

**New Hampshire Banking Department
Response to Public Comments
Ban 523, 525, 526**

A public hearing was held on the proposed Ban 523, 525 and 526 on Monday, September 28 at 9 a.m. in the banking department conference room. One commenter (Attorney John Funk on behalf of the New Hampshire Bankers Association) was in attendance and made three substantive comments about Ban 523 and 525. He made no comments about Ban 526. The oral comments were followed by a letter addressed to General Counsel Leonard expressing the same comments.

No other written or oral comments were received by the banking department in connection with rulemaking for Ban 523, 525 or 526.

Comment #1:

With respect to Ban 523 and Ban 525, if a bank wants to exercise an authorized power, it is required to give a 30 day notice to the Bank Commissioner. NHBA recommends that language be inserted to the effect that the power may be exercised unless a written objection is received prior to the expiration of the notice period.

Banking Department Response #1:

The following amended language is proposed to adopt this suggestion in all three proposed Ban rules – 523, 525 and 526 (with language in 526 addressing credit unions and not banks):

XXX.03 Notification.

(a) At least 30 days prior to exercising any authorized power, a state bank shall provide the bank commissioner with a written notice which shall:

~~(a)~~1) Specifically describe in narrative form each national bank authorized power;

~~(b)~~2) Specifically describe any limitations or restrictions on the authorized power; and

~~(c)~~3) Include copies of all federal laws, regulations or other federal authority, including rulings, decisions, opinions, policy statements, bulletins and interpretive letters, under which such authorized power is permitted for national banks.

(b) The state bank may begin exercising the authorized power upon completion of the 30 day notification period unless the state bank has received a written order of objection from the bank commissioner pursuant to Ban XXX.04.

(c) The 30 day notice period shall run from the date the notice was received by the commissioner.

XXX.04 Termination; Modification.

(a) State banks shall not exercise, or cease exercising the authorized power or cease making or divest an investment which was authorized by Ban XXX.02:

(1) Upon the bank commissioner’s order of objection, if the bank commissioner determines that the authorized power or investment will jeopardize the safety and soundness of the state bank;

~~(1)~~(2) Upon ~~order of~~ the bank commissioner’s order of termination if the bank commissioner determines that the continuation of the authorized power or investment will jeopardize the safety and soundness of the state bank; or

~~(2)~~(3) If the authorized power is terminated by operation of a federal law, regulation or other federal authority, including rulings, decisions, opinion, policy statements, bulletins and interpretive letters.

Comment #2:

With respect to Ban 523 and 525, NHBA recommends, for the sake of clarity, that 523.02 and 525.02 begin with the phrase “In addition to any powers authorized under New Hampshire laws and regulations,” to make the point that if the federal power also exists under state law, a bank doesn’t need to give the notice.

Banking Department Response #2:

By operation of law, any activity that is permitted by New Hampshire statute does not need special permission under this rule. It seems redundant and therefore unnecessary to include such a phrase.

Comment #3:

NHBA asked the banking department to consider the effect of RSA 384:16-b, which already permits a state-chartered bank to engage in all of the activities authorized for national banks without the need for prior notification. NHBA feels that in light of this statute, proposed Ban 523 may be redundant and confusing. Ban 525 is still needed, however, because state-chartered banks do not have statutory authority with respect to the powers of federally chartered savings banks.

Banking Department Response #3:

Ban 523 is broader in scope than the language of RSA 384:16-b and permits state banks to engage in more authorized activities. RSA 384:16-b specifically addresses Gramm-Leach-Bliley activity. Furthermore, should 384:16-b be amended or repealed, the Commissioner’s authority to permit state banks to use federal bank authorized powers will remain, because this rulemaking is being made pursuant to the commissioner’s authority under RSA 394-A:7.