

Memo 1994-27 Third Party Messenger Services

TO: All Kansas State Chartered Banks  
FROM: Sonya Allen, Staff Attorney  
DATE: September 9, 1994

RE: Use of Third Party Messenger Services Between Banks and Their Customers

For purposes of this memo, a "messenger service" refers to any service, such as a courier service or armored car service, that is used by a 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 such customers.

The first consideration in determining whether such a service constitutes "branch banking" is whether or not the activities conducted by the messenger service are core banking functions that would be considered to be branching activities. Such activities include but are not limited to receiving deposits, paying checks, or loaning money. The determination of what other various activities are branching activities may be determined on a case-by-case basis.

Once it has been determined whether a particular activity is a branching activity, the following guidelines shall apply.

I. Pickup and delivery of items relating to nonbranching activities.

A bank may either "establish (i.e., own or rent)" a messenger service' or may contract with third party messenger service to pick up and deliver items relating to nonbranching activities.

In establishing or contracting for such a service, the bank may establish terms, conditions and limitations that it deems appropriate to assure compliance with safe and sound banking practices.

II. Pickup and delivery of items pertaining to branching activities.

Without receiving approval from the state bank commissioner to establish a branch, a bank may not establish a messenger service to pickup and deliver items relating to branching activities. However, a bank may use a third party messenger service to perform this function.

A third party messenger service means one that is established and operated by a third party. Such a determination is made on a case-by-case basis, based on the totality of the circumstances. However, the following guidelines are given as "safe harbor" provisions under which a messenger service that meets each of the following criteria shall be deemed to be established by a third party.

A. The first requirement is that a party other than the bank shall own the service and its facilities (or rent them from another party other than the bank) and employ the persons engaged in the provision of the service.

B. Second, the messenger service shall meet the following criteria.

1. The messenger service makes its service available to the public, including other depository institutions.
2. The messenger service retains ultimate discretion to determine which customers and geographical areas it will serve.
3. The messenger service maintains ultimate responsibility for scheduling, movement and routing.

4. The messenger service does not operate under the name of the bank, and the bank and the messenger do not advertise, or otherwise represent, that the bank itself is providing the service. However, the bank may advertise that its customers may use one or more third party messenger services to transact their business with the bank.
  5. The messenger service assumes responsibility for the items during transit and maintains adequate insurance covering holdups, employee infidelity, and other in-transit losses.
  6. The messenger service enters into contracts with customers which include the following provisions:
    - a. the messenger service acts as the agent for the customer when the items are in transit between the bank and the customer;
    - b. in the case of items intended for deposit, such items shall not be deemed to have been deposited until delivered to the bank at an established bank office; and
    - c. in the case of items representing withdrawals, such items shall be deemed to be paid when the bank gives the item to the messenger service for return to the customer.
- C. Third, a bank may help a customer to defray all or part of the costs incurred by the customer in transporting items through a third party messenger service by directly paying the messenger or by reimbursing the customer, and may also impose terms, conditions and limitations with respect to the payment of such costs without such activity constituting "establishment" of a service.
- D. Finally, a bank may also establish terms, conditions and limitations not inconsistent with these provisions as it deems appropriate to assure compliance with safe and sound banking practices.

Conclusion:

The "safe harbor" provisions contained in this memo are intended to provide general guidance regarding the acceptable uses of messenger services between banks and their customers. Situations which fall outside the guidelines will be scrutinized on a case-by-case basis, based on the totality of the circumstances to determine whether such a service constitutes branch banking.