and options advice by FCMs is closely related to banking and has approved this activity by order. (*E.g., Bankers Trust New York Corporation,* 71 Federal Reserve Bulletin 111 (1985); *J.P. Morgan & Co. Incorporated,* 70 Federal Reserve Bulletin 780 (1984); *Manufacturers Hanover Corporation,* 70 Federal Reserve Bulletin 369 (1984)). The proposed CTA activity is identical to FCM advice and may be provided by a bank holding company that does not act as an FCM (*i.e.,* execute or clear orders for futures and options for customers). A reasonable basis thus exists that acting as a CTA is closely related to banking under the *National Courier* guidelines.

The comments indicate that the addition of futures and options advisory services to the list of permissible activities is likely to result in public benefits in the form of increased competition through *de novo* entry into the market place and would provide an additional service to customers. Some commenters noted possible adverse effects, such as tying and conflicts of interest when the advisor is also a principal or dealer in the underlying financial physicals. The risk of liability for negligent advice also was noted.

The Board considers that the anti-tying provisions of the BHC Act substantially address any problems in connection with the possiblity of tying of services. In order to further minimize possible conflicts and risk, however, the Board is imposing additional conditions similar to those previously imposed by order that prohibit the advisor from dealing and limit advice to financially sophisticated customers on futures and options on futures previously approved for FCM subsidiaries.

Accordingly, the Board has determined that FCM and CTA advice is a permissible activity subject to the following conditions:

(1) The FCM or CTA limits its investment advice to those futures and options on futures that bank holding companies may execute and clear for customers through their FCM subsidiaries under § 225.25(b)(18) of Regulation Y (*i.e.,* futures contracts and options on futures contracts traded on major commodity exchanges for bullion, foreign exchange, government securities, and money market instruments that a bank may buy or sell in the cash market for its own account);

(2) Customers are limited to financial institutions and other financially sophisticated customers that have significant dealings or holdings in the underlying commodities, securities, or instruments; and

(3) The FCM or CTA may not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument.

The Board specifically requested comment on whether advice should be limited to the financial commodities for which the Board has authorized FCM execution and clearance activities. Several commenters favored expanding the activity to include advice on futures and options for nonfinancial commodities, such as agricultural commodities. However, other commenters indicated that the field of banking organizations with sufficient expertise to offer advice on these instruments is narrow, and the overwhelming majority of the commenters did not request expansion of the types of instruments at this time.

Accordingly, the Board is maintaining the limitation on the scope of advice in the Board's previous decisions approving the activity by order. This decision does not preclude a bank holding company from filing an individual application for expanded advisory authority under section 4(c)(8) of the BHC Act.

Consumer Financial Counseling. Consumer financial counseling involves providing counseling, educational courses, and instructional materials to individuals on consumer-oriented financial management matters, including debt consolidation, mortgage applications, bankruptcy, budget management, real estate tax shelters, tax planning, retirement and estate planning, insurance and general investment management. This activity does not include the sale of specific products or investments. The commenters overwhelmingly supported the addition of this activity to the Regulation Y list.

The Board has previously determined that the provision of consumer financial counseling services is closely related to banking and has approved this activity by order. (*Citicorp/Citicorp Person-to-Person Financial Centers,* 65 Federal Reserve Bulletin 265 (1979); *Maryland National Corporation,* 71 Federal Reserve Bulletin 253 (1985); *United City Corporation,* 71 Federal Reserve Bulletin 662 (1985)).

The public comments indicated that the addition of this activity to the list would result in public benefits in the form of enhanced customer convenience, increased availability of financial information and counseling, and increased competition to the extent bank holding companies engage in the activity *de novo.*

Some commenters expressed concern that the activity could result in unfair competition, conflicts of interest, and other adverse effects. For example, a potential conflict was perceived between a bank's traditional role as a source of objective financial advice and the bank's interest in promoting a particular product, especially if the bank holding company provides discount brokerage services in addition to consumer financial counseling. Another conflict was noted in the provision of debt consolidation or bankruptcy counseling to clients who are in default on loan payments to an affiliate. Some commenters stated that such counseling could also give rise to legal liability for the unauthorized practice of law, depending on the content of the advice

and State law, and that there would be a general risk of liability for negligent advice. The possibility of unauthorized disclosure of confidential information concerning customers was also noted.

To address these concerns, the Board has determined that conditions, similar to those previously established by the Board in orders approving consumer financial counseling activities, are necessary to guard against the potential conflicts associated with this activity. (See *Citicorp, supra,* 65 Federal Reserve Bulletin at 267). Accordingly, the Board is establishing the following conditions on consumer financial counseling services in Regulation Y:

(1) Educational materials and presentations used by the counselor may not promote specific products and services;

(2) The counselor shall advise each customer that the customer is not required to purchase any services from affiliates; and

(3) The counselor shall not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

The first of these conditions provides that the consumer financial counselor's educational materials and presentations may not promote specific products and services. The purpose of the consumer financial counseling authorization is to allow bank holding companies to provide consumers with basic consumer financial education and advice concerning the development of a general financial plan to meet the consumer's needs and objectives. The condition is intended to promote this purpose by ensuring the objectivity of educational materials and activities and preventing them from being used to promote specific products and services, such as those that may be offered by an affiliate. For example, in *Citicorp* the Board noted that the consumer financial counseling materials proposed in that case were objective and did not promote Citicorp financial services. This condition incorporates the distinction between promotional and educational activities required in the *Citicorp* case. In addition, Citicorp undertook to specifically advise each customer that the customer is not required to purchase any services from Citicorp affiliates, the second condition that the Board has incorporated into this regulation.

The third condition is also based on the Board's order in *Citicorp* and prohibits the counselor from obtaining or disclosing confidential information concerning its customers without the customer's written consent. The prohibition against unauthorized disclosure of confidential customer information does not, however, bar disclosure that is legally required, for example, by statute or under a court order.

With respect to possible unfair competition, the Board relies on the anti-typing provisions of the BHC Act (12 U.S.C. 1971 and 1972(1)) to substantially address the commenters' concerns. With respect to possible liability risk, the Board notes that insurance may be available in many cases to reduce any losses and cautions applicants to confine their activities to applicable state law limitations.

In addition, the Board has determined that a bank holding company may offer this activity through a subsidiary that also engages in securities brokerage only if the brokerage activity is provided by completely different personnel and in separate offices or in separate and distinctly marked areas of the facility through which counseling services are offered. The Board imposed similar restrictions in approving by order an application by a bank holding company to provide consumer financial counseling and securities brokerage services in the same subsidiary. *United City Corporation,* 71 Federal Reserve Bulletin 662 (1985).

The Board has also determined that consumer financial counseling does not include the provision of portfolio investment advice or portfolio management. These activities are already permissible under provisions of Regulation Y authorizing trust activities (12 CFR 225.25(b)(3)) and investment advice (12 CFR 225.25(b)(4)(iii)) subject to a fiduciary standard. The Board believes that these activities should not be authorized in other than a fiduciary context because of potential conflicts of interest that could arise between the provision of disinterested investment advice and the incentives to promote specific products sold by the bank holding company or its affiliates.

Tax Planning and Preparation. Tax planning involves providing advice and strategies designed to minimize tax liabilities and includes, for individuals, analysis of the tax implications of retirement plans, estate planning and family trusts and, for corporations, includes analysis of the tax implications of mergers and acquisitions, portfolio mix, specific investments, previous tax payments and year-end tax planning. Tax preparation involves the preparation of tax forms and advice concerning liability based on records and receipts supplied by the client. The overwhelming majority of the commenters favored adding tax planning and preparation services to the list of permissible activities.

The Board has previously determined that tax preparation services for individuals is closely related to banking and has approved this activity by order. (*Bancorp Hawaii, Inc.,* 71 Federal Reserve Bulletin 168 (1985)). Since tax preparation services for corporations are functionally or operationally similar to the tax preparation services that banks already provide to individuals as well as to their affiliates and other financial institutions, the Board has determined that corporate tax preparation services are closely related to banking.

The Board also has determined that tax planning is closely related to banking because banks provide this service through their trust and financial counseling departments. In addition, banks perform tax analyses of business transactions they finance, provide tax planning services to financial institutions, and provide tax planning services to corporations in connection with merger and acquisition and similar advisory services, and through their leasing subsidiaries.

The Board specifically requested the commenters to address whether tax planning for corporations should be considered management consulting. The Board has determined that general management consulting is not an activity that is closely related to banking. The Board has defined management consulting to include a broad range of counseling on matters relating to the substantive operation of a trade or business, often on a continuing basis. (See 12 CFR 225.25(b)(4) n.2; *First Commerce Corporation,* 58 Federal Reserve Bulletin 674 (1972)).

The Board has concluded that tax planning is a specialized form of financial advice, akin to the provision of financial feasibility studies on specific projects, which the Board has previously approved (*Security Pacific Corporation/ Duff & Phelps, Inc.,* 71 Federal Reserve Bulletin 118 (1985)), and does not involve the degree of influence over substantive operations necessary to be deemed management consulting.

Several commenters recommended that the Board expand the final rule to include services to noncorporate businesses, such as partnerships and sole proprietorships, and tax exempt nonprofit organizations. Although not specifically proposed, services to these customers represent a logical extension of the proposed activity involving the same skills and expertise necessary to perform such services for corporations and individuals. In view of this similarity, the Board believes that its initial proposal is sufficiently broad to encompass tax services to noncorporate businesses and nonprofit organizations.

The comments indicated that tax planning and preparation services are likely to result in public benefits in the form of enhanced convenience to customers, who would have a single source for many types of financial services. In addition, to the extent that bank holding companies enter this activity on a *de novo* basis, competition would be increased.

Some commenters noted potential adverse effects similar to those in consumer financial counseling, such as conflicts of interest if tax planner or preparer used materials that promoted other specific products or services, the misuse of confidential information concerning customers, or tying. Some commenters raised the possibility that tax planning services could give rise to legal liability for negligent advice or for the unauthorized practice of law.

The Board has determined that the activity should be added to the list of permissible activities subject to the following conditions to guard against potential conflicts and misuse of confidential information:

(1) The materials used by the tax planner or preparer do not promote other specific products and services; and

(2) The tax planner or preparer shall not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

With respect to tying, existing provisions of the BHC Act are specifically directed at preventing this type of abuse. Liability risk may be reduced by insurance and conforming activities to applicable legal and fiduciary limitations.

With respect to the unauthorized practice of law, the Board notes that the activity must be conducted in strict accordance with applicable local law, and that the activity would therefore be prohibited in those jurisdictions that specify the activity as the practice of law.

Check Guaranty Services. The proposed activity of check guaranty services would permit bank holding companies to authorize the acceptance by subscribing merchants of certain personal checks tendered by the merchant's customers in exchange for goods and services and to purchase validly authorized checks from merchants in the event the checks are subsequently dishonored.

The Board has previously determined that check guaranty services are closely related to banking and has approved applications by bank holding companies on a case-by-case basis to engage in this activity. (*Barnett Banks of Florida*, 65 Federal Reserve Bulletin 263 (1979); *Citicorp*, 67 Federal Reserve Bulletin 740 (1981)).

The comments indicate that the provision of check guaranty services by bank holding companies can reasonably be expected to provide public benefits in the form of increased competition through *de novo* entry into the market place. In addition, check guaranty services would increase customer convenience by facilitating the use of checks by consumers for the purchase of retail goods and services while providing merchants with a means to decrease bad check losses.

The commenters did not indicate that any significant adverse effects would result from this activity. In approving check guaranty services by order, however, the Board noted the potential for unfair competition or conflicts of interest with respect to the authorization of checks not drawn on affiliated banks. To minimize this possibility, the Board relied on a commitment that the applicant would not discriminate against checks drawn on unaffiliated banks. (*Citicorp, supra*). The Board believes it is appropriate to maintain that condition in authorizing check guaranty services under Regulation Y.

In proposing this activity, the Board asked whether conditions should be imposed to limit the liability of a bank holding company on the purchase of dishonored checks. The commenters on this issue answered in the negative. A number of commenters noted that banks impose various policies and procedures to limit liability through the terms of the agreement with the merchant subscribing to the service, and some limit liability to the amount of the purchased check. The Board believes that such procedures are sufficient to limit liability arising from this action.

Operating a Collection Agency or a Credit Bureau. A collection agency seeks to collect payment on the overdue bills of debtors, charging the party submitting the claim a flat dollar amount or a specified percentage commission contingent on the amount collected. A credit bureau gathers, stores, and disseminates factual information relating to the identity and paying habits of consumers. Credit bureaus then provide this information for a fee to credit grantors such as retailers, banks and finance companies to enable these institutions to arrive at prudent credit granting decisions.

The commenters noted that banks function as collection agencies, since they are presently engaged in debt collection activities for loans they originate and service. A number of commenters reported that some banks maintain professional staffs to conduct such collection activities. Other commenters pointed out that banks historically have operated collection agencies in order to collect on overdue credit card accounts. Accordingly, there is a reasonable basis for concluding that operating a collection agency is closely related to banking under the *National Courier* guidelines.

With regard to the credit bureau activity, the comments indicated that banks provide services that are operationally or functionally similar. Numerous commenters noted that banks maintain credit files and analyze credit information as part of their consumer lending function. Therefore, banks already possess a particular expertise with regard to credit reporting, and a reasonable basis exists to conclude that this activity is closely related to banking under *National Courier*.

The comments indicate that the operation of collection agencies and credit bureaus by bank holding companies can reasonably be expected to produce benefits to the public by increasing competition through *de novo* entry into the marketplace for these services. A number of commenters noted that the national credit bureau market is dominated by a small number of firms and that *de novo* entry by bank holding companies in this area would increase competition. In addition, the convenience of business customers would be enhanced because they would be able to obtain an increased number of financial services at a single source.

With respect to possible adverse effects from operating a collection agency, several commenters expressed concern over the potential for unfair competition or tying if business customers of an affiliated bank were required to use the collection services. Other commenters noted possible conflicts of interest arising if a bank allowed its affiliated collection agency to prematurely garnish a customer's bank account or to give a preference to an affiliated creditor in cases where multiple creditors are trying to collect from the same debtor.

Although the anti-tying provisions address potential tie-in arrangements, the Board has determined that conditions are warranted to minimize potential unfair competition or conflicts of interest. Accordingly, the Board is establishing the following conditions on operating a collection agency:

(1) The collection agency shall not obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains trust accounts for those agencies; and

(2) The collection agency shall not provide preferential treatment to an affiliate or a customer of such affiliate seeking collection of an outstanding debt.

With respect to possible adverse effects from operating a credit bureau, representatives of the credit bureau industry expressed concern regarding potential conflicts of interest and unfair competition resulting from a bank holding company performing credit bureau activities. For example, under the Fair Credit Reporting Act, a credit bureau is required to investigate the accuracy of any item of information disputed by a consumer. (15 U.S.C. 1681(i)). Industry representatives claimed that a bank holding company credit bureau may not conduct an impartial investigation if the disputed information originates with an affiliate. In addition, they claimed that holding company entry into the industry would not result in increased competition through *de novo* entry, but rather would result in the absorption of existing firms by bank holding companies.

The Board considered similar arguments when it denied a bank holding company's proposal to engage in providing credit ratings for large businesses, many of which were credit customers of its subsidiary bank. (*Security Pacific Corporation/Duff & Phelps, Inc.*, 71 Federal Reserve Bulletin 118 (1985)). The present proposal, however, would allow bank holding companies to engage only in consumer credit reporting activities, rather than credit reporting activities concerning large commercial institutions. Consumer related activities would be subject to the public disclosure and other requirements of the Fair Credit Reporting Act. In addition, in order to address the possible conflict of interest of favoring an affiliate, the Board is imposing the condition that a credit bureau shall not provide preferential treatment to a customer of an affiliated financial institution.

Although the national credit reporting industry consists of only five firms, bank holding company entry into this market need not have an anticompetitive effect if entry is on a *de novo* basis. Accordingly, the Board would carefully consider an application to acquire one of the five dominant firms under the standards in the BHC Act, including whether it would result in unfair competition, undue concentration of resources, conflicts of interest, or other adverse effects.

Accordingly, the Board has determined to add operation of a credit bureau to Regulation Y subject to the above noted conditions.

Armored Car Services. The Board proposed to amend Regulation Y to authorize bank holding companies to provide fully insured transportation of cash, securities, and valuables (primarily between commercial customers and financial institutions) and such ancillary services as coin wrapping, change delivery, mail delivery, payroll check cashing, servicing of ATMs and leasing safes to commercial customers.

This activity was the most controversial of the activities proposed, and generated the most negative comment. The Board received numerous comments against adding this activity to the list, primarily from armored car operators, their trade associations, and insurers of armored car operators.

The opponents maintained that the activity is not closely related to banking but rather is essentially a transportation activity requiring no banking expertise. The opponents noted several possible adverse effects, including tying, conflicts of interest, liability risk for losses of valuables, or the use of armored car services to facilitate illegal branch banking. A large number of these commenters also maintained that approval would lead to unfair competition, possibly disrupting the existing level of service.

The Board initially proposed adding this activity to the list in 1971. In view of the adverse comments received from the industry at that time and the lack of strong interest on the part of bank holding companies, the Board did not issue a final rule, finding the evidence in support of the activity to be insufficient. However, the Board stated it would consider individual applications for this activity. To date the Board has received no bank holding company applications for armored car services.

The Board received many comments from bank holding companies expressing generalized support for the addition of armored car services to the Regulation Y list along with the other proposed new activities. Only a few of the commenters commented specifically on this activity, however, or indicated a desire to engage in the activity in the near future.

In view of the issue raised by the comments on this activity and the minimal interest by bank holding companies, the Board has decided not to add the activity to the Regulation Y list at this time. This decision will not preclude Board consideration of individual applications to engage in the activity under section 4(c)(8) of the Act, however.

Accordingly, the Board will continue its present policy of deferring action to add armored car services to Regulation Y pending receipt of an application for the activity. The Board expresses no opinion as to whether the activity would meet the *National Courier* test and would be a proper incident to banking.

Regulatory Flexibility Analysis—Paperwork Reduction Act

The Board has certified that adoption of this amended regulation dealing with permissible activities for bank holding companies is not expected to have a significant economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The Board is required by section 4(c)(8) of the BHC Act, 12 U.S.C. 1843(c)(8), to determine whether nonbanking activities are closely related to banking and thus are permissible for bank holding companies. The Board is clarifying the scope of activities it considers to be closely related to banking and permissible for bank holding companies, with Board approval. The amended regulation does not impose different or more burdensome requirements than the prior regulation for applications to the Board to engage in such activities. By clarifying the scope of permissible activities, the amended regulation will permit certain additional applications to qualify for more expeditious processing in the regional Federal Reserve Banks under authority delegated by the Board. 12 CFR 225.23.

The amended regulation imposes no additional information collection requirements and imposes no substantial change in the requirements for applications to engage in nonbanking activities.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

PART 225—[AMENDED]

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)), the Board is amending 12 CFR Part 225 as follows:

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909.

2. Section 225.25(b) is amended by revising paragraph (13) and adding new paragraphs (19), (20), (21), (22), (23), and (24) to read as follows:

§ 225.25 List of permissible nonbanking activities.

* * * * *

(b) * * *

(13) *Real estate and personal property appraising.* Performing appraisals of real estate and tangible and intangible personal property, including securities.

* * * * *

(19) *Investment advice on financial futures and options on futures.* Providing investment advice, including counsel, publications, written analyses and reports, as a futures commission merchant ("FCM") authorized pursuant to paragraph (b)(18) of this section or as a commodity trading advisor ("CTA") registered with the Commodity Futures Trading Commission, with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to in paragraph (b)(18) of this section, provided that the FCM or CTA:

(i) Does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument; and

(ii) Limits its advice to financial institutions and other financially sophisticated customers that have significant dealings or holdings in the underlying commodities, securities, or instruments.

(20) *Consumer financial counseling.* Providing advice, educational courses, and instructional materials to consumers on individual financial management matters, including debt consolidation, applying for a mortgage, bankruptcy, budget management, tax planning, retirement and estate planning, insurance and general investment management, provided:

(i) Educational materials and presentations used by the counselor may not promote specific products and services;

(ii) The counselor advises each customer that the customer is not required to purchase any services from affiliates; and

(iii) The counselor does not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

This paragraph does not authorize the provision of advice on specific products or investments or the provision of portfolio investment advice or portfolio management, which are authorized under paragraph (b)(3) and (4)(iii) of this section subject to certain fiduciary standards. If consumer financial counseling is offered by a company that also offers securities brokerage services pursuant to paragraph (b)(15) of this section, the brokerage and counseling services must be provided by different personnel and in separate offices or in separate and distinctly marked areas.

(21) *Tax planning and preparation.* Providing individuals, businesses, and nonprofit organizations tax planning and tax preparation services, including advice and strategies to minimize tax liabilities, and the preparation of tax forms, provided:

(i) The materials used by the tax planner or preparer do not promote other specific products and services; and

(ii) The tax planner or preparer does not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

(22) *Check guaranty services.* Authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services and purchasing from the merchant validly authorized checks that are subsequently dishonored, provided that the check guarantor does not discriminate against checks drawn on unaffiliated banks.

(23) *Operating collection agency.* Collecting overdue accounts receivable, either retail or commercial, provided the collection agency:

(i) Does not obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains trust accounts for those agencies; and

(ii) Does not provide preferential treatment to an affiliate or a customer of such affiliate seeking collection of an outstanding debt.

(24) *Operating credit bureau.* Maintaining files on the past credit history of consumers and providing that information to a credit grantor who is considering a borrower's application for credit, provided that the credit bureau does not provide preferential treatment to a customer of an affiliated financial institution.

By order of the Board of Governors of the Federal Reserve System, October 30, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-24930 Filed 11-3-86; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[Rev. 6; Amdt. 31]

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule with request for comments.

SUMMARY: This final rule makes technical changes in the regulations governing the cost of money that Small Business Investment Companies may charge. The rule substitutes the term "Debenture Rate" for the term "FFB Rate" in the definitional section of the regulations and in the substantive regulation, thus tying the maximum permissible cost of money that a Small Business Investment Company may charge the small concerns it finances to the rate established on Small Business Investment Company debentures in sales to the public from time to time.

DATES: Effective November 4, 1986. Comments by January 5, 1987.

ADDRESS: Written comments may be sent to: Robert G. Lineberry, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 1441 L Street, NW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John L. Werner, Director, Office of Investment, U.S. Small Business Administration, 1441 L St., NW., Room 810, Washington, DC 20416 (202) 653-6584.

SUPPLEMENTARY INFORMATION: These changes implement section 18004 of Pub. L. 99-272, 100 Stat. 82, 364 (April 7, 1986) which adds a new section 320 to the Small Business Investment Act removing, as of October 1, 1986, the authority of the Federal Financing Bank to purchase debentures issued by Small Business Investment Companies and guaranteed by the Small Business Administration (SBA). Section 18005 of the same Pubic Law authorizes SBA to establish a mechanism by which certificates of interest backed by trusts or pools of guaranteed debentures may be sold to the public and requires SBA to take certain actions regarding the registration and conduct of such sales. The latter statutory directive was implemented by regulations published, and effective, June 12, 1986. 51 FR 21484. Since the debentures of Small Business Investment Companies will no longer be sold to the Federal Financing Bank, it is necessary to amend the present Cost of Money regulation, which refers to the interest rate charged by the Federal Financing Bank. Accordingly, references to the "FFB rate" now appearing in the regulations governing Small Business Investment Companies (13 CFR Part 107) will be replaced by references to the rate of interest on debentures which are pooled and which pool certificates are sold to the public with SBA's guarantee. The underlying principle of the regulations—that the Cost of Money to a small concern should bear a relationship to the current cost of ten-year money to Licensees—remains unchanged.